

OPTIMISING RESOLUTION: ANALYSING PRE-PACKAGED INSOLVENCY'S ACADEMIC EFFICACY IN CREDITOR-DEBTOR RELATIONS

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Introduced in 2016, the Insolvency and Bankruptcy Code ('IBC') regulates insolvency and bankruptcy proceedings for a range of entities such as corporations, partnerships, and individuals. Against the backdrop of the evolving landscape of Alternative Dispute Resolution ('ADR') and Online Dispute Resolution ('ODR'), the emergence of pre-packaged insolvency has proven to be a pivotal relief mechanism. The pre-packaged insolvency model entails an informal collaborative process involving creditors and debtors to address concerns related to insolvency before the formal initiation of insolvency proceedings. Beyond being a responsive solution during the challenges posed by the COVID-19 pandemic, it serves as an expeditious resolution mechanism tailored for Micro, Small, and Medium Enterprises ('MSMEs') experiencing financial turmoil. Importantly, its scope extends beyond pandemic-induced stress, aiming for swift, cost-effective, and value-maximising resolutions that minimise disruption to ongoing business operations. This paper critically analyses the pre-packaged insolvency process, delving into its advantages and its pivotal role in preserving the relationships between creditors and debtors. It offers insights into how this mechanism achieves its objectives, providing a foundation for a seamless and effective resolution within 120 days from initiation.

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I. INTRODUCTION

The modern legal landscape is driven by rapid technological progress and shifting societal forces, the pursuit of swift and efficient legal mechanisms is evident across various domains.¹ The Companies Act of 2013 initially functioned as the principal legislation overseeing corporate matters in India until the introduction of the Insolvency and Bankruptcy Code ('IBC') in 2016. This comprehensive legislation heralded a new era in the resolution of corporate insolvency issues. This paper seeks to analyse the academic efficacy of the Pre-Packaged Insolvency Resolution Process ('PPIRP') as a mechanism for resolving creditor-debtor disputes in the evolving context of insolvency law. By critically examining the framework's ability to provide efficient, cost-effective, and value-maximising resolutions, the study aims to offer insights into its role as a pivotal solution in preserving creditor-debtor relations. Through this evaluation, the paper will contribute to the broader academic discussion on optimising legal mechanisms to address financial distress, especially for Micro, Small, and Medium Enterprises ('MSMEs') which are essential contributors to the Indian economy, playing a crucial role in fostering economic expansion and generating employment opportunities. However, the unprecedented challenges posed by the Covid-19 pandemic necessitated tailored solutions to address the unique vulnerabilities of these enterprises.² In response, in the year 2021 a pre-packaged insolvency resolution mechanism for corporate persons classified as MSMEs under Section 7 sub-section (1) of the Micro, Small and Medium Enterprise Development Act, 2006 was introduced to provide a specialised framework for alleviating distress among small and mid-sized businesses, which may be extended to all body corporates in coming times with stricter measures.³

The Corporate Insolvency Resolution Process ('CIRP') under the IBC, while designed to facilitate the orderly resolution of insolvency cases, has faced

¹ MP Ram Mohan and Urmil Shah, 'Director Liability Framework During Borderline Insolvency and Corporate Failure in India' (2022) 18(1) *University of Pennsylvania Asian Law Review* 32 <<https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1089&context=alr>> accessed 27 October 2024.

² Elena Cirmizi, Leora Klapper and Mahesh Uttamchandani, 'The Challenges of Bankruptcy Reform' (2010) *World Bank Policy Research Working Paper* 5448 <<https://documents1.worldbank.org/curated/ar/556211468331212706/pdf/WPS5448.pdf>> accessed 27 October 2024.

³ Santosh Kumar and Vaishali Jain, 'Pre-Packaged Insolvency: Exploring an Alternative Framework for Bankruptcy Resolution in India' (2022) 107(1) *The Electrochemical Society Transactions* 4129 <<https://doi.org/10.1149/10701.4129ecst>> accessed 27 October 2024.

criticism for its sluggish pace. According to data from the Insolvency & Bankruptcy Board of India ('IBBI'), About 68% of the cases have exceeded 270 days marks as of October 15, 2024⁴, which shows that this process places a burden on the adjudicatory bodies such as the National Company Law Tribunal ('NCLT'). The PPIRP was introduced to address delays and enhance efficiency in resolving disputes. It serves as an informal process worked out for the debt resolution by the creditor and the debtor.⁵ Inspired by international practices, particularly those in the US and UK, PPIRP offers a faster and more streamlined alternative to traditional insolvency proceedings. Unlike the conventional CIRP, which operates within a statutory timeline of 330 days, PPIRP aims to conclude proceedings within 120 days, thereby expediting outcomes.⁶

Despite its potential benefits, the adoption of PPIRP has been hindered by reluctance among financial institutions, primarily due to concerns regarding voluntary concessions and informal agreements.⁷ Nevertheless, its introduction marks a significant step towards promoting efficient and value-maximising resolutions for distressed companies, particularly MSMEs. The PPIRP represents a pre-litigation settlement mechanism, facilitating organic negotiations and minimising judicial intervention. While its efficacy is yet to be fully realised, addressing legal intricacies and policy considerations is crucial for its successful implementation and broader acceptance within the legal community.⁸

II. ADVENT AND OPERATIONAL MECHANICS OF PPIRP

The pre-packaged insolvency process is an innovative mechanism that allows debtors to devise a resolution plan prior to the commencement of insolvency proceedings and promptly implement it thereafter.⁹ This extrajudicial settlement

⁴ Insolvency and Bankruptcy Board of India, *Discussion paper on amendments to Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Process) Regulations, 2016* (2024).

⁵ Insolvency and Bankruptcy Board of India, *Annual Report 2020-2021* (2021).

⁶ *ibid.*

⁷ MP Ram Mohan and Vishakha Raj, 'Pre-packs in the Indian Insolvency Regime' (2020) Indian Institute of Management Ahmedabad Working Paper 2020-0803 <<http://hdl.handle.net/11718/25462>> last accessed 27 October 2024.

⁸ Santosh Kumar and Vaishali Jain (n 4).

⁹ Hiteshkumar Thakkar and Krishna Agarwal, 'Pre-Packaged - Integration of Debtor Centric Model with Creditor in Control Model: Indian Insolvency Regime' (2022) 93(1) Indian Institute of Banking Finance <<https://iibf.org.in/documents/BankQuest/jan-mar2022/1.%20Pre-packaged%20-%20Integration%20of%20Debtor%20centric%20module%20with%20creditor%20in%20control%20model%20-%20Indian%20Insolvency%20Regime%20->

avenue offers debtors a means to resolve disputes amicably, circumventing the protracted, costly, and burdensome court procedures.¹⁰ Its inclusion in the IBC underscores its significance in safeguarding the interests of MSMEs and creditors alike, streamlining the cumbersome steps inherent in the traditional process that is CIRP.¹¹ The first PPIRP case in India was *GCCL Infrastructure and Projects Lts.*,¹² which was accepted by the NCLT of Ahmedabad. Despite the bar under Section 29A, an exemption for MSMEs under Section 240A for the submission of the resolution plan exists making it easier for the entities to get their dispute resolved faster.

The emergence of the PPIRP represents a significant development within the Indian insolvency framework. This mechanism allows corporate debtors to propose and negotiate a resolution plan with creditors before the formal commencement of insolvency proceedings, thereby minimising the delays and disruptions associated with conventional insolvency processes. The Report of the Insolvency Law Committee's Sub-Committee (2020)¹³ played a pivotal role in recommending the adoption of this framework, particularly in light of the challenges exacerbated by the COVID-19 pandemic.

The 2020 Sub-Committee Report identified several inefficiencies in the Corporate Insolvency Resolution Process ('CIRP'), particularly for MSMEs.¹⁴ It recommended the introduction of PPIRP as a hybrid mechanism that would offer the advantages of both informal out-of-court negotiations and the formal, structured insolvency process under the IBC. The report emphasised the need for debtor-in-possession provisions to maintain the management's control over the enterprise during the resolution process, combined with creditor oversight and judicial approval. By reducing the reliance on the NCLT for each step, PPIRP seeks to expedite the resolution of insolvency within the statutory timeframe, while also preventing the erosion of the debtor's value.

[%20Dr.%20Hiteshkumar%20Thakkar%20and%20Ms.%20Krishna%20Agarwal.pdf](#)> accessed 27 October 2024.

¹⁰ Insolvency and Bankruptcy Board of India (Pre-packaged Insolvency Resolution Process) Regulations 2021.

¹¹ Institute of Insolvency Professionals, *Insolvency and Bankruptcy Journal* (vol 6, ICSI Resolve, 2022).

¹² *GCCL Infrastructure & Projects Ltd*, 2021 ibclaw.in 562 NCLT.

¹³ Sub-Committee of Insolvency Law Committee, *Pre-packaged Insolvency Resolution Process* (File No. 30/20/2020-Insolvency Section, 2020).

¹⁴ *ibid.*

This innovative mechanism reflects the evolution of India's insolvency framework, with PPIRP being designed to specifically address the unique challenges faced by MSMEs. As noted by the 2020 Report, this process was crucial to ensuring quicker resolutions and preserving the value of distressed companies, especially during times of widespread economic disruption. The initiation of the prepackaged insolvency process is a voluntary decision made by the debtor, who, along with creditors, jointly seeks approval from the NCLT for the resolution plan they have amicably negotiated.¹⁵

PPIRP advocates mutual negotiations for dispute resolution with minimal adjudicatory intervention, thereby fostering expeditious, cost-effective, and minimally disruptive resolutions, conducive to legal clarity as deemed appropriate by the Adjudicating Authority ('AA').¹⁶ The process mandates approval from at least 66% of creditors for initiation and applies to defaults exceeding a minimum threshold of ten lakhs (Rs.10,00,000).¹⁷ Notably, the provisions governing PPIRP are delineated within Chapter IIIA of the IBC, tailored particularly to cater to the unique needs of MSMEs.¹⁸ The initiation can be done only when conditions laid down under Section 54A are met.¹⁹ The AA is then required to either accept or reject the PPIRP application within 14 days. Upon admission, the AA declares an adjournment under Section 14 of the IBC and issues a public announcement.²⁰

The entire PPIRP process must be concluded within 120 days, with the Committee of Creditors ('CoC') given 90 days to review and approve the resolution plan. The remaining 30 days are allotted for seeking approval from the Adjudicating Authority.²¹ The AA has the authority to approve or reject the

¹⁵ Pre-packaged Insolvency Resolution Process Regulations 2021 (n 11).

¹⁶ The Institute of Chartered Accountants of India, Committee on MSME and Startup, 'Pre-Packaged Insolvency Resolution Process (PPIRP) Framework for Micro Small and Medium Enterprises' (2021).

¹⁷ Insolvency and Bankruptcy Code 2016, s 30(6).

¹⁸ Binoy J. Kattadiyil and Prashant Kumar, 'Future Path for Pre-Packaged Insolvency Resolution in India' (2020) 9(3) *International Journal of Multidisciplinary Educational Research* <https://icsiip.in/panel/assets/images/research_articles/16331677144482Future%20path%20for%20Pre-Packaged%20Insolvency%20Resolution%20in%20India%20%20-%20March,%202020.pdf> accessed 27 October 2024.

¹⁹ *ibid.*

²⁰ Oitihjya Sen, Shreya Prakash and Debanshu Mukherjee, 'Designing a Framework for Pre-Packaged Insolvency Resolution in India: Some Ideas for Reform' (Vidhi Centre for Legal Policy 2020) <<https://vidhilegalpolicy.in/wp-content/uploads/2020/07/Report-on-Pre-Packaged-Insolvency-Resolution.pdf>> accessed 27 October 2024.

²¹ Elena Cirmizi., Leora Klapper, and Mahesh Uttamchandani (n 3).

PPIRP plan, ensuring legal integrity. Importantly, PPIRP does not entail a change in management or corporate control, as stipulated in subsections (4) or (12) of Section 54K of the IBC.²² This process is particularly beneficial for MSMEs as it offers a cost-effective, efficient, and mutually agreed mechanism for debt resolution. It reduces the time and expense streamlined and cost-efficient mechanism for MSMEs. It reduces the time and expense typically associated with insolvency proceedings by enabling debtors and creditors to negotiate a resolution plan prior to formal court involvement, The debtor-in-possession framework, minimal litigation, and quicker creditor approvals contribute to its cost-effectiveness, while the reduced dependency on the NCLT makes the process more efficient, allowing businesses to maintain operations during financial distress. The reliance on the debtor-in-possession and creditor-in-control model, helps to safeguard the corporate debtor from asset and goodwill depreciation.²³ Furthermore, PPIRP aids MSMEs in navigating economic stress induced by the pandemic by minimising litigation and preserving jobs. All in all, PPIRP represents an expedient alternative dispute resolution mechanism, facilitating informal negotiations between parties and obtaining approval from the AA.²⁴ Its inclusion serves as a breath of fresh air for companies who may now opt for a way which allows them amicable and hassle-free resolution in contrast with the lengthy court proceedings.²⁵

III. EMERGENCE OF PPIRP IN RESPONSE TO THE LIMITATIONS IN CORPORATE INSOLVENCY RESOLUTION PROCESS

Upon meticulous examination of India's judicial landscape, it becomes evident that a multitude of cases linger unresolved, exacerbating the backlog and impeding timely dispute resolution. The court expressed its disapproval regarding the protracted nature of judicial proceedings, attributing this to the insufficient infrastructure within the judicial system. The delay, it held, undermines the very essence of justice, emphasising that when justice is

²² Neeti Shikha and Urvashi Shahi, 'Policy Inputs on Report of Subcommittee on Prepacks Centre for Insolvency and Bankruptcy' (Indian Institute of Corporate Affairs 2021) <<https://iica.nic.in/images/Prepacks>> accessed 27 October 2024.

²³ RP Vats and Srijal Sinha, 'Pre-Packaged Insolvency Resolution Process Under the Insolvency and Bankruptcy Code' (*Mondaq*, 12 May 2021) <<https://www.mondaq.com/india/insolvencybankruptcy/1067642/pre-packaged-insolvency-resolution-process-under-the-insolvency-and-bankruptcy-code>> accessed 27 October 2024.

²⁴ Sub-Committee of Insolvency Law Committee (n 14).

²⁵ Insolvency and Bankruptcy Code (Amendment) Ordinance 2021.

deferred, it effectively constitutes a denial of justice.²⁶ This backlog not only burdens the parties involved but also disrupts societal order and imposes substantial financial costs.²⁷ There are a limited number of cases pertaining to this process as of now, one of the notable cases is that of *Ruchi Soya Industries Limited*,²⁸ in which the company was admitted into CIRP in December 2017, which spanned nearly for two years due to the challenges in resolution and multiple disputes, after a long and complex process of CIRP, the resolution plan was approved by the NCLT in the year 2019. This long delay of two years highlighted the inefficiencies in traditional CIRP. The implementation of the resolution plan was delayed considerably due to legal challenges and other reasons including the withdrawal of Adani Wilmar from the process due to the delays demonstrating the need for a faster, pre-negotiated process like PPIRP to avoid such delays. As an aftermath in the year 2020, the PPIRP mechanism was introduced which served as a ray of hope for all such entities to escape from the burdensome traditional CIRP process. In 2021, the company submitted a resolution plan under PPIRP, and the plan was accepted in a span of two months, with the successful implementation of the resolution plan. Thus, proving that the successful implementation of the PPIRP mechanism will lead to a revolution in the dispute resolution mechanism of India.²⁹

The protracted nature of court proceedings, coupled with resource scarcity, perpetuates this cycle of unresolved cases. In reaction to the deficiencies of the CIRP, the PPIRP has emerged as an alternative mechanism for addressing insolvency issues.³⁰ This process presents numerous advantages over traditional court proceedings, including:

Contributes to confidentiality maintenance and cost efficiency: One of the paramount advantages of the PPIRP lies in the confidential nature of negotiations, enabling the parties to engage in candid dialogue and articulate their concerns or grievances.³¹ This confidentiality reduces the chances of

²⁶ *Hussainara Khatoon & Ors v Home Secretary, State of Bihar*, 1980 1 SCC 98.

²⁷ *ibid.*

²⁸ *Ruchi Soya Industries Limited v Joint Commissioner*, 2017 SCC OnLine Cal 6187.

²⁹ Aurelia Gurrea-Martinez, 'The Rise of Pre-Packs as a Restructuring Tool: Theory, Evidence and Policy' (2023) 24(1) *European Business Organization Law Review* 93-116 <<https://link.springer.com/article/10.1007/s40804-022-00261-3>> accessed 27 October 2024.

³⁰ Elena Cirmizi, Leora Klapper, and Mahesh Uttamchandani (n 3).

³¹ *Insolvency and Bankruptcy Code 2016*, s 30(6).

speculative media attention and potential damage to the debtor's reputation.³² Given the exorbitant costs and time consumption associated with court proceedings, this approach proves to be cost-effective, substantially reducing legal expenses and thereby offering economic benefits to all involved parties.³³

Prompt Disposal: The negotiation and finalisation of the process occur prior to filing with the NCLT, resulting in expedited resolution compared to the conventional CIRP, which often entails a protracted delivery of justice.³⁴ This expedited process aids in the preservation of jobs by facilitating swift resolution.

Ensures minimal disruption to the debtor while actively engaging the creditor: Minimal disruption to the debtor occurs as negotiations precede the formal initiation of the process. The creditor is to participate actively in both the process and the formulation of the resolution plan, fostering feasibility and enabling efficient collaboration among stakeholders.³⁵

Adaptability and Legal Clarity: The PPIRP facilitates debtors and creditors to formulate agreements and strategise based on their unique requirements, while ensuring clarity through approval from the Adjudicating Authority, thereby offering assurance to all involved parties.

Preservation of Management Control: The PPRIP aims to preserve management control, with the corporate debtor, in contrast to CIRP where management changes occur during the resolution phase.³⁶ This procedure helps in protecting the corporate debtor's assets and reputation by promptly and effectively resolving disputes, thereby reducing the decline in asset value.

To fulfil the outlined objectives within the statutory provisions, the establishment of a robust resolution system for vital enterprises in India is imperative, and this process represents a significant stride in that direction.³⁷

³² Priyadarsini TP and Vishnu Suresh, 'Accommodating Pre-Packs in the Indian Insolvency Regime' (2018) 5 RGNUL Financial and Mercantile Law Review 145 <<https://www.rfmlr.com/5-issue-2-part-1>> accessed 27 October 2024.

³³ Urmika Tripathi, 'A Critical Analysis of India's Pre-Pack Regime for MSMEs' (2023) 33(1) International Insolvency Review <<https://doi.org/10.1002/iir.1517>> accessed 27 October 2024.

³⁴ Aparna Ravi, 'Prepacks Under the IBC: A Tussle Between Speed and Fair Process' in Susan Thomas (ed), *Insolvency and Bankruptcy Reforms in India* (1 Springer Nature Singapore 2022).

³⁵ *ibid.*

³⁶ Sanjana Rao, 'Insolvency Procedures - Investigating the Pre-Pack Paradigm in India' (2019) 10(69) The Law Review Government Law College <<https://www.glcmbai.com/lawreview/volume10/Sanjana%20Rao.pdf>> accessed 27 October 2024.

³⁷ Insolvency and Bankruptcy Code 2016, s 30(6).

Moreover, the PPIRP process offers numerous advantages, with the potential for additional benefits to emerge as further insights are gained into this novel resolution mechanism.

IV. CONSIDERATIONS AND LEGAL HURDLES SURROUNDING PPIRP

The PPIRP process in India presents a promising alternative to the traditional CIRP. However, it is not without its challenges and drawbacks, which warrant careful consideration and mitigation strategies. As with any new initiative, PPIRP faces the hurdle of lacking precedent and established literature, leading to ambiguity and multiple interpretations of applicable laws and regulations.³⁸ This ambiguity poses a risk of inconsistency and uncertainty in decision-making processes. Moreover, while PPIRP offers expedited resolutions, this quick turnaround may result in limited judicial oversight.³⁹ Unlike the thorough examination conducted by judges in traditional proceedings, the accelerated nature may compromise the protection of stakeholder's rights and interests.⁴⁰

The effectiveness of negotiations in resolving disputes among creditors may be questioned, thus, without a clear mechanism for dispute resolution, there is a potential for delays and deadlock, further complicating the resolution process.⁴¹ To add to this there is a concern that the process could be susceptible to abuse by debtors seeking to evade obligations or by creditors seeking to exert undue influence. The absence of safeguards against such abuse raises questions about the fairness and integrity of the insolvency framework. Furthermore, certain stakeholders, such as minority shareholders, may have limited participation and influence in the process, potentially marginalising their interests. This lack of inclusivity could undermine the legitimacy of the resolution plan.⁴² Debtors may face inadequate protection of their rights, risking coercion into accepting unfavourable resolution plans or facing liquidation

³⁸ Ananya Awasthi and Deesha Reshmi, 'The Evolving Indian Insolvency Law Regime in a Pandemic Era' (2022) Social Science Research Network <<http://dx.doi.org/10.2139/ssrn.4292365>> accessed 27 October 2024.

³⁹ *ibid.*

⁴⁰ Priyadarsini TP and Vishnu Suresh (n 33).

⁴¹ Shakti Deb and Indrajit Dube, 'Insolvency and Bankruptcy Code 2016: Revisiting with Market Reality' (2021) 63(1) International Journal of Law and Management 125-146 <[10.1108/IJLMA-05-2020-0133](https://doi.org/10.1108/IJLMA-05-2020-0133)> accessed 27 October 2024.

⁴² Mahesh Koolwal and Devashree Awasthy, 'IBC 2016 - Ways Ahead: Strengthening the Process' (2020) 19(4) Elementary Education Online 5038 <<https://ilkogretim-online.org/index.php/pub/article/view/5892>> accessed 27 October 2024.

consequences. Consensus among creditors and debtors may also prove challenging, particularly when one party is unwilling to negotiate in good faith.⁴³

There is a notable absence of consideration for the future well-being of the company emerging from a pre-pack sale, with insolvency practitioners solely focused on creditor interests.⁴⁴ Addressing these multifaceted challenges necessitates the establishment of a robust regulatory framework to ensure the effective implementation of PPIRP while safeguarding the rights of all the parties involved.⁴⁵ While this process offers the promise of expeditious resolutions, grappling with these challenges underscores the imperative for comprehensive legal and regulatory measures to fortify the process and engender trust in its efficacy and fairness.⁴⁶

V. INTERNATIONAL PERSPECTIVES ON PPIRP

India has incorporated the PPIRP (also known as pre-packs) mechanism from different legal systems, particularly the United States and the United Kingdom,⁴⁷ where it is widely recognised. For example, in the United States, Chapter 11 of the Bankruptcy Code allows companies to opt for pre-packaged insolvency arrangements, aiding in streamlined restructuring and swift emergence from bankruptcy proceedings. Similarly, the United Kingdom permits pre-pack arrangements, allowing companies to reach agreements with creditors before initiating formal insolvency proceedings, thereby providing an avenue for amicable resolution between parties. In addition to these jurisdictions, Singapore has recently enacted reforms under the Insolvency, Restructuring and Dissolution Act 2018, influenced by the US and UK models. Singapore's system emphasises debtor-led restructuring while maintaining a robust framework for creditor protection, allowing distressed companies to negotiate pre-packaged solutions before entering formal insolvency. This

⁴³ *Swiss Ribbons Pvt Ltd v Union of India*, 2019 4 SCC 17.

⁴⁴ Alok Kumar Kuchhal and Kshamta Chauhan, 'The Novel Coronavirus and its Aftermath on the Insolvency System' (2021) 12(6) *Turkish Online Journal of Qualitative Inquiry* 4638-4652 <<https://www.tojqi.net/index.php/journal/article/view/3636>> accessed 27 October 2024.

⁴⁵ Shaina Zabin and Rashmi K.S., 'Insolvency Proceedings & Impact of Covid-19: Insolvency & Bankruptcy Code, 2016, Divulging the Loopholes' (Alliance School of Law 2021) <<http://192.168.20.106:8080/xmlui/handle/123456789/506>> accessed 27 October 2024.

⁴⁶ Sanjana Rao (n 37).

⁴⁷ Nocilla, A., 'Pre-Packaged Sales and the Destruction of Value: The View from the United Kingdom,' *International Insolvency Review*, vol. 26, no. 1, 2017, pp. 5-35.

approach balances expeditious recovery with preserving creditors' interests, positioning Singapore as a prominent hub for restructuring in Asia.

Similarly, Canada employs pre-packaged sales under its Companies' Creditors Arrangement Act ('CCAA'), focusing on flexibility in restructuring while maintaining significant judicial oversight. This ensures that debtors can pursue restructuring with greater control, while courts safeguard the interests of creditors, preventing the undervaluation of assets. Canada's approach prioritises preserving the business's value, allowing financially troubled entities to restructure without liquidating their assets hastily.

Other jurisdictions, including Singapore and Canada, offer pre-pack processes as a means for distressed parties to resolve their issues before embarking on formal proceedings, thereby circumventing the complexities associated with traditional methods. This approach is widely regarded to expedite the recovery process for financially troubled entities, offering them a pathway to early resolution and rehabilitation. This procedure is relatively novel in India and is still evolving, yet it has emerged as a noteworthy transformation in the country's dispute resolution framework.⁴⁸

VI. WAY FORWARD

Commencing from the standpoint of acknowledging the manifold benefits of the PPIRP process, it becomes imperative to recognise the accompanying challenges that necessitate meticulous regulatory attention for optimal functioning. Regulatory bodies need to formulate clear and comprehensive laws and regulations under the IBC to outline the procedures and standards for PPIRP, thus providing clarity and simplifying interpretation, thereby minimising ambiguity in the process.⁴⁹ Since PPIRP is at a nascent stage in India and such regulations do not currently exist, these measures will streamline the process and safeguard the rights and interests of debtors and creditors alike. There is a pressing need for prompt implementation of mechanisms to enhance judicial oversight during the process, which could be achieved by the timely appointment of the resolution professional by the adjudicating officer or by establishing specialised courts to review and approve resolution plans. This would ensure that stakeholders' rights are upheld and prevent any potential violations. In addition to negotiation, the introduction of alternative dispute

⁴⁸ *ibid.*

⁴⁹ Elena Cirmizi, Leora Klapper, and Mahesh Uttamchandani (n 3).

resolution mechanisms like mediation or online dispute resolution systems can help address conflicts among creditors and facilitate smoother negotiations, thereby expediting the resolution process.

To promote transparency and accountability, regular reporting and disclosure of information must be mandated, fostering trust and confidence among the involved parties, as well as mitigating the risk of abuse or manipulation.⁵⁰ Establishing safeguards to protect debtors' rights, such as providing independent representation or advisory services to ensure they are not coerced into accepting unfavourable terms. Such measures are essential to maintain fairness and prevent exploitation during the process. Active participation by all the significant parties, including shareholders, offers opportunities for them to express their concerns and interests, which can then be addressed through formal redressal mechanisms. This inclusive approach ensures that shareholders feel heard, and their perspectives are considered during negotiations, thereby minimising discrepancies. Lastly, a system should be instituted to regularly review and monitor the effectiveness of the PPIRP framework. This system would identify challenges and shortcomings, enabling ongoing improvements. Regular evaluations, Stakeholder feedback, and periodic reviews can ensure the framework stays effective and meets the needs of both debtors and creditors. This adaptive approach enables policymakers to make necessary adjustments and enhancements over time, fostering a more efficient process through iterative refinement and accumulated experience.

Under the present IBC laws, insolvency professionals are still evolving the necessary expertise required over time. The UK as well as US pre-pack laws⁵¹ have evolved over time rather than being promulgated suddenly. The application of PPIRP in India will require more expertise by the professionals as a higher degree of control is required under this process.

VII. CONCLUSION

Disputes are an inherent aspect of daily life, particularly when individuals of differing perspectives are involved, given the principle of individuality where no two individuals are identical. The objective lies in resolving these disputes to foster an amicable environment and alleviate growing societal concerns. Thus, a robust dispute resolution mechanism becomes imperative, especially within the

⁵⁰ Aurelia Gurrea-Martinez (n 30).

⁵¹ MP Ram Mohan and Vishakha Raj (n 8).

context of companies where numerous minds collaborate daily. In such a dynamic environment, frequent disputes are inevitable. However, the conventional court route proves time-consuming and burdensome, particularly for MSMEs lacking the resources for prolonged legal battles. Recognising the critical role of MSMEs in the economy, the introduction of the Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code Amendment Act of 2021⁵² aimed to address these challenges. The Pre-Packaged Insolvency Resolution Process (PPIRP) emerges as a fast and efficient alternative, allowing companies to settle disputes outside the courtroom before formal proceedings commence. This innovative approach marks a significant advancement in dispute resolution mechanisms, offering parties a chance to maintain relationships and preserve social standing. For instance, consider a scenario where a small technology startup faces a disagreement with its software development partner regarding project deadlines and deliverables. Instead of resorting to lengthy court battles, the parties can opt for PPIRP, facilitating prompt negotiations and preserving their professional relationship. Similarly, in the case of a family-owned manufacturing business experiencing financial difficulties, PPIRP can offer a swift resolution to disputes among family members while safeguarding the company's legacy and reputation. While PPIRP is still in its nascent stage, its potential is evident. Proper regulation and consideration of challenges are essential for its success. As companies familiarise themselves with PPIRP, insolvency professionals must carefully evaluate and refine the process to enhance efficiency while ensuring legal compliance. In doing so, PPIRP can serve as a streamlined resolution mechanism, facilitating amicable negotiations and upholding the reputation of the parties involved.

⁵² Insolvency and Bankruptcy Code (Amendment) Act 2021.