



*Micro, Small and Medium Enterprises*

**PRE-PACK MECHANISM**

**CA Khushboo Shah Rajani**  
**CA Ayush J Rajani**

**19 DECEMBER 2021**

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New Definitions

Eligibility & Conditions

Before initiation of PIRP

Application

Role of RP

Vesting of management of CD



Approval of plan

Termination of PPIRP

Liquidation of CD

Migration to CIRP

# IMPORTANT DEFINITIONS (NEW) IN Section 5 of IBC

'(2A) "**base resolution plan**" means a resolution plan provided by the corporate debtor under clause (c) of sub-section (4) of section 54A.

23A) "**preliminary information memorandum**" means a memorandum submitted by the corporate debtor under clause (b) of sub-section (1) of section 54G;

(23B) "**pre-packaged insolvency commencement date**" means the date of admission of an application for initiating the pre-packaged insolvency resolution process by the Adjudicating Authority under clause (a) of sub-section (4) of section 54C;

# IMPORTANT DEFINITIONS (NEW) IN Section 5 of IBC

(23C) "**pre-packaged insolvency resolution process costs**" means—

(a) the amount of any interim finance and the costs incurred in raising such finance;

(b) the fees payable to any person acting as a resolution professional and any expenses incurred by him for conducting the pre-packaged insolvency resolution process during the pre-packaged insolvency resolution process period, subject to sub-section (6) of section 54F;

(c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern pursuant to an order under sub-section (2) of section 54J;

(d) any costs incurred at the expense of the Government to facilitate the pre-packaged insolvency resolution process; and

(e) any other costs as may be specified;

# IMPORTANT DEFINITIONS (NEW) IN Section 5 of IBC

(23D) "**pre-packaged insolvency resolution process period**" means the period beginning from the pre-packaged insolvency commencement date and ending on the date on which an order under sub-section (1) of section 54L, or sub-section (1) of section 54N, or sub-section (2) of section 54-O, as the case may be, is passed by the Adjudicating Authority;

# IMPORTANT DEFINITIONS (NEW) under PPIRP Regulations

- **Applicant**- means the corporate applicant, filing an application for initiation of pre-packaged insolvency resolution process under section 54C;
- **class of creditors**- means a class with at least ten financial creditors under clause (b) of sub-section (6A) of section 21 and the expression, creditors in a class shall be construed accordingly;
- **identification number**- means the limited liability partnership identification number or the corporate identity number, as the case may be;

# IMPORTANT DEFINITIONS (NEW) under PPIRP Regulations

- **fair value** - means the estimated realisable value of the assets of the corporate debtor, if they were to be exchanged on the pre-packaged insolvency commencement date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had acted knowledgeably, prudently and without compulsion;
- **liquidation value**- means the estimated realisable value of the assets of the corporate debtor, if it were to be liquidated on the pre-packaged insolvency commencement date



# ELIGIBILITY (Sec 54 A)

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graph TD; A[ELIGIBILITY (Sec 54 A)] --> B[MSME U/S 7(1) of MSME Development Act, 2006]; A --> C[DEFAULT as per Sec 4 OF IBC]; A --> D[Approval from unrelated FCs (66%)];
```

MSME U/S 7(1)  
of MSME  
Development  
Act, 2006

DEFAULT as  
per Sec 4 OF  
IBC

Approval from  
unrelated FCs  
(66%)

# MSME

## Revised MSME Classification

Composite criteria: Investment and annual turnover

Classification	Micro	Small	Medium
Manufacturing & services	Investment < Rs 1 crore and turnover < Rs 5 crore	Investment < Rs 10 crore and turnover < Rs 50 crore	Investment < Rs 20 crore and turnover < Rs 100 crore

# DEFAULT

MCA NOTIFICATION Dated 9th April, 2021

ten lakh rupees as the minimum amount of default

Section 4 of IBC

shall not be more than one crore rupees

# FC's Approval [Section 54 A (3)]

The corporate debtor 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 corporate debtor 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.**

```
graph TD; A[Prior to FC's approval CD must provide them] --- B[Declaration (Form P6)]; A --- C[Special Resolution]; A --- D[Base resolution plan]; A --- E[Other documents as may be specified];
```

Prior to FC's approval CD must provide them

Declaration  
(Form P6)

Special  
Resolution

Base  
resolution  
plan

Other  
documents  
as may be  
specified

# NO UNRELATED FC's

## **REGULATION 14(8)**

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.

## **Committee with only operational creditors (REG. 25)**

(1) Where the corporate debtor has no financial debt or all financial creditors are related parties, the committee shall consist of operational creditors, being not related to the corporate debtor, as under:-

- (a) ten largest operational creditors by value, and if the number of operational creditors is less than ten, the committee shall include all such operational creditors;
- (b) one representative elected by all workmen other than those workmen included under clause (a); and
- (c) one representative elected by all employees other than those employees included under clause (a).



## COMMITTEE WITH ONLY CREDITORS IN A CLASS.



Where the corporate debtor has only creditors in a class and no other financial creditor who are not related parties of the corporate debtor, the committee shall consist of only the authorised representative(s).



The authorised representative of creditors in a class shall be entitled to receive fee for every meeting of the committee attended by him in the following manner, namely:-

<u>Numbers of Creditors</u>	<u>Fee per meeting</u>
10-100	15,000
101-1000	20,000
More than 1000	25,000

# CONDITIONS

- No CIRP where the CD is undergoing PIRP

- No PIRP and no CIRP within 3 years of undergoing one PIRP

- If PIRP application is pending before AA, no application for corporate insolvency resolution process can be accepted and if an application for CIRP is pending, within 14 days PIRP application can be filed and it will get a preference.

- no liquidation order and eligible under Sec. 29A

- FC's proposed IP (66%)

- Majority of directors/ partners declaration

- Special Resolution or resolution by three fourth of partners



## Declaration By Majority Of Directors Or Partners

File PPIRP application within time not exceeding 90 days

PPIRP not to defraud any person

Name of IP proposed and approved

# DUTIES OF PROPOSED IP (BEFORE PPIRP SEC 54B)

Prepare a report in Form P8

file such reports and other documents, with the Board, as may be specified

perform such other duties as may be specified.

# **DUTY OF PROPOSED IP CEASES**

- **CD Fails to submit application for PPIRP within prescribed time period**
- **Application for PPIRP admitted or rejected**

# Preliminary information Memorandum

- Made by CD

## PPIRP Cost

- Interim finance and the costs incurred thereof;
- RPFees and expenses incurred by RPfor conducting the PPIRP during the PPIRP Period;
- Costs incurred by the RP in running the business of the corporate debtor as a going concern - where management is vested with RP;
- Any costs incurred at the expense of the Government to facilitate the PPIRP; and
- Any other costs as may be specified (by IBBI);

## Pre packaged ICD

- Admission on application of PPIRP

## PPIRP period

- Period beginning from the pre-packaged insolvency commencement date and ending on the date on which an order for approval of resolution plan or termination of PPIRP or initiation of CIRP, is passed by the Adjudicating Authority

## Base Resolution Plan

- Plan provided by CD

**Fee payable** to the IP proposed to be appointed as **RP** to perform duties before initiation of PPIRP shall form part of **PPIRP Costs**

# APPLICATION FOR PPIRP (RULE 4)

Form 1 under  
Rule 4(1)

Fee- Rs.  
15,000/-

Serve to Board

Along with application CD must provide:

Declaration, special resolution or resolution, approval of FC, Name and written consent of IP (Form P5) and his report Form P8, Declaration regarding existence of any PUFEE transactions, Audited Financial statements for last two years, provisional financial statement for current year,

To **conduct** the pre-packaged insolvency resolution **process**

- **Confirm** the list of claims submitted by CD
- **Inform** the Creditors regarding their claims
- **Maintain** updated list of claims

**Monitor** the management of affairs of the Corporate Debtor

- **Constitute CoC**
- Convene & attend all the CoC Meetings
- Inform CoC in the **event of breach** of any of the **obligations** of the Directors or Partners of the CD

**Prepare Information Memorandum** on the basis of Preliminary IM submitted by CD

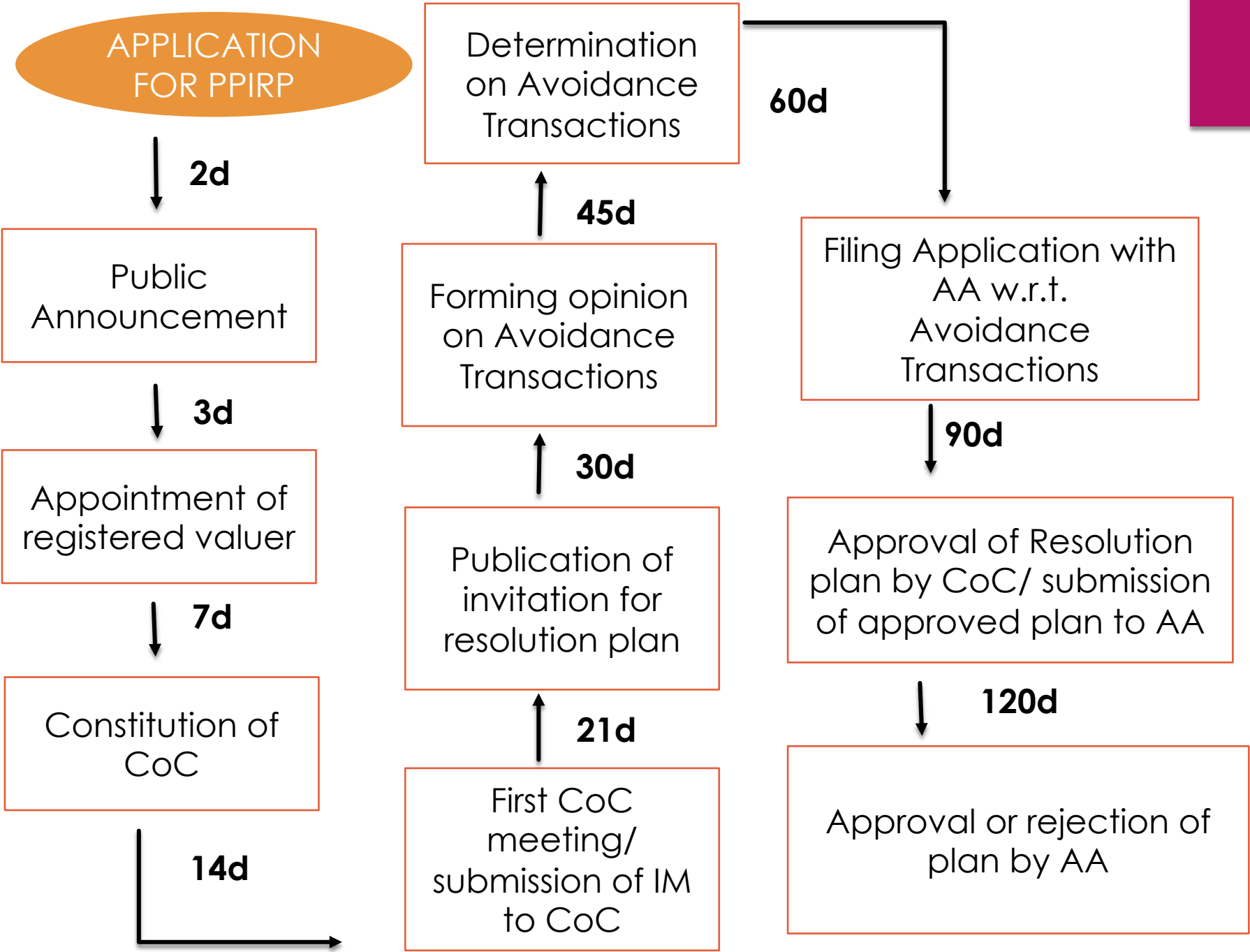
File application for **avoidance of transactions** under Chapter III or **fraudulent or wrongful trading** under Chapter VI

**Present** the resolution plans (which confirm to S.30(2)) to the CoC for its evaluation

- File application(s)** with Adjudicating Authority for:
- Approval of Resolution Plan; or
  - Termination of PPIRP; or
  - Initiation of CIRP



**INITIATION  
OF  
PRE-  
PACKAGED  
INSOLVENCY  
RESOLUTION  
PROCESS**



# DUTIES OF RP (DURING PPIRP) Sec 54F(2)

Confirm list of claims

Inform creditors regarding their claim

Maintain updated list of claim

Monitor management of affairs of CD

Constitute CoC, Convene meeting

Prepare IM

File application for avoidance transactions

Such other duties as may be specified

# POWER OF RP (DURING PPIRP)

## Sec. 54F(3)



Access books of CD



Access electronic records



Access books of Cd with Govt



Attend meetings of Board, committee of directors



Appoint accountants, or other professionals



Collect information relating to assets, finances etc. of CD including avoidance transaction



Business operation for previous two years



Such other actions as may be specified

# VALUATION

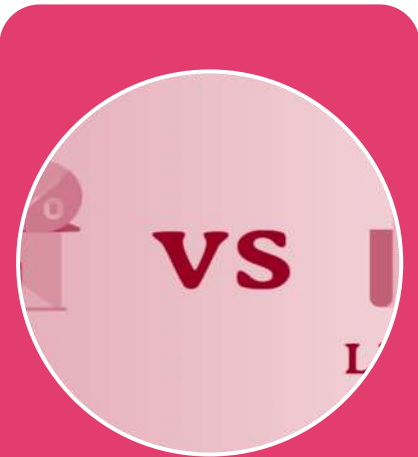
Two unrelated registered valuer appointed by RP

the registered valuers appointed under regulation 38 shall submit to the RP an estimate of the fair value and of the liquidation value computed in accordance with internationally accepted valuation standards, after physical verification of the inventory and fixed assets of the corporate debtor

the average of the value determined by the two registered valuers shall be considered the fair value or the liquidation value, as the case maybe

the resolution professional shall provide the fair value and the liquidation value to every member of the committee in electronic form, on receiving an undertaking from the member to the effect that such member shall maintain confidentiality of

the fair value and the liquidation value and shall not use such values to cause an undue gain or undue loss to itself or any other person The resolution professional and registered valuers shall maintain confidentiality of the fair value and the liquidation value

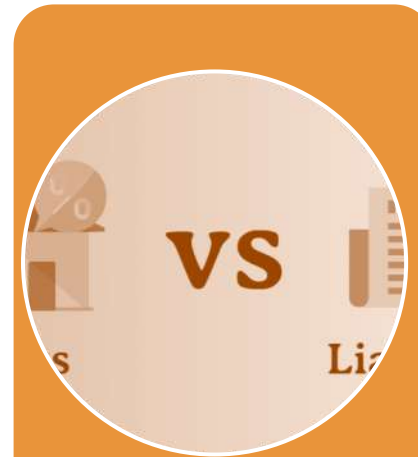


Assets & Liabilities



Latest Annual Financial statement

Audited Financial statement for last two years



List of claims, Debt of Related Party

Details of Guarantee



Details of member of partner holding at least 1% stake in CD



All litigation, number of workers and employees, other information which CD or RP deems relevant

**INFORMATION MEMORANDUM**

# INVITATION FOR RESOLUTION PLANS

the resolution professional shall publish brief particulars of the invitation for resolution plans in Form P11

The Form P11 shall state where the invitation for resolution plans can be downloaded or obtained from, as the case may be

The Form P11 shall provide the last date for submission of resolution plan which shall not be less than fifteen days

It shall includes:

- (i) the basis for evaluation;
- (ii) basis for considering a resolution plan significantly better than another resolution plan;
- (iii) tick size; and
- (iv) the manner of improving a resolution plan; and

not require any non-refundable deposit for submission of or along with resolution plan.

## MANDATORY CONTENTS OF RESOLUTION PLAN

- Secion 29A Affidavit
- Statement giving details of failure to implement resolution plan earlier
- Undertaking
- the term of the plan and its implementation schedule;
- the management and control of the business of the corporate debtor during its term; and
- adequate means for supervising its implementation.
- it addresses the cause of default;
- it is feasible and viable;
- it has provisions for its effective implementation;
- it has provisions for approvals required and the timeline for the same; and
- the resolution applicant has the capability to implement the resolution plan.
- statement as to how it has dealt with the interests of all stakeholders,
- The amount payable under a resolution plan –
  - to the operational creditors shall be paid in priority over financial creditors; and
  - to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan.



## MEASURES IN RESOLUTION PLAN FOR MAXIMISATION OF VALUE

- transfer of all or part of the assets of the corporate debtor to one or more persons;
- sale of all or part of the assets whether subject to any security interest or not;
- restructuring of the corporate debtor, by way of merger, amalgamation and demerger;
- the substantial acquisition of shares of the corporate debtor;
- cancellation or delisting of any shares of the corporate debtor, if applicable;
- satisfaction or modification of any security interest
- curing or waiving of any breach of the terms of any debt due from the corporate debtor;
- reduction in the amount payable to the creditors;
- extension of a maturity date or a change in interest rate or other terms of a debt due from the corporate debtor;
- amendment of the constitutional documents of the corporate debtor;
- issuance of securities of the corporate debtor, for cash, property, securities, or in exchange for claims or interests, or other appropriate purpose;
- change in portfolio of goods or services produced or rendered by the corporate debtor;
- change in technology used by the corporate debtor; and
- obtaining necessary approvals from the Central and State Governments and other authorities.





# Vesting of Management of CD

**Default Rule**  
-----  
Management of the affairs of the Corporate Debtor shall **continue to vest** with Board of Directors or Partners

CoC resolved with **66% voting share** to vest management of CD with RP?



RP to **file application** with Adjudicating Authority

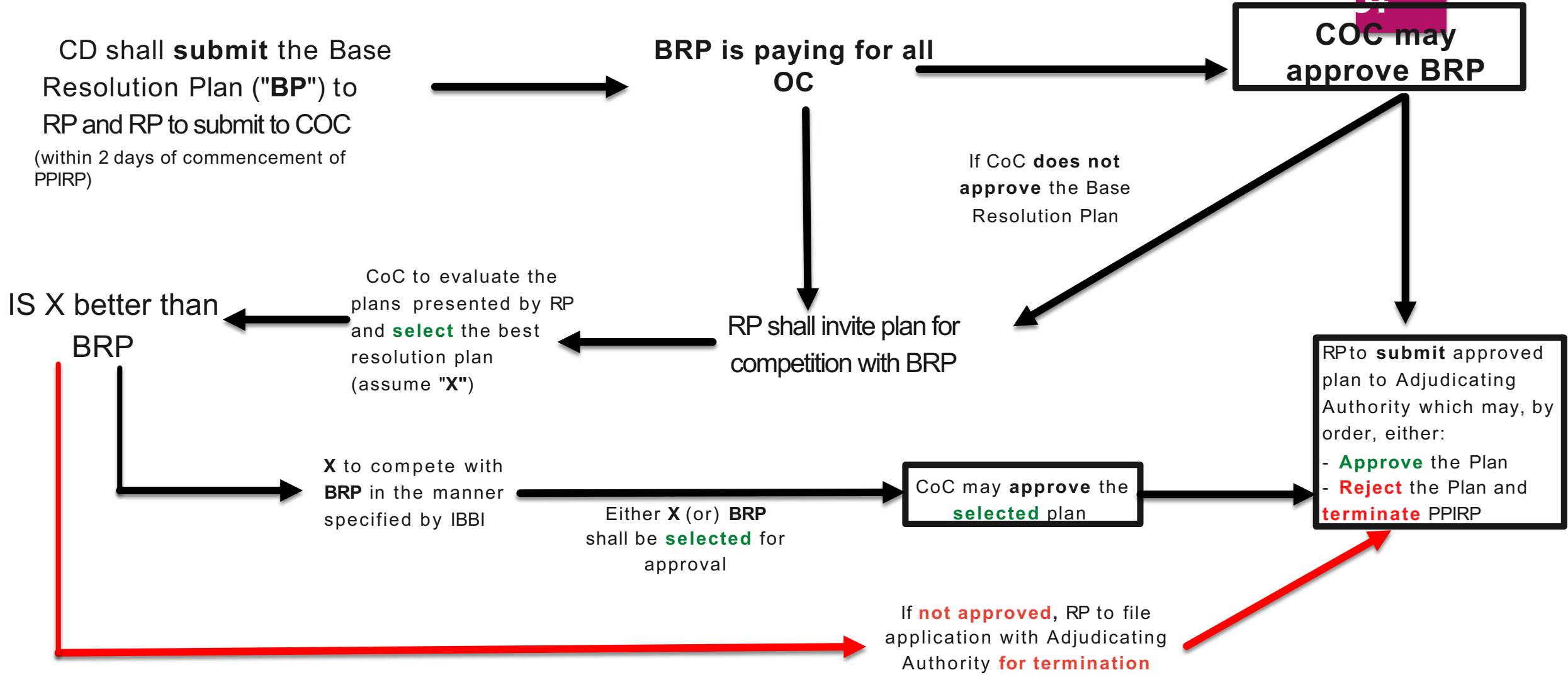
Adjudicating Authority is of **the opinion** that the affairs of the CD during **PPIRP**:

- have been conducted in **fraudulent manner**
- **grossly mismanaged**

Adjudicating Authority shall pass an order **vesting the management with the Resolution Professional**

Once management of CD is vested with the RP, all the rights, powers and duties which RP exercises during CIRP and other provisions of moratorium shall come into play!

# Approval of Resolution Plan



# TERMINATION OF PPIRP BY AA

- No resolution plan approved by CoC within 90 days

- CoC reject selected Resolution plan

- AA reject Resolution plan

- CoC resolved to terminate PPIRP (66%)

- CoC resolved to initiate CIRP(66%)

- Where AA ordered for vesting of management of CD with RP and the CoC approved a resolution plan which does not result in change in management or control of CD

## LIQUIDATION

(CoC cannot decide for liquidation in PPIRP)

### **Section 54N (4)**

AA satisfied that CoC approved plan not comply with Sec 30(2)

### **Section 54L (4)(b)**

Where AA ordered for vesting of management of CD with RP and the CoC approved a resolution plan which does not result in change in management or control of CD

### **Section 33(3)**

Where a resolution plan approved under PPIRP is contravened by the CD

# Switch to CIRP (SEC. 54-0)

CoC at any time after initiation of PPIRP but before approval of resolution plan by 66% vote may resolve to initiate CIRP (Only if CD eligible for CIRP)

RP to intimate AA of the decision taken by CoC to initiate CIRP against the CD

AA shall, by order:  
- Terminate the PPIRP  
- Appoint RP under PPIRP as IRP for the CIRP  
- Declare that PPIRP costs shall be included in IRP Costs

Order of AA shall be deemed to be order of admission u/s 7 & CIRP shall commence from date of such order



## **FORMS Filing of Application Form-1 along with a fee of `15,000**

1. Written consent of RP - **Form P1**
2. List of Creditors - **Form P2**
3. Approval of terms of appointment of RP - **Form P3**
4. Approval for initiating PIRP - **Form P4**
5. Authorised representative representing class of creditors - **Form P5**
6. Declaration under 54A(2)(f) - **Form P6**
7. Declaration under 54C(3)(c) - **Form P7**
8. Report prepared by RP - **Form P8**
9. Public Announcement - **Form P9**
10. Corporate Debtor to submit list of claims - **Form P10**
11. Brief particulars of resolution plan - **Form P11**
12. Compliance Certificate - **Form P12**
13. Application for termination of PIRP - **Form P13**
14. Application for vesting management with Corporate Debtor - **Form P14**

## Case Laws under Pre-pack:

### 1. In the matter of GCCL Infrastructure & Projects Ltd (Corporate Debtor) (Hon'ble NCLT Ahmedabad Bench in CP 116 of 2021 vide Order dated 14.09.2021:

**Facts:** The CD being an MSME had filed an application under the provisions of Section 54A. The CD had annexed proof of default, special resolution of members to initiate the PIRP as well as declaration by majority of directors of CD. The unrelated FC approved the decision of directors to file the application and approved appointment of RP. The RP's report alongwith Section 29A affidavit was also annex to the petition. The AA perused all the relevant documents.

**Held:** Petition admitted. Section 14 moratorium declared. RP to perform its duties as per Section 54F. RP directed to make PA and to file interim report within 30 days of the order.

## Case Laws under Pre-pack:

1. **In the matter of Loon Land Developers Ltd (Corporate Debtor) (Hon'ble NCLT Delhi, Principal Bench in CP 116 of 2021 vide Order dated 29.11.2021):**

**Facts:** The CD being an MSME had filed an application under the provisions of Section 54A. All the ingredients required

**Held:** Petition admitted. Section 14 moratorium declared. RP to perform its duties as per Section 54F. RP directed to make PA and to file interim report within 30 days of the order.



# Khushboo Shah Rajani



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Khushboo has over 12 years experience in the fields of Tax Litigation and Corporate Law. She was a part of Firm managing one of the biggest transfer pricing litigation in the case of a Telecom Major, Vodafone.

Since January 2017, Khushboo has also been providing litigation support under the Insolvency and Bankruptcy Code before the NCLT. She has also been advising Resolution Professionals from Big 4s and others as “Process Advisor” during their tenure as RP with regard to corporate laws and complex issues and sought directions from NCLT.

She has also represented leading transnational companies across a range of industries such as Telecom, Real Estate, Manufacturing and more, before the Appellate Authorities i.e. the Income Tax Tribunals and High Courts on complex direct tax matters.

She is actively involved in insolvency resolution, arbitration, tax planning and other strategic projects. Khushboo and Ayush have co-authored a book on “**Insolvency and Bankruptcy in India – Law & Practice**” published by Bloomsbury in February 2020, 1<sup>st</sup> Edition, while the 2<sup>nd</sup> Edition is also published in March 2021. She has also argued more than 550 matters since 2017 on behalf of RP and FC.

She is an associate member of the Institute of Chartered Accountants of India and also holds a Bachelor’s degree in Law as well as a Bachelor’s degree in Commerce. She is a speaker at Indian Institute Insolvency Professionals of ICAI (“IIPI”)

## Ayush J. Rajani



### Ayush J. Rajani

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Ayush has over 14 years of professional experience which expands to Insolvency and Bankruptcy Code, 2016 [since 2017], Transfer Pricing and International Tax. He was previously associated with Deloitte for a period of over 7 years in his initial days before setting up his own practice.

He is a Fellow member of the Institute of Chartered Accountants of India.

Ayush has been providing services to financial lenders as well as corporates under the Insolvency and Bankruptcy Code. He has been advising and Resolution Professionals from Big 4s before the Hon'ble NCLT and Hon'ble NCLAT and others as “Process Advisors” throughout the corporate insolvency and resolution process and represented before NCLT and NCLAT with regards to complex issues including Resolution Plans and forensic applications.

Khushboo and Ayush have co-authored a book on **“Insolvency and Bankruptcy in India – Law & Practice” 1<sup>st</sup> Edition published by Bloomsbury in February 2020, while the 2<sup>nd</sup> Edition is also published in March 2021.**

He has also represented RPs in leading and contentious matters involving exposures of Rs. 2,000 to Rs. 11,000 crores and more, before Hon'ble NCLT and NCLAT and assisted RPs and Liquidators in resolving various issues. He has argued more than 500 matters so far before Hon'ble NCLT (pan India) and Hon'ble NCLAT representing RPs and FCs

He is a regular speaker at Indian Institute Insolvency Professionals of ICAI and has also authored and co-authored articles on Transfer Pricing published in International Taxation, Financial Chronicle, Taxsutra and other portals.

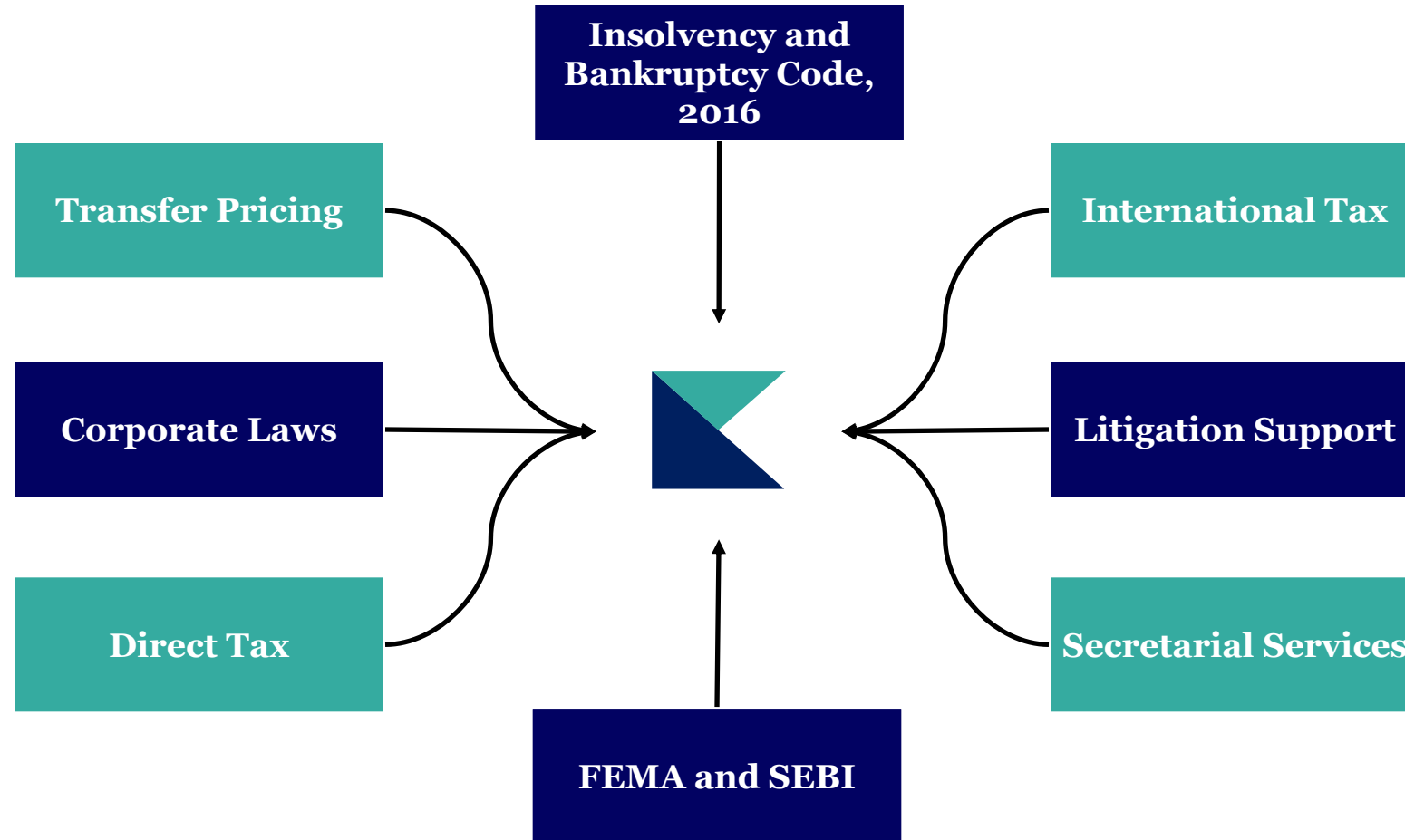


## *How We Can Help*





## *We at AKR can Assist You*





## *Let's Talk*

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