



## The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021

The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 (“**Ordinance**”), promulgated on 4 April 2021, adds a new Chapter III-A to the Insolvency and Bankruptcy Code, 2016 (“**Code**”). The Chapter introduces a new pre-packaged insolvency resolution process (“**PPIRP**”) for micro, small, and medium enterprises (“**MSMEs**”). The key features of the PPIRP are discussed below.

### Objectives of the PPIRP

The Preamble of the Ordinance notes the impact that Covid-19 has had on businesses, financial markets and economies all over the world. In this context, and keeping in mind the unique challenges faced by MSMEs and their significant contribution to the Indian economy, the Preamble notes that an efficient alternative insolvency resolution process for MSMEs under the Code is required. Given this, the PPIRP is introduced to ensure quicker, cost-effective and value maximising outcomes for all the stakeholders, in a manner which is least disruptive to the continuity of their businesses and which preserves jobs.

### Eligibility

Only those corporate debtors (“**CDs**”) that have committed default of at least INR 1 lakh (or such higher amount as may be notified) and are defined as MSMEs under Section 7 of the MSME Development Act, 2006 are eligible for the PPIRP. MSMEs are defined as follows:

- a micro enterprise is one where the investment in Plant and Machinery or Equipment does not exceed one crore rupees and turnover does not exceed five crore rupees;
- a small enterprise is one where the investment in Plant and Machinery or Equipment does not exceed ten crore rupees and turnover does not exceed fifty crore rupees;
- a medium enterprise is one where the investment in Plant and Machinery or Equipment does not exceed fifty crore rupees and turnover does not exceed two hundred and fifty crore rupees.

Additionally,

- the CD must not have undergone PPIRP or corporate insolvency resolution (“**CIRP**”) during the period of three years preceding the initiation date;
- the CD should not be undergoing a CIRP;
- no order requiring it to be liquidated should have been passed under section 33; and
- the CD should be eligible to submit a resolution plan under section 29A.

### Initiation

A PPIRP may be initiated by a corporate applicant as under:

- the unrelated financial creditors of the CD must propose the name of the insolvency

### In this Issue

Objectives of the PPIRP

Eligibility

Initiation

Admitting an Application

Timelines

Debtor in Possession

Duties and Powers of the RP

List of Claims and Preliminary Information Memorandum

Committee of Creditors

Choosing a Resolution Plan for voting by the CoC

Approval of a Resolution Plan

Termination of the Process

Liquidation

Conversion into CIRP

Figure 1: Process flow of the PPIRP



# Insolvency & Bankruptcy

- professional to be appointed as resolution professional (“**RP**”) for conducting the PPRIP, with the approval of 66% in value of the financial debt due to such creditors;
- the majority of the directors or partners of the CD, as the case may be, have made a declaration, stating inter alia, that (a) the CD shall file an application for initiating PPRIP within a definite time period not exceeding ninety days, (b) that the PPRIP is not being initiated to defraud any person; and (c) the name of the insolvency professional proposed and approved to be appointed as RP;
- the members of the CD have passed a special resolution, or at least three-fourth of the total number of partners, as the case may be, of the CD have passed a resolution, approving the filing of an application for initiating PPRIP;
- the CD has provided its unrelated financial creditors with (a) the declaration referred to in (v), (b) the special resolution or resolution referred to in (vi), (c) a base resolution plan which conforms to the requirements referred to in the Ordinance, and such other conditions as may be specified; and (d) such other information and documents as may be specified.
- the unrelated financial creditors of the CD, having received all the aforementioned information, representing 66% in value have approved the initiation of the PPRIP.

## Admitting an Application

If a corporate applicant who meets all the eligibility criteria submits a complete application before the National Company Law Tribunal having jurisdiction (“**NCLT**”), the NCLT must admit or reject the application within fourteen days. In case of a defect in the application, the applicant may be given seven days to correct any errors in the application. In making its decision the NCLT will be supported by the report of the RP confirming that the CD is eligible for the PPRIP and that the base resolution plan conforms to the specified requirements. Once an application has been admitted, (a) a limited moratorium (applying only Sections 14(1) and (3) of the Code) is declared, (b) the insolvency professional suggested in the application is appointed as the RP if no disciplinary action is pending against her, and (c) a public announcement is made declaring the initiation of the PPRIP.

## Timelines

The PPRIP must be completed within 120 days from the commencement date. The RP must submit the resolution plan, as approved by the committee of creditors, to the NCLT within a period of 90 days from the PPRIP commencement date. The NCLT must approve a plan within 30 days. If no resolution plan is approved by the committee of creditors (“**CoC**”) or NCLT within these periods, the RP shall, on the day after the expiry of such time period, file an application with the NCLT for termination of the PPRIP.

## Debtor in Possession

On admission of the application, the management of the affairs of the CD shall continue to vest in the Board of Directors or the partners, as the case may be, of the CD. The management will ensure that the value of the debtor is preserved and that it is maintained as a going concern. However, the Board of Directors or partners will require the approval of the CoC for any actions listed under Section 28 of the Code, as well as of the members where required by contract or statute.

Moreover, at any time before approval of a resolution plan, the CoC by a 66% vote may resolve to vest the management of the CD with the RP. The RP shall make an application for this purpose to the NCLT, who will in turn assess whether (a) the affairs of the CD have been conducted in a fraudulent manner; or (b) there has been gross mismanagement of the affairs of the CD. If so, it shall pass an order vesting the management of the CD with the RP.

## In this Issue

### Objectives of the PPRIP

### Eligibility

### Initiation

### Admitting an Application

### Timelines

### Debtor in Possession

### Duties and Powers of the RP

### List of Claims and Preliminary Information Memorandum

### Committee of Creditors

### Choosing a Resolution Plan for voting by the CoC

### Approval of a Resolution Plan

### Termination of the Process

### Liquidation

### Conversion into CIRP

### Figure 1: Process flow of the PPRIP



# Insolvency & Bankruptcy

## Duties and Powers of the RP

After PPIRP has been initiated, the RP has the duty to:

- confirm the list of claims submitted by the CD, and maintain an updated list of such claims. She must also inform creditors regarding confirmation of their claims;
- constitute the CoC and convene and attend all its meetings;
- monitor the management of the affairs of the CD and inform the CoC in the event of breach of any of the obligations of the Board of Directors or partners, of the CD;
- prepare the information memorandum on the basis of the Preliminary Information Memorandum and any other relevant information; and
- file applications for avoidance of transactions under Chapter III or fraudulent or wrongful trading under Chapter VI of the Code.

The appointed RP has the powers to:

- access all books of accounts, records and information available with the CD, electronic records with the Information Utility, or with Government authorities, statutory auditors, accountants and such other persons as may be specified;
- attend meetings of members, Board of Directors and committee of directors, or partners of the CD;
- appoint accountants, legal or other professionals in such manner as may be specified; and
- collect all information relating to the CD to investigate avoidable transactions and improper trading. .

## List of Claims and Preliminary Information Memorandum

Within two days of commencement, the CD must provide the RP:

- a list of claims, along with details of the respective creditors, their security interests and guarantees, if any;
- a Preliminary Information Memorandum containing information relevant for formulating a resolution plan, and
- a base plan.

Promoters, directors/ partners or those authorising the submission of the list of claims or Preliminary Information Memorandum may be held civilly or criminally liable for misinformation in these documents.

## Committee of Creditors

Within seven days of commencement, the RP will constitute a CoC consisting creditors based on the list of claims as submitted by the debtor. The composition of the CoC will be altered on the basis of the updated list of claims, and any such alteration will not affect the validity of any past decision of the CoC.

## Choosing a Resolution Plan for voting by the CoC

Within two days of the commencement of the PPRIP, the debtor must submit the base resolution plan to the RP, who must in turn present it to the CoC. If a resolution plan does not impair any claims owed by the CD to the operational creditors i.e. it provides for full payment of all claims due to the operational creditors, it may be approved by the CoC. Alternatively, where the base plan is not approved by the CoC or it impairs any claims owed by the CD to the operational creditors, the RP must invite prospective resolution applicants to submit resolution plans. Both the base plan, and invited plans must conform to the requirements of Section 30(2).

## In this Issue

**Objectives of the PPIRP**

**Eligibility**

**Initiation**

**Admitting an Application**

**Timelines**

**Debtor in Possession**

**Duties and Powers of the RP**

**List of Claims and Preliminary Information Memorandum**

**Committee of Creditors**

**Choosing a Resolution Plan for voting by the CoC**

**Approval of a Resolution Plan**

**Termination of the Process**

**Liquidation**

**Conversion into CIRP**

**Figure 1: Process flow of the PPIRP**



# Insolvency & Bankruptcy

From the invited plans, the best one will be chosen based on an evaluation criteria. This plan will either compete with the base resolution plan, or will be chosen for voting without competition if it is significantly better than the base plan. The manner in which the competition will be conducted is to be prescribed in Regulations. It is expected that it will be in the nature of a Swiss Challenge.

## Approval of a Resolution Plan

The plan selected is then to be voted on by the CoC. The CoC must consider the feasibility and viability of the plan and the manner of distribution proposed before approving the resolution plan by a vote of 66% by voting share. Interestingly, if the resolution plan does not require the dilution of promoters' shareholding or voting rights, but impairs claims owed by the CD, the CoC must record reasons for its approval of the resolution plan. Once approved, the plan is to be placed before the NCLT for its approval. Once approved, the plan will be binding on all stakeholders, and the resolution applicant would be able to obtain statutory approvals (other than CCI approvals) within a period of 1 year. The immunity provided under Section 32A will also be applicable if there is a change in control pursuant to the resolution plan.

## Termination of the Process

The RP may file an application before the NCLT for termination of the PPIRP where no resolution plan is approved by the CoC, or the timelines of 90 days has expired. The CoC may also, by a vote of not less than 66% of the voting shares, choose to terminate the PPIRP. In such cases, within 30 days, the NCLT must terminate the process and provide the manner for continuation of avoidance proceedings. The CD is liable to bear the costs of the PPIRP herein. Even where the NCLT rejects a resolution plan approved by the CoC, it must order termination of the PPIRP.

## Liquidation

In case the NCLT has already passed an order vesting the management of the CD with the RP during the PPIRP, liquidation may be ordered if:

- a resolution plan has been rejected by the CoC or no plan is approved by it within 90 days and the PPIRP would otherwise have to be terminated, or
- the resolution plan approved by the CoC does not result in the change in the management or control of the CD to a person who was not a promoter or in the management or control of the CD.

Further, liquidation may also be ordered by the NCLT where an approved resolution plan under the PPIRP is contravened by the CD.

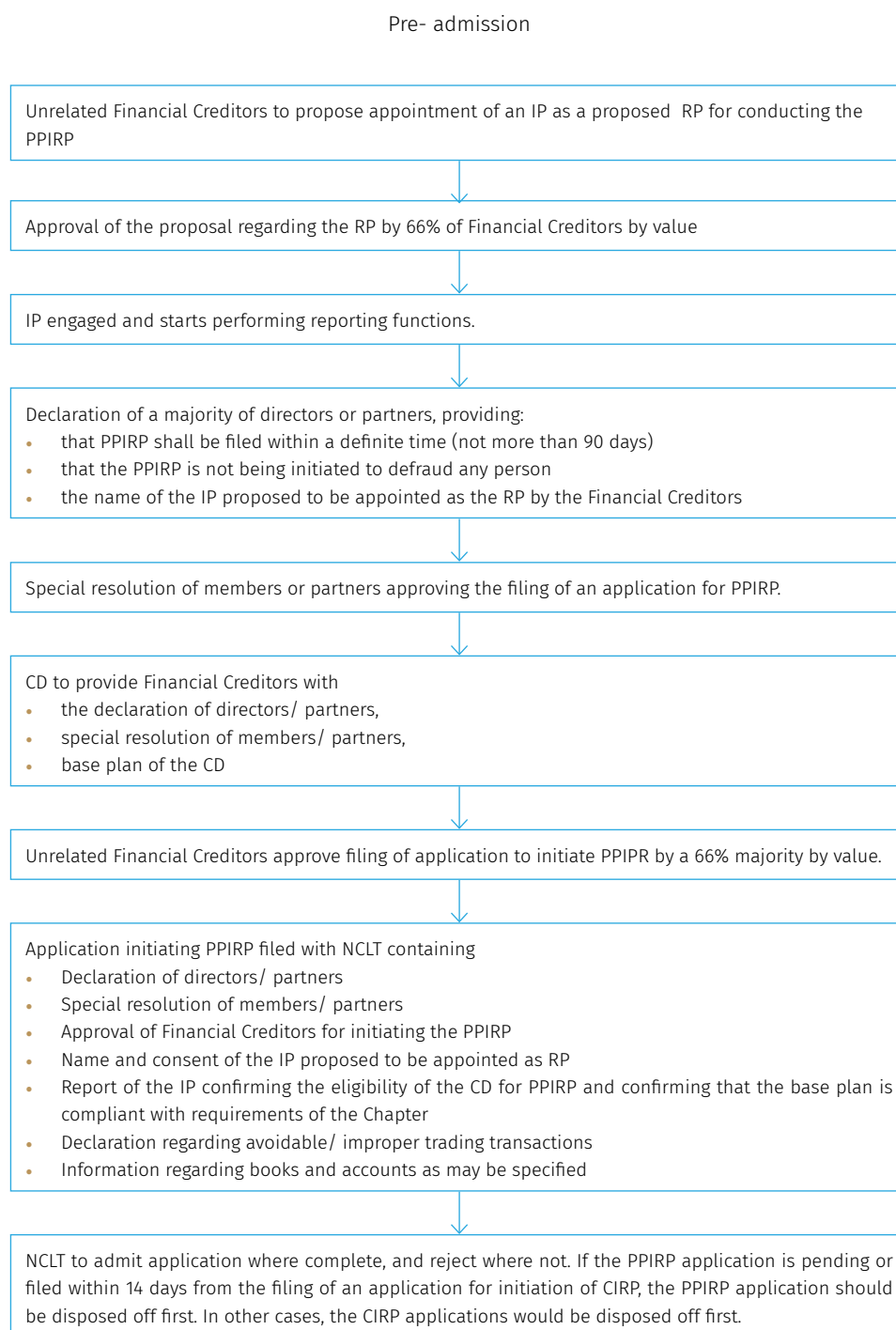
## Conversion into CIRP

At any time after the commencement of the PPIRP and before the approval of a resolution plan, the CoC may, by a vote of not less than 66% of the total voting shares, resolve to initiate a CIRP with respect to the CD as long as the CD is eligible under Chapter II of the Code. In such a case, the RP must intimate NCLT regarding the decision of the CoC. Within thirty days, the NCLT would then (i) terminate the PPIRP and initiate a CIRP, (ii) appoint the RP as the interim resolution professional under the CIRP, and (iii) declare that any PPIRP costs would be included as CIRP costs with respect to the CD. Such an order of the NCLT would be deemed to be an order admitting an application under Section 7 of the Code.

A detailed process flow of the PPIRP is provided in **Figure 1**. The PPIRP promises to offer a viable alternative for resolution of MSME insolvency, particularly given that the One-Time Restructuring Scheme for MSMEs was not extended by Reserve Bank of India. Even as further details of the

PPIRP are expected to emerge in the Rules and Regulations, we can expect that the introduction of PPIRP will significantly transform the insolvency resolution landscape in the country.

**Figure 1: Process flow of the PPIRP**



## In this Issue

### Objectives of the PPIRP

### Eligibility

### Initiation

### Admitting an Application

### Timelines

### Debtor in Possession

### Duties and Powers of the RP

### List of Claims and Preliminary Information Memorandum

### Committee of Creditors

### Choosing a Resolution Plan for voting by the CoC

### Approval of a Resolution Plan

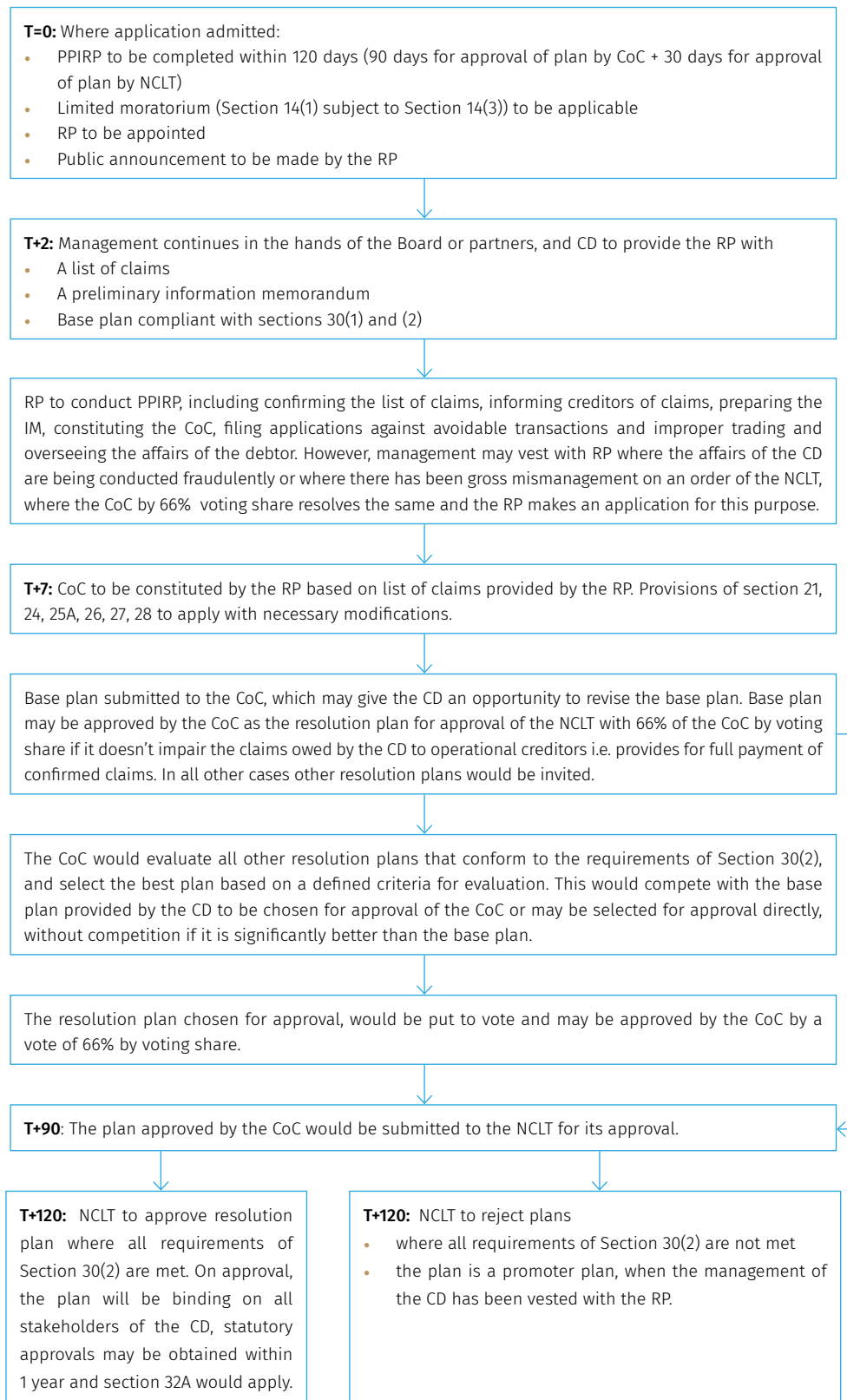
### Termination of the Process

### Liquidation

### Conversion into CIRP

### Figure 1: Process flow of the PPIRP

## Post – admission



Contd.

## In this Issue

### Objectives of the PPIRP

### Eligibility

### Initiation

### Admitting an Application

### Timelines

### Debtor in Possession

### Duties and Powers of the RP

### List of Claims and Preliminary Information Memorandum

### Committee of Creditors

### Choosing a Resolution Plan for voting by the CoC

### Approval of a Resolution Plan

### Termination of the Process

### Liquidation

### Conversion into CIRP

### Figure 1: Process flow of the PPIRP



Contd.

After the plan is approved, liquidation may be ordered if the provisions of the plan are contravened by the CD in terms of Section 33(3).

Rejection of plan to lead to termination of the PPIRP. It would ordinarily not result in liquidation unless

- the NCLT has rejected a promoter plan of a CD whose management has been vested with the RP
- a PPIRP of a CD whose management has been vested with the RP has to be terminated in all cases where a plan is rejected by the CoC or not approved by the CoC within 90 days.

The PPIRP may also terminate if –

- the plan selected for approval by the CoC is not approved by the requisite 66% majority.
- Where no resolution plan is approved by the CoC within 90 days.
- the CoC at any time before approval of the resolution plan by it, resolves to terminate the PPIRP with 66% voting share.
- the CoC at any time before approval of the resolution plan by it, votes to convert the PPIRP to a CIRP (for entities eligible to initiate the CIRP). In this case, an order initiating CIRP would be considered an order under Section 7 of the Code.

## In this Issue

**Objectives of the PPIRP**

**Eligibility**

**Initiation**

**Admitting an Application**

**Timelines**

**Debtor in Possession**

**Duties and Powers of the RP**

**List of Claims and Preliminary Information Memorandum**

**Committee of Creditors**

**Choosing a Resolution Plan for voting by the CoC**

**Approval of a Resolution Plan**

**Termination of the Process**

**Liquidation**

**Conversion into CIRP**

**Figure 1: Process flow of the PPIRP**

Please feel free to address any further questions or request for advice to:

**Shardul S. Shroff**

Executive Chairman and National Practice  
Head – Insolvency & Bankruptcy  
shardul.shroff@AMSShardul.com

**Anoop Rawat**

Partner  
anoop.rawat@AMSShardul.com

**Veena Sivaramakrishnan**

Partner  
veena.sivaramakrishnan@AMSShardul.com

**Misha**

Partner  
misha@amsshardul.com

**Disclaimer**

This is intended for general information purposes only. It is not a substitute for legal advice and is not the final opinion of the Firm. Readers should consult lawyers at the Firm for any specific legal or factual questions.