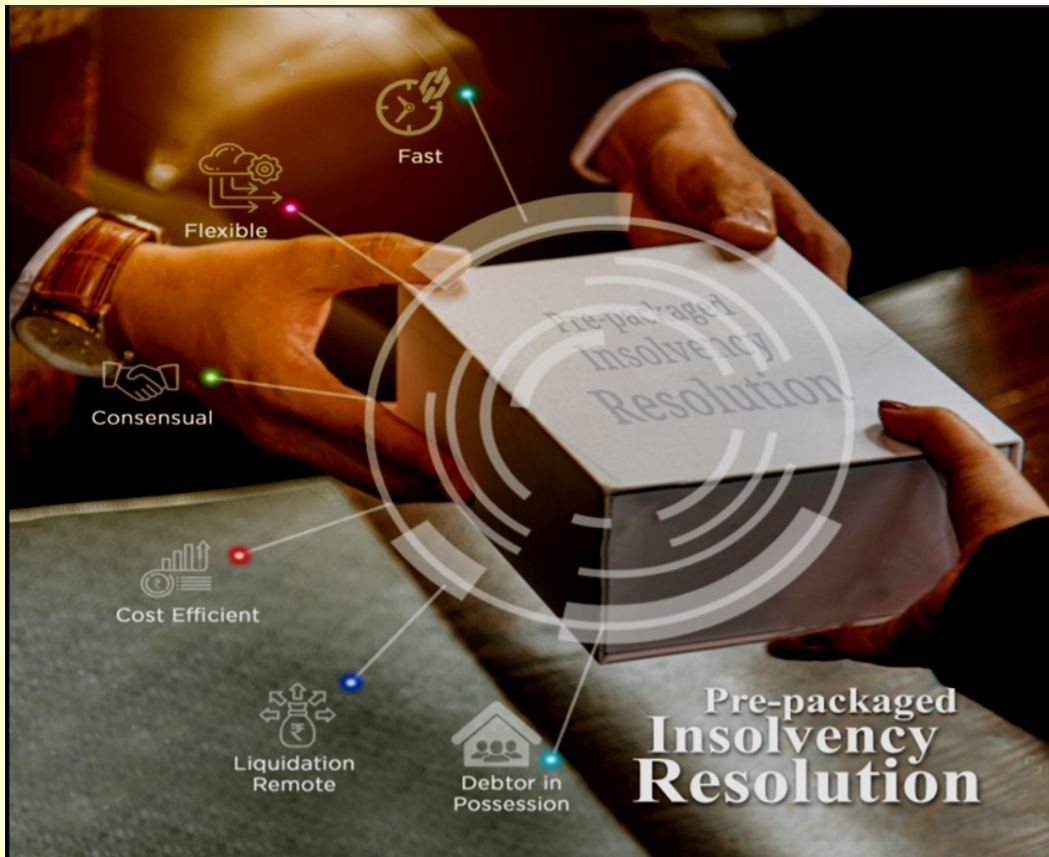




Pre-Packaged Insolvency Resolution Process

>> Information Brochure <<



About the Code

The Insolvency and Bankruptcy Code, 2016 (Code) provides for a time-bound, market mechanism for reorganisation and insolvency resolution of persons (companies, limited liability partnerships, partnership and proprietorship firms and individuals) in financial distress. The objective of such reorganisation and resolution is maximisation of value of assets of the persons to promote entrepreneurship, enhance availability of credit, and balance of the interests of all stakeholders.

The resolution process typically begins with admission of an application filed by an entitled stakeholder in the event of a threshold amount of default. The Code envisages a calm period when the stakeholders endeavour to resolve the stress without fear of recovery or enforcement actions. In case of corporate insolvency, the creditors assess the viability of the corporate debtor (CD) and endeavour to rescue it through a resolution plan. There are two broad processes for resolution corporate stress: (a) Corporate insolvency resolution process (CIRP) resolves stress either through a resolution plan rehabilitating the CD or liquidation of the CD; and (b) Pre-packaged insolvency resolution process (PPIRP) either resolves stress through a resolution plan or closes without resolution.

In case of individual insolvency, the debtors and creditors negotiate a repayment plan, which is implemented under the supervision of a resolution professional (RP). A bankruptcy process, entailing sale of the assets of the debtor, arises on failure of either the insolvency resolution process or implementation of repayment plan. The Code envisages a fresh start process to discharge individuals, with extremely limited means, of their debt, where the chance of recovery is very less compared to the efforts involved.

In sync with its objectives, the Code provides for clawing back the value lost in avoidance transactions. In liquidation waterfall, Government stands at the bottom of the list, even below unsecured financial creditors. In case of bankruptcy, the Government stands at the bottom of the list, just above unsecured creditors. The Code has overriding effect over other laws in case of any conflict or inconsistency.

The Code provides for an ecosystem comprising of four pillars to help the stakeholders to resolve their stress. First of these is a class of regulated persons, called insolvency professionals (IPs). They play a key role in the efficient working of the insolvency, liquidation, and bankruptcy processes. The second pillar is a private industry of the Information Utilities (IUs). They store financial information about debtors in electronic database and eliminate delays and disputes during resolution process. The third is the Adjudicating Authority (AA), namely, the National Company Law Tribunal in case of corporate insolvency and the Debt Recovery Tribunal in case of individual insolvency, along with their appellate tribunals.

The fourth pillar is the regulator, namely, the Insolvency and Bankruptcy Board of India (IBBI). Set up as a unique regulator, it regulates a profession as well as processes. It has regulatory oversight over IPs, Insolvency Professional Agencies (IPAs), Insolvency Professional Entities (IPEs) and IUs. It writes and enforces rules for processes, namely, CIRP, corporate liquidation, PPIRP, fresh start, individual insolvency resolution and individual bankruptcy under the Code. It promotes the development of, and regulate, the working and practices of, IPs, IPAs and IUs and other institutions, in furtherance of the purposes of the Code. It acts as the 'Authority' under the Companies (Registered Valuers and Valuation) Rules, 2017 for regulation and development of the valuation profession.

Pre-packaged Insolvency Resolution Process

Background

Micro, small, and medium enterprises (MSMEs) are critical for India's economy. They contribute significantly to gross domestic product and provide employment to a sizeable population. The COVID-19 pandemic has impacted their business operations and exposed many of them to financial stress. Resolution of their stress requires different treatment, due to the unique nature of their businesses and simpler corporate structures. Therefore, it was considered expedient to provide an efficient alternative insolvency resolution process under the Code for corporate MSMEs, that ensures quicker, cost-effective and value maximising outcomes for all the stakeholders, in a manner which is least disruptive to the continuity of their businesses, and which preserves jobs. Accordingly, President promulgated the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 on 4th

April, 2021 to introduce PPIRP under the Code for this purpose. PPIRP is built on trust and honours the honest MSME owners by enabling resolution when the company remains with them.

PPIRP is available for resolution of stress of corporate MSMEs. It is available as an alternate option, should the stakeholders like to use it. It is available for resolving stress where default is at least ₹ 1 crore for which CIRP is available. Unlike CIRP, it is also available in respect of defaults where default is at least ₹ 10 lakh, and defaults that arose between 25th March, 2020 to 24th March, 2021.

PPIRP has the features, which make a CIRP sacrosanct, and has the rigour and discipline of the CIRP. It is informal up to a point and formal thereafter. It blends debtor-in-possession with creditor-in-control. It is neither a fully private nor a fully public process - it allows the company, if eligible under section 29A, to submit the base resolution plan (BRP) which is exposed to challenge for value maximisation. It safeguards the rights of stakeholders as much as in CIRP and has adequate checks and balances to prevent any potential misuse. It entails a limited role of the courts and IPs. Unlike CIRP, it does not yield liquidation if there is no resolution plan. Though PPIRP and CIRP are alternate options, some stakeholders may prefer one over the other in certain circumstances.

This brochure presents step-by-step activities from initiation till closure of PPIRP. It annexes:

- (i) a typical process flow of a PPIRP (Annexure A);
- (ii) an indicative list of responsibilities of the CD, the RP and the creditors in respect of a PPIRP (Annexure B);
- (iii) a model timeline for completion of PPIRP within the prescribed period of 120 days from the date of its commencement (Annexure C); and
- (iv) a list of Forms (Annexure D).

Governing Framework

The provisions governing PPIRP are available in:

- (i) the Insolvency and Bankruptcy Code, 2016, as amended by the Insolvency and Bankruptcy (Amendment) Ordinance, 2021;
- (ii) the Insolvency and Bankruptcy (Pre-packaged Insolvency Resolution Process) Rules, 2021; and

(iii) the Insolvency and Bankruptcy Board of India (Pre-packaged Insolvency Resolution Process) Regulations, 2021.

Eligibility for PPIRP

A CD, 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, if it-

- (i) has committed a default of at least ₹10 lakh;
- (ii) is eligible to submit a resolution plan under section 29A of the Code;
- (iii) has not undergone a PPIRP during the three years preceding the initiation date;
- (iv) has not completed a CIRP during the three years preceding the initiation date;
- (v) is not undergoing a CIRP; and
- (vi) is not required to be liquidated by an order under section 33 of the Code.

To evidence that the CD is an MSME, the application shall attach either a copy of the latest and updated Udyam Registration Certificate or proof of investment in plant and machinery or equipment and turnover as per Notification No. 2119(E) dated 26th June, 2020 of the Ministry of MSMEs.

Pre-initiation Phase

PPIRP envisages a hybrid process, where pre-initiation phase is largely informal and post-initiation stage is formal. The informality at pre-initiation stage offers flexibility for the CD and its creditors to swiftly explore and negotiate the best way to resolve stress in the business, while the post-initiation stage drives value maximisation and bestows the resolution plan with the statutory protection.

The following activities need to be undertaken in pre-initiation stage:

- (i) For seeking approval of creditors under section 54A(2)(e) and (3), the applicant (corporate applicant filing an application for initiation of PPIRP) shall convene meetings of the unrelated financial creditors (UFCs), that is, financial creditors who are not related parties of the CD. Where the CD has no financial debt or where all financial creditors are related parties, the applicant shall convene meetings of unrelated

operational creditors (UOCs) and the UOCs shall perform the same duties and functions as the UFCs.

- (ii) For convening a meeting of UFCs, the applicant shall serve the notice of the meeting to UFCs at least five days before the date of the meeting (s) unless a shorter time is agreed to by all of them. The notice of the meeting shall indicate the date, time, and venue of the meeting and specific agenda items for discussion.
- (iii) The applicant shall enclose a list of creditors and the amount due to each of them in Form P2, along with the notice convening the meeting seeking approval for appointment of an IP as RP.
- (iv) In the meeting of UFCs, creditors having at least 10% of the value of debt shall propose the name of an IP eligible under the Regulations, for appointment as RP. An IP is eligible to be appointed as RP if he, and all partners and directors of the insolvency professional entity of which he is a partner or director, are independent of the corporate debtor. A person is considered independent if he meets the requirements specified under regulation 7.
- (v) The UFCs representing not less than 66% in value of debt due to such creditors shall approve the appointment as RP and the terms of appointment in Form P3. The terms of appointment shall include: (a) fee payable to him for performing duties in relation to pre-initiation phase under section 54B, (b) fee payable to him and expenses to be incurred by him for conducting the PPIRP, and (c) fee payable to him and expenses to be incurred by him in case management of the CD is vested with him under section 54J.
- (vi) The majority of director/partners of the CD shall make a declaration in Form P6 stating (a) that the CD shall file an application for initiation within a definite time not exceeding 90 days, (b) that the PPIRP is not being initiated to defraud any person, and (c) the name of the IP approved by creditors to be appointed as the RP.
- (vii) The members of the CD shall pass a special resolution, or at least three-fourth of the total number of partners of the CD shall pass a resolution, approving the filing of an application for initiating PPIRP as required in section 54A(2)(g).
- (viii) The CD shall prepare a BRP in conformity with the requirements under section 54K.

- (ix) Along with the notice for convening the meeting(s) seeking approval for filing of an application for initiating PPIRP, the applicant shall enclose (a) a list of creditors and the amount due to each of them in Form P2, (b) declaration in Form 6, (c) the resolution of members or partners referred to in section 54A(2)(g), and (d) the BRP.
- (x) In the meeting of UFCs, creditors representing not less than 66% in value of debt due to such creditors shall approve filing of application for initiation of PPIRP of the CD under section 54A(3), in Form P4.
- (xi) The IP (proposed to be appointed as the RP) shall ascertain creditors in class(es), if any, from the list of creditors in Form P2, identify three IPs to act as authorised representative (AR) and obtain their consent in Form P5, seek choice of creditors in the class, select the IP, who is the choice of the highest number of creditors in the class to act as the AR, and inform the name of the IP, along with his consent in **Form P5**, to the applicant, in accordance with regulation 15.
- (xii) The IP (proposed to be appointed as the RP) shall prepare report in **Form P8** confirming if the CD is eligible for PPIRP and the BRP confirms the requirements.

Application for Initiation

- (i) Only a corporate applicant can file an application for initiation of PPIRP.
- (ii) The applicant shall file the application in **Form 1**, in electronic form, before the AA for initiating PPIRP.
- (iii) The application shall be accompanied by the following documents:
 - (a) Record of default;
 - (b) Consent of the IP proposed to be appointed as RP, in **Form P1**;
 - (c) Approval of UFCs for initiation, in **Form P4**;
 - (d) Consent of the IP proposed to act as AR, if any, in **Form P5**;
 - (e) Declaration by Directors/Partners, in **Form P6**;
 - (f) Members' resolution or Partners' resolution;
 - (g) Declaration by CD regarding avoidance transaction(s), in **Form P7**;
 - (h) Report of the RP, in **Form P8**;
 - (i) Audited financial statements of the last two financial years;
 - (j) Provisional financial statements for current financial year made up to the date of declaration under section 54A(2)(f);
 - (k) Latest and updated Udyam Registration Certificate, or proof that the CD is an MSME;

- (l) Affidavit stating that the CD is eligible under section 29A of the Code to submit resolution plan in the PPIRP of the CD;
- (m) A statement of affairs made up to a date not earlier than 14 days from the date of application;
- (n) A statement giving the names and addresses of the members or partners of the CD, with details of their respective shareholdings;
- (o) Proof that the application fee of ₹15,000 has been paid;
- (p) Proof that a copy of the application has been served to the IBBI; and
- (q) Document that records the authority of the applicant to make the application, where the applicant is a member or partner of the CD.
- (iv) The applicant shall serve a copy of the application (for initiating PPIRP) to the IBBI before filing it with the AA.
- (v) Within 14 days of the receipt of the application, the AA shall admit the application, if the application is complete or reject the same, if incomplete. However, before rejecting the application, the AA shall provide a period of seven days to the applicant for rectifying the defects, if any, in the application. The AA shall also deal with any application for initiation of CIRP pending for admission in accordance with the Code while deciding on the application.
- (vi) The PPIRP shall commence on the date of admission of the application.
- (vii) The AA shall, on the PPIRP commencement date along with the order of admission, declare a moratorium of the purposes of sub-sections (1) and (3) of section 14 of the Code, appoint the IP named in the application as the RP, and cause a public announcement to be made by the RP. (viii) The duties of the IP shall cease if the application is either not filed within the time specified in declaration in Form 6 or is not admitted by the AA.

Post-initiation Phase

- (i) The process is required to be completed within a time frame of 120 days from the PPIRP commencement date. A model timeline along-with details of the activities to be undertaken during the process is presented in Annexure C.
- (ii) During the PPIRP, (a) the management of the affairs of the CD shall continue to vest in the Board of Directors / the partners of the CD; (b) the Board of Directors / the partners of the CD shall make every endeavour to protect and preserve the value of the property of the CD,

and manage its operations as a going concern; and (c) the promoters, members, personnel and partners of the CD shall exercise and discharge their contractual or statutory rights and obligations in relation to the CD.

- (iii) The CD shall, within two days of the PPIRP commencement date, submit to the RP, updated as on that date, (a) a list of claims, along with details of the respective creditors, their security interests and guarantees, in **Form P10**, and (b) a preliminary information memorandum (PIM) containing information relevant for formulating a resolution plan. If any person sustains any loss or damage as a consequence of the omission of any material information or inclusion of any misleading information in the list of claims or the PIM, every person who (a) is a promoter or director or partner of the CD at the time of submission of the list of claims or the PIM, or (b) has authorised the submission of the list of claims or the PIM, shall be liable to pay compensation.
- (iv) The CD shall submit the BRP to the RP within two days of the PPIRP commencement date. It may revise the BRP if permitted by the CoC.
- (v) The RP shall make a public announcement, in **Form P9**, within two days of the commencement of the process in the manner specified in regulation 19.
- (vi) The RP shall exercise powers and carry out duties as required under section 54F.

Approval of Resolution Plan

- (i) If BRP does not impair claims owed to operational creditors (OCs), the CoC may approve it for submission to the AA.
- (ii) If the CoC does not approve the BRP or the BRP impairs the claims of OCs, the RP shall invite prospective resolution applicants to submit resolution plans to compete with the BRP. He shall publish brief particulars of the invitation for resolution plans in **Form P11**, not later than 21 days from the PPIRP commencement date, in accordance with regulation 43.
- (iii) The invitation for resolution plans shall detail each step in the process, and the manner and purposes of interaction between the RP and the resolution applicant, along with corresponding timelines. It shall include (a) the basis for evaluation; (b) the basis for considering a resolution plan significantly better than another resolution plan; (c) the

tick size; and (d) the manner of improving a resolution plan. It shall not require any non-refundable deposit for submission of or along with resolution plan.

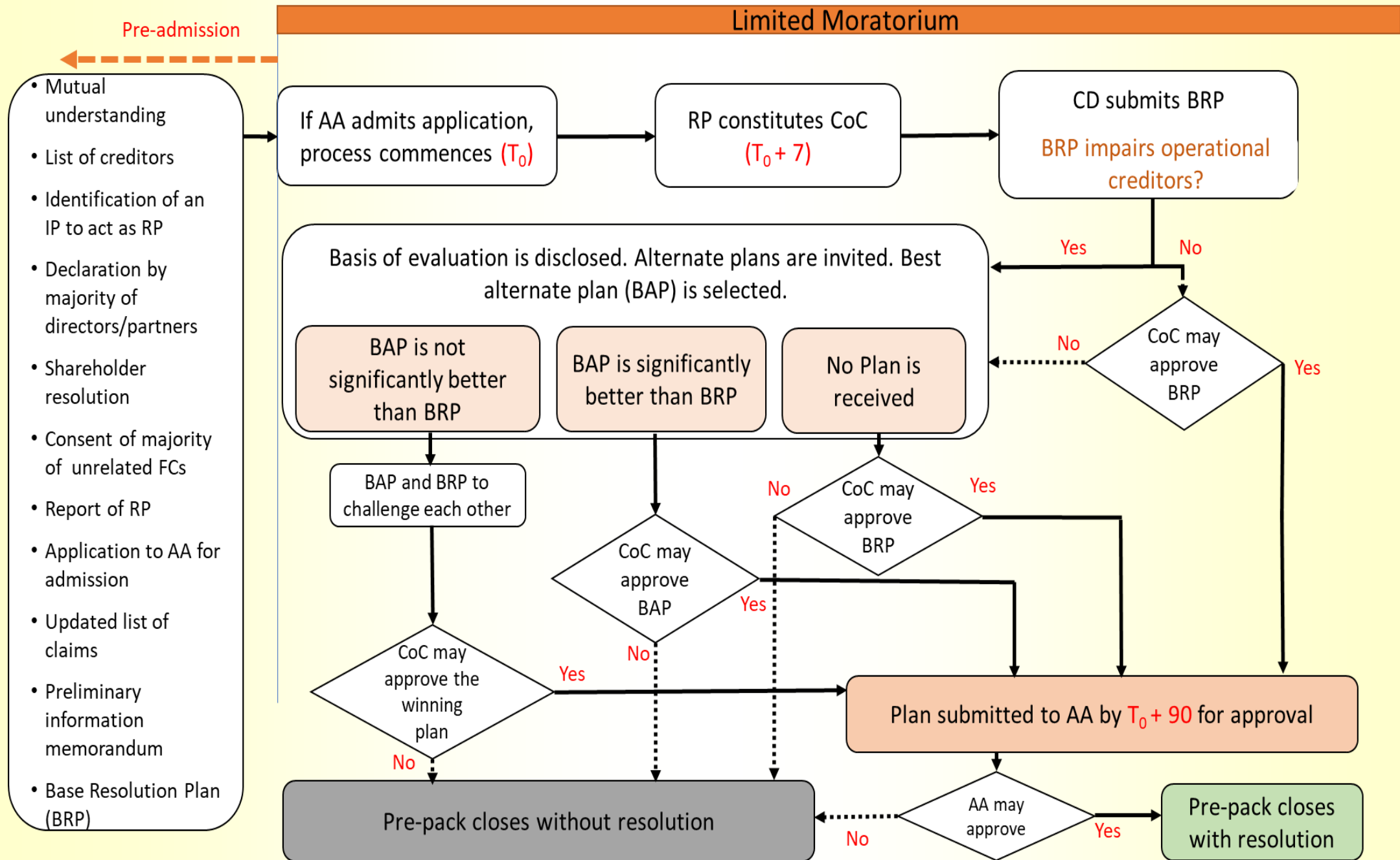
- (iv) The resolution plans received in response to invitation and complying with the requirements of the Code and the Regulations shall be evaluated on the basis for evaluation. The resolution plan which gets the highest score shall be selected as best alternate plan (BAP) for competition with the BRP.
- (v) The CoC may consider BRP for approval if no resolution plan is received.
- (vi) The CoC may consider the BAP for approval if it is significantly better than the BRP. If it does not approve a significantly better BAP, the process terminates.
- (vii) If the BAP is not significantly better than the BRP, the RP shall disclose the scores of the BAP and BRP to submitters of these plans and invite them to improve their plans in accordance with regulation 48.
- (viii) The process of improvement shall continue till either of the submitters fails to use the option within the specified time. The resolution plan having higher score on completion of process of improvement shall be considered by the CoC for approval. If the CoC does not approve it, the process terminates.

Closure of PPIRP

The PPIRP closes in the following circumstances:

- (i) On approval of either the BRP or the BAP by the AA.
- (ii) On expiry of 90 days if no resolution plan is submitted to the AA for approval.
- (iii) On rejection of resolution plan by the AA.
- (iv) On approval by the AA of application filed by the RP for termination of PPIRP, where the CoC approves termination with 66% of voting share.
- (v) On conversion into CIRP based on an application filed by the RP, where the CoC approves so with 66% of voting share, and the CD is eligible for CIRP. The RP of the PPIRP is appointed as the IRP of the CIRP.
- (vi) On an order of termination in case either no resolution plan is approved by CoC or the resolution plan approved by the CoC does not result in change in management, where the AA has vested the management of the CD with the RP under section 54J.

A Typical Process Flow of a PPIRP



An Indicative List of Responsibilities of the Corporate Debtor, Resolution Professional and Creditors

Responsibilities of Corporate Debtor / Applicant	Responsibilities of Resolution Professional	Responsibilities of Creditors
<p>Identify creditors (FCs and OCs). Prepare a list of creditors and the amount due to each of them in Form P2 and revise the Form with change in creditors or amount due to any of them.</p> <p>Convene and facilitate meetings of creditors seeking approval for appointment of an IP as RP.</p> <p>Make a declaration from majority of Directors/ Partners in Form P6.</p> <p>Pass a special resolution approving the filing of an application for initiating PPIRP.</p> <p>Prepare the BRP.</p> <p>Convene and facilitate meetings of creditors seeking approval for filing application to initiate PPIRP.</p> <p>Prepare the declaration regarding avoidance transaction(s), in Form P7.</p> <p>Prepare audited financial statements for the last two financial years and provisional financial statements for the current financial year.</p> <p>File application for initiation of PPIRP.</p> <p>Prepare the preliminary information memorandum.</p> <p>Prepare the list of claims in Form P10 and update it as and when required.</p> <p>Submit the preliminary information memorandum, list of claims, and BRP to the RP.</p> <p>Manage the affairs of the CD as a going concern.</p> <p>Protect and preserve the value of the property of the CD.</p> <p>Participate in process to improve the BRP.</p>	<p>Give consent to act as RP if eligible under Regulations.</p> <p>Ascertain class(es) of creditors, if any. Seek choice of the creditors in the class for an IP to act their AR.. Inform the name of the IP selected by creditors in the class, along-with his consent form, to the applicant.</p> <p>Collect all information relating to assets, liabilities, finances, and operations of the CD.</p> <p>Prepare and submit the report in Form 8 confirming that the CD is eligible for PPIRP, and the BRP conforms to the requirements.</p> <p>Make public announcement.</p> <p>Appoint registered valuers.</p> <p>Confirm the list of claims and update it.</p> <p>Constitute the CoC, convene its meeting and chair the meetings.</p> <p>Submit the IM to members of the CoC.</p> <p>Invite prospective resolution applicants to submit a resolution plan.</p> <p>Conduct the process for improvement of resolution plan.</p> <p>Present to the COC, for its evaluation, compliant resolution plans.</p> <p>Submit the resolution plan approved by CoC to the AA along with compliance certificate in Form P12.</p> <p>Submit the application for termination of PPIRP when approved by the CoC.</p> <p>Form an opinion and make determination about avoidance transactions and file applications.</p> <p>Attend meetings of members, Board of Directors and committee of directors, or partners of the CD.</p> <p>Monitor management of the affairs of the CD.</p> <p>Report to CoC in the event of breach of any of the obligations of the Board of Directors or partners of the CD.</p> <p>Manage the affairs of the CD when the AA approves application vesting management of the CD.</p>	<p>Approve the name of IP to act as RP and his terms of appointment.</p> <p>Select an IP as AR to represent the creditors in a class.</p> <p>Approve filing of application for initiation of PPIRP.</p> <p>Assist the RP to finalise the list of claims.</p> <p>Consider the BRP and allow opportunity for revision.</p> <p>Approve eligibility criteria for prospective resolution applicants.</p> <p>Approve the basis for evaluation.</p> <p>Approve 'significantly better' in relation to a resolution plan.</p> <p>Approve 'tick size' for improvement over another resolution plan.</p> <p>Specify parameters for the improvement process such as value for identifying the significantly better plan, the tick size, the time limit for every iteration of the challenge process.</p> <p>Evaluate the resolution plans presented by the resolution professional and select a resolution plan from amongst them.</p> <p>May resolve to vest the management of the CD with the RP.</p> <p>May resolve to initiate a corporate insolvency resolution process in respect of the CD.</p>

A Model Timeline for Completion of the PPIRP

The PPIRP is required to be completed within a period of 120 days from its commencement date. The RP shall either file the resolution plan for approval or an application for termination of PPIRP, with the AA within 90 days from the PPIRP commencement date. A model timeline along-with the activities to be undertaken during the process is as under:

Section of the Code / Regulation No.	Description of Activity	Norm	Timeline
Section 54C	Commencement of PPIRP and appointment of RP	-----	T
Sections 54G and 54K	Submission of list of claims, preliminary information memorandum and BRP	Within 2 days from commencement of PPIRP	T+2
Section 54E / Regulation 19	Publication of public announcement	Within 2 days from commencement of PPIRP	T+2
Regulation 38	Appointment of registered valuers	Within 3 days from appointment of RP	T+3
Section 54I	Constitution of CoC	Within 7 days from commencement of PPIRP	T+7
Section 54I	First Meeting of the CoC	Within 7 days from constitution of CoC	T+14
Regulation 43	Submission of IM	Within 14 days from commencement of PPIRP	T+14
Regulation 43	Publication for invitation for resolution plan	Within 21 days from commencement of PPIRP	T+21
Regulation 43	Receipt of resolution plans	At least 15 days from publication for IFRP	T+36
Regulation 47 & 48	Evaluation and approval of resolution plan	Within 89 days from commencement of PPIRP	T+89
Regulation 41	RP to form opinion on avoidance transactions	Within 30 days from commencement of PPIRP	T+30
	RP to make determination on avoidance transactions	Within 45 days from commencement of PPIRP	T+45
	RP to file application to AA for appropriate relief	Within 60 days from commencement of PPIRP	T+60
Section 54D / Regulation 48	Submission of CoC approved resolution plan / application for termination of PPIRP	Within 90 days from commencement of PPIRP	T+90
Section 54L	Approval of resolution plan / order for termination of PPIRP	Within 30 days of application under section 54D	T+120

List of Forms

FORM	SOURCE	DESCRIPTION
Form 1	Rules	Application by Corporate Applicant to initiate PPIRP
Form P1	Regulations	Written consent by IP to act as RP / IRP
Form P2		List of creditors to be provided by the applicant
Form P3		Approval of terms of appointment of RP, by UFCs
Form P4		Approval for filing application to initiate PPIRP, by UFCs
Form P5		Written consent by IP to act as AR
Form P6		Declaration by majority of directors / partners
Form P7		Declaration regarding existence of avoidance transaction(s)
Form P8		Report by the IP proposed to be appointed as the RP
Form P9		Public announcement by the RP
Form P10		List of claims by the CD
Form P11		Brief particulars of the invitation for resolution plans
Form P12		Compliance certificate by the RP
Form P13		Application for termination of PPIRP

Abbreviations

AA	Adjudicating Authority	CoC	Committee of Creditors	PIM	Preliminary Information Memorandum
AR	Authorised Representative	IFRP	Invitation for resolution plan	PPIRP	Pre-packaged Insolvency Resolution Process
BRP	Base Resolution Plan	IM	Information Memorandum	RP	Resolution Professional
BAP	Best Alternate Plan	IP	Insolvency Professional	UFC	Unrelated Financial Creditor
CD	Corporate Debtor	MSME	Micro, Small and Medium Enterprise	UOC	Unrelated Operational Creditor
CIRP	Corporate Insolvency Resolution Process	OC	Operational Creditor		

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