



Insolvency and Bankruptcy Code (Amendment Bill), 2021

Why in News

Recently, the government introduced the **Insolvency and Bankruptcy Code (Amendment Bill), 2021** in the Lok Sabha.

- The Bill is set to replace the **Insolvency and Bankruptcy Code Amendment Ordinance 2021** promulgated in April 2021.
 - It introduced an **alternate insolvency resolution process** for **Micro, Small and Medium Enterprises (MSMEs)** with defaults **up to Rs 1 crore** called the **Pre-packaged Insolvency Resolution Process (PIRP)**.
- In March 2021 a sub-committee of the **Insolvency Law Committee (ILC)** recommended a **pre-pack** framework within the basic structure of the **Insolvency and Bankruptcy Code (IBC), 2016**.

Insolvency and Bankruptcy Code

- It is a reform **enacted in 2016. It amalgamates various laws** relating to the insolvency resolution of business firms.
- It lays down **clear-cut and faster insolvency proceedings to help creditors**, such as banks, recover dues and prevent bad loans, a key drag on the economy.

Key Words

- **Insolvency:** It is a situation where **individuals or companies are unable to repay** their outstanding debt.
- **Bankruptcy:** It is a **situation whereby a court of competent jurisdiction has declared a person or other entity insolvent**, having passed appropriate orders to resolve it and protect the rights of the creditors. It is a legal declaration of one's inability to pay off debts.

Key Points

- **Major Provisions:**
 - Distressed Corporate Debtors (CDs) are permitted to initiate a **PIRP** with the **approval of two-thirds of their creditors** to resolve their outstanding debt under the new mechanism.
 - A corporate debtor is a corporate person **who owes debt to any other person**.
 - The PIRP also allows for a **Swiss challenge to the resolution plan** submitted by a CD in case operational creditors are not paid 100 % of their outstanding dues.
 - A **Swiss Challenge** is a method of bidding, often used in public projects, in which

an interested party initiates a proposal for a contract or the bid for a project.

▪ About PIRP:

- A pre-pack is the **resolution of the debt of a distressed company through an agreement between secured creditors and investors** instead of a public bidding process.
 - This system of insolvency proceedings has become an **increasingly popular mechanism** for insolvency resolution in the UK and Europe over the past decade.
- Pre-packs are **largely aimed at providing MSMEs with an opportunity to restructure their liabilities and start with a clean slate** while still providing adequate protections so that the system is not misused by firms to avoid making payments to creditors.
- Unlike in the case of [Corporate Insolvency Resolution Process \(CIRP\)](#), **debtors remain in control of their distressed firm during the PIRP.**
- Under the **pre-pack system**, financial creditors will **agree to terms with a potential investor** and seek approval of the resolution plan from the [National Company Law Tribunal \(NCLT\)](#).

▪ Need of Pre-Packs:

- CIRP is a **time taking resolution**. At the end of December 2020, over 86% of the 1717 ongoing insolvency resolution proceedings had crossed **the 270-day threshold**.
 - Under the IBC, **stakeholders are required to complete the CIRP within 330 days** of the initiation of insolvency proceedings.
 - One of the key reasons behind delays in the CIRPs are **prolonged litigations by erstwhile promoters and potential bidders**.

▪ Key Features of Pre-Packs:

- **Insolvency Practitioner:**
 - Pre-Pack **usually requires services of an insolvency practitioner** to assist the stakeholders in the conduct of the process.
 - The extent of **authority** of the practitioner **varies across jurisdictions**.
- **Consensual Process:**
 - It envisages a **consensual process** - prior understanding among or approval by stakeholders about the course of action to address stress of a CD, before invoking the formal part of the process.
- **No requirement of Court Approval:**
 - It does **not always require approval of a court**. Wherever it requires approval, the courts **often get guided by commercial wisdom of the parties**.
 - Outcome of the pre-pack process, where approved by the court, is **binding on all stakeholders**.

▪ Benefits of pre-packs:

- **Quick resolution:**
 - It is limited to a **maximum of 120 days** with only 90 days available to the stakeholders to bring the resolution plan to the NCLT.
 - Besides offering a way for MSMEs to restructure their debts, the pre-pack scheme could also **reduce the burden on benches of the NCLT** by offering a faster resolution mechanism than ordinary CIRPs.
- **Minimises Disruptions to the Business:**
 - Existing **management retains control** in the case of pre-packs rather than resolution professionals in CIRP, hence **avoids the cost of disruption of business** and continues to retain employees, suppliers, customers, and investors.

- **Addresses the entire liability side:**

- PIRP will **help CD to enter into consensual restructuring** with lenders and **address the entire liability** side of the company.

- **Challenges of PIRP:**

- **Raising additional capital:**

- Initially **CDs may not raise additional capital or debt from Investors or Banks**, because of the risk involved in recovering the money being provided by these Investors and lenders.

- **Small timeline:**

- Resolution Plan under PIRP is 90 days with an additional 30 days to AA (Adjudicating Authority) for support of the scheme. It is **challenging for CoC (Committee of Creditors) members to decide on the Base resolution Plan within this short period** without any broad parameters on which the Resolution Plan be approved.

Way Forward

- While the PIRP is a timely effort to protect viable MSMEs, it is likely that operationalising it only for MSMEs now may just be the first step towards a sound Pre-pack and **will lead to a much wider coverage in the future** which, like the IBC, is expected to evolve with time and jurisprudence.
- The government should **consider setting up specific benches of the NCLT to deal with pre-pack resolution plans** to ensure that they are implemented in a time-bound manner.

[Source: IE](#)

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