

PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS- BENEFITS & CHALLENGES IN INDIAN ECONOMY: A CRITICAL STUDY**Dr. Pallavi Bhagel**

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ABSTRACT

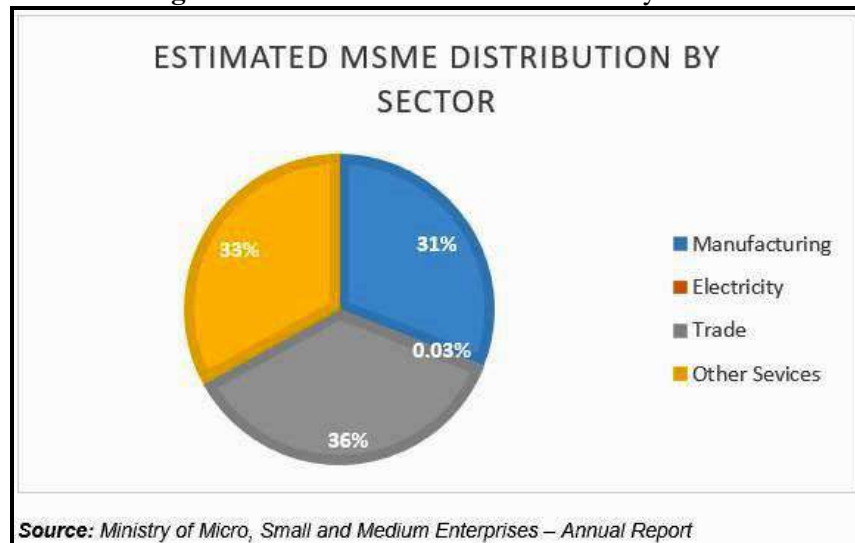
The Indian Economy is exceptionally reformed in the last 6 years such as the introduction of the economic legal reform viz, the Insolvency and Bankruptcy Code, 2016 (IBC). COVID-19 has massively squeezed the global corporate sector. Consequently, the Micro, Small and Medium Enterprises (MSMEs) sector, known as the backbone of Indian Economy is severely shook by the hit of the pandemic, about two-thirds of the MSMEs (67%) were temporarily shut for 3 months or more in the FY21 and over half of the MSMEs saw a decline of over 25 per cent in revenues. The large companies somehow survived and made recovery but the MSMEs are looking for their survival rather than their growth while some are looking for funding options of recovery. Pre-packaged Insolvency Resolution Process (PPIRP) is a newly introduced turnaround scheme in India but is already in place in many developed nations. This novel research aims to throw light on their revival and restructuring strategy via the, resolution route of PPIRP under the IBC and has used secondary data namely- various reports and data released by the Government of India, Reserve Bank of India reports, International report of Forbes Survey, United Nations Commission on International Trade Law's publication named 'UNCITRAL Legislative Guide on Insolvency', etc. This exploratory study has established and deduced that the positive aspects of PPIRP outweigh its shortcomings and so is a boon for the MSMEs. The researcher has eventually proposed suggestions for the effective implementation of PPIRP in India. The research study will play an instrumental role for the economists in conducting studies, formulating policies, researchers, students, MSMEs, professionals and economy will also be massively helped by it. A comparison using statistical tools can be done in the following years for measuring the benefits of PPIRP.

Keywords: MSMEs, PPIRP, Revival, Restructuring and UNCITRAL Legislative Guide on Insolvency.

I. INTRODUCTION -

The COVID-19 pandemic has globally impacted the corporate sector on a massive scale. The unforeseen economic shocks locked people inside their homes for their safety, stopped corporate operations significantly, shuttered many companies, laid off millions of workers and disrupted demand and supply of lots of products. Most of the powerful developed nations are in the grip of corporate distress today. There is increase in the rate of NPAs, liquidations, insolvency filings and asset fire-sales. Correspondingly, the Indian Economy is also hit and it was surveyed and stated by the RBI Report released on January 17, 2022 that, "the pandemic has been brutal in India, especially during the second wave in April-May 2021" and the pandemic has also negatively impacted consumer confidence indices.¹ India has experienced pandemic outbreaks such as, 1896 Bubonic plague, 1918 Spanish flu, 1958 Asian flu and 1974 Smallpox which contracted the Indian Economy. And the recovery was made swiftly within two years of these pandemics. India has also learnt from the past notably the Asian financial crisis of 1997 and Global financial crisis of 2008.

¹ The RBI Bulletin, 'The Impact of Covid-19 Pandemic on Consumer Confidence in India' Reserve Bank of India (17 January, 2022) https://www.rbi.org.in/Scripts/BS_ViewBulletin.aspx?Id=20751 accessed on 16 November 2022.

Figure 1: Estimated MSME distribution by sector

The Indian Economy consists of approximately 63 million Micro, Small and Medium Enterprises (MSMEs) which contribute to about 48% of the exports and employs around 11 crore people until November, 2021.² It is discernible from Figure 1 that MSMEs have become the backbone of the Indian Economy and are also acting as an engine for the growth of the economy. These MSMEs contributed to 30.5% and 30% of the Indian GDP in the FYs 2019 and 2020 respectively.³ They are the key to US\$ 5 trillion Indian Economy. This pandemic has punched the Indian MSME sector and it is high time that the MSMEs are revived through restructuring scheme else they will be thrown into liquidation. PPIRP is a new turnaround mechanism introduced in India available only for the MSMEs.

This research study is divided into twelve sections. Section I is the introduction to the research study, II elucidates the urgency and significance of the study, III lists out the objectives of the study, IV throws light on the purpose of the research work, V states the research methodology, VI unfolds impact of COVID-19 on MSMEs, VII puts forward the aim, applicability and whole process of PPIRP and is divided into three fragments, VIII explores the benefits of PPIRP accruing to MSMEs along with the advantages of opting PPIRP over CIRP, IX reveals the challenges faced by MSMEs in the implementation of PPIRP by in depth analysis, X submits the implications of the study, XI presents conclusions and draws out the findings of the study and XII proposes the suggestions given by the researcher for building a robust and efficient PPIRP regime.

II. URGENCY AND SIGNIFICANCE OF THE STUDY –

The economies have suffered badly due to COVID, similarly the Indian economy is also severely hit by it. The MSME sector has suffered heavy losses in India. It is crucial at this point of time to revive and rehabilitate these small and medium businesses instead of their liquidation or winding up. Rehabilitation will be fruitful to the economy and this can only be done through corporate restructuring mechanisms. The nation will bleed to death through liquidation of companies. Liquidation should be opted to as last resort only when the restructuring fails and if the company is an unviable one. Since the MSME is the key driver of the Indian economy, so it becomes very important to restructure the sick MSMEs and this research study is hence conducted to find out the benefits and challenges coming in the way of PPIRP.

² Annual Reports of Ministry of Medium Small and Micro Enterprises 2019-20.

³ The RBI Bulletin, 'Creating New Opportunities for Growth – Shaktikanta Das' *Reserve Bank of India* (19 March, 2021) https://rbi.org.in/scripts/BS_ViewBulletin.aspx?Id=20139 accessed on 16 November 2022.

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The researcher puts forth the recommendations to overcome those challenges in the emerging phase of PPIRP through this study. A new legislation is to be properly monitored so that the amendments can be made well in time and this point is a crucial juncture of the rise of PPIRP. This study is very much needed for providing a strong basis for future research works. It is the need of the hour for discerning the significance of PPIRP as a revival tool of sick MSMEs.

III. OBJECTIVES OF THE STUDY –

The objectives of the present research study are:

- i. To discover the facts which led to the turbulent financial condition of MSMEs.
- ii. To examine the consequences of debacle of MSMEs.
- iii. To shed light on the gravity of PPIRP mechanism and unearth the challenges coming in the way of implementation of PPIRP.
- iv. To propose suggestions to overcome these challenges for the smooth functioning of PPIRP.

IV. PURPOSE OF THE STUDY –

The UNCITRAL's Legislative Guide on Insolvency introduced Pre-packs by citing it as 'expedited reorganization proceedings'.⁴ The raison d'être behind calling it so is that the PPIRP process provides a negotiation proceeding which commences immediately and finishes without delay. Thus, the efficacy of PPIRP can be judged from this fact. The researcher could not find any research study examining the causes of distress of MSMEs, analyzing the positive aspects of PPIRP and deducing the challenges in the implementation of PPIRP. None of the proper studies is conducted in India to underscore the importance of restructuring of the MSMEs for the betterment of Indian economy as well. Therefore, the researcher conducts this research study to enlighten the vitality of restructuring of MSMEs via, PPIRP.

V. RESEARCH METHODOLOGY -

The research methodology adopted for the research study is :

- **Doctrinal Research** involving analysis of the MSME Sector.
- **Qualitative Research.**
- **Secondary sources** of data are used.

VI. IMPACT OF COVID ON MSMEs -

The RBI has expressed its concern over the severe stress scenario in which the rate of GNPA is forecasted to likely to increase to 9.5% in September, 2022 from 6.9% in September, 2021.⁵ Though the Government has introduced schemes, namely the Emergency Credit Line Guarantee Scheme (ECLGS) and the Credit Guarantee Scheme for Subordinate Debt (CGSSD) and the RBI has supported MSMEs through monetary and regulatory measures as, higher structural and durable liquidity, interest rate cuts, moratorium on debt servicing, loan restructuring package, asset classification standstill and cash reserve ratio (CRR) exemptions on credit disbursed to new MSME borrowers for greater credit penetration to the MSMEs but still the outbreak of the pandemic has created 'Liquidity' problem as the major stumbling block in the path of MSMEs. Besides this the other obstacles are acute shortage of working capital, non-availability of labor, non-availability of working capital, dearth of raw

⁴ UNCITRAL *Legislative Guide on Insolvency Law (2005)* http://www.uncitral.org/pdf/english/texts/insolven/05-80722_Ebook.pdf accessed on 17 November 2022.

⁵ Press Trust of India, 'Banks' gross NPAs may rise to 9.5% in September 2022: RBI Report' *The Economic Times* (29 December, 2021) <https://economictimes.indiatimes.com/industry/banking/finance/banking/banks-gross-npas-may-rise-to-9-5-in-sept-2022-rbi-report/articleshow/88572587.cms> accessed on 18 November 2022.

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materials, low demand, delays in settlement of its dues by the large companies as well as by the government and disruption of supply chain.

Though the activities in the economy have contracted (such as the Rate of GDP, demand of products, fresh orders of products, availability of labor, increase in the rate of unemployment, cut in salaries, etc) but the large industrialists have somehow managed the loss suffered by diversifying resources. Conversely this is not true in the case of all MSMEs as is noticeable from the decline in exports from India and also many of the MSMEs are suffering from liquidity problem. The MSMEs are more vulnerable to the negative effects of COVID and hence, the foundation of MSMEs is shattered and these small businesses are thrown in financial distress.

According to a Forbes survey, “After surveying 1,500 of its small business owners throughout the U.S., Goldman Sachs reported that approximately 75% said they might not be able to exist in three months because of the drop off in sales”.⁶ The Times of India report on the Indian economy states that, “approximately 95% firms were impacted negatively due to national lockdown imposed in April 2020, 70% of businesses remained disrupted till August 2020. Even after progressive unlocking, reports suggest that almost 40% businesses remained interrupted till the end of February 2021. The three critical barriers faced by MSMEs are market access, overall productivity and getting access to more finances. An average 11% decline in business volume of Indian MSMEs has been recorded because of lockdown in 2021 in comparison to 46% decline during nationwide lockdown in year 2020”.⁷

It is also confirmed by the survey of All India Manufacturers Organization that the self-employed MSMEs which is predominantly 35% of MSMEs Sector did not have any scope of recovery and hence, they started with the winding process. This risk of winding up process amplifies because the banks perceive MSMEs as ‘risky clients’ and in the absence of collaterals the banks do not disburse loan to MSMEs or even if they get convinced then the loan is provided at a higher rate of interest than normal. This pandemic has brought a segment of the corporate sector to a standstill. It has surged financial distress in the corporate sector. Some companies and businesses are able to survive while the others are facing bankruptcy and hence, it is necessary to restructure or liquidate them. In this situation many MSMEs are either looking for their survival rather than their growth while the other MSMEs are looking for their recovery by possible funding options. It is urgently required to assess the financial status and security of MSMEs. Therefore, at this juncture embarking on Pre-packaged Insolvency Resolution Process (PPIRP) - a corporate restructuring strategy will prove to be a good choice for the revival of the disrupted companies or businesses in the long run.

VII. PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS (PPIRP)-

MSME sector is a crucial part of the Indian Corporate Sector and plays a pivotal role in the development or downfall of the economy. So, it is indispensable to have a sound, healthy and protected MSME sector. As is very clear from the RBI Report that Liquidation is the best option when the unviable businesses cannot be re-organized, which means that even after re-organization such unviable businesses will always remain and operate in losses. The businesses which are viable can be saved through corporate restructuring tools viz, mergers, acquisitions, amalgamations, compromises, joint ventures, disinvestments and arrangements, etc. Corporate restructuring helps a viable company to stay afloat as a going concern, prevents the destruction of organizational capital and protects the assets and liabilities until they are reallocated. These tools will also aid in cost reduction, preserving and enhancing the value of assets.

⁶Chad Otar, ‘The Impact of the Coronavirus on Small Businesses’ *Forbes Finance Council* (29 May, 2020) <https://www.forbes.com/sites/forbesfinancecouncil/2020/05/29/the-impact-of-the-coronavirus-on-small-business/?sh=3aed7a64cf84> accessed on 17 November 2022.

⁷ Dr. Agyeya Tripathi, ‘MSMEs in India – Post Covid Scenario’ *The Times of India* (21 October, 2021) <https://timesofindia.indiatimes.com/blogs/agyeya/msmes-in-india-post-covid-scenario/> accessed on 17 November 2022.

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The corporate sector in India is in the phase of restructuring revolution which is absolutely crucial if we are to prevent a deeper and more lasting downturn of the MSMEs. Accordingly, a sub-committee under the Chairmanship of Dr. M S Sahoo was formed by the Insolvency Law Committee (ILC) on April 24, 2020 which submitted recommendations in its report on October, 31, 2020⁸ to the Government of India. It recommended introducing a Pre-packaged Insolvency Resolution Process (PPIRP) for companies classified as Micro, Small and Medium Enterprises (MSMEs).

The Insolvency and Bankruptcy Code (Amendment) Act, 2021 has retrospective effect and is deemed to have come into force on April 04, 2021. It introduces Chapter III-A in the IBC consisting of Section 54A to 54P. A PPIRP is an ingenious corporate rescue process which furnishes both out-of-court settlement and judicial insolvency resolution process to MSMEs. The PPIRP is quoted as “Expedited reorganization proceedings” and “voluntary restructuring negotiations” by the UNCITRAL.⁹

VII.I. AIM & APPLICABILITY OF PPIRP –

The Preamble to the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 says that the aim of introducing PPIRP is to aid the MSMEs in getting over the hardships faced due to COVID. The PPIRP is directed to preserve and maximize the value of the assets of MSMEs. This provides efficient and easy insolvency resolution process to small distressed businesses such as MSMEs. In accordance with the ordinance, the corporate debtor must qualify as an MSME under Section 7(1) of the Micro, Small and Medium Enterprises Development Act, 2006 for filing an application of PPIRP.

VII.II. CEILING OF DEFAULT –

The default amount for PPIRP should be between Rs. 10 lakh and Rs. 1 crore and the Central Government may by way of notification alter the lower limit of the default amount to any amount below the upper limit. If the default is more than the amount prescribed then the MSME can initiate Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016 (IBC).

VII.III. PROCESS OF PPIRP -

PPIRP is a restructuring procedure wherein the creditors and Corporate Debtor (CD) concur on an informal agreement and then the restructuring agreement is submitted to the National Company Law Tribunal (NCLT) for its approval. So, the present promoters participate maintaining the board powers and the CD present a base resolution package which is then put to bidding process, via, Swiss challenge.

- **Eligibility for Ppirp** : A CD who is an MSME is eligible to apply for initiation of PPIRP if it- commits a default of at least Rs. 10 lakh, is eligible for submitting resolution plan under the IBC¹⁰, has not undergone PPIRP and has not completed a CIRP during three years preceding the insolvency initiation date, is not undergoing a CIRP and is not to be liquidated as per liquidation order under Section 33 of the IBC.
- **Pre-Commencement Requirements** : After fulfilling the basic eligibility criteria, the CD has to prepare a base resolution plan in conformity with Sections 54A(4)(c) and 54K of the Code and submit it to the Financial Creditors (FCs) for their approval. The approval of base resolution plan requires 66% majority votes and then

⁸ Ministry of Corporate Affairs, ‘Report of the Sub-Committee of the Insolvency Law Committee on Pre-packaged Insolvency Resolution Process’ *Insolvency and Bankruptcy Board of India* (31 October 2020) <https://ibbi.gov.in/uploads/resources/24c7fc03cdffff69960ce374416fa646.pdf> accessed on 18 November 2022.

⁹ United Nations Commission on International Trade Law, ‘UNCITRAL Legislative Guide on Insolvency’ *United Nations Commission on International Trade Law Publication* (05th edn, 2005) Vol 10 https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/05-80722_ebook.pdf accessed on 20 November 2022.

¹⁰ Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016), s. 29A.

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the CD has to fulfill the below-mentioned conditions before making an application for the initiation of the PPIRP:

Firstly, a meeting of its unrelated FCs should be convened¹¹ and they will propose and approve the appointment of an Insolvency Professional (IP) as the Resolution Professional (RP) for the pre-pack process. This RP will have to provide his/her consent to be appointed and fulfill eligibility requirements as provided in the Regulations.

Secondly, the CD is required to obtain internal approvals to initiate PPIRP. These are: a Declaration in Form P6 from the majority of the Directors and Partners stating the time-period not exceeding 90 days within which the application will be filed, the name of the proposed RP as approved by the unrelated FCs and a Special Resolution passed by the members approving the initiation of PPIRP.

Thirdly, the approval of unrelated FCs who are not less 66% of the value of debt is required. The unrelated FCs should be provided sufficient information like, declaration of the partners or directors, special resolution passed by members (Section 54A(2)(g) of the IBC) and the proposed base resolution plan for the resolution of the CD as a going concern.¹²

- **Admission of Application for Initiation of Ppirp** : For the initiation of PPIRP only the CD may file an application in Form 1 with the Adjudicating Authority (AA) (Section 54C of the IBC) within the stated time-period along with a report of the proposed RP in Form P8, confirming the eligibility of the CD and that the base resolution plan conforms with the requirements, record of default, consent of the proposed IP to act as RP in Form P1, approval of unrelated FCs in Form P4, Declaration by Directors/partners in Form P6, Member's resolution, etc. The antecedent transactions (under Chapter III or VI of the Code), if any should also be declared by the CD. The AA is required to admit the application within 14 days from the date of filing application, if the application is complete. The AA passes the order of admission (when the application is admitted) which marks the commencement of the PPIRP, also declares moratorium for the purposes of Sections 14(1) and 14(3) of the Code, appoints the RP and cause a public announcement to be made by RP (this announcement will be sent to Information Utilities (IUs), creditors, the Insolvency and Bankruptcy Board of India (IBBI) and published on website of the CD).
- **Post-Initiation Proceedings** : The PPIRP has to be completed within a time-line of 120 days (out of which 90 days is given to the approval of resolution by the Committee of Creditors (CoC) and 30 days is set out for adjudication by the AA) from the date of commencement of PPIRP (Section 54D of the Code).¹³ The management of the CD will continue to be vested in the Board of Directors or the partners of the CD and they shall make every effort to preserve the value of the property of the CD. The RP has to form a CoC, maintain a list of claims and prepare Information Memorandum. Within the period of 90 days from the admission of application, the RP should submit to the NCLT a resolution plan authorized by the CoC, else if no plan is authorized within this time-limit then the RP will have to apply with the NCLT for the termination of PPIRP after the lapse of the time-period. The CD is required to submit the base resolution plan with the RP within 2 days of PPIRP's commencement date and may also revise the plan if permitted by the CoC. Thereafter the RP has to make a public announcement in Form P9 and shall carry out the duties and exercise powers as are provided in Section 54F of the IBC.
- **Approval of Resolution Plan**: The base resolution plan may be approved by the CoC for its submission to the NCLT, if it does not impair the claims of OCs. If the CoC does not approves it, then the RP shall invite prospective resolution applicants for submitting resolution plans to compete with the base resolution plan. The

¹¹ *Id.*, ss. 54A(2)(e) and 54A(3).

¹² *Supra* note 10, s. 54A(2)(g).

¹³ *Supra* note 10, s. 54D.

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resolution plans shall be evaluated as per the requirements of the Code and the Regulations and the plan which gets the highest score shall be selected as the best alternate plan (BAP) for competing with the base resolution plan. If BAP is not significantly better than the base resolution plan, then the RP shall invite the submitters of the BAP to improve their plan. The CoC shall consider the resolution plan which gets the highest score for submission to the NCLT. Lastly, the resolution plan approved by the CoC is submitted to the AA for approval and once the plan is approved by the NCLT, then it shall have the same effect as a resolution plan approved under the CIRP.

• **Closure of Pre-Pack Process** : The PPIRP can come to an end in these 5 ways only:

First, resolution plan approved by the CoC is submitted to the AA and receives approval.

Second, the resolution plan submitted with the AA is rejected by the AA.

Third, an order to initiate CIRP is passed by the AA (when the CoC seeks the same resolution).

Fourth, Liquidation order is passed by the AA, when the CoC approves the resolution plan in which the management or control of the CD to a third party is not envisaged or the PPIRP is required to be terminated.

Fifth, when the 90 days time-period expires and no resolution plan is submitted to the NCLT for its approval.

VIII. BENEFITS OF PPIRP: A SAVIOUR OF MSME SECTOR -

PPIRP is induced in the IBC for providing a speedy, flexible, resilient and collaborative process for the resolution of MSMEs in financial distress. It is an informal understanding process, engaging the stakeholders and ending with a judicial outcome. Below-mentioned are the advantages of PPIRP:

- ***It is a more cost effective mode than CIRP*** and the base resolution plan provided by it acted as relief for the MSMEs when the worldwide MSMEs were facing adversities. No cost is to be paid to a RP as the management stays with the CD and it also avoids notable cost of litigation.
- ***Speedy Process***. The IBC provides that PPIRP is a 120 days time bound process. Additionally the IP is required to submit a resolution plan within a period of 90 days from the insolvency commencement date failing which the IP has to file for termination of PPIRP with the AA.
- ***Preliminary work is already done before filing an application with the NCLT for initiation of the PPIRP***. It commences only after approval of 66% of FCs for PPIRP is sought, name of RP is confirmed by the FCs and CD and the base resolution plan is prepared by the CD.
- ***Builds informal understanding between CD and FCs***. An informal understanding develops between CD and FCs as the initial spade work of working on an informal resolution plan is done before filing the application with the AA. It is to all intents and purposes a joint application by the CD and FCs.
- ***Faster approval of the resolution plan and reduction of burden on AA***. Since there is prior understanding between FCs and CD, hence the approval for the resolution plan is faster without opposition to it. It is a 'win-win' situation at the admission stage.
- ***Another advantage offered by this process is that the corporate debtor, i.e., the company stays in the control of the business till the completion of the process***. Hence, delivers a simple structure as compared with the CIRP where the RP takes control of the business. The RP has no idea about the management and business of the CD and so, it takes a lot of time for him to understand about the CD.
- ***Confidentiality of the PPIRP is maintained***. The whole process of PPIRP is concluded between the CD and the creditors and there is no provision of making advertisements or inviting resolution plans from other bidders. This helps in maintaining confidentiality (as it is far away from public scrutiny) and preserving the reputation of the CD.

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- **Base Resolution Plan is a good move to embark upon a resolution.** The management of the CD has all the inside information of the CD, therefore, the current management is in the best position to find a suitable route of recovery.
- **This process also ensures least disruption in the continuity of businesses, continuation of routine management of the CD and preservation of jobs.**
- **Incase no resolution plan is arrived at then there is no outcome from the PPIRP** which is not same as in CIRP because in CIRP liquidation is ordered by the Tribunal if resolution fails.

The main belief of introduction of PPIRP is that the CD is better positioned for reviving and managing the activities of the CD. That is why the present management of the CD stays in control and is allowed to submit a base resolution plan. This ensures that there is no erosion of the value of assets and the business continues as a going concern. But it is not wrong to say that it is the management of the CD which is responsible for the distressed company. Both the creditors and debtors work out an informal plan without initiating insolvency proceedings. Besides the positive aspects there are certain challenges in the implementation of PPIRP which is discussed in the next section.

IX. CHALLENGES IN THE IMPLEMENTATION OF PPIRP –

Several concerns surround the tangled features of PPIRP in resolving the distress of MSMEs effectively. It is a new provision inserted in the IBC and therefore its viability is yet to be tested. The challenges that come in the way of an efficient and effective PPIRP are as follows:

- **Insecure Creditors.** PPIRP has introduced debtor-in-possession form of regime, hence the creditors tend to lose faith in the whole process. The creditors are aware of the distressed company and so are not at ease when the same defaulting promoters are given the authority to retain control over the company. This reduces creditors' faith and may choose CIRP over PPIRP.
- **Erring Promoters.** The CD can be salvaged only if the promoters come with clean hands. For avoiding the payment of creditors, the promoters may indulge in unfair or fraudulent transactions for disposing off the assets of the CD. Then the creditors may choose to hand over the management to the RP or may initiate CIRP under the IBC. This will ultimately lead in the increment of resolution and litigation costs.
- **Fear of takeover of CD by the connected parties.** The connected or the related parties are barred in the IBC during CIRP but unfortunately there is no such debarring provision in the PPIRP. The related parties get a chance to present the plan for purchasing/taking over the business of the CD and hence it would be an improper restructuring. Even after the restructuring process such a party would be associated with the CD which is again another issue of concern for the CD.
- **Non-Participation of Operational Creditors.** The operational creditors are excluded in the PPIRP and from any participation in the CoC as well.
- **Absence of Moratorium Period.** There is no 'calm period' under the PPIRP unlike the CIRP which contains the provision of moratorium period. During this calm period the RP gets the chance for reviving the operational prospects of the CD without any interference from the CoC. This time period is beneficial in seeking approval of the best suited resolution plan. There are chances that for the recovery of their dues, the creditors may initiate legal proceedings against the CD under any forum and so the settlement will be severely impacted.
- **Raising Additional Capital.** The turnaround plan needs capital for a fresh start after the PPIRP ends. Since the MSMEs are not financially sound, so the banks or the lenders will have to bear heavy risk of recovering their money back. A significant issue is raising additional capital required for the revival plan.

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- **Overburdening NCLT.** Almost in every step of PPIRP, NCLT has a role to play. This results in increasing the burden of the NCLT.

X. IMPLICATIONS OF THE STUDY –

It is high time to restructure MSMEs for covering their 11% decline (April 2021) through the PPIRP turnaround mechanism introduced in the Indian legal landscape's IBC. The researcher advocates reducing costs, making best use of available talent and resources without wasting them, incorporating new technology, making expansion in new areas, eliminating business inefficiencies, etc. The researcher believes that the business restructuring of MSMEs will increase their value in the coming years, gain competitive advantage, eliminate inefficiencies, rebuilding structure of MSMEs from the ground by implementing an effective financial, operational and managerial framework, ensuring capital management and keeping debt load under control will make them profitable. It will certainly restore and consequently increase the creditworthiness of the MSMEs in the lending market.

XI. CONCLUSIONS AND FINDINGS -

In India we had various options namely- CIRP and Chapter XV of the Companies Act, 2013 (it provides for compromises, arrangements and amalgamations) but owing to the financial distress created by COVID-19, also the suspension of CIRP during this time and raising the default threshold to Rs. 1 crore, a dire need for the restructuring of the MSMEs was ascertained. PPIRP was consequently introduced, as it is said that 'Necessity is the mother of all inventions' for addressing the problem of resolution of insolvency of corporates classified as MSMEs under Section 7(1) of the MSME Development Act, 2006. The PPIRP is a well tailored insolvency resolution process for reviving MSMEs instead of time-consuming CIRP. MSMEs get an opportunity to start with a clean slate by quickly restructuring their liabilities.

The edifice on which PPIRP is built is the assumption that the company itself is the best judge for reviving its activities and making a resolution plan in this direction. Accordingly the CD prepares a BRP which is put up before the CoC for approval. If CoC disapproves the plan then new plans are invited from third parties. It is an alternate effective and efficient insolvency resolution process under the IBC for the MSMEs by ensuring a quicker, cost-effective process which also maximizes the outcomes under the resolution process. There are many advantages of a PPIRP scheme such as working out an insolvency resolution plan informally between the CD and CoC, minimum intervention of Court, less costs, small time of 120 days for resolution, management stays with the company, etc. So, its an appropriate hybrid configuration for providing summary process for the recovery of MSMEs and covers the shortcomings of CIRP.

Apprehensions exist concerning the success of the pre-pack process as it is in its nascent stage and is a developing aspect of the IBC. It is very difficult for the CD to raise money for its restructuring and the lenders will surely not be willing to take the risk. Another major issue surrounding PPIRP is that the process is more in favor of secured creditors and operational creditors also do not have much say in the negotiation process. Third criticism regarding PPIRP is that the aegis of moratorium is not there and so the creditors get an opportunity to enforce their rights even when the CD is in the process of negotiation of PPIRP. Transparency issue is another major point of concern because the existing management stays in control over the company, so there are chances that the management may alienate assets. This hits the veracity of the PPIRPP. It is also contended that since the existing management is responsible for pushing the company into insolvency hence, it should not be given a chance to stay in control over the company as it may be prejudicial to the interest of stakeholders. There is a risk of over-burdening of the NCLTs when the number of PPIRPs will increase, since NCLT is the adjudicating authority.

XII. SUGGESTIONS –

The implementation stage of PPIRP is a bit challenging phase but still its positive aspects outweigh its negative features. Even after having few challenges it can prove to be a blessing in disguise and can help in the survival of sick MSMEs. The researcher has found that the PPIRP has been given sharp claws and teeth for the insolvency

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resolution of stressed MSMEs. There are few suggestions made by the researcher for the better implementation of the PPIRP which are listed below:

1. **Increasing the Number of Nclt Benches and Judges** – NCLT is constituted by the Central Government with effect from June 01, 2016.¹⁴ At present there are 17 NCLT benches including one principal bench at New Delhi.¹⁵ It is urgently required to increase the number of NCLT benches, as it is clearly discernible from the Government data that at the end of May 2022, there stood 20,963 pending cases before the NCLT benches.¹⁶ This number of pending cases will keep on rising and will reach a dreadful number if the number of benches is not increased within time. It also said that 30 member positions and 270 officers and staff positions were vacant as at July 18, 2022. For timely disposal of cases within the timeline it is suggested that:
 - a. *In the major cities like Delhi, Mumbai and Ahmedabad, the number of NCLT benches should be increased and separate benches should be established for dealing with the PPIRP cases.*
 - b. *It is imperative to appoint more number of judges and other judicial staff in the NCLT.*
 - c. *The judges are significantly required to have expertise with commercial background and proper training.*
 - d. *Sector-specific experts with specialized knowledge and skills should be appointed to delve deeply into MSME specific matters.*
 - e. *Promoting online filing and hearing to enable fewer adjournments and more disposal of cases without absenteeism.*
2. **Participation of Operational Creditors and Keeping them Informed** – Operational creditors are the ones who supply goods and services to the CD. OCs are vital for the survival of the CD as without their support the CD cannot operate even a single day because the CD gets goods and services from the OCs for their daily operations. Hence, they should be regularly informed about every aspect of the PPIRP.
3. **Preventing Litigations Before and During Ppirp** – The creditors should be prevented from filing litigations against the CD before (i.e., at the negotiation stage) and after the PPIRP begins. There is no moratorium imposed before the admission of the insolvency proceedings, so it is demanded that no litigations should be allowed before the PPIRP begins.
4. **Strict Vigilance on the Management of the Cd** – There should be a strict vigilance mechanism on the management of the CD, so that the management does not get a chance to dispose off the assets of the company for their selfish motives. The structure should be built in a manner which is under scrutiny. As is seen in the case of CIRP that the management loses control over the company so that the assets of the CD cannot be alienated. Similarly whole proceedings of PPIRP should be kept open so that the process ends well for the benefit of all the stakeholders.

¹⁴ Companies Act, 2013 (Act no. 18 of 2013), s. 408.

¹⁵ *National Company Law Tribunal* [¹⁶ K. R. Srivats, 'NCLT had 20,963 pending cases as of May: Govt' *The Hindu Business Line* \(25 July, 2022\) <https://www.thehindubusinessline.com/economy/nclt-had-20963-pending-cases-as-of-may-govt/article65682266.ece> accessed on 22 November 2022.](https://nclt.gov.in/about-nclt#:~:text=The%20Central%20Government%20has%20constituted%20National%20Company%20Law,Chandigarh%2C%20Chennai%2C%20Guwahati%2CJaipur%2C%20Hyderabad%2C%20Kolkata%20and%20Mumbai.%20 accessed on 21 November 2022.</p>
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- 5. Support of the Lenders** – The lenders are mainly the banks and they should extend their support to the CD for its revival. Without additional money restructuring of the CD is impossible. It is recommended that at this crucial juncture the banks should also lower the interest rates for the CD.