

Role and Responsibilities of RPs: PPIRP Vs. CIRP



*The concept of Pre-packaged Insolvency Resolution Process (PPIRP) was introduced by way of an amendment in the IBC through an Ordinance w.e.f. April 4, 2021, which has replaced with an Act of the Parliament in August 2021. One of the important features of the PPIRP for MSMEs is that it allows the company, if eligible under section 29A, to submit the Base Resolution Plan (BRP) which may be exposed to challenges for value maximisation. In the present article the author analyses the provisions of the law from the perspective of an Insolvency Professional (IP) and highlights the roles and responsibilities an Interim Resolution Professional (IRP)/ Resolution Professional (RP) before and during the initiation of PPIRP. **Read to know more...***



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1. Introduction

The Insolvency and Bankruptcy Code, 2016 (IBC or the Code) provides for insolvency of corporate persons facing financial distress. The Code provides two broad processes for resolution of corporate persons, firstly the Corporate Insolvency Resolution Process (CIRP) and secondly, Pre-packaged Insolvency Resolution Process (PPIRP) which is limited to Micro Small and Medium Enterprises (MSMEs). The concept of PPIRP for MSMEs is rather new which was introduced in the IBC by the IBC (Amendment) Ordinance, 2021 on April 4, 2021. It is available for MSMEs as an alternate option for stakeholders and is being considered favourable to promoters in particular. IBC defines the PPIRP as the insolvency resolution process for corporate persons under Chapter III-A of Part II of the Code¹. It involves five phases - Pre-initiation, Application for Initiation, Post-initiation, Approval of Resolution Plan, and Closure of PPIRP.

2. Classification of MSMEs

As the PPIRP is presently applicable only for financial

¹ Rule 3(b) of the Insolvency and Bankruptcy (Pre-packaged Insolvency Resolution Process) Rules, 2021

stressed MSMEs, it becomes pertinent to have an understanding of the MSMEs as per the government

Manufacturing Enterprises and Enterprises Rendering Services			
Classification	Micro	Small	Medium
Investment in Plant & Machinery	Not more than ₹ 1 crore	Not more than ₹ 10 crore	Not more than ₹50 crore
Annual Turnover	Not more than ₹ 5 crore	Not more than ₹ 50 crore	Not more than ₹ 250 crore

norms. The classification of the MSME has been revised w.e.f. July 1, 2020, which is as under²:

3. Difference between CIRP and PPIRP for MSMEs

The PPIRP for MSMEs is covered under Chapter III-A of the IBC consisting of Section 54A to 54P, which was inserted by the IBC (Amendment) Ordinance, 2021 and

the same was replaced by the IBC (Amendment) Act 2021 in August 2021. Pursuant to the enactment, the IBC (PPIRP for MSMEs) Rules, 2021 and the IBBI (PPIRP for MSMEs) Regulations, 2021 were laid down. The Rules provide a Form for filing 'Application by Corporate Applicant to initiate PPIRP' and the Regulations prescribe 13 different Forms to be completed during the process. The

CIRP	PPIRP
The CIRP is applicable for all Corporate Debtors (CDs) including the MSMEs.	The PPIRP is applicable for a CD classified as MSME only.
It is formal.	It is informal upto a point and formal thereafter.
CIRP application can be filed by Financial Creditor/s, Operation Creditor/s, and also voluntarily by promoters of the CD under Section 10 of IBC	Only promoters can file for PPIRP
It is creditors in possession.	It is a hybrid model of debtor-in possession and creditor in control.
It is fully public process.	It is neither fully private nor a fully public process.
It is more rigour than PPIRP.	Less rigorous than CIRP, but keeps spirit of CIRP sacrosanct.
No concept of Base Resolution Plan (BRP).	It allows the company, if eligible under section 29A to submit the Base Resolution Plan (BRP) which may be exposed to challenges for value maximisation.
It has comprehensive role of the Adjudicating Authority (AA) and the IPs.	It entails a limited role of the AA and IPs

difference between the two processes could be explained as follows:

4. Eligibility for initiation of PPIRP

An application for initiating PPIRP may be made in respect of a CD classified as a micro, small or medium enterprise (MSME) under sub-section (1) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006³. Thus a CD is eligible for initiation of the PPIRP, if:

- It has been classified as MSME having a valid Udyam registration certificate;
- It has committed a default of at least ₹10 lakh⁴;
- It is eligible to submit a resolution plan under section 29A of the IBC read in conjunction with section 240A;
- It has not undergone a PPIRP during the three years preceding the initiation date;
- It has not completed a CIRP during the three years preceding the initiation date;

² Gazette Notification No. S.O. 1702(E) dated 1st June, 2020 (May be you want to explain here in a line or two how plant & machinery is calculated)

³ Section 54A(1) of IBC, 2016

⁴ Notification No. S.O. 1543(E) dated 9th April, 2021

- f) It is not undergoing a CIRP; and
- g) It is not required to be liquidated by an order under section 33 of the Code.

5. Eligibility of Resolution Professional

Resolution professional (RP) is an IP appointed to conduct the CIRP or the PPIRP, as the case may be, and includes an IRP⁵. The IP to be appointed as IRP/RP should be independent of the CD⁶. The law provides that an IP shall be considered as independent of the CD, if:

- a) He is eligible to be appointed as an independent director on the board of the CD under section 149 of the Companies Act, 2013 (18 of 2013), where the CD is a company;
- b) He is not a related party of the CD; or
- c) He is not an employee or proprietor or a partner-
 - (i) of a firm of auditors or secretarial auditors or cost auditors of the CD; or
 - (ii) of a legal or a consulting firm, that has or had any transaction with the CD amounting to five per cent. or more of the gross turnover of such firm, in any of the preceding three financial years.

PPIRP is a hybrid model of debtor-in possession and creditor in control while CIRP under IBC is purely 'creditors in possession' model.

The RP, who is a director or a partner of an Insolvency Professional Entity (IPE), shall be ineligible to continue as RP in a process, if the IPE or any partner or director of such IPE represents any of the stakeholders in the same process.

6. Duties of RP in CIRP

- a) Before, we discuss the role of RP in PPIRP, it is also important to discuss the duties of the RP as provided in Section 25 of the Code. The following points highlight the duties of RP:
- b) To preserve and protect the assets of the CD.
- c) To continue business operations of the CD.

⁵ Section 5(27) of IBC, 2016

⁶ Regulation 7 of The IBBI (Pre-packaged Insolvency Resolution Process) Regulations, 2021.

- d) To take immediate custody and control of all the assets of the CD, including the business records of the CD.
- e) To represent and act on behalf of the CD with third parties, exercise rights for the benefit of the CD in judicial, quasi-judicial or arbitration proceedings.
- f) To raise interim finances subject to the approval of the committee of creditors under section 28.
- g) To appoint accountants, legal or other professionals in the manner as specified by Board.
- h) To maintain an updated list of claims.
- i) To convene and attend all meetings of the committee of creditors.
- j) To prepare the Information Memorandum (IM) in accordance with section 29.
- k) To invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the CD and such other conditions as may be specified by the Board, to submit a resolution plan or plans.
- l) To present all resolution plans at the meetings of the committee of creditors.
- m) To file application for avoidance of transactions in accordance with Chapter III, if any.

7. Duties of RP in PPIRP

The duties of RP in the case of PPIRP can be discussed in two phases: Before Initiation of PPIRP and During the Course of PPIRP.

7.1. Before initiation of PPIRP

PPIRP Commencement date is the date of admission of an application for initiating the pre-packaged insolvency resolution process by the AA under clause (a) of sub-section (4) of section 54C⁷. In case of CIRP, there is no role of IRP/RP before the commencement date of CIRP but here in PPIRP for MSMEs the role of IP starts before the date.

⁷ Section 5(23B) of the IBC, 2016

So, before the PPIRP commencement date, the IP have certain duties which have been mentioned in section 54B of the Code. This section provides that the IP, proposed to be appointed as the RP, 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 CD meets the requirements of section 54A, and the base resolution plan conforms to the requirements referred to in clause (c) of subsection (4) of section 54A. The report under section 54B (1) (a) shall be prepared in Form P8.
- (b) file such reports and other documents, with the Board, as may be specified; and
- (c) perform such other duties as may be specified.



- (b) the application for initiating PPIRP is admitted or rejected by the AA, as the case may be.

7.2. During the course of PPIRP

The RP during the course of PPIRP of a CD shall perform the following duties¹⁰:

- a) To confirm the list of claims submitted by the CD under section 54G, in such manner as may be specified: The RP shall confirm the details of the list of claims submitted by the CD under section 54G(1) in Form P10 and shall inform every creditor regarding its claims and seek objections, if any, and may also call for the evidence or clarifications from a creditor for substantiating the whole or part of its claim¹¹.
- b) To maintain an updated list of claims, in such manner as may be specified
- c) To monitor management of the affairs of the CD
- d) To constitute the Committee of Creditors (CoC) and convene and attend all its meetings;
- e) To inform the CoC in the event of breach of any of the obligations of the Board of Directors or partners, as the case may be, of the CD, under the provisions and the rules and regulations made thereunder.
- f) To prepare the information memorandum on the basis of the preliminary information memorandum submitted under section 54G and any other relevant information, in such form and manner as may be

Before the PPIRP commencement date, the Insolvency Professional (IP) have certain duties which have been mentioned in section 54B of the IBC.

7.1.1. Disclosure of cost by RP

The RP shall make disclosures at the time of his appointment and, thereafter, in accordance with the code of conduct as set out in the IBBI (Insolvency Professionals) Regulations, 2016⁸. Furthermore, the RP is mandatorily required to disclose item wise process costs in such manner as may be required by the IBBI (Board).

7.1.2. Cessation of duties of IPs

The duties of the IP shall cease⁹, if,—

- (a) the CD 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

⁸ Regulation 11 of the IBBI (Pre-packaged Insolvency Resolution Process) Regulations, 2021

⁹ Section 54B(2) of the IBC, 2016

¹⁰ Section 54F(2) of the IBC, 2016

¹¹ Regulation 20 of the IBBI (Pre-packaged Insolvency Resolution Process) Regulations, 2021

¹² Regulation 19 of the IBBI (Pre-packaged Insolvency Resolution Process) Regulations, 2021

specified.

- g) To file applications for avoidance of transactions under Chapter III or fraudulent or wrongful trading under Chapter VI, if any; and such other duties as may be specified.

The RP is required to preserve a physical as well as an electronic copy of the records relating to the process of the CD as per the record retention schedule.

7.2.1. Public announcement

The RP shall make a public announcement within two days of the commencement of the process¹².

The public announcement referred to in sub-regulation (1) shall be-

- (a) in Form P9;
- (b) sent to every creditor listed in Form P2;
- (c) sent to information utilities; and
- (d) published on the website, if any, of the CD and the Board.

7.2.2. Determination of amount of claim¹³

(1) where the amount of claim of a creditor is not precise due to any contingency or other reason, the RP shall make the best estimate of the amount of the claim based on the information available with him.

(2) The RP shall revise the amount of claims confirmed, including the estimates of claims made under sub-regulation (1), as soon as may be practicable, when he comes across additional information warranting such revision.

7.3. Preservation of records¹⁴

The RP shall preserve a physical as well as an electronic copy of the records relating to the process of the CD as per the record retention schedule, as may be required by the IBBI in consultation with Insolvency Professional

¹² Regulation 21 of the IBBI (Pre-packaged Insolvency Resolution Process) Regulations, 2021

¹⁴ Regulation 12 of the IBBI (Pre-packaged Insolvency Resolution Process) Regulations, 2021

¹⁵ Section 54F(3) of the IBC, 2016

¹⁶ Regulation 9 of the IBBI (Pre-packaged Insolvency Resolution Process) Regulations, 2021

Agencies (IPAs).

8. Powers of the RP during the PPIRP¹⁵

The RP shall exercise the following powers:

- a) To access all books of accounts, records and information available with the CD: The RP may access the books of account, records, and other documents to the extent relevant for discharging his duties under the Code¹⁶, of the CD held with-
 - b) members, promoters, partners, directors and joint venture partners of the CD;
 - c) professionals and advisors engaged by the CD;
 - d) depositories of securities;
 - e) registries that records the ownership of assets; and
 - f) contractual counterparties of the CD.
- g) To access the electronic records of the CD from an information utility having financial information of the CD.
- h) To access the books of accounts, records and other relevant documents of the CD available with Government authorities, statutory auditors, accountants and such other persons as may be specified.
- i) To attend meetings of members, Board of Directors and committee of directors, or partners, as the case may be, of the CD.

The role as an IP in PPIRP ceases when the CD fails to file for initiation of PPIRP within the prescribed time or the AA admits or rejects the application.

- j) To appoint accountants, legal or other professionals in such manner as may be specified: Regulation 10 provides that the resolution professional may appoint a professional under clause (e) of sub-section (3) of section 54F. The following persons shall not be appointed as a professional, namely:
 - i. a person who is not registered with the regulator of the profession concerned;
 - ii. a related party of the CD;
 - iii. an auditor of the CD at any time during the five

- years preceding the pre-packaged insolvency commencement date;
- iv. a partner or director of the insolvency professional entity of which the resolution professional is a partner or director; or
 - v. a relative of the resolution professional or of a partner or director of the insolvency professional entity of which the resolution professional is a partner or director.
- k) To collect all information relating to the assets, finances and operations of the CD for determining the financial position of the CD and the existence of any transactions that may be within the scope of provisions relating to avoidance of transactions under Chapter III or fraudulent or wrongful trading under Chapter VI, including information relating to:
- i. business operations for the previous two years from the date of pre-packaged insolvency commencement date.
 - ii. financial and operational payments for the previous two years from the date commencement of PPIRP.
 - iii. list of assets and liabilities as on the initiation date and such other matters as may be specified.

9. Conclusion

In the case of CIRP, once admitted by the AA, the IP is designated as IRP which is required to be confirmed as RP or replaced with another RP in the first meeting of the CoC. There is no role of the IP before the admission of the application of CIRP by the AA. However, the case of PPIRP, the Code has cast some duties on IP as shown in Section 54B i.e., before the initiation of the PPIRP. Accordingly, the IP is required to prepare a report confirming whether the CD meets the eligibility criteria for PPIRP. The provision of Base Resolution Plan (BRP) conforms to the requirements of Section 54A(4)(c) and to file certain reports and documents with the IBBI. The role as an IP ceases when the CD fails to file for initiation of PPIRP within the prescribed time or the AA admits or rejects the application for initiation of PPIRP. After admission of the application for PPIRP by the AA, the nomenclature of the IP will change to RP and duties as specified in section 54F shall be applicable.

Thus, the PPIRP extends the jurisdiction of an MSME prior to the commencement date. This provision seems in the interest of small businesses as they would get professional assistance. However, the actual benefits to the financially distressed MSMEs will depend timely decisions and coordination among stakeholders.

