

Pre-pack insolvency resolution process (PPIRP)

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In news : The sub-committee of Insolvency Law Committee (ILC) has recently submitted its report to the Government and recommended a pre-pack framework within the basic structure of the Insolvency and Bankruptcy Code (IBC), 2016.

Background

In June 2020, the Government constituted a sub-committee of Insolvency Law Committee (ILC) under the chairmanship of Dr. M. S. Sahoo, Chairperson, Insolvency and Bankruptcy Board of India (IBBI) to make recommendation on pre-pack insolvency resolution process (PPIRP).

Key recommendations of the Insolvency Law Committee (ILC)

Following are the Key recommendations of ILC:

- It recommended that the PPIRP framework be within the basic structure of the insolvency code as an additional option for a resolution that blends both formal and informal options.
- PPIRP would pursue the same objectives as the IBC, with checks and balances to prevent any abuse.
- Phased implementation: Implementation of PPIRP may be phased, starting with defaults from Rs 1 lakh to Rs 1 crore, and then expanded to defaults of over Rs 1 crore
- Pre-packs in case of pre-default can be considered if 75% of creditors consent
- The corporate debtor (CD) can initiate pre-pack with the consent of a simple majority of unrelated FCs and its shareholders. No two proceedings – pre-pack and corporate insolvency resolution process (CIRP)– shall run in parallel.

- There shall be a cooling-off that a pre-pack cannot be initiated within three years of closure of another pre-pack
- No coverage of critical services: Moratorium under Section 12 to be available from the pre-pack commencement date till closure or termination of the process, but won't cover essential or critical services.
- Section 29A of the IBC, which prohibits promoters of defaulting firms from participating in the process to continue in the case of PPIRP
- The committees recommend that the resolution value need not necessarily be higher than the realisable value.
- The resolution plan approved by the adjudicating authority will be binding on everyone
- It also recommended that the pre-pack should allow 90 days for market participants to submit the resolution plan to the adjudicating authority, and 30 days thereafter for the authority to approve or reject it.

What does Pre pack deal mean?

It is a kind of restructuring plan which is agreed to by the debtor and its creditors prior to the insolvency filing and then sanctioned by the court on an expedited basis. The incumbent management typically retains control until the final agreement is agreed upon. This kind of informal process is intended at a faster resolution of distressed firms

What are the benefits of a pre-pack?

- **Informal process:** As compared to CIRP under IBC regular pre-packs have the advantage of being a more informal process and the possibility of closure in a shorter period of time.
- **Flexibility:** As per the committee's report, pre-pack provides the stakeholders flexibility in working out a consensual, but efficient, strategy for effective resolution and value maximisation that may be difficult

under the formal insolvency procedure

- **Lesser time:** It takes less time because a substantial part of the proceedings is undertaken before the commencement of the formal proceeding by the court

What are the problems/concerns associated with pre-packs?

- **Lack of transparency:** Its nature leads to a lack of transparency, where often unsecured creditors feel disenfranchised by the secrecy.
- **Valuation process:** Experts feel more can be done to explain the valuation methodology to bring comfort to all stakeholders
- The insolvency practitioner has no legal requirement to look at the future viability of the new business emerging from a pre-pack sale, and the practitioner's legal responsibility is to the creditors of the old business. It would be a concern for both transferring suppliers and new ones.
- Sale of business and assets of the corporate debtor to connected parties has also been criticised

Corporate Insolvency Resolution Process

- It is a recovery mechanism made available to creditors as under the Insolvency and Bankruptcy Code, 2016 (IBC).
- If a corporate entity becomes insolvent (unable to repay debt), the concerned creditor or the corporate entity (the debtor) itself, may initiate CIRP.