



STUDY GROUP REPORT

ROLES OF IPs PRIOR TO, DURING AND POST PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS (PPIRP) FOR MSMEs

Study By
Indian Institute of Insolvency Professionals of ICAI (IIPI)



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October 2021



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FOREWORD

Indian Institute of Insolvency Professionals of ICAI (IIPI) is pleased to present the study group report on 'Roles of IPs Prior to, During and Post Pre-Packaged Insolvency Resolution Process (PPIRP) for MSMEs' prepared by a study group constituted in this regard. The study group focused on providing a detailed account of actions and roles that an IP is expected to undertake across three stages viz. prior to, during and post PPIRP. This study would help strengthening the regime by preparing the Insolvency Professionals (IPs) and stakeholders better to manage PPIRPs for and in the context of MSMEs, besides providing inputs to regulator(s) for policy decisions.

I sincerely appreciate and thank CA. G Ramaswamy, IP & Past President, ICAI for steering the group and providing his valuable guidance, along with members of the group who all worked hard to prepare the said report.

I also appreciate the efforts put in by CA. Rahul Madan, Managing Director, IIPI and the Secretariat of IIPI, for providing their technical and administrative support in bringing out this publication.

I am sure that the members of the profession, industries and other stakeholders will find the publication immensely helpful.

Dr. Ashok Haldia,
Chairman, Governing Board,
Indian Institute of Insolvency Professionals of ICAI (IIPI)

Date: 28th July, 2021

Place: New Delhi

PREFACE

The study group constituted by the Indian Institute of Insolvency Professionals of ICAI (IIPI), on 'Roles of IPs Prior to, During and Post Pre-Packaged Insolvency Resolution Process (PPIRP) for MSMEs' is pleased to present this report.

The study group has attempted to develop a comprehensive understanding on the subject after elaborate consultation intra-group and with other professionals/stakeholders. The group focused on providing a detailed account of actions and roles that an IP is expected to undertake across three stages viz. prior to, during and post PPIRP. This study would help preparing the Insolvency Professionals (IPs) and stakeholders better to manage PPIRPs for and in the context of MSMEs, besides providing inputs to regulator(s) for policy decision.

The study group consisting of members with rich experience in managing CIRPs and liquidations, was further divided into three small sub-groups covering three different aspects of study as referred above. The group members relied on their personal experience and reached out to other professionals to identify the challenges involved.

The study group is thankful to IIPI for providing an opportunity to develop the knowhow as above and strengthen the IBC framework. In addition, the group expresses gratitude to several other professionals including experienced IPs, legal experts and other professionals who have contributed directly and indirectly to the development of this research report.

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ACRONYMS

AA	Adjudicating Authority (NCLT)
CD	Corporate Debtor
CIRP	Corporate Insolvency Resolution Process
CoC	Committee of Creditors
FC	Financial Creditor
IBBI	Insolvency and Bankruptcy Board of India
IBC/Code	Insolvency and Bankruptcy Code, 2016
IM	Information Memorandum
IP	Insolvency Professional
IPE	Insolvency Professional Entity
IU	Information Utility
LLP	Limited Liability Partnership
MSME	Micro, Small, And Medium Enterprises
NCLT	National Company Law Tribunal
OC	Operational Creditor
PPIRP	Pre-Packaged Insolvency Resolution Process
RP	Resolution Professional

BACKGROUND

Insolvency and Bankruptcy Code, 2016 (IBC/Code) has been in vogue for nearly five years and has provided effective succour to creditors in an expeditious manner. The code and processes therein have reasonably evolved and stabilised. The raging pandemic in the form of Covid 19 with the attendant adverse impact on economy accompanied by stress to various industries including MSMEs fuelled the thought process of the policy makers leading up to the realization that a Pre-Packaged Insolvency Resolution Process (PPIRP) may be need of the hour. PPIRP has been envisaged as a subset of the IBC code and an additional option for resolving insolvency, given the obvious fact that normal CIRPs would not yield the outcome as desired by the IBC due to the anticipated dearth of Resolution Applicants in the aftermath of the adverse impact of Covid 19. It was at this juncture that the Central thought it fit to constitute a sub-committee to prepare a first draft of PPIRP with the avowed objective for aiding the existing insolvency framework by cutting costs and the time taken for resolution process.

MSMEs are considered as the engines of economic growth and for promoting equitable development in the country. MSMEs play crucial role in providing large employment opportunities at comparatively lower capital cost than large industries and also help in industrialization of rural & backward areas, thereby, reducing regional imbalances, assuring more equitable distribution of national income and wealth. The MSME sector's contribution to India's GDP is significant and has been measured at around 30%. Moreover, MSME Sector contributes to about 48% of the total exports of the country.

To encourage early referral and redressal, the minimum amount of default for the matters relating to the PPIRP of CD under Chapter III-A of the Code has now been specified as Rs. 10 Lakhs. Further, the Insolvency Resolution process time frame has also been reduced to 120 days, including 30 days to be taken by NCLT for approval of plan. In case of Micro Small and Medium Enterprises (MSMEs), the promoter of the CD understands the company, its stress, and the possibility of its resolution better. In many cases it could be the only person who is interested in and capable of resolution of stress of the CD. In recognition of this, the pre-pack framework allows only the CD to initiate the process voluntarily and obtain consent of key stakeholders before approaching the Court. Therefore, the threat of losing company or the possibility of liquidation reduces considerably.

Pre-pack insolvency has gained prominence worldwide due to unique features attributed to it. It is an innovative blend of formal as well as informal proceedings to resolve insolvency. With the debtor creditor relationship at its core, and the aim to

cut down cost and time of resolution process - the Insolvency and Bankruptcy (Amendment) Ordinance, 2021 was promulgated on 5th April, 2021 for MSMEs. As a significant portion of provisions introduced in the Ordinance were dependent on the rules and regulations to be issued; hence the Insolvency and Bankruptcy (Pre-packaged Insolvency Resolution Process) Regulations, 2021 and Insolvency and Bankruptcy (Pre-Packaged Insolvency Resolution Process) Rules, 2021 were notified on 9th April, 2021. Later, on 11th August, 2021, the amendment after having been passed by Parliament, received the assent of the President of India.

The key features of a pre-packaged insolvency resolution process, as is also acknowledged in jurisdictions abroad (notably in UK and USA) and by international bodies like UNCITRAL, are (a) cost effectiveness; (b) maximization and preservation of value; (c) timelines; and (d) lighter on courts.

The Amendment along with PPIRP Regulations and PPIRP Rules, as referred above, lay down provisions for Pre-packaged Insolvency Resolution in India on similar lines.

The PPIRP framework essentially involves the processes across three phases:

1. Prior to admission of application;
2. During PPIRP and prior to approval of plan; and
3. Post-approval of plan by the AA.

An Insolvency Professional (IP) has various functions, duties, and responsibilities to undertake across such three phases. The process of PPIRP is distinct from Corporate Insolvency Resolution Process (CIRP) in several respects. The involvement of IP ensures oversight to the process for transparency and fairness. The Code enlists the duties and responsibilities of an IP before and during PPRIP including, inter-alia, confirmation and maintenance of list of claims, constitution of CoC, preparation of information memorandum, inviting resolution plans, and making necessary filings before the NCLT. More such duties and functions of the Insolvency Professionals have been laid down in the PPIRP Regulations.

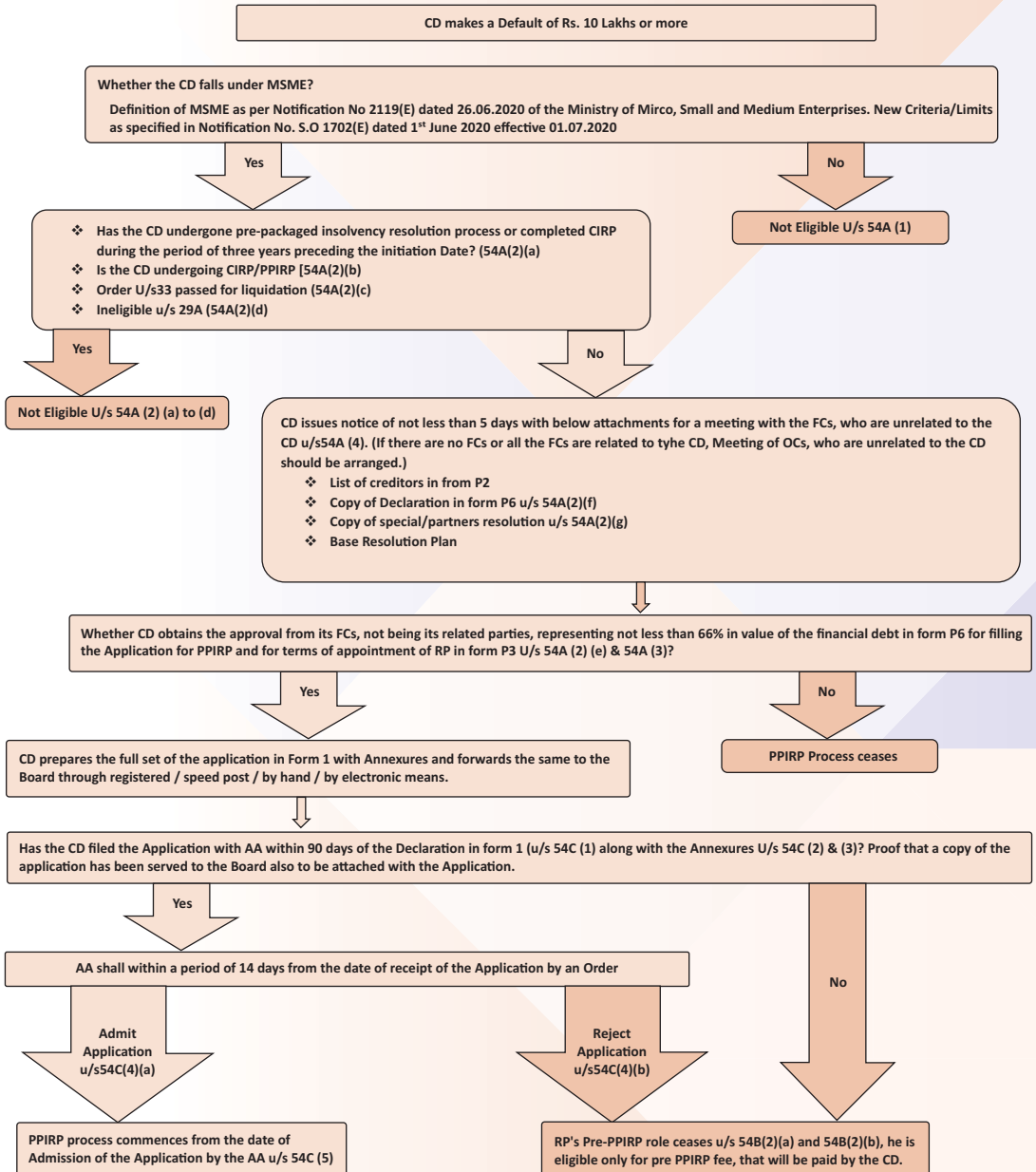
In this context, it is worth mentioning that across matured insolvency regimes like in UK, the pre-packaged insolvency process has evolved more from practice than law. The insolvency practitioners are guided there by several Statements of Best Practices to ensure uniformity in practices and procedures adopted by them.

Given the above backdrop, this report provides a detailed account of actions and roles that an IP is expected to undertake across three stages identified earlier, essentially to provide guidance to practitioners. The guidelines as mentioned in the report are recommendatory in nature leaving substantial discretion to Resolution Professional and other stakeholders depending upon the circumstances of each case.

— *** —

ROLE OF IPs AT PRE-APPLICATION STAGE OF PPIRP

2.1. Flow Chart of Pre-Application Stage of PPIRP



2.2 Corporate Debtor's Eligibility to Apply for PPIRP

Relevant Sections – Section 54A

- (1) An application for initiating PPIRP may be made in respect of a CD classified as a Micro, Small or Medium Enterprise under sub-section (1) of Section 7 of the Micro, Small and Medium Enterprises Development Act, 2006.
- (2) Without prejudice to sub-section (1), an application for initiating PPIRP may be made in respect of a CD, who commits a default referred to in section 4, subject to the following conditions, that—
 - (a) it has not undergone PPIRP or completed CIRP, as the case may be, during the period of three years preceding the initiation date;
 - (b) it is not undergoing a CIRP;
 - (c) no order requiring it to be liquidated is passed under section 33;
 - (d) it is eligible to submit a resolution plan under section 29A;

Relevant Rules / Forms

- (1) In case of Financial Debt, record of default to be obtained through Information Utilities (IU) to prove the existence of debt and extent of default. (Annexure I to Form 1 under the Rules).
- (2) In case of Operational Debt (i) Copy of the Invoice / Demand Notice served by Operational Creditor on the CD and (ii) record of default obtained through IU or all documents to prove existence of debt and extent of default. (Annexure II to Form 1).
- (3) Copy of the relevant books of accounts of the CD evidencing the default to creditors. (Annexure XI to Form 1).
- (4) Affidavit stating that the CD is eligible under Section 29A of the Code to submit Resolution Plan in the PPIRP. (Annexure X to Form 1).

Role of IP as Advisor

- (1) To ensure latest updated Udyam Registration Certificate to confirm that the CD is classified as MSME.
 - (a) Definition of MSME as per Notification No 2119(E) dated 26th June, 2020 of the Ministry of Micro, Small and Medium Enterprises.
 - (b) New Criteria / Limits as specified in Notification No. S.O 1702(E) dated 1st June 2020 effective 01st July, 2020

As per the Amendment, Chapter III A calls for a prior registration under the Micro, Small and Medium Enterprises Development Act for a CD to be eligible for PPIRP. According to National Sample Survey 73rd Round (2015-2016), an estimated 6.3 crore MSMEs exist in India. As per Udyam Registration (MSME registration) website data only 26.42 lakh MSMEs have registered till date. This

indicates, number of unregistered MSMEs far exceeds the registered MSMEs who as such cannot take recourse under PPIRP.

- (2) As per the IBBI (PPIRP) Regulations, 2021, the pre pack resolution extends to only companies and (LLPs) and keeps sole proprietorship, partnerships and Hindu Undivided Family forms of MSMEs out of the ambit of the pre pack process currently.
- (3) In case of Financial Debt, checking that the record of default is obtained through the Information Utility to prove the existence of debt and extent of default.
- (4) In case of Operational Debt, ensuring that copy of invoice / demand notice is served by an Operational Creditor on the Corporate Debtor and the record of default obtained through Information Utility to prove the existence of debt and extent of default.
 - (a) The Government has notified a minimum default of Rs 10 lakhs.
 - (b) “Default” under Section 3(12) means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the CD, as the case may be;
- (5) To obtain a declaration from CD that:
 - (a) Such CD has not undergone PPIRP or completed CIRP, as the case may be, during the period of three years preceding the initiation date;
 - (b) Such CD is not undergoing a CIRP;
 - (c) No order requiring liquidation of the such CD is passed under section 33;
 - (d) Such CD is eligible to submit a resolution plan under section 29A; specifying individual conditions separately.
- (6) To peruse the IBBI / NCLT portal to have reassurance on (a), (b) and (c) of the above declaration and that there are no CIRP cases against the CD during the last 3 years.
- (7) To obtain a CIBIL Report or other reliable means to ensure compliance with the provisions Section 29A on Wilful default.
- (8) Defaults could be in multiple accounts aggregating Rs 10 Lacs or more.

2.3 Obtaining the Approval of Financial Creditors

Relevant Sections – Section 54A

- (1) Without prejudice to sub-section (1), an application for initiating PPIRP may be made in respect of a CD, who commits a default referred to in section 4, subject to the following conditions, that:
 - (a) the financial creditors of the CD, not being its related parties, representing such number and such manner as may be specified, have proposed the name of the Insolvency Professional to be appointed as Resolution

Professional for conducting the PPIRP of the CD, and the financial creditors of the CD, not being its related parties, representing not less than sixty-six per cent. in value of the financial debt due to such creditors, have approved such proposal in such form as may be specified: Provided that where a CD does not have any financial creditors, not being its related parties, the proposal and approval under this clause shall be provided by such persons as may be specified;

- (b) The majority of the directors or partners of the CD, as the case may be, have made a declaration, in such form as may be specified, stating, inter alia, —
 - (i) that the CD shall file an application for initiating Pre-Packaged Insolvency Resolution Process within a definite time period not exceeding ninety days;
 - (ii) that the Pre-packaged Insolvency Resolution Process is not being initiated to defraud any person; and
 - (iii) the name of the Insolvency Professional proposed and approved to be appointed as Resolution Professional under clause (e);
- (c) The members of the CD have passed a special resolution, or at least three-fourth of the total number of partners, as the case may be, of the CD have passed a resolution, approving the filing of an application for initiating Pre-Packaged Insolvency Resolution Process.

- (2) The CD shall obtain an approval from its Financial Creditors, not being its related parties, representing not less than sixty-six per cent. in value of the financial debt due to such creditors, for the filing of an application for initiating Pre-Packaged Insolvency Resolution Process, in such form as may be specified:

Provided that where a CD does not have any Financial Creditors, not being its related parties, the approval under this sub-section shall be provided by such persons as may be specified.

- (3) Prior to seeking approval from Financial Creditors under sub-section (3), the CD shall provide such Financial Creditors with —
 - (a) the declaration referred to in clause (f) of sub-section (2);
 - (b) the special resolution or resolution referred to in clause (g) of sub-section (2);
 - (c) a base resolution plan which conforms to the requirements referred to in section 54K, and such other conditions as may be specified; and
 - (d) such other information and documents as may be specified.

Relevant Regulations

(1) Reg. 7 Eligibility for Resolution Professional

- (a) Subject to consent in Form P1, an insolvency professional shall be eligible to be appointed as an interim resolution professional or resolution professional, as the

case may, 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.

Explanation: A person shall be considered independent of the corporate debtor, if he-

- (i) is eligible to be appointed as an independent director on the board of the corporate debtor under section 149 of the Companies Act, 2013 (18 of 2013), where the corporate debtor is a company;
 - (ii) is not a related party of the corporate debtor; or
 - (iii) is not an employee or proprietor or a partner;
 - (iv) of a firm of auditors or secretarial auditors or cost auditors of the corporate debtor; or
 - (v) of a legal or a consulting firm, that has or had any transaction with the corporate debtor amounting to five per cent or more of the gross turnover of such firm, in any of the preceding three financial years.
- (b) A resolution professional, who is a director or a partner of an insolvency professional entity, shall be ineligible to continue as a resolution professional in a process, if the insolvency professional entity or any partner or director of such insolvency professional entity represents any of the stakeholders in the same process.

(2) Reg 14. Approvals by Financial Creditors

- (a) For the purposes of clause (e) of sub-section (2) and sub-section (3) of section 54A, the applicant shall convene meetings of the financial creditors, who are not related parties of the corporate debtor.
- (b) The notice of the meeting under sub-regulation (1) shall be served to the financial creditors, who are not related parties of the corporate debtor, at least five days before the date of the meeting, unless a shorter time is agreed to by all of them.
- (c) The notice of the meeting under this regulation shall indicate the date, time and venue of the meeting, and enclose a list of creditors along with the amount due to them in Form P2.
- (d) The financial creditors who are not related parties of the corporate debtor and have not less than ten per cent. of the value of the total financial debt of such creditors may propose names of insolvency professionals for the purposes of clause (e) of sub-section (2) of section 54A.
- (e) The approval of the terms of appointment of resolution professional under clause (e) of sub-section (2) of section 54A shall be in Form P3.
- (f) The terms of appointment of the resolution professional under this regulation shall include -

- (i) fee payable to him for performing duties under sub-section (1) of section 54B;
 - (ii) fee payable to him and expenses to be incurred by him for conducting the process; and
 - (iii) fee payable to him and expenses to be incurred by him in case management of the corporate debtor is vested with him under section 54J.
- (g) The approval for filing of application under sub-section (3) of section 54A shall be in Form P4.

Where the corporate debtor has no financial debt or where all financial creditors are related parties, the applicant shall convene a meeting of operational creditors, who are not related parties of the corporate debtor and provisions of sub-regulations (1) to (7) shall mutatis mutandis apply.

Relevant Rules / Forms

- (1) List of Creditors as on the date of Meeting to be submitted by CD in Form P2.
- (2) Approval of unrelated financial creditors under section 54A(2)(e) of the Code for appointment of the proposed resolution professional, as set out in Form P3 of the Insolvency and Bankruptcy Board of India (Pre-Packaged Insolvency Resolution Process) Regulations, 2021. (Annexure III to Form 1).
- (3) Written consent by the proposed resolution professional as set out in Form P1 of the Insolvency and Bankruptcy Board of India (Pre-Packaged Insolvency Resolution Process) Regulations, 2021. (Annexure IV – to Form 1).
- (4) Declaration of the majority of the directors or partners of the corporate debtor, as the case may be, as referred to in section 54A(2)(f) of the Code as set out in Form P6 of the Insolvency and Bankruptcy Board of India (Pre-Packaged Insolvency Resolution Process) Regulations, 2021. (Annexure V to Form 1).
- (5) Copy of the special resolution or resolution of the members or partners of the corporate debtor, as the case may be, as referred to in section 54A(2)(g) of the Code. (Annexure VI to Form 1).
- (6) Approval of creditors under section 54A (3) of the Code for filing application for initiating pre-packaged insolvency resolution process, as set out in Form P4 of the Insolvency and Bankruptcy Board of India (PPIRP) Regulations, 2021. (Annexure VII to Form 1).

Role of IP as Advisor

- (1) IPs who are acting in the capacity of advisors are to get a letter of engagement from the CD specifying the details of services to be rendered as advisors along with the terms of engagement.
- (2) To provide professional advice on the finalisation of provisional financial

statements / Statement of Affairs / Preliminary Information Memorandum as on the PPIRP initiation date in coordination with the CA of the Corporate Applicant.

- (3) To obtain the latest provisional financial statements (made up to not less than 14 days before the date of Application) duly certified by Directors / partners.
- (4) To obtain the list of Creditors in Form P2.
- (5) To compare the list of Creditors in Form P2 with the Provisional Financial Statement to find whether they are matching.
- (6) To assist in the preparation of other necessary documents:
 - (a) Drafting of the shareholder's resolution to be submitted to the CoC to seek their approval to file PPIRP application before NCLT
 - (b) Preparation of a detailed Preliminary Information Memorandum
 - (c) Preparation of notice & other documents pertaining to meetings of financial creditors conducted before submission of PPIRP application with NCLT.
 - (d) List of Claims of Creditors of the CD.
(A list of claims is required to be provided by the Corporate Applicant to the RP within 2 days of initiation of PPIRP.)
 - (e) Base Resolution Plan
- (7) To obtain a declaration /affidavit for confirming on Related and Unrelated creditors.
- (8) To check unrelated creditors and their percentage of claim have been identified correctly.
- (9) To assist the corporate debtor in identifying avoidable transactions as per Chapter III and Chapter VI of the IBC to give requisite declaration in Form P6 by the majority of the Directors/ partners of the CD as required under Section 54A(f).
- (10) To provide assistance to the corporate debtor in the preparation & finalization of a Legally Compliant Base Resolution Plan ensuring that it will qualify the tests for feasibility & viability besides complying with the provisions of Section 30(1) and (2) and Section 54(K) of the Code.
CD has to provide the Base Resolution Plan (BRP) to FCs prior to seeking approval to initiate PPIRP as per clause (f) of sub section 4 of Section 54A. If the CD proposes a BRP involving impairment to OCs' interests at the pre-admission stage, such BRP can comply with the Provisions of Section 54K (1) and (2) only and not requirements of all the provisions of Section 54K. Hence the CD has to specifically state the above in his declaration.
- (11) To provide assistance in negotiations with the COC for Approval of the Base Resolution Plan that serves the interests of both the financial creditors and the Corporate Applicant. It is necessary for the advisor to discuss the BRP, list of

Creditors' claims with all stakeholders before the application is submitted to NCLT so as to avoid any delay / litigation.

- (12) To obtain written consent in Form 1 from the proposed Resolution Professional confirming his eligibility to be appointed as RP.
- (13) To obtain a special resolution is passed by the members of the corporate debtor or by a resolution by three-fourth of the total number of partners of the corporate debtor approving the application for initiating PPIRP as required under Section 54A(g).
- (14) To check that adequate notice (5 days) or shorter notice as the case may be, has been given by CD to convene the meeting complying with the Regulations 14(2) and 14(3).
- (15) To check whether the notice convening the meeting of the unrelated financial creditors has requisite attachments as required under Section 54A (4).
- (16) To obtain a declaration from the unsecured creditors on the relationship status with the CD.
- (17) To obtain Approval of the appointment of the RP in Form P3 and check whether it has been made by non-related financial creditors and having not less than 10% of the value of the total financial debt of such creditors.

Where there is no financial debt or where there are no unrelated financial debtors, then a meeting of unrelated operational creditors may be convened and the above regulations may apply accordingly. In the case of "OCs only" meeting, obtaining 66% concurrence of voting and obtaining Form P4 will take time and hence necessary steps should be taken well in advance to ensure necessary compliance within the given timelines.

- (18) To ensure approval for initiating PPIRP in Form 4 and ensure requisite percentage of not less than 66% in value of the financial debt due to such creditors have approved.
- (19) The issue of Personal Guarantee needs to be confirmed with the lenders as to whether the Resolution Plan is a composite Resolution Plan covering Personal Guarantees also. Similarly, Group Company cross guarantees / cross personal guarantees also needs to be addressed before getting into the Resolution process under this scheme. This is important in view of the recent verdict of the Hon'ble Supreme Court that Personal Guarantees are invokable by the lenders, independent of the Resolution plan.
- (20) If an IP who acts as a Consultant to the CD in the pre-application process on the advisory capacity in the preparation of Statement of Affairs, Base Resolution Plan etc, he shall not be eligible to be appointed as RP for the PPIRP due to possible Independence / Conflict of Interest issue. The following may be noted in respect of the above.

- (a) Definition of Related Party under Section 5(24) and Section 5 (24A) of the Code
- (b) Eligibility of the Resolution Professional – Regulation 7
- (c) Circular No. IP/005/2018 of IBBI

Role of IP as RP

To examine the Base Resolution plan to ensure it complies with the provisions of Section 30 (1), (2) and Section 54(K) of the Code. As preparing BRP is the responsibility of the CD, RP has no role in preparing the BRP. RP's role is to check the BRP to make sure that the BRP conforms to the requirements of Section 54K.

2.4 Duties of RP Before Initiation of PPIRP

Relevant Sections – Section 54B

- (1) The insolvency professional, proposed to be appointed as the resolution professional, shall have the following duties commencing from the date of the approval under clause (e) of sub-section (2) of section 54A, namely: —
 - (a) prepare a report in such form as may be specified, confirming whether the corporate debtor meets the requirements of section 54A, and the base resolution plan conforms to the requirements referred to in clause (c) of sub-section (4) of section 54A;
 - (b) file such reports and other documents, with the Board, as may be specified; and
 - (c) perform such other duties as may be specified.
- (2) The duties of the insolvency professional under sub-section (1) shall cease, if, —
 - (a) the corporate debtor fails to file an application for initiating PPIRP within the time period as stated under the declaration referred to in clause (f) of sub-section (2) of section 54A; or
 - (b) the application for initiating PPIRP is admitted or rejected by the Adjudicating Authority, as the case may be.
- (3) The fees payable to the insolvency professional in relation to the duties performed under sub-section (1) shall be determined and borne in such manner as may be specified and such fees shall form part of the PPIRP costs, if the application for initiation of PPIRP is admitted.

Relevant Regulations

(1) Reg. 8 Fee of resolution professional

- (a) Where the corporate debtor fails to file an application or the application for initiation of the process is rejected, the fee payable to the insolvency professional for performing duties under sub-section (3) of section 54B shall be borne by the corporate debtor.

- (b) The corporate debtor shall maintain a separate bank account with such amount as may be advised by the committee from time to time and, subject to provisions of clause (23C) of section 5, such account shall be operated by the insolvency professional to meet his fee and expenses incurred by him for conducting the process.

(2) Reg.11 Disclosure of costs

- (a) A resolution professional shall make disclosures at the time of his appointment and, thereafter, in accordance with the code of conduct as set out in the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.
- (b) The resolution professional shall disclose item wise process costs in such manner as may be required by the Board.

Relevant Rules / Annexures

Report of the insolvency professional proposed to be appointed as the resolution professional as referred to in section 54B(1)(a) of the Code, as set out in Form P8 of the Insolvency and Bankruptcy Board of India (Pre-Packaged Insolvency Resolution Process) Regulations, 2021. (Annexure VIII to Form 1).

Report requires insolvency professional to certify for eligibility of the CD as MSME, commission of default by the CD for a minimum amount and compliance with prescribed procedure.

Role of RP

- (1) To prepare a report in Form P8 to be attached along with Application in Form 1. If CD propose a BRP involving impairment to OCs at the pre-admission stage, RP can give his report in Clause (i) of Form P8, for admission for compliance of Provisions of Section 54K (1) and (2) only and not requirements of all the provisions of Section 54K. Accordingly RP has to qualify his report mentioning the same.
- (2) The application should be filed within 14 days from the date of notice for meeting of the FCs approving initiation of PPIRP for the following reasons:
 - (a) List of Creditors in Form P2 to be attached with the Notice convening the meeting of FCs. Notice period of minimum 5 days or shorter notice as the case may be. Hence list should be within 5 days latest being the date of the meeting.
 - (b) As per Annexure XIII-C to Form 1, the details of Creditors with amounts due to them have to be 'up to date not exceeding 14 days from the date of application.
 - (c) However, clause f of sub section 2 of Section 54A provides that the CD has to file the application within a definite period of not exceeding 90 days
Hence before convening the meeting of FCs, CD should ensure that

everything is updated else it would amount to revision in creditors and multiple meetings of FCs.

- (3) Time limitation for PUF transactions - Reg. 41 of the Prepack Regulations, requires RP to form an opinion about existence of such avoidance transactions, and if so determined, must file an application before the Adjudicating Authority for appropriate relief. He shall make a determination on or before the forty-fifth day of the pre-packaged insolvency commencement date, under intimation to the Board. Identification of such transactions requires detailed analysis and in-depth scrutiny of financials, books etc, even a forensic auditor may be required, the window for identification of transactions seems challenging. Non detection of such transactions may even result in non-compliance of RP's duties as per the requirements of section 54F.

The IP in the role of advisor can facilitate due diligence to make sure whether there are any such transactions in the pre-application stage itself. If required upon approval of FCs, a Forensic Audit can be conducted based on the findings of the due diligence. Application in the Form 1 requires estimated values of the CDs assets and liabilities to be annexed. Hence valuation exercise to arrive the fair value of the assets and liabilities of the CD can be done in the Pre-Application stage itself. This will ensure compliance given the narrow timelines of 90 days to submit the approved resolution plan to the AA.

- (4) To File such reports and documents with Insolvency and Bankruptcy Board of India.
- (5) To caution the corporate debtor that the PPIRP Process will cease if the application for initiating the PPIRP within the time period stated in the declaration referred to under clause (f) of sub section (2) of Section 54A is not complied with.
- (6) RP has to make initial and continuous disclosures of the expenses during the entire process of PPIRP.

2.5 Filing of Application for PPIRP with the Board & AA

Relevant Sections – Section 54C

- (1) Where a corporate debtor meets the requirements of section 54A, a corporate applicant thereof may file an application with the Adjudicating Authority for initiating PPIRP.
- (2) The application under sub-section (1) shall be filed in such form, containing such particulars, in such manner and accompanied with such fee as may be prescribed.
- (3) The corporate applicant shall, along with the application, furnish—
 - (a) the declaration, special resolution or resolution, as the case may be, and the approval of financial creditors for initiating PPIRP in terms of section 54A;

- (b) the name and written consent, in such form as may be specified, of the insolvency professional proposed to be appointed as resolution professional, as approved under clause (e) of sub-section (2) of section 54A, and his report as referred to in clause (a) of sub-section (1) of section 54B;
 - (c) a declaration regarding the existence of any transactions of the corporate debtor that may be within the scope of provisions in respect of avoidance of transactions under Chapter III or fraudulent or wrongful trading under Chapter VI, in such form as may be specified;
 - (d) information relating to books of account of the corporate debtor and such other documents relating to such period as may be specified.
- (4) The Adjudicating Authority shall, within a period of fourteen days of the receipt of the application, by an order, —
- (a) admit the application, if it is complete; or
 - (b) reject the application, if it is incomplete:
- Provided that the Adjudicating Authority shall, before rejecting an application, give notice to the applicant to rectify the defect in the application within seven days from the date of receipt of such notice from the Adjudicating Authority.
- (5) The pre-packaged insolvency resolution process shall commence from the date of admission of the application under clause (a) of sub-section (4).

Relevant Regulations

(1) Reg. 18 Information to be furnished by the applicant

For the purposes of clause (d) of sub-section (3) of section 54C, the applicant shall furnish-

- (a) audited financial statements of the corporate debtor for the last two financial years;
- (b) provisional financial statements for the current financial year made up to the date of declaration under clause (f) of sub-section (2) of section 54A; and
- (c) Form P5 submitted by the authorised representatives selected under sub-regulation (5) of regulation 15.

Authorised representative in the said Regulation refers to the insolvency professional selected by class of creditor(s) for representation and have submitted the consent in Form P5.

(2) Reg. 12 Preservation of records

The resolution professional shall preserve a physical as well as an electronic copy of the records relating to the process of the corporate debtor as per the record retention schedule, as may be required by the Board in consultation with insolvency professional agencies.

Relevant Rules / Annexures

(1) Rule – 4 Filing of Application

- (a) A corporate applicant, shall make an application for initiating pre-packaged insolvency resolution process under sub-section (1) of section 54C of the Code in Form 1, accompanied with affidavit, documents or records as referred in Annexures therein, in electronic form, along with a fee of rupees fifteen thousand:

Provided that in case, electronic facility is not available for filing such application, the application and the accompanying documents may be filed in physical form, and wherever the accompanying documents are bulky, the same may be submitted in scanned portable document format in a data storage device such as a compact disc or a USB flash drive acceptable to the Adjudicating Authority.

- (b) The corporate applicant under sub-rule (1) shall serve a copy of the application to the Board by registered post or speed post or by hand or by electronic means, before filing it with the Adjudicating Authority.
- (c) The application shall be filed before the Adjudicating Authority in accordance with rules 20, 21, 22, 23, 24 and 26 of the National Company Law Tribunal Rules, 2016.
- (d) A corporate applicant shall inform the Adjudicating Authority about the filing of any winding up petition against the corporate debtor after becoming aware about such filing.

(e) Forms / Annexures to Form 1

- (i) Copy of the Audited FS of the CD for the last 2 financial years and the provisional FS for the current financial year up to the date of not less than 14 days from the date of application to be submitted by the CD (Annexure XII to Form 1).
- (ii) Statement of Affairs of the CD made up the date not earlier than 14 days from the date of application (Annexure XIII to Form 1).
- (iii) Proof that the specified application fee (Rs.15,000) has been paid. (Annexure XV to Form 1)
- (iv) Copy of the special resolution or resolution of the members or partners of the corporate debtor, as the case may be, as referred to in section 54A(2)(g) of the Code. (Annexure VI to Form 1).
- (v) Written consent by the proposed resolution professional as set out in Form P1 of the Insolvency and Bankruptcy Board of India (Pre-Packaged Insolvency Resolution Process) Regulations, 2021. (Annexure IV to Form 1).
- (vi) Declaration regarding the existence of any transactions of the corporate debtor, as referred to in section 54C(3)(c) of the Code, as set out in Form P7 of

the Insolvency and Bankruptcy Board of India (Pre-Packaged Insolvency Resolution Process) Regulations, 2021. (Annexure IX to Form 1).

- (vii) Proof for filing with the copy of the Application to the Board (Annexure XVI to Form 1). The Applicant shall serve a copy of the application by registered post or speed post or by hand or by electronic means before filing it with the Adjudicating Authority. [Rule 4 (2)]

Role of IP as Advisor

- (1) The IP acting as advisor, can assist in the preparation & finalization of application for submission before NCLT and continue to provide consultation to represent the CD at any stage of the PPIRP and shall also represent the Corporate Debtor/ Corporate Applicant at any stage or forums.
- (2) Assistance in the compilation of data in the preparation of the Statement of Affairs, identification of unrelated financial creditors, preparation of Base Resolution Plan, etc., for placing before the meeting of Financial Creditors. IP has to ensure that the Statement of Affairs includes all liabilities (including contingent Liabilities), all provisions (including employee liabilities), Statutory dues, disputed liabilities etc.

Role of RP

- (1) Annexure-XIII to Form I require the list of CD's assets and liabilities, divided into such categories as are appropriate for easy identification with estimated values assigned to each category to be given in the statement of affairs. RP will be required to work along with the CD to make a fair estimate of value of assets and liabilities with reference to each category of assets and liabilities.
- (2) To forward the copy of the same to the Board through Registered/Speed Post or by hand or by electronic means
- (3) To check that the application in Form 1 along with Annexures (including the proof of Acknowledgement for filing with the Board) is filed with the AA within the time limit specified in the declaration in Form P6 in accordance with rules 20,21,22,23,24 and 26 of the NCLT Rules, 2016.
- (4) RP shall preserve records both in physical as well as electronic copies as per the record retention schedule and as per the working papers retention practice of professionals.

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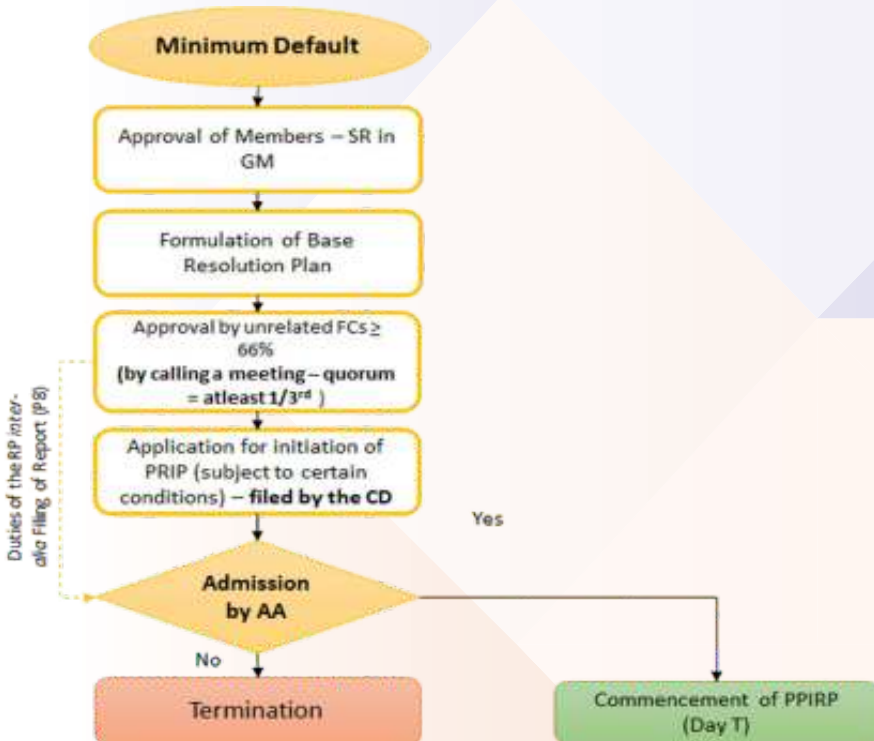
ROLE OF IPs AT THE STAGE OF 'DURING PPRIP'

3.1 Initiation of Pre-Packaged Insolvency Resolution Process

Financial Creditors have a major role to play till admission vis-a-vis the Resolution Professional. However, it must be noted that section 54B (1) read with Regulation 18 requires the Resolution Professional to file a Report on the application being filed for initiation. Hence, it becomes necessary for the RP to ensure that all the compliances and actionable on the part of the CD and the CoC have been adhered to. Attention must be drawn to the fact that a minimum default of Rs 10,00,000/- (Rs. 10 lacs) must be present so as to initiate the PPIRP Process - it cannot be initiated on an apprehension of insolvency.

During this stage, the RP has a singular role of filing the Report as per section 54B (1). However, this single report is all encompassing and requires the RP to confirm that all relevant provisions have been satisfied before filing of the application.

The flowchart showing steps involved during initiation of PPIRP:



Practical Considerations

- (1) The RP in the report filed by him should confirm that corporate debtor and base resolution plan meet all the requirements as specified in Sec 54B.
- (2) The duties of RP given under sec 54B(1) will cease on the failure to file PPIRP application by the CD within the declared time or, admission or rejection of the application by the Adjudicating Authority. The fees for performance of his duties will be borne by CD.
- (3) The RP has to make sure all the prerequisites before filing of the application are fulfilled - The RP should conform with the eligibility criteria mentioned in Regulation 7. Anything contrary to the provision will render RP ineligible.
- (4) In addition, a written consent has to be given by him in Form P1.
- (5) Where any of the aforementioned approvals and/ or declarations are not obtained by the CD, the RP ought to report the same to the NCLT. If for the purpose of the Report, the CD poses any obstruction in provision of documents etc - the RP shall report the same to the AA.

A template of checklist that an RP can adopt while issuing the Report is enclosed as **Annexure A**.

3.2 Invitation and Confirmation of Claims

Upon commencement of PPIRP, the RP shall be responsible for issuing the public announcement to all the creditors of the CD, and confirming and collating the claims of the CD so as to constitute the CoC. The list of claims along with security interest must be submitted by the CD to the RP within 2 days which is confirmed by RP.

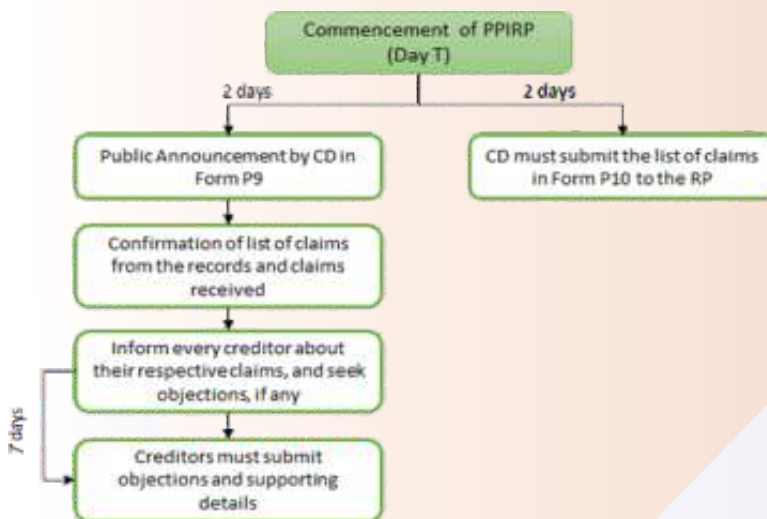
While the list of creditors must be submitted to the financial creditors at the time of seeking approval [In Form P2], a list of claims as prescribed in Form P10 must also be submitted to the RP within 2 days of commencement of PPIRP, which shall thereafter be confirmed by the RP by issuing public notice and inviting comments.

A template of checklist that an RP can adopt while issuing the Report is enclosed as **Annexure B**.

Practical Considerations

The following must also be kept in mind by the RP while collation of claims –

- (1) Is the RP required to issue the public announcement in newspapers? Unlike CIRP, in case of PPIRP, the RP is not required to make the public announcement in newspapers and neither is the public announcement required to invite claims. The intent of the public announcement is to make creditors of CD aware of the initiation of PPIRP.
- (2) The RP shall ensure that the List of Claims submitted by the CD is in conformity with Form P10.



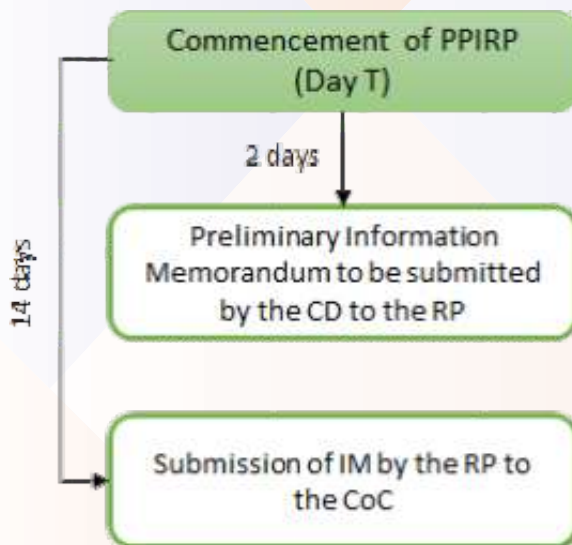
- (3) Form P-10 does not require the CD to submit correspondence details of the creditors. As a result, the RP may have to seek the information separately. Given the time constraints, it is suggested that the RP should instruct the CD to provide such details beforehand.
- (4) In case of disputes or ongoing litigations or disagreement by CD, RP has no adjudicatory role and such disputes or ongoing litigations should be reflected against claim. Unlike CIRP, RP is not to receive and collate claims. RP is only required to confirm the list of claims as received in Form P10.
- (5) Further, the Committee of Creditors must be formed within 7 days of Commencement as the first meeting of the CoC must be constituted within 14 days with a notice period of minimum 5 days - Thus, the RP must keep all communication in ready to go stage so as to avoid any delay in timelines. CoC shall constitute only unrelated FCs.
- (6) The RP must endeavour to send maximum possible communications in form of emails - this would not only ensure cost and time control, but will also help in effective record retention for PPIRP related documents.
- (7) Where the RP observes significant deviations in the list of claims vis-a-vis details received from the creditors, the reliability of the books of accounts and records of the CD may be put to question - such a situation may be treated as a red flag for the RP to initiate a forensic audit process.
- (8) The RP must ensure that the minimum notice period for calling of the meeting is adhered to.
- (9) The RP must ensure that the list of claims submitted by the CD is duly verified and checked. It should be sufficiently communicated to the CD that any misinformation in the list of claims shall attract penalty and action under section 77A.

- (10) Given that the PPIRP is based on a debtor in possession model, the records and documents of the CD remain to be in the possession of the directors. management. Hence, the RP must also maintain sufficient records of all communication between the RP and the CD, as well as of the documents received from the CD.

3.3 Preparation of Information Memorandum

Information Memorandum is one of the most important documents prepared by the RP. A preliminary information memorandum is submitted by the CD to the RP. Based on this preliminary information memorandum, RP prepares the memorandum.

Information memorandum refers to a memorandum prepared by the RP under sec 29(1), which contains comprehensive details regarding the business of CD - It discloses all the information that would be required by the investor before making any investment. However, given the nature of proceedings in PPIRP and the time constraints involved therein, during PPIRP, the obligation to provide all preliminary details falls upon the CD. Hence, the CD is required to submit a 'Preliminary Information Memorandum' to the RP, on the basis on which the RP shall prepare the Information Memorandum.



A template of checklist that an RP can adopt while issuing the Report is enclosed as **Annexure C**.

Practical Considerations

The following must be kept in mind by the RP while making Information Memorandum-

- (1) Preliminary information memorandum is the basis of the information

memorandum therefore needs to be vetted properly. The information memorandum should not leave any information required under Regulation 40.

- (2) As the information memorandum has direct bearing on the Resolution Plan, all material information should be disclosed. The RP should provide any information required by the CoC within reasonable time after seeking same from the CD.
- (3) The information memorandum contains sensitive information, an undertaking of confidentiality will prevent any undue gain or loss from the CoC, other stakeholders with whom such IM is shared.
- (4) Any misleading information will attract a penalty, therefore it is advised that every information is corroborated with necessary documents. Additionally the CD must always be sufficiently informed about the implication of misinformation in the preliminary IM (under section 77A)
- (5) If the RP is of the view that additional information, not already mentioned in the preliminary IM submitted by the IP is required for preparation of the Information Memorandum, the RP shall have access to the records and documents of the books and records, even though they remain in the possession of the management of the CD.
- (6) If at any point, the management of the CD does not cooperate with the RP, in providing requisite documents or otherwise, the RP may bring the same to the notice of the CoC, who may initiate shift from debtor-in-possession to creditor-in-possession, if so warranted.
- (7) Additionally, the RP must also look out for red flags indicating avoidance transactions, if any. If the RP is of the view that there is a likelihood of avoidance transactions, the RP must immediately take necessary steps for appointing a forensic auditor, if required and report such transactions.

3.4 Review of Base Resolution Plan

Section 54B. Duties of resolution professional before initiation of pre-packaged insolvency resolution process

The insolvency professional, proposed to be appointed as the resolution professional, shall have the following duties commencing from the date of the approval under clause (e) of sub-section (2) of section 54 A, namely:

- a. prepare a report in such form as may be specified, confirming whether the corporate debt or meets the requirements of section 54 A, and the base resolution plan conforms to the requirements referred to in clause(c) of sub section (4) of section 54A;
- b. File such reports and other documents, with the Board, as may be specified;

Section 54K Consideration and Approval of Resolution Plan

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

prepackaged insolvency commencement date, and the resolution professional shall present it to the committee of creditors.

The committee of creditors may provide the corporate debtor an opportunity to revise the base resolution plan prior to its approval under sub-section (4) or invitation of prospective resolution applicants under sub-section (5), as the case may be.

The resolution plans and the base resolution plan, submitted under this section shall conform to the requirements referred to in sub-sections (1) and (2) of section 30, and the provisions of sub-sections (1), (2) and (5) of section 30 shall, mutatis mutandis apply, to the proceedings under this Chapter.

Note: Section 54K (1) states that the corporate debtor shall submit the base resolution plan, to the resolution professional within two days of the Pre-Packaged Insolvency Commencement Date (PPICD). However, a copy of the BRP is already with the RP prior to the commencement of PPIRP [please refer Section 54B (1)]. It is understood that the BRP submitted by the CD prior to the commencement of PPIRP have to be updated so that all the claims are as on the PPICD, hence the updated BRP with claims as on PPICD has to be submitted by the CD before the RP within 2 days of the PPICD.

Checklist for Review of Mandatory Contents in the BRP

Section of the Code/Regulation No.	Requirement with respect to the Base Resolution Plan (BRP)	Relevant Clause and Provision in the Resolution Plan (to be filled by RP)
Section 30(1) & Regulation 45(1)(a)	Affidavit by CD stating that the Resolution applicant is eligible under section 29A	
Section 30(2)(a)	Resolution Plan must provide for the payment of Pre-packaged insolvency resolution process costs in priority to the payment of other debt.	
Operational Creditor('OCs') payments: Section 30(2)(b) read with Regulation 38(1)(a)	Resolution plan must provide for the payment of debts of OCs in such manner as may be specified by Insolvency and Bankruptcy Board of India which shall not be less than— a. The amount to be paid to such creditors in the event of a liquidation of corporate debt or under Section 53 of IBC; or b. the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in Section 53(1) of IBC, whichever is higher.	

Section of the Code/Regulation No.	Requirement with respect to the Base Resolution Plan (BRP)	Relevant Clause and Provision in the Resolution Plan (to be filled by RP)
Dissenting financial creditors Section30(2)(b)& Regulation45(5)(b)	Resolution Plan must provide for the Payment of debts of financial ('FCs'): creditors, who do not vote in favor of the resolution plan, in such manner as may be specified by Insolvency and Bankruptcy Board of India, which shall not be less than the amount to be paid to such creditors in accordance with Section 53 (1) of IBC in the event of a liquidation of corporate debtor.	
Section30(2)(c)	The Resolution Plan provides for the management of the affairs of the Corporate debtor after the approval of the Resolution Plan.	
Section30(2)(d)	The Resolution Plan should provide for the implementation and supervision of the resolution plan.	
Section30(2)(e)	The Resolution Plan does not contravene any of the provisions of the Law for the time being in force.	
Regulation45(4)	The Resolution Plan should include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.	
Regulation45(1)(b)	A resolution plan shall include a statement giving details if the resolution applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.	
Regulation45(1)(c)	A resolution plan shall include an undertaking that every information and records provided in connection with or in the resolution plan is true and correct and discovery of false information and record at any time will render the resolution applicant ineligible to participate in any resolution process under the Code.	

Section of the Code/Regulation No.	Requirement with respect to the Base Resolution Plan (BRP)	Relevant Clause and Provision in the Resolution Plan (to be filled by RP)
Regulation45(2)(a)	Term of the Resolution Plan and its implementation schedule must be provided in the Resolution Plan.	
Regulation45(2)(b)	The management and control of the business of the corporate debt or during its term must be provided in the Resolution Plan.	
Regulation45(2)(c)	The Resolution Plan should contain adequate means for supervising its implementation.	
Regulation45(3)(a)	Resolution Plan should demonstrate that it addresses the cause of default.	
Regulation45(3)(b)	Resolution Plan should demonstrate that it is feasible and viable.	
Regulation45(3)(c)	Resolution plan has provisions for its effective implementation.	
Regulation45(3)(d)	Resolution Plan should have provisions for approvals required and the timeline for the same.	
Regulation45(3)(e)	Resolution Plan should demonstrate that the Resolution Applicant has the capability to implement the Resolution Plan.	
Regulation45(5)(a)	The amounts due to the OCs under the Resolution Plan shall be given priority of payment over financial creditors.	

Action Points for RP

- (1) Review that the BRP contains all the mandatory contents as laid down in the Code and Regulations.
- (2) Inform the CoC of any non-compliance if any
- (3) Review whether BRP impairs debts of any OCs.
- (4) If BRP impairs the debts of the OCs, issue Invitation for Resolution plan with approval of the CoC
- (5) Confirm that all the claims as stated in last updated Form P10 has been provided for in the resolution plan.
- (6) Confirm the CD and any joint applicant with the CD are eligible to submit the resolution plan under Section 29A.

- (7) As the CD is a MSME - the provisions of clauses (c) and (h) of section 29A shall not apply to the MSME in respect of the pre-packaged insolvency resolution process. However, it has to be kept in mind that the joint applicant may not be a MSME and hence all the clauses of Section 29A shall apply to such joint applicant.
- (8) CoC may like to provide an opportunity to CD to revise its plan before approval.

Timeline to be kept in mind by RP

Activity	Time (Days) from the PPICD(T)	Reference
Issue Invitation for resolution plan in Form P11	T+21	Regulation 43(1)
Approval of a resolution plan by the CoC	T+90	Section 54D(2)

3.5 Action Plan upon Failure of Base Resolution Plan

The Base Resolution Plan is provided by the CD. The major difference between CIRP and PPIRP is the opportunity given to the CD to submit the resolution plan. It is in fact one of the prerequisites (under section 54A (2)) of initiating insolvency that the CD is eligible to submit a resolution plan this resolution plan is known as a 'Base Resolution Plan' (discussed in detail in the previous chapter'). However, it may so happen that the Base Resolution Plan is not approved by the CoC; in such cases the fresh resolution plan is invited.

Timelines to be considered by the RP is annexed herewith and marked as **Annexure D**.

Practical Consideration

These are the following considerations that are required to kept in mind by the RP:

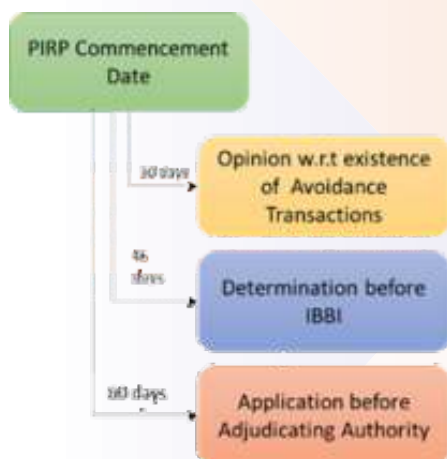
- (1) The RP should invite prospective resolution plans within 21 days from the date of commencement.
- (2) The RP has an obligation to provide the Resolution Applicants with the basis of evaluation of the resolution plan as approved by CoC and relevant information referred to in section 29. Further, the plan should contain all the necessary contents required under regulation 44 and 45. As timelines are short, RP along with CoC will have to formulate RPF along with basis for evaluation and take approvals expeditiously.
- (3) The RP will publish Form P11 on the website of CD or on the website designated by the Board, and in any other manner specified by the committee, wherein the last date of submission shall not be less than 15 days from the date of issue of invitation.
- (4) If no plan is received by the last date of submission, the RP may seek permission of the CoC to extend the timeline, provided that the total time period of 90 days to submit a plan to the Adjudicating Authority is not compromised. However, if no plan is approved, then termination application will be filed by the RP.

- (5) The evaluation should be done by the CoC carefully. An opportunity should be given to RA for improvement of the resolution plan.
- (6) The RP should take performance security from the successful resolution applicant as per decision of CoC. This will ensure execution of the plan. The CoC may decide to forfeit amount on the failure of execution.

3.6 Role in the Context of Avoidance Transactions

Avoidance transactions are those transactions which can be annulled by RP for the benefit of the CD. These transactions are entered by CD prior to the commencement of CIRP. The three categories of avoidable transactions are-

- Preferential Transactions
- Fraudulent Transactions
- Undervalued Transaction



A template of checklist that an RP can adopt while issuing the Report is enclosed as **Annexure E**.

Practical Considerations

- (1) The scope of transactions should be within sections 43, 45, 49, 50 and 66 of the Code.
- (2) Given that the framework comes with time constraints which are made even more stringent with the specific timelines for identification of avoidance transactions (30 days), the RP may initiate identification of such transactions in the pre-NCLT stage, that is, after approval of initiation by the FCs, thereby providing the RPs a sufficient window to identify such transactions, and take subsequent actions.
- (3) Alternatively, prior to pre-initiation approval by the unrelated FCs, the unrelated FCs may conduct a forensic audit into the affairs of the CD, at the cost of the CD. This would not only ensure timely action by the RP, but will enable the CD to

furnish the declaration regarding existence of avoidance transactions [Section 54C(3)(c)]

- (4) The failure to file avoidance application will result in breach of duty under section 54F(2)(h)

3.7 Role during Debtor-in-Possession Mode

A significant distinguishing feature of the PPIRP framework vis-à-vis corporate insolvency resolution framework is the debtor-in-possession model, which implies that the management of CD vest in the Board of Director or the Partners as the case may be. Given that a PPIRP can be initiated by the CD only, the rationale behind a DIP model is to incentivize the CDs to initiate the PPIRP as the management would continue to vest in their hands.

During such period, the Board of the CD, is under the duty to endeavour to protect and preserve the value of the property of the CD, and manage its operations as a going concern, and carry out all statutory and contractual rights and obligations as may be required – however, all activities of the CD shall be monitored by the RP and be subject to approval by the CoC as and when required as per regulation 50.

The Adjudicating Authority on pre-packaged insolvency commencement date, along with the order of admission under section 54C also declare a moratorium for the purposes referred to in sub-section (1) read with sub-section (3) of section 14, which shall mutatis mutandis apply to the proceedings under PPIRP.

As laid down in section 54J (1), where the CoC is of the view that the affairs of the CD, under the DIP Model, are being grossly mismanaged, or are being conducted in a fraudulent manner, the CoC may resolve, with consent of at least 66% members, to shift the power of management from the Board of directors of the CD to the RP, i.e. a shift from DIP to Creditors-in –Possession ('CIP') Model. As per section 54F (2), RP shall inter alia perform duty of monitoring the management of affairs of the CD unlike CIRP, wherein IPR/RP has primary role of managing the affairs of the CD.

CD shall continue to be liable for all compliances required for operations and affairs.

Hence, the role of the RP shall be crucial. The list of actions laid down in Reg. 50 is annexed as **Annexure E**.

Practical Considerations-

- (1) Even though the possession of the books and records remains with the CD, the RP shall continue to have access to the books of accounts, records and other documents necessary for discharging its duties inter-alia preparation of information memorandum, invitation for resolution plan.
- (2) The FCs may also consider restricting the powers of the CD as per the extant provisions laid down in Reg. 50 (2), for which prior approval of the CoC is required. However, it must be taken into account that the CD should be given sufficient independence to continue the operations without unwarranted

obstruction.

- (3) During the PPIRP period, the compliances and regulatory filings shall be the responsibility of the CD. The CD shall also be responsible for maintaining the going concern status of the CD. However, the RP may undertake to monitor and ensure that such filings are duly made and the going-concern status of the CD is not jeopardized.
- (4) As a part of monitoring process, RP should scrutinize cash flows of the CD by regularly going through bank accounts and highlight any transaction not in line with PPIRP to CD and CoC. To enable above, as per section 54F(4), financial institution maintaining accounts of the CD shall furnish all information relating to CD to RP as and when required by him.
- (5) RP shall follow directions issued by CoC to him, if any, for monitoring the affairs of CD.
- (6) The monthly report required to be submitted by the CD to the RP must contain the following .
- (7) Details of legal proceedings having a material impact on the business of the corporate debtor [Reg. 50 (3) (a)] along with action taken by CD to protect and preserve the assets of CD.
- (8) Details of key contracts executed during the reporting period [Reg. 50 (3) (a)] Updated claims list.
- (9) As moratorium is under effect, no payments made to creditors including FCs of pre-PPIRP period by CD.
- (10) Other details that the RP may require from the CD include –
 - (a) Production and Supply levels during the months;
 - (b) Details of the workforce and personnel employed with the CD;
 - (c) Details of the regulatory filings and other compliance requirements during the month;
 - (d) Updated position and balance of all assets of the CD;
 - (e) Details of any resolution passed/ decision taken by the Board of the CD;
 - (f) Updated cash and bank balances
 - (g) Details of immediate actionable in the following month
 - (h) such other details as may be required based on the CD

The RP may also decide on the particular date of the following month within which the CD may submit the report to the RP.

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ROLE OF IP AT STAGE OF POST COMPLETION OF PPIRP

4.1 Possible Scenarios Arising after Completion of PPIRP

S.Sr.	Scenarios	Relevant Section
a.	Termination of PPIRP (No resolution plan received OR COC rejected the Resolution plan OR AA Rejected the Resolution Plan)	Sec-54N(1)&(2) Sec-54L(3)
b.	Base Resolution Plan approval by COC & AA	Sec-54L
	Best Alternate Plan approval by COC & AA	Sec-54L
c.	Liquidation order passed by AA	Sec-54N(4)
d.	Initiation of CIRP by AA based on COC request	Sec-54O

4.2 Termination of PPIRP

Termination of PPIRP	<p>Section 54N: Termination of pre-packaged insolvency resolution process.</p> <p>54N. (1) Where the resolution professional files an application with the Adjudicating Authority,</p> <p>(a) under the proviso to sub-section (12) of section 54K; or</p> <p>(b) under sub-section (3) of section 54D, the Adjudicating Authority shall, within thirty days of the date of such application, by an order, —</p> <p>(i) terminate the pre-packaged insolvency resolution process; and</p> <p>(ii) provide for the manner of continuation of proceedings initiated for avoidance of transactions under Chapter III or proceedings initiated under section 66 and section 67A, if any.</p> <p>(2) Where the resolution professional, at any time after the pre-packaged insolvency commencement date, but before the approval of resolution plan under subsection (4) or sub-section (12), as the case may be, of section 54K, intimates the Adjudicating Authority of the decision of the committee of creditors, approved by a vote of sixty-six per cent. of the voting shares, to terminate the pre-packaged insolvency resolution process, the Adjudicating Authority shall pass an order under sub-section (1)</p>
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<p>If the resolution plan received is rejected by COC under Proviso to section 54K(12)</p>	<p>Section 54K: Consideration and approval of resolution plan. (12) The resolution plan selected for approval under sub-section (10) or sub-section (11), as the case may be, may be approved by the committee of creditors for submission to the Adjudicating Authority: Provided that where the resolution plan selected for approval under sub-section (11) is not approved by the committee of creditors, the resolution professional shall file an application for termination of the pre-packaged insolvency resolution process in such form and manner as may be specified.</p>
<p>If the resolution plan is not received / approved in 90 days from the date of commencement under section 54N</p>	<p>Section 54D: Time-limit for completion of pre-packaged insolvency resolution process. 54D. (1) The pre-packaged insolvency resolution process shall be completed within a period of one hundred and twenty days from the pre-packaged insolvency commencement date. (2) Without prejudice to sub-section (1), the resolution professional shall submit the resolution plan, as approved by the committee of creditors, to the Adjudicating Authority under sub-section (4) or subsection (12), as the case may be, of section 54K, within a period of ninety days from the pre-packaged insolvency commencement date. (3) Where no resolution plan is approved by the committee of creditors within the time period referred to in sub-section (2), the resolution professional shall, on the day after the expiry of such time period, file an application with the Adjudicating Authority for termination of the pre-packaged insolvency resolution process in such form and manner as may be specified.</p>
<p>If the COC approved Resolution plan is rejected by AA u/s 54L(3)</p>	<p>Section 54L: Approval of resolution plan. (3) Where the Adjudicating Authority is satisfied that the resolution plan does not conform to the requirements referred to in sub-section (1), it may, within thirty days of the receipt of such resolution plan, by an order, reject the resolution plan and pass an order under section 54N.</p>

Applicable PPIRP Regulations	Regulation 49(4): (4) Where no resolution plan is approved by the committee or where the committee has approved the termination of process, the resolution professional shall file an application in Form P13 to the Adjudicating Authority for termination of process.
Expected Role of RP upon Termination	<p>A. Initiating the Termination Process RP in the PPIRP Process has to file the application for termination before the Adjudicating Authority upon occurring of any one of the following three scenarios:</p> <p>(i) The committee of creditors in its meeting decided to terminate the aforementioned pre-packaged insolvency resolution process filed by the corporate debtor under sub-section (2) of section 54N.</p> <p>(ii) No resolution plan was submitted within the period permitted for approval of resolution plan [90 days] under sub-section (3) of section 54D.</p> <p>(iii) The resolution plan selected under sub-section (11) of section 54K has not been approved by the committee of creditors under sub-section (12) of section 54K</p> <p>B. Upon Receipt of AA order of PPIRP Termination Upon termination order, the role of RP ceases except to the extent of duties / instructions specified in the order for the outgoing RP to complete. Whether or not mentioned in the order, RP should carry out the followings tasks:</p> <p>Communication & Reporting:</p> <p>(i) File the copy of the termination order with the MCA Portal</p> <p>(ii) Intimate the order of termination to the CD and all the COC members and maintain trail of communication and confirmation</p> <p>(iii) Complete all the disclosure/cost reporting, to IBBI and IPA as per applicable regulations.</p> <p>(iv) Intimate Bank regarding the termination order and direct the bank to permit the CD to operate the account specifically opened for the PPIRP expense purpose. Ideally RP should pay for all expenses before such release of bank account to the CD.</p>

(v) Ideally, either ceased RP or CD shall formally intimate all the statutory authorities and parties involved any other disputes, regarding the termination order, as the moratorium will cease on the order of termination. Unlike CIRP/Liquidation, there is no public announcement for commencement of PPIRP. As all communication to claimant are on one-to-one basis, the intimation of termination is also essential as a best practice, while maintaining trail of communication/confirmation, for future reference/evidence.

Handovers:

(vi) RP should endeavour to handover all the original documents, books of accounts and other records received from the CD immediately upon receipt of the order (except to the extent of forms, communications and documents to be retained by RP as per the Records Retention regulation of IBBI) and take proper acknowledgement of handover from authorized official of CD.

(vii) In case, if the RP has earlier initiated any avoidance transaction proceedings (PUFE) against the CD or their related parties or third parties, RP shall follow the direction of the AA as spelt in the termination order regarding the manner of continuity of those specific cases.

In scenarios of vesting of management with RP, there is no question of termination (as it will be ordered for liquidation) and hence there is no scenario of handover of the management back to the CD.

Professional Ethics:

(viii) Suggestion – RP shall refrain from any commercial or professional dealing with the CD at least for 12-24 months post the termination to ensure his independence.

Applicable Forms:

Form P13 - APPLICATION FOR TERMINATION OF PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS

4.3 Base Resolution Plan/Best Alternative Plan - Approved by CoC & AA

<p>Approval of Resolution Plan by AA u/s 54L</p>	<p>Section 54L: Approval of resolution plan. 54L. (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) or sub-section (12) of section 54K, as the case may be, subject to the conditions provided therein, meets the requirements as referred to in sub-section (2) of section 30, it shall, within thirty days of the receipt of such resolution plan, by order approve the resolution plan: Provided that the Adjudicating Authority shall, before passing an order for approval of a resolution plan under this sub-section, satisfy itself that the resolution plan has provisions for its effective implementation. (2) The order of approval under sub-section (1) shall have such effect as provided under sub-sections (1), (3) and (4) of section 31, which shall, mutatis mutandis apply, to the proceedings under this Chapter.</p>
<p>Base Resolution Plan approval u/s 54K(4)</p>	<p>Section 54K: Consideration and approval of resolution plan. (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.</p>
<p>Best Alternative Plan approval u/s 54K(12)</p>	<p>Section 54K: Consideration and approval of resolution plan. (12) The resolution plan selected for approval under sub-section (10) or sub-section (11), as the case may be, may be approved by the committee of creditors for submission to the Adjudicating Authority;</p>
<p>Expected Role of RP upon Plan Approval</p>	<p>A. Application to AA for approval of Resolution Plan Once the Resolution Plan is approved by COC with the requisite majority, RP should arrange to file application before AA for approval:</p>

	<p>(i) There is no separate application provided in the Regulation for this purpose. Hence RP shall proceed with filing the application in Form NCLT-1 as per the NCLT Rules;</p> <p>(ii) RP shall enclose Compliance Certificate in Form P12 as per Regulation 49(1) of PPIRP Regulations ;</p> <p>(iii) In case of change in management and if the Resolution Plan provides for carry forward of available tax benefits, RP shall serve a copy of petition to appropriate tax authority for their response to AA, if any;</p> <p>At times, there are multiple amendments in the plan before COC finally approves it. As far as possible, RA should be asked to provide a consolidated Resolution plan (after incorporating all the amendments as per various rounds of negotiation), to avoid any ambiguity during implementation.</p> <p>Applicable Form: Form P12 – Compliance Certificate Form No. NCLT. 1 – Application to NCLT [Refer NCLT Rules 2016]</p> <p>B. Upon Receipt of Resolution Plan approval Order of AA:</p> <p>Communication: Once RP receives the Resolution plan approval order, he shall ensure to communicate it:</p> <p>(i) To Resolution Applicant and all the COC members;</p> <p>(ii) To all the Claimants (within 7 days) about the approval of the plan and the ratio/formula for payment of their claim as approved in the resolution plan;</p> <p>Interim Management Committee:</p> <p>(iii) Like in any CIRP, RP shall constitute the Interim Management Committee (IMC) as per provisions, if any, in the Resolution Plan and orally communicate the composition of the committee to all the concerned members;</p> <p>(iv) RP shall call for the First meeting of the IMC and decide on some of the following key matters as may be relevant for the specific case of the CD:</p>
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	<p>1. Grant of Power & Right to Resolution Applicant (until full settlement) - CD Bank account operation rights / authorization for statutory filings / Fixing of monetary limits for specific transactions</p> <p>3. Defining the modus operandi of business progress reporting at frequent intervals as per the business conditions (Daily / Weekly/ Fortnightly etc.,)</p> <p>3. The frequency of meeting / Minimum time for Service of notice may be agreed upon</p> <p>Realization & Distribution</p> <p>(v) RP shall ensure timely flow of funds from the Resolution Applicant as committed in the approved plan;</p> <p>(vi) As and when the amounts are realized, RP shall endeavour to distribute the payment to the parties on the order of priority (PPIRP expenses including RP fees, Dissenting Financial creditor liquidation value share, Operation Creditors due are to be paid in priority over the other FC dues) along with a letter that this will be the full and final settlement of their dues from the Corporate Debtor, against acknowledgement of the recipient.</p> <p>Completion of the Resolution Plan Implementation: Upon realization of full payment from the resolution applicant as envisaged in the plan, RP & IMC shall endeavour to:</p> <ul style="list-style-type: none"> • Handover the entire management control to the resolution applicant; • Handover all the company assets in control of the RP / IMC along with all the relevant documents • Handover all the documents of the CD (including Books of accounts, statutory records etc.), excluding those PPIRP process related records which needs to be retained by RP as per Record Retention guidelines of IBBI; • Transfer all authorized signatory rights (CD's bank account, statutory authorities registration etc.,) to the representatives of the RA • Make Security creditors release all the charges (registered with MCA) and MOD's and handover all the original title deed and relevant documents to the RA
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	<ul style="list-style-type: none"> • Complete the change in share-holding and board of directors, in the MCA records in line with the resolution plan • File Resolution Plan implementation completion report to AA (along with complete details of realization, distribution and actions taken during the implementation period) • Intimate MCA regarding successful implementation of the plan and file appropriate form for de-flagging the PPIRP process in their portal; <p>Note: In all the handovers, RP should ensure that appropriate acknowledgement from the authorized person is received and documented properly, to avoid any future disputes.</p> <p>Exception Situations:</p> <ul style="list-style-type: none"> • If there is any default in realization of payment from the Resolution Applicant, RP shall serve a notice to the RA to honour the committed payments immediately [within 7 days or such grace period as may be approved in the resolution plan] • In case of non-realization after the notice period, RP shall call for the IMC meeting immediately and decide upon following issues: <ol style="list-style-type: none"> 1. Filing Application to AA regarding Failure in Resolution Plan implementation by RA 2. Invoking the Bank Guarantee if any, provided by the RA for implementation of the plan
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4.4 Liquidation Order by AA

<p>AA ordering for Direct Liquidation</p>	<p>Section 54L: Approval of resolution plan.</p> <p>(4) Not with standing anything to the contrary contained in this section, where the Adjudicating Authority has passed an order under sub-section (2) of section 54J and the resolution plan approved by the committee of creditors under sub-section (4) or subsection (12), as the case may be, of section 54K, does not result in the change in the management or control of the corporate debtor to a person who was not a promoter or in the management or control of the corporate debtor, the Adjudicating Authority shall pass an order —</p> <p>(a) rejecting such resolution plan;</p> <p>(b) terminating the pre-packaged insolvency resolution process and passing a liquidation order in respect of the corporate debtor as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1) of section 33; and</p> <p>(c) declaring that the pre-packaged insolvency resolution process costs, if any, shall be included as part of the liquidation costs for the purposes of liquidation of the corporate debtor.</p>
<p>Vesting of Management with RP [order u/s 54J(2)]</p>	<p>Section 54J: Vesting management of corporate debtor with resolution professional.</p> <p>54J. (1) Where the committee of creditors, at any time during the pre-packaged insolvency resolution process period, by a vote of not less than sixty-six per cent of the voting shares, resolves to vest the management of the corporate debtor with the resolution professional, the resolution professional shall make an application for this purpose to the Adjudicating Authority, in such form and manner as may be specified.</p> <p>(2) On an application made under sub-section (1), if the Adjudicating Authority is of the opinion that during the pre-packaged insolvency resolution process—</p> <p>(a) the affairs of the corporate debtor have been conducted in a fraudulent manner; or</p> <p>(b) there has been gross mismanagement of the affairs</p>

	<p>of the corporate debtor,</p> <p>it shall pass an order vesting the management of the corporate debtor with the resolution professional.</p> <p>Form P14 has been prescribed under Regulation 51 for the above purpose.</p>
Expected Role of RP (Liquidator) upon Liquidation	<p>A. Order of Liquidation:</p> <p>At the time of passing of liquidation order, AA will decide upon the appointment of liquidator (AA may give option to RP to file his Consent to continue as the liquidator). Upon receipt of the liquidator, depending upon who the liquidator is, the RP has to arrange for the followings:</p> <ol style="list-style-type: none"> Arrange to handover to the new Liquidator If RP is the liquidator, arrange to takeover the management from the CD (if not already vested) <p>B. Communication:</p> <p>Upon Receipt of the order, RP shall communicate the copy of the order to the following parties:</p> <ul style="list-style-type: none"> Corporate Debtor and all the directors (as their directorship ceases) Resolution Applicant, whose resolution plan is rejected by the AA Display in the notice board for the information of all the employees (as their employment contract ceases/terminates from the date of order) Complete the reporting in IBBI / IPA portals regarding the PPIRP completion and commencement of liquidation Newly appointed liquidator (if any appointed in Liquidation order) and proceed with handover formalities on priority (If RP continues as liquidator) Proceed with public announcement within 5 days and intimate the liquidation commencement to all the relevant statutory authorities (Income Tax, GST, PF, ESI, DGFT, Customs, Factory Inspectorate, Pollution Control board and such other authorities as may be relevant)

C. RP continues as the liquidator:

If the RP continues as the Liquidator, the role of liquidator in brief is listed as under for further processing:

- Verify and admit the claims & finalise the Stakeholders list
- Consolidate the liquidation estate and ensure proper possession of all the asset of the CD (ensure third party assets are identified and released appropriately)
- Open a separate Liquidation account with bank (if a separate PPIRP account is earlier opened, request bank to re-designate the account as Liquidation account of the CD)
- Review the relinquishment decision of the bank and make appropriate arrangement of demarcate and handover those unrelinquished assets to the specified secured creditors (also arrange to collect their share of Liquidation cost & other workmen due shares within the stipulated time period 90/180 days).
- Prepare & file Stakeholders List, Asset memorandum, Preliminary report to the AA within stipulated time (60 / 75 days) and file to IBBI / IIPICAI as appropriately
- Constitute Stakeholders Consultation committee and hold the meeting to kick start the sale process
- Assess the need for any fresh valuation of the assets and proceed with e-auctioning of the assets as per the sale process defined in the IBBI Liquidation Process regulation
- Ensure realization and distribution of liquidation estate proceeds as per Section 53
- Ensure proper filing of Quarterly Progress Report, Sale Report, Audited Liquidation Account, Statutory Returns & Final report upon closure of the liquidation process

D. Handover to New Liquidator:

- In case of new liquidator appointed in Liquidation

	<p>order, RP shall endeavour to complete the followings at the earliest possible:</p> <ul style="list-style-type: none"> • Handover the management of the CD with a detailed handover note explaining chronologically all the developments and actions during the PPIRP period, details of business operations as on date and all other relevant information as may be needed by the liquidator to continue as going concern (assuming the management is already vested with RP by earlier AA order) • Handover all the accounting records, documents and other information collected from the CD and other stakeholders during the PPIRP process • Arrange to transfer all the authorized signatory rights to the new liquidator (send intimation to banks and other authorities regarding the change along with the copy of the liquidation order) • Arrange to handover all the assets, the bank account control and other funds & articles, if any in his custody; • Extend the best possible co-operation to the new liquidator for smooth takeover and for further process; <p>Note: RP shall ensure to take proper acknowledgment for handover of all assets, keys, documents etc., to the new liquidator or to his authorized representative as the case may be.</p>
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4.5 Initiation of CIRP by AA based on CoC's Request

<p>Initiation of CIRP by AA [Resolution by CoC u/s 54O(1)]</p>	<p>Section 54-O: Initiation of corporate insolvency resolution process.</p> <p>54-O. (1) The committee of creditors, at any time after the pre-packaged insolvency commencement date but before the approval of resolution plan under subsection (4) or sub-section (12), as the case may be, of section 54K, by a vote of sixty-six per cent. of the voting shares, may resolve to initiate a corporate insolvency resolution processing respect of the corporate debtor, if such corporate debtor is eligible for corporate insolvency resolution process under Chapter II.</p> <p>(2) Notwithstanding anything to the contrary contained in Chapter II, where the resolution professional intimates the Adjudicating Authority of the decision of the committee of creditors under sub-section (1), the Adjudicating Authority shall, within thirty days of the date of such intimation, pass an order to —</p> <p>(a) terminate the pre-packaged insolvency resolution process and initiate corporate insolvency resolution process under Chapter II in respect of the corporate debtor;</p> <p>(b) appoint the resolution professional referred to in clause (b) of sub-section (1) of section 54E as the interim resolution professional, subject to submission of written consent by such resolution professional to the Adjudicatory Authority in such form as may be specified; and</p> <p>(c) declare that the pre-packaged insolvency resolution process costs, if any, shall be included as part of insolvency resolution process costs for the purposes of the corporate insolvency resolution process of the corporate debtor.</p> <p>(3) Where the resolution professional fails to submit written consent under clause (b) of sub-section (2), the Adjudicating Authority shall appoint an interim resolution professional by making a reference to the Board for recommendation, in the manner as provided under section 16.</p>
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	<p>(4) Where the Adjudicating Authority passes an order under sub-section (2) —</p> <p>(a) such order shall be deemed to be an order of admission of an application under section 7 and shall have the same effect;</p> <p>(b) the corporate insolvency resolution process shall commence from the date of such order;</p> <p>(c) the proceedings initiated for avoidance of transactions under Chapter III or proceedings initiated under section 66 and section 67A, if any, shall continue during the corporate insolvency resolution process;</p> <p>(d) for the purposes of sections 43, 46 and 50, references to “insolvency commencement date” shall mean “pre-packaged insolvency commencement date”; and</p> <p>(e) in computing the relevant time or the period for avoidable transactions, the time-period for the duration of the pre-packaged insolvency resolution process shall also be included, notwithstanding anything to the contrary contained in sections 43, 46 and 50.</p> <p>A. Application to AA for initiating the CIRP:</p> <p>Upon COC passing the resolution u/s 54O with requisite majority for initiating the CIRP process, RP shall arrange to file the application before Adjudicating Authority with all the relevant records immediately;</p>
Expected Role of RP (IRP) upon CIRP commencement	<ul style="list-style-type: none"> • No specific form prescribed for this application in PPIRP regulation. Application to AA be filed in Form No. NCLT-1 along with other requirements as per NCLT Rules 2016 • Written consent of RP to act as IRP in CIRP Process in form P1 to be submitted along with the application • Detailed facts of the case along with the reason contemplated by the COC for initiating the CIRP process • Proof of default of a sum exceeding the minimum threshold limit prescribed for initiating the CIRP [presently Rs.1.00 crore]

B. Upon Receipt of CIRP Order from AA:**Communication:**

Upon receipt of the CIRP order, RP shall communicate the order to the following parties;

- CD & its directors (as the board power stands suspended)
- All the COC members
- Display in the notice board for the information of all the employees
- Complete the reporting in IBBI / IIPICAI portals regarding the PPIRP completion and commencement of CIRP
- New IRP (if erstwhile RP did not give written consent) as appointed by the AA and proceed with handover formalities on priority
- (If RP continues as IRP) Proceed with public announcement within 3 days and intimate the CIRP commencement to all the relevant statutory authorities (Income Tax, GST, PF, ESI, DGFT, Customs, Factory Inspectorate, Pollution Control board and such other authorities as may be relevant)

RP Continues as IRP:

If the RP continues as the IRP, the role of IRP (for first 30 days) in brief is listed as under for further processing:

- Take control of the management and possession of the assets of the CD with appropriate documentation
- Identify essential services and communicate the authorities appropriately and continuity of the services for keeping the entity as a going concern
- Ensure appropriate communication to employees and other workforce for management continuity to maintain going concern
- Prepare cashflow estimations with due care to ensure smooth going concern operation of the entity
- Assess the need for engagement of industry expert and appoint him (in discussion with erstwhile COC members)
- Collate the claims & finalize the list of Creditors [14 + 7 days]

- Constitute the COC and call for the First COC meeting (5 days notice)
- File list of Creditors, CoC constitution report to AA within stipulated time
- File CIRP forms, Disclosure reports to IBBI & IPA within the stipulated time

Upon completion of First COC meeting, his role will re-designate as RP (if not replaced with a new RP) and proceed with other process of Valuer appointment, IM Finalisation, Issue of Expression of Interest inviting Resolution Plans, Evaluation Resolution Plans etc.

Handover to New IRP:

Incase of new IRP appointed in CIRP order, RP shall endeavor to complete the followings at the earliest possible:

- (If the management is already vested with the RP by AA order) Handover the management of the CD with a detailed handover note explaining chronologically all the developments and actions during the PPIRP period, details of business operations as on date and all other relevant information as may be needed by the liquidator to continue to going concern of the entity
- Handover all the accounting records, documents and other information collected from the CD and other stakeholders during the PPIRP process
- Arrange to transfer all the authorized signatory rights to the new IRP (send intimation to banks and other authorities regarding the change along with the copy of the CIRP order)
- Arrange to handover all the assets, the bank account control and other funds & articles, if any in his custody;
- Extend the best possible co-operation to the new IRP for smooth takeover and for further process;

Note: RP shall ensure to take proper acknowledge-ment for handover of all assets, keys, documents etc., to the new IRP or to his authorized representa-tive as the case may be.

ANNEXURE A

Checklist as Referred in Para 3.1

S. No.	Relevant Sec/ Reg.	Requirement/ Check Points
1.	54A (2)	Whether there has been a default of Rs. 10,00,000/- or more
2.	54A (2) (a) to (c)	Whether any of the following conditions laid down are attracted - <ul style="list-style-type: none">• The CD has undergone PPIRP or completed corporate insolvency resolution process (CIRP), as the case may be, during the period of three years preceding the initiation date;• The CD is undergoing a corporate insolvency resolution process;• The CD is undergoing liquidation process under section 33;
3.	54A (2) (d)	Whether the CD is eligible to submit a resolution plan in terms of section 29A
4.	54A (2) (f)	Whether the majority of directors have given the required declaration as per Form P6
5.	54A (2) (e)	Whether 10% of unrelated FCs have proposed the name of an IP to be appointed as the RP
6.	Reg 7	Whether the IP proposed to appointed has given written consent in Form P1; and whether the IP is eligible to be appointed as per conditions laid down in Reg. 7
7.	Reg 14 (1)	Whether meeting of the unrelated FCs was called by the CD
8.	Reg 14 (2)	Whether minimum 5 days' notice was given to the unrelated FCs for calling of the meeting(or a shorter period of time is agreed to by all unrelated FCs)
9.	Reg 14 (3)	Whether the notice of the meeting mentioned the time, date, place and also included the list of creditors in form P2
10.	Reg 14 (5)	Whether the approval of the terms of appointment of RP are enlisted as per Form P3

11.	Sec 54A (2) (g)	Whether approval from at least 3/4th of the shareholders in a general meeting of the CD
12.	Sec 54A(4)	Whether the unrelated FCs were provided with - <ul style="list-style-type: none"> • declaration by the majority of director; • copy of special resolution passed by the members; • terms of appointment of the RP; • base resolution plan
13.	Sec 54A (3)	Whether approval for initiation of PPIRP has been obtained from at least 66% of the unrelated FCs
14.	Sec 54C (1)	Whether the CD has filed the application within the time committed under the declaration, however not exceeding 90 days from the date of the declaration
15.	Sec 54C (3) read with Reg. 18	Whether the application contains - <ul style="list-style-type: none"> • the declaration, special resolution or resolution, as the case may be, and the approval of FCs for initiating PPIRP; • the name and written consent, in such form as may be specified, of the insolvency professional proposed to be appointed as RP and report in form P8 • a declaration regarding the existence of any transactions of the corporate debtor that may be within the scope of provisions in respect of avoidance of transactions under Chapter III or fraudulent or wrongful trading under Chapter VI, in Form P7 • following information relating to books and accounts of the CD - <ul style="list-style-type: none"> ○ (a) audited financial statements of the corporate debtor for the last two financial years; ○ (b) provisional financial statements for the current financial year made up to the date of declaration under clause (f) of sub-section (2) of section 54A; and ○ Form P5 submitted by the authorised representatives

ANNEXURE B

Checklist as Referred in Para 3.2

Sec./ Reg.	Subject Matter	Actionable	Timeline
54(C) (4)	Commencement of PPIRP	Order of the AA for admission of application for initiation of CIRP	say, T
Reg. 19	Public Announcement	<p>The RP must make the Public Announcement in Form P-9; and must be-</p> <ol style="list-style-type: none"> 1. sent to every creditor in Form P2; 2. sent to all Information Utilities (currently only one- NeSL) 3. Publish on the website of the CD, if any; and 4. Publish on the website of the Board 	T+2
Reg. 20(2) and (3)	Confirmation of list of claims	<p>Based on the records of the CD and other relevant material available on record, the RP shall confirm the details received in Form P10.</p> <p>The RP must inform from every creditor about their respective claims, and seek objections if any. List of Related FCs shall be provided separately.</p>	say, Y (Y < T+7)
Reg 20 (4)	Objection by the creditors	Any creditor having objection with respect to the claims shall submit the to the RP	Y+7
Reg. 20 (8)	Maintenance of List of Creditors	List of Creditors, modified and updated as and when required, must be maintained in Form P10	Through out the PPIRP Period

ANNEXURE C

Checklist as Referred in Para 3.3

Sec./ Reg.	Subject Matter	Actionable	Timeline
54(C) (4)	Commencement of PPIRP	Order of the AA for admission of application for initiation of CIRP	say, T
54(G) (1)	Preliminary information memorandum	Receive preliminary information memorandum from CD	T+2
54(F) (2)	Prepare information memorandum	Prepare information memorandum based on the preliminary information memorandum	T<14
Reg. 40	Content of Information memorandum and Undertaking of Confidentiality	<p>The RP must ensure that the following details are set out in the IM -</p> <ul style="list-style-type: none"> • description of assets and liabilities • Latest annual financial statements • Audited FS for last two years and provisional FS for current FY. • List of claims along with security interests • Particulars of debt with respect to related parties • Details of guarantee • Details of members holding more than 1% • Number of workers and employees and liabilities toward them • Details of all material litigation and investigation • Other information deemed relevant • An undertaking of confidentiality will be taken from the member of committee or resolution applicant, to the effect that the content of the IM shall not be used for causing unlawful gains or loss to any person. 	T<14
Reg. 40	Submission of information memorandum to COC	RP will submit the information memorandum to the COC. Any further information required by the COC will be provided by RP within reasonable time after seeking same from CD.	T+14

ANNEXURE D

Checklist as Referred in Para 3.5

Sec./ Reg.	Subject Matter	Actionable	Timeline
54K (1)	Base Plan	RP will receive Base Plan from CD	T+2
54k (5)	Invitation to RA	If Base Plan gets rejected- invitation to RAs for resolution plan	T+21
Reg 43	Form P11	Brief particulars of invitation	T+21
Reg 49(1)	Application to Adjudicating Authority	RP will submit an application for the approval of resolution plan with a compliance certificate in form P12	
Reg 49(3)	Intimation to each claimant	RP after approval of plan by AA will send intimation to each claimant regarding payment of debt	Date of order of AA+7
Reg 49(4)	Termination of process	Where no plan is approved by COC or has ordered termination, RP will an application inform P13 to AA	T+21

ANNEXURE E

Checklist as Referred in Para 3.7

Sec./ Reg.	Subject Matter	Actionable	Timeline
Sec 54C	Information required to be furnished along with the application	Declaration of any transaction that can come within the scope of avoidance transaction under chapter III or, fraudulent or wrongful trading under chapter IV in Form- P7	
Sec 54F (h)	Duty of RP	<p>One of the duties of RP is to file application of these avoidance or fraudulent transactions. Collect all the information that would determine the financial position of CD and existence of any such transactions. Following information needed to be collected-</p> <ul style="list-style-type: none"> • business operations for the previous two years from the date of pre-packaged insolvency commencement date • financial and operational payments for the previous two years from the date of prepackaged insolvency commencement date • list of assets and liabilities as on the initiation date 	
Sec 54N (1)	Manner of Continuation of proceedings	The RP will provide the manner in which these proceedings relating to avoidance transactions will be continued after termination of PPIRP	
Sec 54O (4)	Continuation of proceedings	Once CIRP is commenced these proceedings of avoidance transaction will be continued during the process.	
Reg. 41 (1)	From an opinion about existence of avoidance transaction	RP shall form an opinion about existence of such avoidance transactions and file an application before AA- as it is his duty under sec 54F (h)	T+30
Reg 41(2)	Intimation to the Board	RP will send intimation to the Board regarding these transaction	T+45
Reg 41(3)	Application to AA	RP will file application to the AA for avoidance of these transactions	T+60






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