

Insolvency and Bankruptcy Law in India

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Week 08

Lecture 39

Welcome, everyone.

In today's class, as part of the course on insolvency and bankruptcy law in India, we are going to discuss the concept of the pre-packaged insolvency resolution process under the IBC.

So, before that, let us recap what we discussed in the previous class. In the previous class, we discussed the fast-track resolution process, also known as FTP. Then, who is eligible for the fast-track resolution process? We have discussed. We then discussed the application process for the fast-track resolution, including how to submit an application and who is eligible to apply. We then discussed the stages of the fast-track resolution process in detail. Then, the time framework for the fast-track resolution process was discussed. Today, in class, we will discuss what PPIRP is, who is eligible, and other related topics. So what is PPIRP? PPIRP is a streamlined alternative insolvency resolution mechanism.

The prepackaged insolvency resolution process is a streamlined alternative resolution mechanism exclusively designed for MSMEs, medium, and small-scale industries. Therefore, this scheme was introduced for MSMEs. Then, Chapter 3A of the IBC, which covers sections 54A to 54P, deals with these provisions. Sections 54A to 54P relate to the PPIRP pre-packaged insolvency resolution process. Additionally, we have Chapter 3A of the IBC and the Insolvency and Bankruptcy Board of India's Pre-packaged Insolvency Resolution Process Regulations 2021. So, we have Chapter 3 and the Regulations. Then, who is eligible? A corporate debtor is eligible to initiate PPIRP if it is an MSME. One of the basic conditions to be satisfied in order to initiate PPIRP, that is, the pre-packaged insolvency resolution process under this Act, is that it should be an MSME.

Then, the corporate debtor must be classified as a micro, small, or medium enterprise under the MSME Act, as there is a separate MSME Act. Therefore, under that legislation, it must be categorized as an MSME. And what is the default threshold? If you want to opt for PP IRP, the default threshold limitation is that the minimum default amount should be at least ₹ 10 lakh. If the default amount is at least ₹ 10 lakh, then you can opt for PPIRP.

Let us discuss the further conditions. There should not be any PPIRP, formerly CIRP, so if any corporate debtor has already undergone the PPIRP or CIRP previously, then in such cases, you cannot go for PPIRP for the second time. Then, if the corporate debtor has not previously undergone a corporate debtor CRP process, no PPIRP has been initiated or completed for the corporate debtor in the preceding three years. So, the limitation is three years. So, in the preceding three years, there should not have been any PPIRP formally.

Then, there should be no liquidation order. Another condition is that there should not be any liquidation order. No order of liquidation should have been passed against the corporate debtor. Therefore, if a liquidation order is passed against the corporate debtor, you cannot proceed with PPIRP. Then, the corporate debtor must have obtained a special resolution, so what are the procedural aspects to be followed? The procedural aspects to be followed are that a special resolution must be passed. You are expected to conduct the general meeting, and at the general meeting, you are expected to pass the special resolution, which is a resolution passed by at least three-fourths of the total number of partners. So, suppose it is an LLP; then in such cases, there is no concept of a special resolution, which is why a three-fourths majority is needed to pass the resolution. Then, after approving the initiation of PPIRP, what should be the agenda of the resolution or the meeting? The agenda of the meeting must be to approve the PPIRP. So, you should have passed the special resolution in the case of a company. In the case of an LLP, the application must be approved with a 3/4 majority.

Then, the CD shall obtain approval from its FC. Therefore, the corporate debtor shall obtain approval from the financial creditor, who is not a related party, representing not less than 66% of the value of the financial debts due to such creditor. So, Regulation 14 further provides that if you wish to opt for PPIRP, another condition is that you are required to obtain approval from the financial creditors. When you are getting approved by the financial creditors, it should be with a majority of 66% of the whole, or 66% of the value. However, please note that when calculating this 66% or percentage, we are not supposed to include related parties. In previous classes, we have already discussed in detail who is considered a related party. Therefore, the related parties are not included while calculating or considering the 66%. Then, before seeking approval, the CD needs to provide the documents prescribed under Section 54, subsection 4.

Under Section 54, Subsection 4, we already have the provisions we discussed, which state that whenever you wish to obtain approval from the financial creditor, you are required to provide certain documents. Specific documents and disclosures must be made to the financial creditors. All these disclosures and documents have already been discussed in the previous lessons. Before seeking approval, the CD must provide the documents prescribed under the legislation. Then who can act as an RP? It is simple logic: whoever is eligible to act as an RP in the regular CRP process is also eligible to act

as an RP in the case of PPIRP. I can tell you that PPIRP is essentially a replica of the regular CRP process, with only the timelines being comparatively different. Other than that, most of the processes relating to CRP will also be applicable to the PPIRP.

Now, let us look at regulation 7. Subject to consent in form number P1, an insolvency professional shall be eligible to be appointed as an interim resolution professional or RP, as the case may be, 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. That means if I want to appoint someone as a resolution professional, they should be an independent person. Let me put it this way: whoever is eligible to be appointed as an independent director is also eligible to be appointed as a resolution professional. That means he should not have, as we have already discussed in previous classes, the resolution professional or any person we want to appoint as a resolution professional; such a person is not expected to have any material pecuniary relationship with the company. He should not have any relation with the company. So if he has any relation, then he is not eligible to be appointed as an RP. Let us discuss some other key points. The RP shall prepare a report in form P8. In this lesson or under the regulations, all forms will be designated as P1, P2, P3; the numbering will follow the sequence P1, P2, P3 like. So, the RP shall prepare a report in P8. The fee payable to insolvency professionals in relation to the duties performed under Section 58 B shall be determined as may be specified under the legislation. Therefore, under the existing legislation regarding the COC, we have discussed the maximum remuneration we can pay; schedules are in place, but the COC will determine the remuneration payable to the insolvency professional. The same provisions apply. Therefore, the provisions we discussed in earlier lessons are also applicable in the case of a resolution plan, particularly for a resolution professional in the case of a PPIRP. Regulation 14 provides for approval by the financial creditors.

The notice of the meeting under this regulation shall indicate the date, time, and venue of the meeting and enclose the list of creditors, along with the amount due to each of them in P4. Please remember that Regulation 14 provides that you have to get approval from the FC, Financial Creditor. The notice of the meeting under this regulation shall indicate the date, time, and venue of the meeting, as well as the enclosed list of creditors. Please note that before considering the list of creditors, you must first send a notice to the creditors, stating that this is the complete list of creditors, along with the amount due.

Then an authorized representative can be appointed. So, there is a possibility of representing the class of creditors. As we have already discussed in previous lessons, there is a concept known as the class of creditors. If any class of creditors exists, they can appoint an authorized representative to represent them on the creditors' committee in such cases. So, there is a possibility that, even in the case of PPIRP, an authorised representative can be appointed by a class of creditors, as provided in regulation 15. Let us then discuss the initiation of the PPIRP under section 54C. Where the corporate debtor

meets the requirements under section 54A. As we have already discussed, the requirements for MSMEs are as follows, with a triggering point of 10 lakh rupees. Similarly, we have discussed the eligibility criteria. So, where the corporate debtor meets the requirement under Section 54A, a corporate applicant may file an application with the adjudicating authority to initiate the pre-packaged insolvency resolution process. Who can initiate an application for the PPIRP? It is a corporate applicant. It's a corporate applicant, so they can make an application for the initiation of PPIRP.

Then, once the application is made, okay, these are all regular procedures we have already discussed. Once the application is made with the NCLT, the adjudicating authority must either admit or reject the application within 14 days. So, whenever he is admitting, there is no concept of judicial discretion; there will be little to no judicial discretion. Whenever he is admitting, he will verify whether they followed the procedure or not. So, if they do not follow, he will give the other person an opportunity to rectify the mistakes; then, accordingly, he can resubmit. Otherwise, he can reject the application if it does not satisfy the conditions. Then, PPIRP shall be completed within 120 days. Another important provision under Section 54D is that the PPIRP must be completed within a 120-day period. Therefore, if you follow the regular CRP process, it should be completed within a period of 180 days, with an optional 90-day extension, totaling 270 days. Additionally, it may take up to 330 days, as previously discussed. The timelines we discussed in the previous lessons, one of which is about timelines.

In the timelines lesson, we have already discussed how they will calculate them. However, in the case of PPIRP, it has to be completed within a period of 120 days. Please note that once an application is made under Section 54C, when the adjudicating authority admits the application, it will also declare the moratorium immediately in such cases. We have already discussed the importance of the moratorium in the previous classes. So, you cannot file any cases against the company during the moratorium period. Once the initiation is complete and the insolvency admission is finalized, i.e., once the adjudicating authority accepts the application, the moratorium will take effect immediately. That is section 54E. Let us then discuss the duties and powers of the resolution professional.

More or less, these duties and powers of the resolution professional are similar to the regular CIRP procedure. So, what is the first duty? He is expected to inform the creditors regarding their claims, as confirmed under Class A, in a manner specified by the relevant authorities. Once the resolution professional is appointed, they are expected to make the announcement. After the announcement, he will receive the claims. He is going to prepare, collect, and collate the information. Once that is done, he will inform the creditors of their claims and maintain an updated list of claims in the specified manner. As we have already discussed in previous classes, it is the responsibility and duty of the resolution professional to maintain and update the list of claims, as there is a possibility that claims may be received in a phased manner. Therefore, whenever you receive the

claims, you are required to update the register periodically. Then monitor the management of the debtor affairs. So, this is one of the core features of the IBC itself.

So, even if you observe under CIRP, once the resolution professional is appointed, either as IRP or RP, the existing board of directors is suspended. The resolution professional will replace the existing board of directors. That's why he will be monitoring the management of the corporation's affairs. The entire management will be in the hands of the resolution professional only. Then, constitute the committee of creditors and convene, attending all its meetings. Another duty of the resolution professional is to constitute a committee of creditors once they are appointed. He is going to receive the claims; accordingly, he will constitute a committee of creditors. He will conduct the meeting as we previously discussed in the first meeting. There is a possibility that the IRP may continue as the RP, or they may appoint another person as the resolution professional. Therefore, he will constitute the committee of creditors, convene the meetings, and attend all its meetings. It is the responsibility of the resolution professional to attend all meetings. The resolution professional also has the power to access the books of account. As we have already discussed in previous classes, when a resolution professional is appointed, it is the responsibility of the suspended board of directors to cooperate with the resolution professional. They are expected to cooperate and show the records. He has the power to access the books of accounts.

Then, the power of the resolution professional lies in appointing professionals. Therefore, if you observe Regulation 10, since the resolution professional is replacing the board of directors, it is practically impossible for him to manage the entire company individually. That is why he has the power to appoint other professionals as well. He can seek the help of other professionals and run the business accordingly. Then attend the meetings of the members, the board of directors, and the committee of directors or partners, as applicable. So, once he is appointed, he will be the person conducting the meetings. He is expected to attend meetings of the members, the board of directors, and the committee of directors, among others.

Then let us discuss the claims. Section 54 provides for the claims. A corporate debtor shall, within two days of the PPIRP commencement date, submit the claims. Thus, within two days from the PPIRP, which is once it is admitted by the NCLT, such date is referred to as the commencement date. Therefore, on such date, the PPIRP is commenced. Once the commencement is complete, within two days, he is expected to submit to the resolution professional and the corporate debtor the following information. What he is expected to submit is a list of claims, along with the details of the respective creditors, their security interests, and any guarantees, as the application is initiated by the corporate debtor. He is expected to give this information to the resolution professional once he is appointed. The list of claims, along with the details of the respective creditors and their

security interests. Then, a preliminary information memorandum containing relevant information for the formulation of the resolution plan will be provided.

Then a creditor may submit an objection. Once that is done, there is an option for the creditor under Regulation 20; a creditor may submit an objection along with supporting documents. Along with the supporting documents, such as invoices, he may submit the claims. Okay, then, where the amount of the creditor's claim is not precise, the possibility is that they are unable to determine the exact amount due to some contingencies. In such cases, the resolution professional is expected to make the estimation. Based on the transaction, he can make the estimation accordingly. He is going to admit the claim based on his estimation.

Then, if you observe Regulation 22, claims denominated in a foreign currency shall be valued in Indian currency, as you will settle the issue under Indian law and settle the amounts in Indian currency. Therefore, if any claims are denominated in a foreign currency, such currency must be converted into Indian currency at the official exchange rate as of the pre-packaged insolvency commencement date. As we have already discussed, once the NCLT admits the application, that date is considered the date of commencement of the PPIRP. As of that date, regardless of the foreign exchange ratio, that ratio or exchange price must be accepted and considered valid. So, where a creditor assigns or transfers the debt due to such creditor to any other person during the process period, both parties shall provide the resolution professional with the terms of such assignment or transfer and the identity of the assignee or transferee. Suppose we take the example of a creditor during the PPIRP process; perhaps the creditor must have transferred or assigned their right in favor of another person. In such cases, the assignment or transfer must be submitted to the resolution professional along with the necessary evidence. Let us then discuss other important provisions. The resolution professional shall, within seven days of the PPIRP, that is, the prepackaged insolvency commencement date, constitute a committee of the creditors. Within how many days is he expected to constitute? Within 7 days, he is expected to constitute the committee of creditors. Then the vesting of the management of the corporate debtor is with the resolution professional. Once the resolution professional is appointed, the existing management ceases to be in existence. There is no board of directors of the company. The resolution professional will replace the existing board of directors. He will be vested with the entire management of the corporate debtor.

Next, suppose we consider the example where the corporate debtor has only one class of creditors. There are no other financial creditors; however, there are creditors in the class who are not related to the corporate debtor's related parties. In such cases, the committee shall consist only of authorized representatives. Suppose the company has a class of creditors; we have already discussed that in the case of a class of creditors, you can have representatives. In such cases, the committee shall consist of only authorized

representatives. Then, suppose we take the example where CD has no financial debt, or all the financial creditors are related parties. As we have already discussed, if any financial creditor is a related party, they are not eligible to be a member of the COC. Alternatively, if the CD does not have any financial debt, the committee can then consist of only operational creditors. Generally, operational creditors do not have a say, nor are they part of the committee of creditors. However, in such cases, if the company does not have financial creditors, the committee can only include operational creditors.

Let us then discuss the procedure governing the meetings of the COC. We have Regulation 27 of the PPIRP regulations, which speaks about meetings of committees. The procedure for conducting committee meetings is outlined in Regulation 27. Then, notice the committee for the meeting. So, how do you send the notice, Regulation 28? You are expected to send the notice before the meeting. Please remember that whenever you send a notice, you are expected to include the nature of the meeting, as well as the time, place, and date of the meeting. Additionally, when you are conducting the meeting, you are expected to disclose the time, place, and date of the meeting. These items must also be included with the notice, as well as the service of notice for the committee meetings. Whenever you conduct meetings, Regulation 29 stipulates that it is the responsibility of the resolution professional to serve notice for each meeting.

Then, as we have already discussed, the contents of the meeting should include the following: if you observe Regulation 30, it stipulates that the meeting notice must contain the date, place, and time of the meeting. The quorum for the meeting of the CoC is established, so we are having provisions relating to quorum. Regarding the meetings of the CoC under Regulation 31 of the PPIRP. Then, participation is possible through video conferencing. Yes, you can participate through video conferencing. Additionally, Regulation 32 addresses the conduct of the meeting, and Regulation 33 outlines the provisions for conducting meetings. Then, the committee with creditors in class is possible, as we have already discussed. The committee of creditors in class can be represented through an authorized representative. Creditors in class generally don't have a direct say; they cannot represent themselves, so they are expected to be represented by an authorized representative.

Then, voting by committee, as provided in regulation 35 of the PPIRP, is similar to the regular CRP process. Then, once we have a class of creditors, as we have already discussed, you are expected to appoint the authorized representative. Therefore, even an authorized representative can cast a vote. While voting for each creditor, he is expected to vote according to the instructions given by that creditor. Then, voting by electronic means is possible; you can also conduct the voting electronically. So let us recap what we have discussed. Till now, we have discussed what PPIRP, the pre-packaged insolvency resolution process, is. Then, who is eligible under PPIRP? All MSMEs where the default is less than ₹ 10 lakh; in such cases, PPIRP is applicable. Then, who can be appointed as

a resolution professional? Any person who is eligible to be appointed as an independent director can be appointed as a resolution professional. Then we have also discussed other eligibility conditions. He should not be related; his partner should not be related in that way. Then how do you initiate PPIRP? Generally, PPIRP is initiated by the corporate debtor. Then they will submit an application. Once the application is accepted by the tribunal or adjudicating authority, the PPIRP process will continue.

We then discussed the due descent powers of the resolution professional. Please note that when we are discussing the duties and powers in this lesson, we have intentionally not discussed them in detail. Why, because while discussing the CRP regulations and the regular CRP process, we have discussed in detail the duties and powers of the resolution professional. In one lesson, we discussed the duties and powers of the resolution professional; in another lesson, we did not delve into this topic in detail. We then discussed the formation of the COC, how to form it, and that while forming the COC, there is a possibility that even operational creditors can also be members, if you don't have any financial creditors. Then, we subsequently discussed the procedure governing the meetings of the COC, so how you will govern the meeting is more or less similar to the regular CRP process.

Thank you.