CORPORATE INSOLVENCY AND RECOVERY MECHANISMS FOR SMALL AND MEDIUM ENTERPRISES (MSMEs) IN INDIA

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ABSTRACT

Micro, small, and medium companies (MSMEs) provide many benefits to the Indian economy such as employment, output, economic expansion, entrepreneurship, and GDP growth. But since they have trouble getting funding, drawing in and keeping skilled workers, and breaking into local, national, and global markets, MSMEs are especially susceptible to financial shocks. The second wave of COVID-19 was unexpected, and MSMEs were ill-prepared for it.[1]

An economy in good health depends on the MSME sector, which industrializes rural and underdeveloped areas, reduces regional imbalances, and guarantees a more equal distribution of national income and wealth. Moreover, they provide large employment opportunities at comparatively lower capital costs than large industries. Among the many measures by which the MSME sector has risen significantly in the last ten years are the number of units, production, employment, and exports. This industry can offer much more and realize its enormous potential with the appropriate support structures and enabling environment.[2].

Henceforth, the MSME is essential for India's economic growth and development. However, it faces challenges in accessing finance, attracting, and retaining qualified workforce, and penetrating regional, national, and international markets. With the right support systems and enabling framework, MSMEs can contribute significantly to the overall growth of the Indian economy.[3] Technological backwardness is one of the most important constraints faced by these businesses[4].

Through many laws and directives, the government and regulators have tried to provide a favorable atmosphere for the growth of the MSME sector. Adapting of the Micro, Small and

[1] SME Chamber of India, https://www.smechamberofindia.com/about-msme-in-india.php (last visited October 10, 2024).
[2] MSME- Development Institute, Kolkata, https://sisikolkata.gov.in/msme-definition.html (last visited October 10, 2024).
[3] Insolvency and Bankruptcy Code, 2016, S 4, No. 31, Acts of Parliament, 2016 (India).
[4] Insolvency and Bankruptcy Code, 2016, S 240A, No. 31, Acts of Parliament, 2016 (India).

Medium Enterprises Development Act, 2006 (MSMED Act) has brought a strong insolvency framework that seeks to safeguard small investors' interests and make a company's existence easier in India[5].

A recent amendment to the Insolvency and Bankruptcy Code, 2016 (IBC) was made by the President of India via the Insolvency and Bankruptcy (Amendment) Ordinance, 2021. A whole new system is introduced by the amendment: the Pre-Packaged Insolvency Resolution Process (PIRP). Micro, small, and medium-sized firms (MSMEs) are to benefit from a speedier, more affordable, and less intrusive insolvency procedure under the PIRP.[6]

The concept of the pre-packaged insolvency resolution procedure is implemented to protect the MSMEs and creditors from protracted legal disputes during a period of economic weakness, which is crucial for restoring the struggling economy to stability. While this strategy is widely used in other countries, its adoption and definition in India provide an opportunity for creditors and debtors to develop a robust plan and resolve disputes without resorting to lengthy legal actions. PIRP facilitates organic bilateral discussions about the terms and circumstances of restructuring with little involvement of the Adjudicating Authority (AA). Conversely, although official insolvency processes like the corporate insolvency resolution process (CIRP) have certain time constraints, informal remedies like PIRP are achieved outside of court and are more efficient in ensuring legal compliance if deemed suitable by the AA. PIRP, or Pre-Indictment Resolution Programme, is a legal agreement reached before a court case goes to trial. Indeed, the court may identify and approve it, ensuring precise protections for all parties with biases.

Pre-packaged insolvency Resolution minimizes interruptions to company operations and preserves job prospects while achieving quicker, more affordable, and value-optimized outcomes for all parties concerned.

The amendment is being introduced in response to a difficult financial situation caused by the COVID-19 pandemic, which has put companies under significant strain and offers little hope for improvement. The amendment provides micro, small, and medium enterprises (MSMEs) with the opportunity to address financial difficulties via a partially formal system that allows

[5] Insolvency and Bankruptcy Code, 2016, S 54A-54P, No. 31, Acts of Parliament, 2016 (India).
[6] Debanshu Mukherjee, Aishwarya Satija et. Al, Pre-Packaged Insolvency Resolution under Insolvency and Bankruptcy Code (IBC): An Overview, Vidhi Centre for Legal Policy (October 10, 2024), https://vidhilegalpolicy.in/blog/pre-packaged insolvency-resolution-under-the-insolvency-and-bankruptcy-code-ibc-an-overview/.

for resolution outside of the court to a certain degree. This is done while maintaining the integrity of a formal insolvency procedure as mandated by law.[7].

THE AUTOCHTHONY OF THE LAW OF CORPORATE INSOLVENCY IN INDIA

The need of the hour was a law which was powerful to deal with all situations which were acting as hurdles in the path of recovery of debt. This dearth in insolvency law leads to introduction of the Insolvency and Bankruptcy Code, 2016. Before analyzing the Code, it is necessary to understand the historical background of the insolvency law in India, the advent of the roots that led to the introduction of the Code. Discussed below is the history of law of corporate insolvency in India and the need for implementation of the Code[8].

Historical Derivation of The Law of Corporate Insolvency in India

The historical background of corporate insolvency is divided into two parts which are discussed below in detail:

1. Pre Independence-Period

Prior to the arrival of the British, India lacked a comprehensive system of commercial law. As a result of the lack of legislation in the business sector, they were allowed to establish their own set of regulations. The insolvency law was formerly without any official legislation. The origins of bankruptcy law may be traced back to sections 23 and 24 of the Government of India Act, 1800. These provisions granted the Supreme Court at Fort William and Madras, as well as the Recorder's Court in Bombay, the authority to handle insolvency cases. The easily available general law was used since there was no particular legislation available. A law passed by the British Parliament in 1759 known as the Lord's Act gave the Courts the power to administer legal remedies. As there was a complete absence of existing bankruptcy laws, it became necessary to establish such laws in the three presidential cities of Madras, Bombay, and Calcutta. The demand was greater in these locations due to the significant volume of commerce conducted there.

Following the enactment of the Government of India Act in 1800, the Statute 9 of 1828 was subsequently approved. It is considered to mark the commencement of bankruptcy law in India. According to this law, the courts that dealt with bankruptcy had their own unique character and

[7] Pre-packaged insolvency resolution under IBC for MSMEs: Challenges that may arise in implementation, Financial Express, May 15, 2024.
[8] The lack of viability of many financially distressed MSMEs has also been recognized by the World Bank and UNCITRAL.

were led by a judge from the Supreme Court. The Statute was initially enacted for a period of four years, but owing to the absence of a proper legal framework, its length was extended and it stayed in effect until the year 1843.

The enactment of the Indian Bankruptcy Act in 1848 marked an important milestone in the development of bankruptcy legislation in India. The Bankruptcy Statute, which was applicable in England during that period, was used to tackle the problem of debtors who were bankrupt and to investigate strategies for attaining amicable resolutions. The Courts established under the 1828 Act were replaced by the High Courts in the presidential towns after the enactment of the Indian High Court Act, 1861. Consequently, the authority to handle insolvency cases in the Presidency towns was shifted from the Supreme Court to the High Court.

In 1877, efforts were made to implement insolvency laws in rural regions which allowed the District Courts to handle insolvency petitions. The Act of 1848 remained in effect in presidency towns, but it was deemed insufficient to address the evolving circumstances. Therefore, the Presidency Towns Insolvency Act of 1909 was established. This Act was enforced in the three presidential cities of Calcutta, Madras, and Bombay, granting authority to the Single Judge of the High Court in each town. It was implemented to address the issues of insolvency and bankruptcy for both individuals and corporations. It provided for an appointment of an officer on whom all the property of insolvent was vested and he will be called as the Official Assignee[9]. Under the Provincial Insolvency Act an official receiver under S. 57 was appointed and his appointment was not obligatory. Where an official receiver was not appointed on an ad hoc basis as a receiver the property vested in the Court[10]. This was convenient and the common system under the Presidency Towns Act was adopted all over India. These Acts continued to function even after independence. For the remaining provinces in India, the Provincial Insolvency Act, 1920 prevailed with similar content and the difference being that of their territorial jurisdiction. Both these Acts dealt with personal insolvency, insolvency of sole proprietorship and partnership firms.

2. Post Independence Period

After the independence of India, the subject matter of insolvency and bankruptcy was incorporated under the Constitution of India, 1950. The subject matter of 'Bankruptcy and Insolvency' is provided under the Concurrent List i.e. both Centre and State Governments can

[9] Presidency Towns Insolvency Act, 1909, No.3, Act of Central Government, 1909, §77
[10] The Provincial Insolvency Act, 1920No. 5 of 1920, §58

make laws relating to this subject.[11] The position of India is similar to that of the US with regard to the power of making laws in the subject matter which fall within the concurrent list. "In the US, insolvency laws are generally the subject matter of the State but once a bank process is initiated to resolve insolvency only federal laws are applicable[12]." Although it is up to the concurrent list in India which is dealt with by central government. The Companies Act 1956 was adopted with these powers, making it the first insolvency law in independent India. The term "insolvency" was not explicitly defined within the legal framework of corporate laws in India. S.433 (e) of the Companies Act, 1956 specifically refers to a corporation that is incapable of fulfilling its financial obligations. Furthermore, Section 425 of the aforementioned Act outlines the procedures for both voluntary and involuntary winding up of companies that are unable to meet their financial obligations. In the event of a voluntary winding up, shareholders have the option to wind up the firm if the company's assets are insufficient to cover its obligations, among other reasons. Creditors voluntary winding up is a sort of winding up in which the firm's creditors have the power to compel the company to be wound up if it is unable to settle its obligations.

Although, the Act provided for certain relief in case of insolvency but these provisions were not capable of pathway for resolution of the problem of corporate insolvency in India. The biggest disadvantage was that under the provisions of the Act, all the cases were transferred to the Court. The Court in turn appointed official liquidators. The matters thus took prolonged time and there were delays and thus failed to provide relief to the debtors.

Industrial sickness was present throughout the pre-independence period, but it was given significant attention after independence. There was a perceived need for a distinct framework due to the insufficiency of the current system. In the 1980s, there was a significant surge in industrial illness. The government was implementing measures to regulate ailing sectors, but these efforts were not producing any positive outcomes. In addition, the government implemented steps to nationalize banks and made efforts to provide temporary relief. However, these actions were insufficient in addressing the issue of increasing industrial disease. During this era, the government initiated its first legislative action to address issues of insolvency and bankruptcy. Several committees were established and provided various recommendations, but it was the T. Tiwari Committee, appointed in 1981, that proposed a comprehensive special

[11] INDIA CONST. art. 246
[12] Ashish Pandey, The Indian Insolvency and Bankruptcy Bill: Sixty Years in the Making, Vol. 8, Issue 1, IMJ, Jan.– Jun. 2016 at Pg. 27.

legislation to address the issue of sickness in industries. This legislation outlined the fundamental objectives and necessary remedies for the revival of ailing units. In September 1983, the committee conducted a thorough analysis and presented its findings, recommending the enactment of a special resolution and the establishment of a dedicated quasi-judicial institution to address the growing issue of bankruptcy. Therefore, the Sick Industries and Companies (Special Provisions) Act was enacted. The provisions of the industries (Development and Regulations) Act, 1951, apply to both public and private sector companies listed in the 1st Schedule.

Despite its purpose of addressing industrial disease, SICA had several deficiencies. The effort ended in failure, highlighting the continued need for a comprehensive insolvency legislation in the Indian business sector. In order to address the deficiencies of SICA, the government tried to tackle the issue of bankruptcy by enacting the Recovery of Debts Due to Banks and Financial Institutions Act[24]. In November 1991, the Committee on financial system, led by Shri Narasimha, submitted a report to the Ministry of Finance, Government of India. The study supported the recommendations of the Tiwari Committee, which proposed the establishment of dedicated laws and tribunals to accelerate the process of recovering funds in the financial sector. Therefore, the RDDBFI Act was established, which created a specifically designated body known as the Debt Recovery Tribunal and Debt Recovery Appellate Tribunal. These tribunals are responsible for issuing recovery certificates to banks and financial institutions.

The rationale behind the implementation of the Act can be understood from the following words as contained in the Tiwari Committee Report, which stated “the civil courts are burdened with diverse types of cases. Recovery of dues due to banks and financial institutions is not given any priority by the civil courts. The banks and financial institutions like any other litigants must go through a process of pursuing the cases for recovery through civil courts for unduly long periods."[13] But all this exercise became futile because SICA had predominance over the RDDBFI Act and if a case was pending in BIFR, DRTs were unable to issue recovery certificates. The end result remained the same, the owners/ promoters remained unaffected and non-performing assets increased significantly.

[13] Report of the Committee on Legal Aspects Relating to Operation of Banking and Financial System, RBI, 1992, pg.39, https://rbidocs.rbi.org.in/rdocs/PublicationReport/Pdfs/CR32_19927E9E88840F264C68899BDCF841D79121.PDF

Earlier the Goswami Committee and then the Eradi Committee was set up with the intention to achieve more transparency and avoid delays in liquidation of the Companies. The committee concluded its tasks in the year 2000 and presented its findings to the Central Government. The group recommended that the authority to wind up a firm should be given to a national tribunal instead of the High Court. It was decided that the provisions relating to revival and rehabilitation of the Sick companies will be transferred to the Companies Act, 1956 vide Companies (Second Amendment), 2002. Following this the Parliament passed the Companies (Second Amendment) Act, 2002 to restructure the Companies Act, 1956 including the setting up of the national company law tribunal and appellate tribunal. Part VIA (S.424A to S.424L) was inserted in Companies Act, 1956 by the Companies (Second Amendment) Act, 2002 to provide for revival and rehabilitation of sick companies.

Thus, the application of SICA which was restricted to industrial undertakings only was extended to all companies which were registered under the Co. Act, 1956. The NCLT and NCLAT were given power to deal with such matters replacing BIFR and AAIFR. However, as these provisions were never notified the Second Amendment Act never came into force. In 2003, the Sick Industrial Companies (Special Provisions) Repeal Act, 2003, was passed which watered down some aspects of the original Act and introduced some changes to fix the problematic factors[14]. Since, NCLT and NCLAT did not come into force due to non-enforcement of Companies Second Amendment Act, 2002 the authorities under SICA were not dissolved and the tribunal were not established every amendment thereafter could not be enforced. Thereafter, Dr. J.J. The Irani Committee was set up to deal with weaknesses of the second amendment Act. In response to the suggestions put out by the Irani Committee, the government initiated a plan to completely revamp the current corporate and bankruptcy laws. The objective is to introduce a new set of laws that would simplify and expedite the process of closing enterprises. The government has implemented both entrance and departure restrictions and has mandated certain prerequisites that must be met before terminating commerce or business. The Companies Act, 2013 was implemented to replace the Companies Act, 1956, after the submission of the Irani Committee's findings.

Definition of MSME's

The term "enterprise" refers to an industrial venture or a commercial entity, or any other

[14] Adam Hayes, Sick Industrial Companies Act (SICA), INVESTOPEDIA, (Mar. 26, 2024), https://www.investopedia.com/terms/s/sick-industrial-companies-act-sica.asp.

establishment, regardless of nomenclature, that is involved in the production of goods related to any industry listed in the first schedule to the Industries Development and Regulation Act 1951, or in the provision of any service. Enterprises have been classified broadly into: [15]

(i) Enterprises engaged in the Manufacture/production of Goods

(ii) Enterprises engaged in providing/rendering of services.

The Micro, Small and Medium Enterprise Development Act as per Section 7 classifies the Micro, Small and Medium Enterprises based on investment in plant and machinery and investment in equipment.[55]

Manufacturing businesses are characterized based on their investment in plant and equipment, excluding land and buildings. They are further categorized into:

- Micro Enterprises refer to businesses that need an investment of up to INR 25 lakh.
- Small Enterprises refer to businesses that need an investment ranging from INR 25 lakh to INR 5 crore.
- Medium Enterprises refer to investments ranging from INR 5 crore to INR 10 crore.

Service firms are categorized based on their investment in equipment, excluding land and buildings.

- Micro enterprises are defined as those with investments up to INR 10 lakh.
- Investment in small enterprises ranges from INR 10 lakh to INR 2 crore.
- Investment in medium-sized enterprises ranging from INR 2 crore to INR 5 crore.

Under the Micro, Small and Medium firms Development (Amendment) Bill, 2018, MSMEs are to be redefined and, depending on their annual revenue, classified as either manufacturing or service-providing firms.[16]

The economy has seen tremendous transformations since then. The Government has suggested changing the present investment-based definition of MSMEs with a turnover-based one to make conducting business easier. The revised definition and criteria were announced by the Union Ministry of Micro, Small and Medium Enterprises (Ministry of MSMEs) and went into

[15] D' Coasta V. and Ojha A. (2019), "Amendment in IBC qua MSMEs: East, Endorse and Ensure", Monday. [55] Swiss Ribbons Pvt. Ltd. and Anr. v. Union of India and Ors, (2019) 4 SCC 17.
[16] Epstein D. G. and Fuller C. (1985), "Chapters 11 and 13 of the Bankruptcy Code - Observations on Using Case Authority from One of the Chapters in Proceedings under the Other", Vanderbilt Law Review, Vol 38, p. 902.

force on July 1, 2019. Furthermore, eliminated by the new definition was the distinction between the service and industrial sectors.

BUILDING AN EFFICIENT INSOLVENCY FRAMEWORK FOR MSMES

To address the economic insolvency structure in India, which was a combination of several statutes, including the Companies Act of 1956, The Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI) 2002, the Sick Industrial Companies (Special Provisions) Act 1985, and the Recovery of Debts Due to Banks and Financial Institutions Act 1993, the Insolvency and Bankruptcy Code of 2016 was introduced. It was the intention of this bill to bring about a consolidated opinion of recovery procedures that would be presented in a structured style. This was done to ensure that the approach system would be consistent while the debtor was in default. On the other hand, the International Business Council (IBC) of 2016 concentrated mostly on multinational corporations (MNCs), corporate bodies, partnerships, and other similar entities, while entirely ignoring the micro, small, and medium businesses (MSME), who are the most significant contributors of funds to the economy[17].

On June 26, 2020, the Ministry of Micro, Small, and Medium Enterprises added provisions to the Micro, Small, and Medium Enterprises Development Act, 2005 (the MSME Act) with the aim of classifying them as "MSME." The notification specifies the new financial threshold limits and investment plans as follows:

(a) Micro enterprises can invest up to Rs1 crore in plant and machinery, with a turnover limit of Rs 5 crores.

(b) Small enterprises can invest up to Rs10 crores in plant and machinery, with a turnover limit of Rs 50 crores.

(c) Medium enterprises can invest up to Rs 50 crores in plant and machinery, with a turnover limit of Rs 250 crores.

The Rajya Sabha adopted the amendment to the Insolvency and Bankruptcy Code, 2016 on August 3, 2021. This amendment provides protection to the micro, small, and medium-sized firm sector in case of failure. Though the Ordinance was ignored by the House of Representatives without any discussion, the President finally approved the Bill on November

[17] Mukherjee S. (2018), "Challenges to Indian micro, small scale and medium enterprises in the era of globalisation", Journal of Global Entrepreneurship Research, Vol 8.

8, 2021. With the pandemic causing interruptions and the opposition coalition in the lower chamber causing a stir, a very efficient recovery system became critical. The President of the United States of America issued the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2016, which expanded Chapter III-A of the previous Code (2016). The control of the creditors takes the position of the debtor with the implementation of the corporate insolvency resolution process (CIRP), and the committee of creditors is then recommended to acquire sixty-six percent of the voting rights.

The 2021 Amendment has changed its status by including the Micro, Small, and Medium Enterprises (MSME) defined in the Micro, Small, and Medium Enterprises Development Act, 2006. The Government of India has made significant progress in implementing the Insolvency and Bankruptcy Code (IBC) and addressing related issues. This has led to a complete understanding of the term "insolvency" and its implications. The pre-packaged insolvency arrangement emerged in India as an essential element in the process of addressing and resolving the economic bankruptcy issue. The investment strategy, in compliance with the Code, enhances the variable turnover rates for each business that specifies the categories and the term "MSME." The Ordinance was implemented with the aim of limiting its applicability to just those corporate debtors that fulfilled the criteria of the MSME framework.

The suspension of Sections 7, 8, and 9 caused financial problems for creditors. In response, the Central Government formed a panel to create a framework and mandatory safeguards for a predefined insolvency resolution process. The report submitted by the Insolvency Law Committee to the Ministry of Corporate Affairs on October 31, 2020, only focused on corporate debtors belonging to the micro, small, and medium-sized company (MSME) sector. In order to maintain pre-packaged bankruptcy procedures, the Subcommittee specified the essential elements that should remain unaltered.

The Central Government has indicated its intention to submit the Insolvency and Bankruptcy Code (Amendment) Ordinance in the lower house specifically for micro, small, and medium-sized companies (MSME). The objective of this legislation is to safeguard the rights and interests of the debtor by implementing a pre-packaged bankruptcy resolution process. Although the Insolvency and Bankruptcy Code, 2016 was put into effect, it took more than five years to suggest revisions that would cater to the requirements of just the micro, small, and medium-sized enterprises (MSME) sectors.

Determinants of MSME insolvency

A fundamental cause for the high failure rate of micro, small, and medium-sized enterprises (MSMEs) is their dominance in the private sector, according to a report published by the World Bank[18]. There is a large failure rate among micro, small, and medium-sized enterprises (MSMEs), which is caused by several factors, including the scale of the business, the amount of collateral available, the lack of diversification, and the absence of effective external governance structures. For this reason, it is very necessary for insolvency systems to be flexible enough to accommodate the requirements of micro, small, and medium-sized businesses (MSMEs). The micro, small, and medium-sized enterprises (MSMEs) in India are facing severe challenges. Following is a list of some of the most significant challenges:[19]

Complicated bankruptcy systems - When it comes to Micro, Small, and Medium Enterprises (MSMEs), the bankruptcy of these businesses brings a unique set of challenges and worries. Due to the complexity of the insolvency procedures, micro, small, and medium-sized businesses (MSMEs) are often dissuaded from pursuing formal actions in order to manage their financial troubles. Inexperienced micro, small, and medium-sized enterprises (MSMEs) have a tough time comprehending this complexity, which in turn prevents them from utilising insolvency processes in a timely manner.

Creditor Conduct- Creditors do not have the desire to participate in legal actions with MSME debtors since there is no structure in place to manage insolvent micro, small, and medium companies (MSMEs). The condition known as "creditor passivity" often arises when creditors analyse the amount of money they would get if they participated in the bankruptcy process in relation to the amount of time and financial resources that would be required for such participation. A prudent choice for creditors is to abstain from becoming engaged in a situation in which the costs are greater than the potential benefits. The implementation of security measures is generally given priority by secured creditors if they identify any indications of financial stress, which may result in a reduction in efficiency.[20]

Insufficient data on borrowers in the MSME sector- The failure of micro, small, and medium-sized enterprises (MSMEs) to provide proper implementation of efficient records

[18] Report on the Treatment of MSME Insolvency, (2017), World Bank Group
[19] Katyal, K., & Xaviour B. (2015). A Study on MSMEs-Role in Propelling Economic Development of India & A Discussion on Current HR Issues MSMEs in India, International Journal of Scientific and Research Publications, Volume 5, Issue 2, February 2015.
[20] Basant, M., Das, K., Ramachandran K., and Koshy, A. (2001). The Growth and Transformation of Small Firms in India. New Delhi: Oxford University Press

management is another key barrier that impedes the growth of this sector.

Post Insolvency and Bankruptcy Process- It is very difficult to get access to post-insolvency finance. Micro, small, and medium-sized businesses (MSMEs) are dependent on the aid of their immediate family members and close friends and acquaintances that they have. Micro, small, and medium-sized businesses (MSMEs) often struggle to satisfy the costs and fees that are connected with a structured insolvency procedure because they lack the financial resources necessary to do so.[21]

Insufficient Insolvency procedure Funds- During the process of filing for bankruptcy, micro, small, and medium-sized enterprises (MSMEs) may encounter considerable hurdles. When it comes to covering the fees involved with the bankruptcy processes, smaller micro, small, and medium companies (MSMEs) may have financial limits. Additionally, they may be unable to generate adequate trust among unsecured creditors about the probability of getting any financial returns.

Personal monetary commitments and responsibilities- A mix of corporate loans and personal debt received by the entrepreneur, which may involve the supply of personal guarantees, is often used to finance micro, small, and medium enterprises (MSMEs). Additionally, personal guarantees may be requested. One of the possible consequences of the collapse of the micro, small, and medium-size enterprise (MSME) might be substantial ramifications for the entrepreneur and their family, including the prospect of being shamed by society[22].

The Objective of PPIRP as stated in the preamble

According to the preamble of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021, which was published on April 4, 2021, the COVID-19 outbreak has had a negative influence on businesses, financial markets, and economies all across the globe, including India. Many micro, small, and medium-sized companies (MSME) have been forced to contend with financial difficulties as a result of the epidemic, which has had a substantial influence on the running of these firms. A number of measures were put into place by the government in order to alleviate the problems that were brought about by the pandemic. One of these measures was

[21] Karthikeyan. R and Jothi Kumar. C. (2014). Improved Reputation System for Wireless Sensor Networks (Wsns), International Journal of Innovations in Scientific and Engineering Research (IJISER), Vol.1, No.3, pp 191-195.
[22] MSME Development Act, 2006. Ministry of the District Industry Centres (DIC) MSME, Government of India.
[111] Sonia and Rajeev, K. (2009), Globalization and Its Impact on Small Scale Industries India, PCMA Journal of Business, Vol. 1, No. 2, June, 2009, Pp. 135-146.

the temporary suspension of the filing of petitions to initiate the corporate bankruptcy resolution procedure for defaults that happened between March 25, 2020 and one year later. On March 24, 2021, the restriction could no longer be enforced.

Because they provide a significant contribution to India's gross domestic product and offer job opportunities to a sizable portion of the country's population, micro, small, and medium-sized enterprises (MSME) are of utmost significance to the Indian economy. Because of this, it was of the utmost need to quickly address the particular requirements of micro, small, and medium firms in connection to the resolution of their bankruptcy. This was especially important when taking into consideration the distinctive characteristics of their operations and the less complex organizational structures that they had.

As a result, it is proposed that a more effective alternative method be provided in order to solve the issues of bankruptcy that are experienced by business entities that are classed as micro, small, and medium firms in accordance with the Bankruptcy Code, 2016. The purpose of this strategy is to achieve results that are accelerated, cost-effective, and value-optimized for all parties involved, while simultaneously minimizing disruptions to their economic activity and safeguarding employment opportunities.

When compared to the goal that was intended, the objective that was declared in the preamble does not coincide. On the surface, it seems to be a political maneuver with strategic aspirations.

Requisites for PPIRP

A Corporate Debtor, which is an MSME is eligible to apply for initiation of PPRIP, if it-

1. a person who has committed a default of at least ₹10 lakh;
2. a person who is entitled to submit a resolution plan in accordance with section 29A of the Code;
3. a person who has not been subjected to a PPIRP in the three years prior to the date of commencement;
4. has not completed a CIRP within the three years prior to the date of start;
5. is not currently undertaking a CIRP; and
6. is not required to be liquidated by an order in accordance with section 33 of the Code.

According to Notification No. 2119(E) dated June 26, 2020 issued by the Ministry of Micro, Small, and Medium Enterprises (MSME), the applicant is required to include either a copy of

the most recent and updated Udyam Registration Certificate or evidence of investment in plant and machinery or equipment, as well as turnover, in order to establish that the CD is a Micro, Small, and Medium Enterprise (MSME).

The process of PPIRP

The following steps are carried out under the Pre-Packaged Insolvency Resolution Process:

1. **Basic Requirements -** In the event that the following requirements are satisfied, the PPIRP procedure will start: (a) the proposal for the PPIRP is approved by at least 66% of the financial creditors (also known as "FCs"), and the name of the Resolution Professional (also known as "RP") is confirmed; (b) the Corporate Debtor (also known as "CD") adopts a special resolution, with 75% of members voting in favor of the PPIRP; (c) the CD prepares a Base Resolution Plan (also known as "BRP"); (d) the FC and CD come to an agreement on the name of the RP; (e) a draft information memorandum is prepared.
2. **Application -** A corporate applicant may apply for the PPIRP by submitting Form 1 (see PPIRP Rules) to the AA together with any necessary annexures. The AA must react with either acceptance or rejection within fourteen days of receiving the application. In the event that the proposal is accepted, he will nominate a Resolution Professional and order them to release a public notification about the beginning of the Pre-Packaged Insolvency Resolution Process (PPIRP). In addition, he will impose a temporary suspension of debt payments in accordance with Section 14(3)(1) of the Code.[23]
3. **The Resolution Professional (RP)** - He is responsible for a variety of responsibilities, including but not limited to the following: the organization of a Committee of Creditors (COC), the authentication of claims that have been presented by the Corporate Debtor (CD), the supervision of the management of the CD's company, and the creation of information memoranda.[24]
4. It is required that the establishment of the COC takes place within a period of **seven days** from the beginning of the process, and Section 21 of the Code is applicable to a PPIRP with the appropriate adjustments.[25]

[23] Section 54C (1) of Insolvency and Bankruptcy Code 2016.
[24] Section 54C (4) of Insolvency and Bankruptcy Code 2016.
[25] Section 54E (1) of Insolvency and Bankruptcy Code 2016.

5. **Approval -** Following the approval of the admission order by AA, a resolution plan is required to be filed and authorized within a period of ninety days. It is recommended that the full PPIRP process be finished within a period of 120 days. The procedure is divided into two phases: the first phase takes 90 days for the COC to adopt the resolution plan, and the second phase takes 30 days for the adjudicating body to make a decision. It is the responsibility of the Resolution Professional (RP) to file an application to terminate the Corporate Insolvency Resolution Process (CIRP) in the event that the Committee of Creditors (COC) does not provide its approval to a resolution plan within a period of ninety days.
6. **Submit Information Memorandum -** Within a period of fourteen days, the resolution professional is obligated to finish the information memorandum, which must include all of the components that are outlined in Regulation 40(2), and then provide it to the members of the Committee of Creditors (COC). All of the information that is available about the CD must be sent to the RP by the financial institutions that are in charge of administering accounts associated with the CD according to the regulations.[26]
7. Either the Board of Directors or the Partners will continue to be responsible for administering the CD's affairs. Their job will not change. In some situations, however, if the Committee on Control (COC) makes the decision to provide the Responsible Party (RP) the power to use the Control Document (CD), then the RP is required to make a formal request for permission from the Appropriate power (AA). This authority is granted to the RP to assign the administration of the corporate debtor.[27]
8. Next, the CD is obligated to hand over the BRP to the FC before the commencement of the PPIRP, and it must be handed over to the COC within a period of forty-eight hours after the PPIRP has begun. The requirements that are described in Section 30 (1), (2), and (5) of the Code must be adhered to while the plan is being developed. It is possible for the BRP to be changed if the COC gives its approval.[28]
9. On the condition that it does not impede the claims that are owed to Operational Creditors (also known as "OC") by the CD, the COC may provide its approval to the BRP. In the case that the COC does not offer permission for the BRP or if the BRP

[26] Section 54D of Insolvency and Bankruptcy Code 2016.
[27] Insolvency and Bankruptcy Board of India (Pre-packaged Insolvency Resolution Process) Regulations, 2021.
[28] Section 54F (4) of Insolvency and Bankruptcy Code 2016.

adversely impacts any existing claims payable by the CD to OC, it is required for the RP to send an invitation to possible resolution applicants to submit alternative solutions and is obligated to publish comprehensive information on the invitation for resolution plans. In accordance with Regulation 43, this publication must be completed within twenty-one days of the day on which the pre-packaged insolvency resolution procedure (PPIRP) was initiated.[29]

10. Submissions of resolution plans in response to the invitation that satisfy the conditions of the Code and Regulations will be assessed using the stated assessment standards. The resolution plan with the greatest score will be the one chosen as the "BAP," or best alternative plan, to take on the BRP.
11. If the COC determines that the BAP is much better than the BRP, it may be reviewed for approval. The process will be stopped if a BAP that has been substantially improved is not accepted.[30]
12. When the BAP fails to show a discernible improvement over the BRP, the RP is required to provide the scores of both plans to the submitters and advise them to revise their plans in compliance with Regulation 48.[31]
13. The process of improvement will keep on until one of the submitters does not use the option in the period allowed. Once the improvement process is over, the COC will evaluate the resolution plan with the highest score to decide whether or not it should be accepted. Should the COC decline, the procedure will be stopped entirely.[32]
14. The AA received the proposal for further consideration after the COC approved it, which needed a minimum of 66% of the voting shares. The AA has to decide whether to accept or reject the resolution plan within 30 days of receiving it, failing which the PPIRP would be terminated.[33]
15. When the PPIRP be ended, AA has permission to start the liquidation procedure.

[29] Regulation 20(1) of the Insolvency and Bankruptcy Board of India Regulations 2021.
[30] Section 54K (1), (2) and (3), Insolvency and Bankruptcy Code 2016.
[31] Section 54K (9) of Insolvency and Bankruptcy Code 2016.
[32] Section 54K (10) and (11) of Insolvency and Bankruptcy Code, 2016.
[33] Section 54K (13) and (15) of Insolvency and Bankruptcy Code, 2016.

Landmark Cases

1. P. Mohanraj & Ors. v. M/s Shah Brothers Ispat Pvt. Ltd., 2021[34]

The moratorium is in place from the start of the Pre-packaged Insolvency Resolution Process until its conclusion. The purpose of declaring a moratorium within a Pre-packaged Insolvency Resolution Process is to prevent any reduction in the assets of the corporate debtor throughout the resolution process. This allows the company to continue operating and maximize its worth as a viable business entity.

2. GCCL Infrastructure and Projects Limited (2021)[35]

The Indian NCLT Ahmedabad Bench has granted the Corporate Debtor permission to enter the Pre-packaged Insolvency and Restructuring Plans (PPIRP) for a total of Rs. 54,16,250 in this historic ruling. The CD had submitted a sworn declaration proving its eligibility under Section 29A, as required by Section 54A(2)(d) of the Code, the court said. While the Pre-Packaged Insolvency Resolution Process (PPIRP) framework allows a Corporate Debtor to submit a Business Restructuring Plan (BRP), promoters and directors are not allowed to do so under Section 29A(c) of the Code. Promoters and directors of SMEs are excluded from the restrictions set out in Section 29A(c) under Section 240A.

3. Loon Land Developers Ltd. 2021[36]

The company's proposal was approved by the NCLT New Delhi Bench later in November 2021. It gives administration of the CD entity to the Board of Directors via the agreement. It will be fascinating to watch how these situations manage to meet the 120-day limit, however.

4. Krrish Realtech Private Limited 2021[37]

It was considered in this instance the 120-day barrier. The PPIRP application was contested by a number of homebuyers who said it was not submitted in compliance with the legislation. The NCLT gave the Objectors permission to file their grievances and mandated that the CD reply. The CD said on appeal that the NCLT lacked the authority to provide Objectors an opportunity to respond. Since the PPIRP is a time-limited project, protest from anyone—including the Objectors/Financial Creditors—was not allowed. Reiterating the NCLT's ruling, the Appellate Authority noted that party in issue suffered no loss since the parties contesting the ruling had

[34] SCC Online SC 152; Swiss Ribbons (P) Ltd. v. Union of India, 2019 4 SCC 17.
[35] CP(IB)/116/54/NCLT/AHM/2021.
[36] (IB)-(PP)-03(PB)-2021.
[37] (AT)(Ins) Nos. 1008,1009 & 1010 of 2021.

the time to respond and the people who voiced complaints had adequate chance to voice their concerns. The NCLAT said that as house buyers and creditors have large investments, their worries should be taken care of by making sure the PPIRP is carried out legally.

CONCLUSION

The primary goal of insolvency law is to pursue a resolution plan that guarantees the ongoing operation of the firm and avoids liquidation. The Code was likewise executed with the same objective. It has ignited various conflicts in the commercial sector of India. Nevertheless, the Code's progress is now in its initial phases. The procedure of developing its roots will need a substantial duration. Nevertheless, even within this short timeframe, it has sparked several debates. At the same time, the Code is susceptible to being used by creditors and lenders who may apply undue pressure on the corporate debtor to recover their unpaid obligations, even if such claims are unfounded or without merit.

Here we will discuss the ambiguities and problems that are present in the existing law that have been highlighted as observations throughout the research process. An analysis has been conducted on the causes of the difficulties and any possible initiatives undertaken by the government to tackle them. The chronic problems are comprehensively outlined, and suggestions are given for resolving these difficulties. Throughout the research, some crucial discoveries have been revealed that need emphasis. The following discoveries are as follows:

IBC has simplified the bankruptcy process by offering small and medium-sized businesses a systematic approach to enhance the recovery of debts from corporate debtors. In order to expedite the settlement of issues, modifications were implemented to Section 240A and the PPIRP. The absence of alternatives for extrajudicial settlements leads to higher costs and greater complexity. The IBC framework should include tailored solutions, distinct resolution procedures, alternative dispute resolution choices, and more adaptability for SME promoters to effectively cater to SMEs. The IBC journey has started, with the commitment to enhance assistance for SMEs and the Indian economy.

Several nations worldwide are now embracing or intending to embrace dedicated bankruptcy frameworks for micro, little, and medium enterprises (MSMEs). A significant amount of research has been carried out in previous decades on the examination of streamlined bankruptcy laws for micro, small, and medium enterprises (MSMEs), with even more emphasis in recent years. However, its importance has significantly increased during the COVID-19 pandemic. This article has examined the main characteristics and challenges faced by micro, small, and

medium firms (MSMEs) when they suffer financial difficulties, as well as the reasons why the conventional insolvency system is inadequate in addressing the needs of MSMEs. This article conducts a comprehensive analysis of several approaches and strategies used globally to tackle the financial challenges and insolvency problems encountered by micro, small, and medium enterprises (MSMEs). Based on this study, the paper provides several suggestions for establishing a meticulously crafted bankruptcy framework that is specifically tailored to the needs of micro and small enterprises.