



INSOLVENCY & BANKRUPTCY

Understanding the Legal Provisions Governing Pre-Packaged Insolvency Resolution Process (PPIRP)

AUTHOR Shrishail Kittad, Rahul Sundaram

PUBLISHED 4 December 2024

The Pre-Packaged Insolvency Resolution Process (PPIRP) under the Insolvency and Bankruptcy Code (IBC), 2016, provides a simpler framework for resolving insolvency, particularly for Micro, Small, and Medium Enterprises (MSMEs). This article explains the key sections of the PPIRP provisions in simple terms.

Micro, Small, and Medium Enterprises (MSMEs) are vital to the Indian economy, yet they often face financial challenges due to market fluctuations, limited resources, and operational constraints. The Pre-Packaged Insolvency Resolution Process (PPIRP) under Section 54 A (Chapter III A) of the Insolvency and Bankruptcy Code (IBC), 2016, offers a simpler and cost-effective solution for insolvent MSMEs. This debtor-in-possession process allows MSMEs to restructure their liabilities while retaining control of their business, ensuring a quicker resolution compared to traditional insolvency proceedings. With its focus on collaboration between creditors and debtors, PPIRP empowers MSMEs to revive operations and protect stakeholders' interests.

The Pre-Packaged Insolvency Resolution Process (PPIRP) under Section 54 A of the IBC, 2016, offers several advantages for MSMEs over the Corporate Insolvency Resolution Process (CIRP). Here's why PPIRP is preferable:

1. **Control and Continuity:** Unlike CIRP, where management control shifts to a Resolution Professional, PPIRP allows MSMEs to retain control of their operations, ensuring business continuity during the process.
2. **Speed and Efficiency:** PPIRP is designed for quicker resolution (within 120 days) compared to CIRP, minimizing disruption to business operations and reducing prolonged uncertainty.
3. **Cost-Effectiveness:** The simpler nature of PPIRP results in lower procedural and administrative costs, making it more accessible for resource-constrained MSMEs.
4. **Collaborative Approach:** PPIRP promotes a debtor-creditor consensus before initiation, reducing adversarial proceedings and encouraging trust among stakeholders.
5. **Protection of Value:** By enabling resolution without public bidding, PPIRP helps preserve the enterprise's value and goodwill, critical for MSME survival and revival.
6. **Flexibility:** PPIRP is tailored to the unique needs of MSMEs, offering a less complex and more adaptable framework compared to CIRP.

Table of contents

- [Eligibility for PPIRP \(Section 54A\)](#)
- [Duties of the Insolvency Professional Before PPIRP \(Section 54B\)](#)
- [Application to Initiate PPIRP \(Section 54C\)](#)
- [Time Limit for Completion \(Section 54D\)](#)
- [Declaration of Moratorium and Public Announcement \(Section 54E\)](#)
- [Conclusion](#)

Eligibility for PPIRP (Section 54A)

PPIRP is available for corporate debtors (Companies and Limited Liability Partnerships) classified as MSMEs under the Micro, Small, and Medium Enterprises Development Act, 2006. To initiate the process:

- The corporate debtor must have defaulted on payments as defined in Section 4 of the IBC.
- The debtor must not have undergone PPIRP or Corporate Insolvency Resolution Process (CIRP) in the past three years.
- It must not be undergoing CIRP or be subject to a liquidation order.
- The corporate debtor must be eligible to submit a resolution plan under Section 29A.

Before initiation, approval is required from unrelated financial creditors holding at least 66% of the financial debt. Additionally, the directors or partners must declare that the process will not exceed 90 days, is not intended to defraud creditors, and propose a resolution professional (RP). A special resolution or partner's approval with at least 75% support is also necessary.

Duties of the Insolvency Professional Before PPIRP (Section 54B)

The proposed Resolution Professional (RP) must undertake specific duties before the PPIRP begins:

- **Eligibility Verification:** Confirm the corporate debtor meets Section 54A requirements and that the base resolution plan complies with stipulated conditions.

- Report Submission: File reports and required documents with the Insolvency and Bankruptcy Board of India (IBBI).

The RP's duties cease if the corporate debtor fails to file a PPIRP application within the declared timeline or if the application is admitted or rejected. The RP's fees for these duties are borne as specified and become part of the PPIRP costs if the application is admitted.

Application to Initiate PPIRP (Section 54C)

To begin PPIRP, eligible corporate debtors must file an application with the Adjudicating Authority (AA). The application must include:

- A declaration, special resolution, and financial creditor approvals.
- Consent and a compliance report from the proposed RP.
- Declarations regarding potential avoidance transactions or fraudulent trading.
- Financial records and other relevant documents.

The AA has 14 days to admit or reject the application. If the application is incomplete, the debtor is given seven days to rectify defects. Once admitted, the PPIRP officially begins.

Time Limit for Completion (Section 54D)

PPIRP must be completed within 120 days of its commencement date. The RP is required to submit the resolution plan approved by the Committee of Creditors (CoC) to the AA within 90 days. If no resolution plan is approved, the RP must file an application to terminate the PPIRP on the following day.

Declaration of Moratorium and Public Announcement (Section 54E)

Upon commencement, the AA declares a moratorium, providing legal protection against actions such as debt recovery and asset seizure. The moratorium remains in effect until the PPIRP concludes. The RP is appointed to oversee the process and must make a public announcement about the initiation of PPIRP.

Duties and Powers of the Resolution Professional (Section 54F)

The RP's role inter alia includes:

- Claims Management: Confirm and maintain the list of claims submitted by the corporate debtor.
- Oversight: Monitor the debtor's management and notify the CoC of any breaches.
- Documentation: Prepare an information memorandum and conduct necessary investigations into avoidance transactions.
- Constituting the committee of creditors and convene and attend its meetings
- Access to Records: Access financial and operational data to assess the corporate debtor's financial position.

The RP is supported by financial institutions, corporate personnel, and stakeholders. Fees and expenses are determined by the CoC and included in the PPIRP costs.

Submission of Claims and Information (Section 54G)

The corporate debtor must submit a list of claims and a preliminary information memorandum to the RP within two days of PPIRP commencement. Promoters, directors, or partners are liable for any omissions or misleading information in these submissions, unless they can prove lack of knowledge or consent. Affected parties may seek compensation through legal recourse.

Management of Corporate Debtor (Section 54H)

During PPIRP, the management of the corporate debtor remains with its Board of Directors or partners. They must preserve the debtor's value, operate the business as a going concern, and comply with all legal obligations under the PPIRP framework.

Formation of Committee of Creditors (Section 54I)

The RP must constitute the CoC within seven days of PPIRP commencement, based on confirmed claims. The CoC composition can be updated as claims are revised, but past decisions remain valid. The first CoC meeting must be held within seven days of its formation.

Transfer of Management to RP (Section 54J)

The CoC may resolve to transfer the debtor's management to the RP if there is evidence of fraud or gross mismanagement. The AA can approve this transfer, and certain insolvency provisions then apply to the RP's management.

Consideration and Approval of Resolution Plan (Section 54K)

The corporate debtor must submit a base resolution plan to the RP within two days of commencement. The CoC evaluates the plan and may allow revisions. If the plan is not approved or impairs claims, the RP invites competing plans. The CoC must approve a plan with a 66% vote before submission to the Adjudicating Authority (AA).

Approval or Rejection of Resolution Plan (Section 54L)

The AA must approve a resolution plan within 30 days if it meets all legal requirements and includes provisions for effective implementation. If the plan fails to comply, the AA may reject it and terminate the PPIRP. In cases where the management remains unchanged, and the plan does not involve a non-promoter, the AA may order liquidation.

Appeal Against Resolution Plan Approval (Section 54M)

If the AA approves a resolution plan under Section 54L, any appeal against this decision can be made only on specific grounds as outlined in Section 61(3) of the IBC. These grounds include:

- Violations of legal provisions.
- Material irregularities in the RP's exercise of powers.
- Failure to provide for the debts owed to operational creditors as required under Section 30(2).
- Contraventions of any other provisions of the IBC.

This ensures that appeals are limited to substantive issues, maintaining the efficiency of the PPIRP framework.

Termination of PPIRP (Section 54N)

PPIRP can be terminated under specific circumstances:

- If the RP files an application under Section 54D(3) (due to failure to approve a resolution plan within 90 days) or Section 54K(12) (if the CoC does not approve the plan).
- If the CoC resolves with a 66% majority to terminate the PPIRP before resolution plan approval.

The AA must pass an order terminating the PPIRP within 30 days of the RP's application or the CoC's resolution. If termination occurs after the management has been transferred to the RP under Section 54J, the AA may order liquidation under Section 33, and PPIRP costs will be included in liquidation expenses. This section ensures a structured conclusion to the process when resolution is not feasible.

Transition to CIRP (Section 54O)

If the CoC resolves to initiate CIRP instead of continuing with PPIRP, the RP informs the AA. The AA terminates the PPIRP and initiates CIRP, appointing an interim RP. Ongoing proceedings under avoidance or fraudulent trading provisions continue during CIRP.

Application of Other IBC Provisions (Section 54P)

Relevant provisions from Chapters II, III, VI, and VII of the IBC apply to PPIRP with necessary modifications. For example, references to "insolvency commencement date" are replaced with "pre-packaged insolvency commencement date," and terms like "CIRP" are replaced with "PPIRP." These adjustments ensure procedural consistency while accommodating the unique features of PPIRP.

Conclusion

The PPIRP framework under the IBC offers a time-bound, cost-effective, and collaborative approach to resolving financial distress for MSMEs. Designed to reduce the pecuniary value of defaults and simplify procedural requirements, PPIRP is tailored to the needs of MSMEs, making the process more accessible and less burdensome. By combining transparency, stakeholder participation, and procedural safeguards, the PPIRP enables businesses to achieve sustainable resolution while balancing the interests of creditors and debtors.

For more details write to contact@indialaw.in