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**Website: [www.ijlae.com](http://www.ijlae.com)**

**Email: [editor@ijlae.com](mailto:editor@ijlae.com)**

## **SIMPLIFYING INSOLVENCY FOR MSMES: A GLOBAL PERSPECTIVE WITH INDIAN INSIGHTS**

*Ms. Poonam Gulati*

*Assistant Professor (Law), Amity University, Punjab*

*Ms. Komal*

*BA. LLB (2021-2026) Amity University, Punjab*

### **ABSTRACT**

*In today's world where 'ease of doing business' is a mantra for economic success, this research looks at how quickly insolvency issues are handled for small businesses (Micro, Small, and Medium Enterprises- MSMEs) in India and compares these methods with those used in other countries. MSMEs are important to the economy, and effective insolvency solutions can greatly affect their chances of recovery during financial trouble. This research dives into the legal intricacies of Pre-pack and Fast-Track insolvency under the Indian Insolvency and Bankruptcy Code, 2016 (IBC), juxtaposing them with analogous systems in the United Kingdom and other global jurisdictions. In India, the Insolvency and Bankruptcy Code offers faster ways to resolve insolvency for small businesses. One such method is the Fast Track insolvency process, which is designed to be quicker and simpler than traditional methods. This research explores how this process works, including the steps involved and the roles of various people and organizations. Pre-pack insolvency entails the sale of a company's assets before the commencement of formal insolvency proceedings, whereas Fast Track insolvency aims to expedite the resolution process for small and medium-sized enterprises (SMEs). The study aspires to dissect the laws, procedures, and roles of various stakeholders in these insolvency mechanisms within India, scrutinizing recent legislative amendments and landmark judicial pronouncements. Additionally, this study draws comparisons between India's frameworks and those in the UK,*

*US, Singapore, etc highlighting both divergences and commonalities in their legal structures and practical applications. By examining systems in other countries, the research aims to unearth best practices that could potentially refine the Indian context. The methodology encompasses a comprehensive analysis of legal texts, case law, academic literature, and expert interviews, amalgamating these insights to offer a holistic perspective on the functionality of Pre-pack and Fast-Track insolvency processes. Ultimately, the objective is to propose recommendations for enhancing these mechanisms in India, fostering greater efficiency, transparency, and fairness, thereby bolstering the economy and the legal framework. The ultimate goal is to suggest ways to make India's insolvency procedures for MSMEs more effective and efficient by learning from successful practices in other countries. This will help small businesses get better support and contribute to a stronger economy.*

**Keywords:** *Quick Insolvency, Pre-pack insolvency, Fast-Track insolvency, Insolvency and Bankruptcy Code, MSMEs*

## **INTRODUCTION TO MSMEs INSOLVENCY CHALLENGES AND APPROACHES**

Micro, small, and medium enterprises (MSMEs) form the backbone of the global economy, playing a pivotal role in driving employment, economic growth, and entrepreneurship across various economies. Despite their critical importance, MSMEs often face significant challenges, particularly when it comes to financial distress and insolvency. Their diversity and sheer numbers make it challenging to quantify their impact accurately. Yet, they constitute the majority of businesses worldwide and are among the largest commercial users of insolvency systems in many economies (World Bank Group, 2017).

However, despite the unique characteristics of MSMEs, many jurisdictions treat them similarly to larger corporate entities or consumers in the context of insolvency, overlooking their distinct needs. This is particularly problematic as many MSMEs, especially micro-enterprises, are informally organized. Tailoring commercial legal systems, including insolvency laws, to their specific requirements is crucial for encouraging these informal enterprises to formalize, which is a critical step towards enhancing economic and financial inclusion for the entrepreneurs and employees involved. The complexities of MSME insolvency are compounded by the fact that MSMEs vary widely in size and nature. While the term "MSME" encompasses a broad

spectrum of businesses, most MSMEs fall into the "micro" category, which often includes sole proprietorships and single-employee businesses. On the other end of the spectrum are "medium" enterprises, which may have hundreds of employees and operate in vastly different ways from their micro counterparts. This diversity within the MSME category complicates the development of universal insolvency solutions that can effectively address the varied challenges these enterprises face.

One of the most significant challenges for MSMEs is their informality. Many MSMEs operate without formal registration and lack limited liability, particularly in developing economies. This informality poses a major obstacle to accessing credit and navigating complex legal processes, including insolvency. The reliance on personal guarantees to secure loans further diminishes the advantages of a limited liability structure for these enterprises. Additionally, MSMEs often struggle with constrained access to credit and are particularly vulnerable to macroeconomic and financial shocks. These challenges, coupled with limited resources and sophistication, make it difficult for MSMEs to manage the intricacies of insolvency procedures. As a result, MSMEs frequently undergo insolvency proceedings, yet the existing insolvency frameworks, which are often designed with larger corporations in mind, may not be well-suited to their needs.

The need for an efficient and expeditious insolvency system that can either rescue MSMEs or swiftly reallocate their productive assets to more efficient activities is paramount. However, there is ongoing debate about whether the broad parameters of corporate insolvency systems, as reflected in international standards, can effectively respond to the unique challenges and needs of MSMEs. The complexity and length of typical insolvency processes, especially in developing economies with inadequate institutional support, are particularly problematic for MSMEs. Different countries have adopted various approaches to address MSME insolvency. Some have made slight modifications or exemptions to existing insolvency provisions, while others have implemented entirely new provisions specifically targeting MSMEs. For example, Japan and Korea have developed tailored procedures that cater to the unique needs of MSMEs, demonstrating that a one-size-fits-all approach may not be sufficient to address the diverse challenges faced by these enterprises.

In summary, while MSMEs are vital to the global economy, they face unique challenges in the context of insolvency. Tailoring insolvency laws to meet their specific needs is essential for supporting their survival and growth, and various countries have adopted different strategies to address these challenges. The ongoing examination of whether current international standards

are sufficient to address the needs of MSMEs highlights the importance of continued innovation and adaptation in insolvency legislation.

## **A CONCISE OVERVIEW COVERING THE AIMS, APPROACH, KEY RESULTS, AND SIGNIFICANCE OF THIS STUDY**

The study of MSME insolvency aims to understand the unique challenges faced by micro, small, and medium enterprises when they encounter financial distress. MSMEs, despite being the backbone of the global economy, often struggle with insolvency due to their diversity, informality, constrained access to credit, and vulnerability to economic shocks. The primary goal of this work is to examine how different jurisdictions address these challenges through tailored insolvency laws and whether current international standards adequately meet the specific needs of MSMEs.

The approach involves analyzing the insolvency frameworks across various countries and comparing the general procedures applicable to larger corporations with those specifically designed for MSMEs. The study explores whether modifications to existing laws or the creation of entirely new provisions are more effective in addressing MSME insolvency.

Key results indicate that while some countries have made slight adjustments to accommodate MSMEs within their existing insolvency frameworks, others, like Japan and Korea, have developed specialized procedures that better cater to the distinct needs of these enterprises. These tailored approaches are often more successful in facilitating quicker resolutions and providing the necessary support for MSMEs during insolvency.

The significance of this work lies in its potential to inform policymakers and legal practitioners about the importance of customized insolvency processes for MSMEs. By highlighting the limitations of current international standards and showcasing successful approaches from different jurisdictions, this study contributes to the development of more effective insolvency laws that can better support MSMEs, ensuring their survival and continued contribution to the global economy.

## **MEANING OF MICRO-SMALL MEDIUM ENTERPRISES CALLED MSMEs**

As auxiliary businesses, Micro, Small, and Medium-Sized Enterprises (MSMEs) support sectors and significantly contribute to the nation's overall industrial development. These businesses are involved in the manufacture, processing, and production of commodities and goods. The Micro, Small and Medium Enterprises Development Act of 2006 divides MSMEs into three groups<sup>1</sup> as shown in Table 1.

**TABLE 1: THREE GROUPS OF MSMES ACCORDING TO THE DEVELOPMENT ACT OF 2006 (Source: <https://msme.gov.in/know-about-msme>)**

CLASSIFICATION OF INDUSTRIES		MICRO ENTERPRISES	SMALL ENTERPRISES	MEDIUM ENTERPRISES
Manufacturing Enterprises and Enterprises Relating to Services		Investment in Plant and Machinery or Equipment: Not more than Rs.1 cr and Annual Turnover; not more than Rs. 5 cr	Investment in Plant and Machinery or Equipment: Not more than Rs.10 cr and Annual Turnover; not more than Rs. 50 cr	Investment in Plant and Machinery or Equipment: Not more than Rs.50 cr and Annual Turnover; not more than Rs. 250 cr

Source: Created by authors

**TABLE:2 RELATIONSHIP AMONG SMES AND MSMEs**

Aspect	MSME	SME
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<sup>1</sup> 'MINISTRY OF MICRO, SMALL AND MEDIUM ENTERPRISES NOTIFICATION, F. No. 2/1(5)/2019-P&G/Policy (Pt.-IV)'(msme.gov 1<sup>st</sup> june,2020) ([https://msme.gov.in/sites/default/files/MSME\\_gazette\\_of\\_india.pdf](https://msme.gov.in/sites/default/files/MSME_gazette_of_india.pdf)) accessed 26 July , 2024

<b>Definition</b>	Micro, Small, and Medium Enterprises	Small and Medium Enterprises
<b>Categories</b>	- Micro	- Small
	- Small	- Medium
	- Medium	
<b>Regional Usage</b>	Commonly used in countries like India	Widely used globally, especially in developed economies
<b>Micro Enterprises</b>	Yes	No

Source: Created by authors

**TABLE 3: COMPARISON OF INDIAN MEANING AND GLOBAL MEANING**

<b>Criteria</b>	<b>MSME (Micro, Small, Medium Enterprises)</b>	<b>SME (Small and Medium Enterprises)</b>
<b>Common Regions</b>	India, some developing nations	Developed economies (EU, USA, UK)
<b>Criteria for Classification</b>	<b>India:</b> -Micro: Up to ₹1 crore investment, ₹5 crore turnover -- - Small: Up to ₹10 crore investment, ₹50 crore turnover – - Medium: Up to ₹50 crore investment, ₹250 crore turnover	<b>EU:</b> Small: <50 employees, turnover ≤ €10 million Medium: <250 employees, turnover ≤ €50 million or balance sheet ≤ €43 million <b>USA:</b> Varies by industry, generally <500 employees
<b>Regulatory Framework</b>	Specific laws like the MSME Development Act in India	Diverse frameworks like SBA regulations in the USA, EU policies
<b>Economic Contribution</b>	Job creation, regional development, economic diversification, government support	Innovation, export growth, economic growth, international competitiveness

<b>Importance and Impact</b>	Reduces poverty, balances economic development, provides employment	Drives economic growth, innovation, and job creation, responds to global market demands
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Source: Created by authors

## MSMES' CONTRIBUTION TO THE DEVELOPMENT OF AN INCLUSIVE AND SUSTAINABLE ECONOMY

It is indisputable that MSMEs have a crucial role in promoting equality and sustainability in the Indian economy. Women operate 20.5% of the MSMEs listed on the Udyam Registration Portal, which translates to 18.73% of all the jobs created by MSMEs with Udyam registrations. Although the statistics speak for themselves, the Ministry of MSMEs has launched a variety of programs to support MSMEs that uphold these values in order to guarantee that the sector's growth and the economy's sustainability, equity, and inclusivity. For instance, female businesses can receive up to 85% guarantee coverage and a 10% reduction in annual guarantee fees through the Credit Guarantee Scheme for Micro & Small Enterprises. In the meantime, the SAMARTH program supports female entrepreneurs by offering skill development and market development help to over 7500 women from rural and suburban areas.

The MSME Sustainable (ZED) Certification Scheme, promotes MSMEs to simplify their operations in order to move toward sustainability and cut expenses associated with the environment. Additionally, the program provides women-owned MSMEs with a 100% subsidy towards ZED Certification.<sup>2</sup>

**TABLE 4: MSME Statistics**

<b>Contribution to Indian Market Share</b>	According to a Forbes Advisor report <sup>3</sup> In the Indian economy, small businesses own 96% of the industrial units. Small businesses make up 42% of all Indian exports and 40% of the country's total industrial production.
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<sup>2</sup> Invest India, 'MSMEs: The Backbone of India's Economic Future' (invest India 28 June,2024) (<https://www.investindia.gov.in/team-india-blogs/msmes-backbone-indias-economic-future>) Accessed 15 Aug,2024.

<sup>3</sup> Nikita Tambe, 'MSME Statistics and Trends' (Forbes advisor 6 feb 2024) (<https://www.forbes.com/advisor/in/business/msme-statistics/>) Accessed 15 Aug, 2024.



<p><b>Employment</b></p>	<p>7.56 lakh new jobs were generated in India, which is also home to 75,000 officially recognized start-ups. Of these jobs, 12% are in the information technology sector, 9% are in the healthcare and life sciences, 7% are in education, 5% are in commercial and professional services, and 5% are in agriculture. The number of new jobs created annually has increased by 110% throughout the previous six years.<sup>4</sup></p>
<p><b>MSME Forecast</b></p>	<p>Based on data from the 73rd round of the National Sample Survey (NSS), conducted in 2015 and 2016, the Indian government intends to grow the number of jobs in the MSME sector from the current level of 11.10 crore by 5 crore by 2025.</p> <p>According to the latest data from the Udyam portal, as of December 2022, roughly 1.28 crore MSME registered industries employed 9.31 crore people, including 2.18 crore women employees.<sup>5</sup></p>

Source: Created by authors

## OVERVIEW OF INSOLVENCY PROCEDURES FOR MSMES IN INDIA

The Insolvency and Bankruptcy Code (IBC) of 2016 was a landmark reform aimed at creating a comprehensive and efficient insolvency resolution framework in India. The IBC introduced several mechanisms to address insolvency issues, particularly for MSMEs. Two notable

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<sup>4</sup> Ibid

<sup>5</sup> Ibid

provisions under the IBC designed to facilitate faster and more effective insolvency resolutions are the Fast-Track and Pre-pack insolvency processes.

## LEGAL FRAMEWORK GOVERNING PRE-PACK AND FAST-TRACK INSOLVENCY PROCESSES

The Insolvency and Bankruptcy Code (IBC), enacted in 2016, revolutionized the insolvency and bankruptcy framework in India. It introduced mechanisms to resolve insolvencies efficiently, aiming to improve the ease of doing business and protect the interests of creditors. Among its various provisions, the IBC includes special processes for pre-packaged (pre-pack) and fast-track insolvency resolutions, designed to expedite the resolution process.<sup>6</sup>

### PRE-PACK INSOLVENCY

**Definition and Purpose:** A pre-packaged insolvency resolution process (pre-pack) is a hybrid mechanism where the debtor and creditors agree on a resolution plan before initiating formal insolvency proceedings. The goal is to combine the efficiency of out-of-court restructuring with the legal sanctity of formal insolvency proceedings. The pre-packaged insolvency resolution process (PPIRP) is designed to offer a faster and more efficient alternative for resolving insolvency, particularly for micro, small, and medium enterprises (MSMEs). This process allows businesses in financial distress to prepare a resolution plan before initiating formal insolvency proceedings, thus providing an expedited route to financial rehabilitation.

**TABLE 5: Priority**

Scenario	Action Required
An application under Section 54C is already in process, and another application under Sections 7/9/10 is submitted during this time	The Adjudicating Authority (AA) must decide on the Section 54C application before addressing the Sections 7/9/10 application

<sup>6</sup> The Insolvency and Bankruptcy Code, 2016,

An application under Sections 7/9/10 is under consideration, and within 14 days, an application under Section 54C is submitted

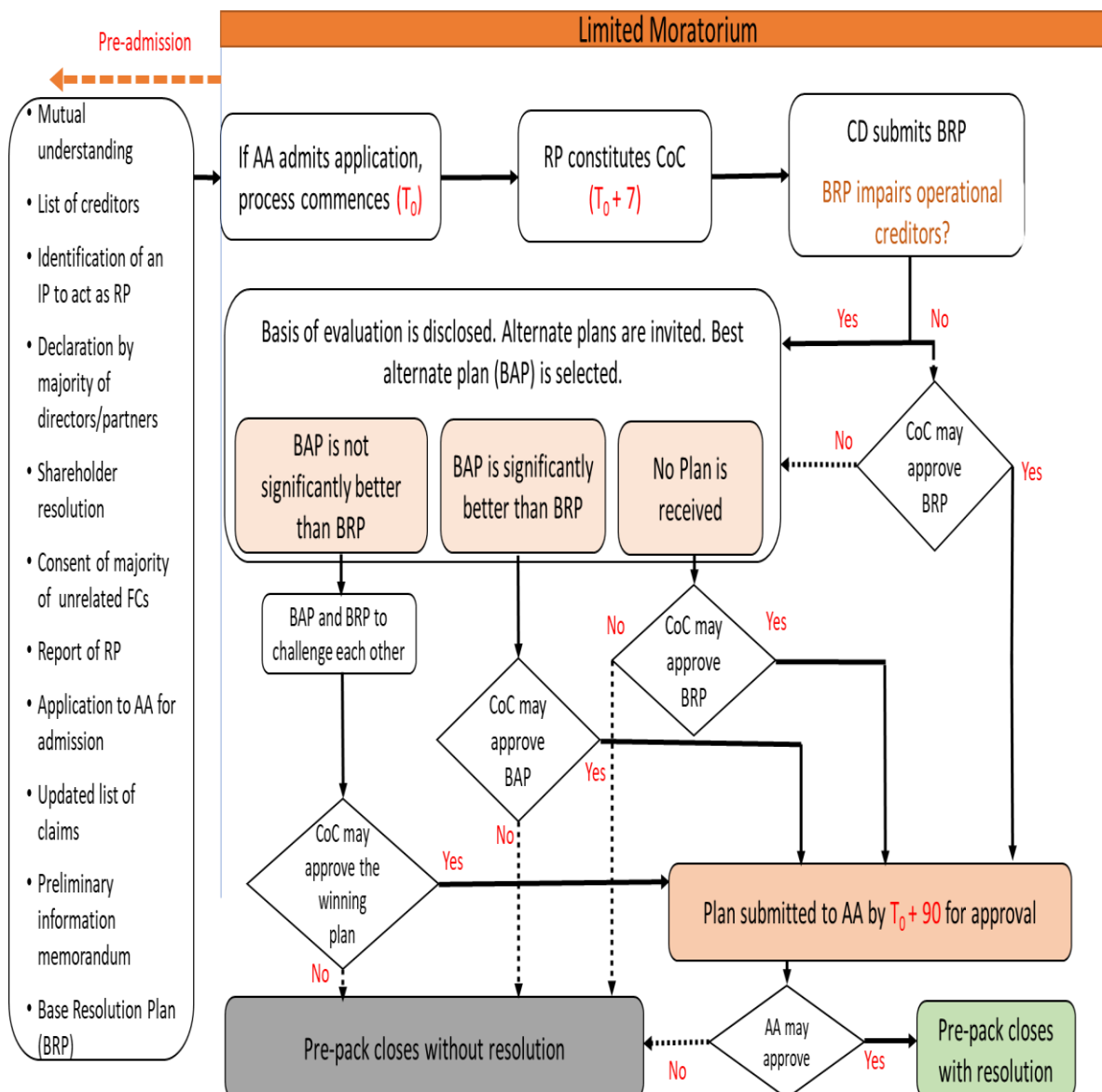
The AA should prioritize and resolve the Section 54C application first

An application under Sections 7/9/10 is pending, and after 14 days, a Section 54C application is submitted

The AA should address the Sections 7/9/10 application before considering the Section 54C application

Source: Created by authors

**FIGURE: 1-PPIRP PROCESS**



(Source IBBI: <https://acrobat.adobe.com/id/urn:aaid:sc:AP:8a46c26d-bd62-4ed5-a94a-073e8d5ab72>)

## I. Eligibility Criteria

- i. **Applicability:** The PPIRP is available exclusively for MSMEs, as defined under the MSME Development Act, 2006.<sup>7</sup>
- ii. **Financial Threshold:** MSMEs must meet specific financial thresholds to qualify for the PPIRP, ensuring that only entities with genuine financial distress can utilize this mechanism.<sup>8</sup>

## II. Initiation of the Process

- i. **Debtor Initiation:** The process can be initiated by the debtor, who must obtain consent from at least 66% of the financial creditors before filing an application with the National Company Law Tribunal (NCLT).<sup>9</sup>
- ii. **Preparation of Resolution Plan:** Prior to initiation, the debtor, in consultation with an insolvency professional, prepares a draft resolution plan, which is then shared with the creditors for their approval.

## III. Role of the Insolvency Professional (IP)

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<sup>7</sup> Micro, Small and Medium Enterprises Development Act, 2006, S7(1).

<sup>8</sup> Ibid

<sup>9</sup> IBBI, 'Pre-Packaged Insolvency Resolution Process' (IBBI 30 June 2021)

(<https://www.ibbi.gov.in/uploads/whatsnew/a650764a464bc60fe330bce464d5607d.pdf>) Accessed 15 Aug, 2024.

- i. **Appointment:** An insolvency professional (IP) is appointed to oversee the PPIRP. The IP ensures that the process adheres to legal requirements and manages the day-to-day operations of the debtor.
- ii. **Supervision:** The IP supervises the implementation of the resolution plan and ensures transparency throughout the process.

#### IV. **Committee of Creditors (CoC)**

- i. **Formation:** A Committee of Creditors (CoC) is formed, comprising financial creditors who review and vote on the resolution plan proposed by the debtor.
- ii. **Decision-making:** The CoC plays a critical role in approving or rejecting the resolution plan and negotiating its terms to ensure the best outcome for all creditors.

#### V. **NCLT Approval**

- i. **Submission:** Once the CoC approves the resolution plan, it is submitted to the NCLT for final approval.
- ii. **Review:** The NCLT reviews the plan to ensure compliance with the legal framework and to confirm that it is fair and feasible.
- iii. **Implementation:** Upon approval, the NCLT oversees the implementation of the resolution plan and resolves any disputes that may arise.

#### VI. **Timelines**

- i. **Resolution Timeframe:** The PPIRP is designed to be completed within 120 days from initiation, with a possible extension of up to 30 days if necessary.
- ii. **Efficiency:** The streamlined timeline is intended to expedite the resolution process and minimize disruption to the debtor's business operations.

### **Advantages of the Pre-pack Insolvency Process**

#### **1. Speed and Efficiency**

- **Quicker Resolution:** The PPIRP offers a faster resolution compared to traditional insolvency processes, reducing the time and costs associated with insolvency proceedings.

## 2. Reduced Stigma

- **Confidential Process:** The pre-pack process allows businesses to address financial issues confidentially, minimizing reputational damage.

## 3. Business Continuity

- **Minimized Disruption:** By preparing a resolution plan before formal proceedings, businesses can continue operations with minimal disruption.

## 4. Stakeholder Involvement

- **Early Involvement:** Creditors are involved early in the process, allowing for a more collaborative approach to resolving insolvency issues.

## FAST-TRACK INSOLVENCY

**Definition and Purpose:** A fast-track insolvency resolution process is designed for specific categories of debtors, facilitating quicker resolution compared to standard insolvency proceedings. It is intended to resolve cases where the insolvency process is expected to be straightforward.<sup>10</sup>

### Key Features:

- Eligibility:** Applicable to small companies, startups (other than partnership firms), and other specified classes of corporate debtors.<sup>11</sup>
- Duration:** Must be completed within 90 days, with a possible extension of 45 days.
- Simplified Process:** Streamlined procedures to expedite the resolution.

### Legal Framework:

- Eligibility Criteria:** Defined under Section 55 of the IBC.<sup>12</sup>
- Regulations:** Governed by the Insolvency and Bankruptcy (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017.

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<sup>10</sup> Insolvency and Bankruptcy Code, 2016, No. 31, Acts of Parliament, 2016 (India).

<sup>11</sup> Insolvency and Bankruptcy (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017, ([https://ibbi.gov.in/uploads/meetings/Agenda%2029\\_29\\_05\\_2017.pdf](https://ibbi.gov.in/uploads/meetings/Agenda%2029_29_05_2017.pdf)) accessed 16 Aug, 2024.

<sup>12</sup> Insolvency and Bankruptcy Code, 2016, S55.

**iii. Process:**

- a. Filing an application with the NCLT.
- b. Appointment of an Interim Resolution Professional (IRP).
- c. Formation of the Committee of Creditors (CoC).
- d. Submission and approval of the resolution plan.

**Advantages:**

- i. **Expeditious:** Swift resolution within a short timeframe.
- ii. **Efficiency:** Reduced procedural requirements streamline the process.
- iii. **Cost-effective:** Lower costs due to the shortened duration and simplified procedures.

## COMPARATIVE ANALYSIS WITH GLOBAL PRE-PACK INSOLVENCY PROCESSES

**India:** A pre-packaged insolvency resolution process (pre-pack) in India is designed for MSMEs and involves pre-agreed plans between debtors and creditors before formal proceedings begin. It is governed by the Insolvency and Bankruptcy (Pre-packaged Insolvency Resolution Process) Regulations, 2021.<sup>13</sup>

**UK:** The UK has a well-established pre-pack administration process under the Insolvency Act 1986. A pre-pack in the UK allows for the sale of a company's business and assets to a buyer before the appointment of administrators, with the deal being completed shortly after the appointment. The process is intended to maximize value and preserve jobs.<sup>14</sup>

**US:** In the US, pre-packaged bankruptcies are common under Chapter 11 of the Bankruptcy Code. A pre-packaged bankruptcy involves a plan that is negotiated and voted on by creditors before the company files for bankruptcy. This process is designed to streamline the reorganization and reduce the time spent in bankruptcy.<sup>15</sup>

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<sup>13</sup> IBBI, 'Pre-Packaged Insolvency Resolution Process' (IBBI 30 June 2021) (<https://www.ibbi.gov.in/uploads/whatsnew/a650764a464bc60fe330bce464d5607d.pdf>) Accessed 15 Aug, 2024.

<sup>14</sup> Insolvency Act 1986, (UK) (<https://www.legislation.gov.uk/ukpga/1986/45/contents>) Accessed 16 Aug, 2024.

<sup>15</sup> Pub. L. No. 116-54, 133 Stat. 1079, 'Small Business Reorganization Act of 2019' (<https://www.congress.gov/116/plaws/publ54/PLAW-116publ54.pdf>) Accessed 17 Aug, 2024

**Singapore:** Singapore introduced the pre-packaged scheme of arrangement under the Companies Act, enhanced by the Insolvency, Restructuring and Dissolution Act 2018. This mechanism allows a company to propose a pre-packaged scheme to its creditors, which, if approved, can be sanctioned by the court without the need for a creditors' meeting.<sup>16</sup>

**TABLE 6: Current Scenario in India**

Aspect	India	UK	US	Singapore
<b>Applicability to Small Businesses</b>	MSMEs	All companies	All companies	All companies
<b>Initiation</b>	Debtor with creditor consent	Debtor	Debtor	Debtor
<b>Regulations</b>	Insolvency and Bankruptcy (Pre-packaged Insolvency Resolution Process) Regulations, 2021	Insolvency Act 1986	Chapter 11 of the Bankruptcy Code	Companies Act, Insolvency, Restructuring and Dissolution Act 2018
<b>Moratorium</b>	Moratorium to be available from the commencement date to its conclusion date.	No moratorium is in effect.	The automatic stay takes effect once the Chapter 11 petition is filed.	The court may impose a 30-day moratorium on a corporate debtor's application, which can be extended. The moratorium does not affect

<sup>16</sup> Insolvency, Restructuring and Dissolution Act 2018 (Singapore) (<https://sso.agc.gov.sg/Acts-Supp/40-2018/>) Accessed 17 Aug, 2024



				legal processes against corporate debtors as stipulated by rules, such as writs for actions in rem, which require court leave.
<b>Appointment of IP</b>	An IRP/RP will supervise over the the procedure.	IP is designated as a n administrator upon the completion of th e agreed-upon sale.	S. 1104(a) of the Code allows the court to designate a trustee upon a party's request.	No role
<b>Transparency of the process</b>	Information Utility will make a public notification and circulate it accordingly.	Very little, as sale is agreed prior to the appointment of the administrator.	The court must approve the disclosure statement containing details regarding the proposal.	It must follow the procedures outlined in the Insolvency, Restructuring, and Dissolution Act of 2018, as well as Sections 210 and 211 of the

<b>Approval Requirement</b>				Companies Act (Cap 50).
	approve the plan by 66% voting	Approved by IP, directors, and significant creditors prior to filing in court.	In pre-negotiated plans, votes will be asked once the Chapter 11 petition is filed. The court will then approve the disclosure statement and other documents.	The scheme must be accepted by a majority of creditors present and voting in each class (greater than 50%), with the majority representing 75% of the voting class value.
<b>Safeguards for creditors</b>	Operational creditors and dissenting financial creditors are safeguarded under Section 30(2) of the IBC, ensuring they receive at least the amount they would have gotten if the debtor were liquidated. Additionally,	None	Under Federal Rule of Bankruptcy Procedure 3018(b), the bankruptcy court must confirm that pre-voted plans are provided to almost all creditors within the same class,	Creditors must receive at least the amount they would have obtained if the debtor had undergone liquidation.

<b>Confidentiality</b>	once a pre-pack is completed, another pre-pack cannot be initiated until three years have elapsed.		ensuring they have adequate time to review and approve the plan.	
	Confidential process	Often public, but details can be limited until completion	Public process with a pre-agreed plan	Confidential until court approval
	<b>Duration</b>	Relatively short, with a pre-agreed plan	Typically swift, but varies based on complexity	Streamlined process if pre-agreed

Source: Created by authors

According to Financial Express<sup>17</sup> Only 6 cases admitted under the pre-pack insolvency resolution process for MSMEs since 2021.

According to The Economic Times newspaper<sup>18</sup> only 5 cases claim success under this scheme. They are Amrit India, Shri Rajasthan Syntex, Enn Tee International, and GCCL. These five cases resulted in a 25% realisation.

## REASON FOR NOT INITIATING PPIRP

There are some important are given below.

<sup>17</sup> Financial express, 'Only 6 cases admitted under pre-pack insolvency resolution process for MSMEs since 2021' (7 Aug 2023) (<https://www.financialexpress.com/business/sme-only-6-cases-admitted-under-pre-pack-insolvency-resolution-process-for-msmes-since-2021-3202707/>) Accessed 17 Aug, 2024

<sup>18</sup> Shilpy Sinha, 'pre-pack insolvency a success for five companies' (The economic times, 24 May 2024) (<https://economictimes.indiatimes.com/news/india/pre-pack-insolvency-a-success-for-five-companies/articleshow/110373627.cms?from=mdr>) Accessed 17 Aug, 2024

- i. **Conflict with the basic structure of the Code:** PPIRP's structure is different than a standard CIRP. In PPIRP, the BOD maintains control and management, whereas in CIRP, it is transferred to RP
- ii. **Issue related to the MSME Development Act.:** Section 3 of the Micro, Small, and Medium Enterprises Development Act of 2006 creates a Board tasked with examining and proposing development strategies for small enterprises. The Board's lack of representation on the Sub-Committee in charge of developing pre-pack frameworks may have resulted in an inadequate response to MSMEs' needs. The pre-pack concept functions on a debtor-in-possession basis, but its implementation requires creditor approval. Creditors may hesitate to agree to voluntary reductions, especially given that pre-pack can be triggered by a default as low as Rs. 10lakh. Hence, there is a need to evaluate the framework provisions of the Code and align them with the Act.
- iii. **Unsecured Creditor's Interest not considered:** Unsecured creditors, who are typically given little consideration in the present insolvency process, may be completely neglected in PPIRPs. They may not have the opportunity to state their rights or oppose the transaction during discussions.
- iv. **Procedural Flaws and Delays:** PPIRP should be finished within 120 days. It is a semi-formal process in which court authorities play a limited role. However, the involvement of AA can be seen at each stage, leading to unnecessary delays and interference, contradicting the primary objective of establishing PPIRP as a CIRP alternative.
- v. **Moratorium not imposed:** During PPRIP, a moratorium's protections as specified by the Code are not applicable unless official insolvency proceedings are initiated. This could be problematic because PPIRP negotiations might not be definitive, which would make the CD open to ongoing legal challenges from all parties. Other creditors may become exposed and vulnerable as a result of this circumstance.

## **FAST-TRACK INSOLVENCY PROCESSES**

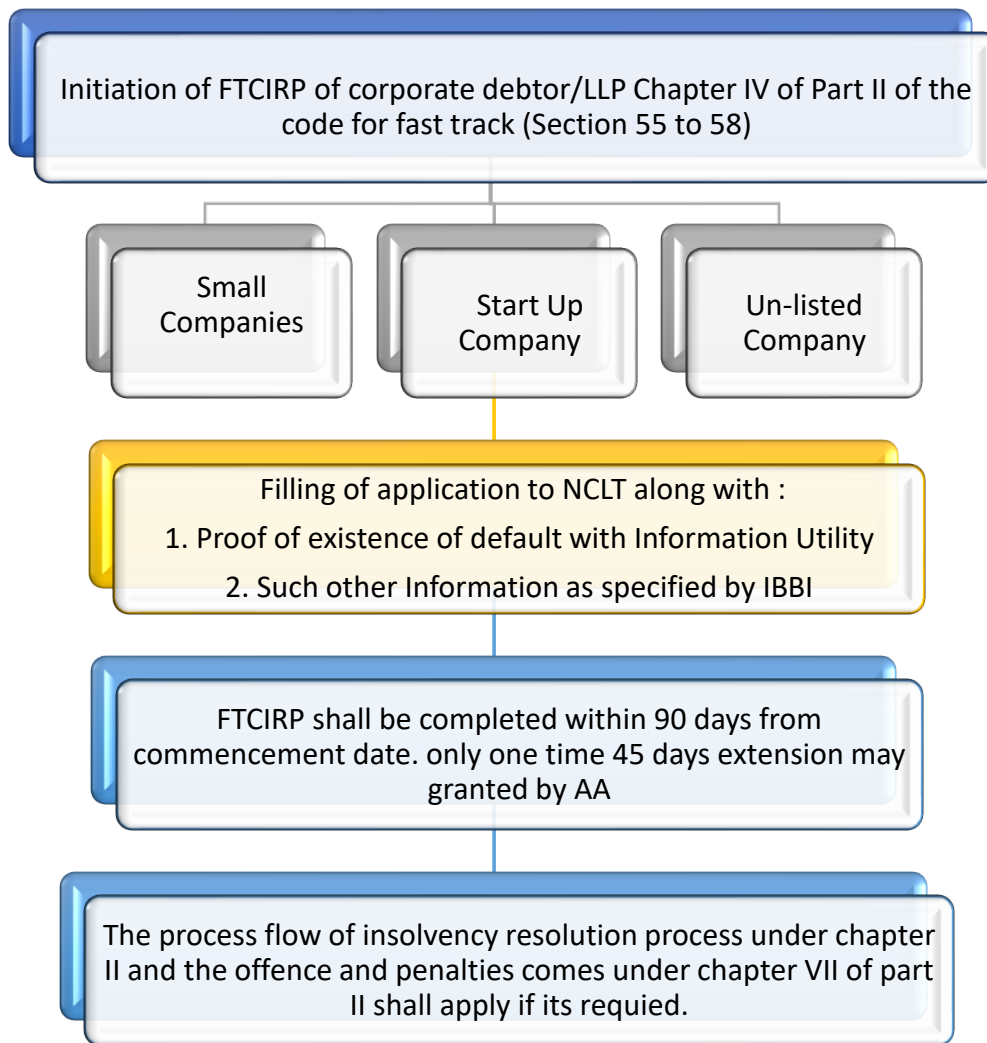
The fast-track regulation is essentially the same as the standard CIRP. Over time, a single legislation may cover both scenarios. However, it was deemed necessary to establish a separate law for fast track to prioritize its importance from the outset. The fast-track CIRP will apply to corporate debtors with assets, turnover, and capital borrowing below a threshold determined by the Central Government under section 55(2). Fast-track CIRP will apply to corporate debtors

with assets, turnover, capital borrowing, and other metrics that fall below a level determined by the Central Government under section 55(2). It will be difficult for an application to determine if a corporate debtor is covered by fast track since it may not have access to the necessary information to verify the threshold. If he believes it was incorrectly triggered, he can petition the AA to change fast-track CIRP to conventional CIRP. If the AA agrees, the transaction will be executed under CIRP regulations.<sup>19</sup>

## **Figure 2: Key Elements of Fast Track Insolvency Process**

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<sup>19</sup> Ibbi, 'Regulations for Fast Track Insolvency Resolution Process for Corporate Persons' (IBBI 8 May 2017) ([https://ibbi.gov.in/uploads/meetings/Agenda%2029\\_29\\_05\\_2017.pdf](https://ibbi.gov.in/uploads/meetings/Agenda%2029_29_05_2017.pdf)) Accessed 18 Aug, 2024



Source: Created by authors

**India:** The fast-track insolvency resolution process in India is designed for small companies, startups, and other specified classes of corporate debtors. It must be completed within 90 days, with a possible extension of 45 days, and is governed by the Insolvency and Bankruptcy (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017.<sup>20</sup>

<sup>20</sup> Insolvency and Bankruptcy (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017, No. IBBI/2017-18/GN/REG022.

**UK:** The UK does not have a formal fast-track process equivalent to India's. However, small companies may benefit from streamlined procedures and simplified processes within existing frameworks, like the Company Voluntary Arrangement (CVA).<sup>21</sup>

**US:** The US offers a "small business debtor" designation under Chapter 11, which provides a streamlined process with specific provisions to expedite the case. Additionally, the Small Business Reorganization Act of 2019 introduced Subchapter V, designed to simplify and speed up the reorganization process for small businesses.<sup>22</sup>

**Singapore:** Singapore's insolvency regime allows for a simplified debt restructuring process for small and medium enterprises (SMEs) under the Insolvency, Restructuring and Dissolution Act 2018. This process aims to reduce complexity and cost for eligible companies.<sup>23</sup>

**TABLE 7: Comparative Analysis of various Jurisdictions.**

Aspect	India	UK	US	Singapore
<b>Eligibility</b>	Small companies, startups, specified classes	No specific fast-track, but simplified procedures for small companies	Small business debtors, Subchapter V under Chapter 11	SMEs
<b>Initiation</b>	Creditor or debtor	Debtor	Debtor	Debtor
<b>Regulations</b>	Insolvency and Bankruptcy (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017	Insolvency Act 1986 (streamlined processes within existing frameworks)	Small Business Reorganization Act 2019, Chapter 11	Insolvency, Restructuring and Dissolution Act 2018

<sup>21</sup> Insolvency Act 1986, (UK) (<https://www.legislation.gov.uk/ukpga/1986/45/contents>) Accessed 16 Aug, 2024.

<sup>22</sup> Pub. L. No. 116-54, 133 Stat. 1079, 'Small Business Reorganization Act of 2019' (<https://www.congress.gov/116/plaws/publ54/PLAW-116publ54.pdf>) Accessed 17 Aug, 2024

<b>Duration</b>	90 days, with a possible extension of 45 days	Variable	Typically shorter under Subchapter V	Expedited process
<b>Complexity</b>	Simplified procedures	Streamlined for small companies	Simplified under Subchapter V	Simplified for SMEs

Source: Created by authors

**TABLE 8: Comparative Analysis of Stakeholder Roles**

<b>Stakeholder</b>	<b>Pre-pack Insolvency Process</b>	<b>Fast-track Insolvency Process</b>
<b>Corporate Debtor</b>	Initiates process, prepares draft resolution plan, submits plan to NCLT, provides disclosures	Initiates process, cooperates with IRP and creditors, provides disclosures
<b>Creditors</b>	Agree to initiation, review and approve resolution plan, participate in discussions	Form CoC, review and approve resolution plan, make key decisions
<b>Insolvency Professional (IP/IRP)</b>	Appointed to oversee the process, manage debtor's affairs, monitor conduct	Appointed to manage affairs, manage assets and operations, assist in plan preparation
<b>NCLT</b>	Reviews and approves plan, supervises process, enforces terms	Reviews and approves plan, ensures adherence to timelines, resolves disputes

Source: Created by authors

**PERFORMANCE AND CHALLENGES: PPIRP**



- i. **Adoption Rates:** As of recent reports, the uptake of the PPIRP has been relatively slow. This may be due to a lack of awareness among MSMEs and creditors about the benefits of the process.
- ii. **Effectiveness:** While the PPIRP offers advantages such as faster resolution and reduced stigma, its implementation has faced challenges. Issues include obtaining creditor consent and the complexity of the resolution plan preparation.
- iii. **Criticisms:** Some stakeholders argue that the process may not fully address the needs of larger or more complex businesses, and there are concerns about the effectiveness of the resolution plans and their execution.

## **PERFORMANCE AND CHALLENGES: FAST TRACK**

- i. **Adoption Rates:** The fast-track process has seen a moderate level of use, but its effectiveness has been variable. Smaller companies have benefited from the expedited process, but there are concerns about its application and consistency.
- ii. **Effectiveness:** While the process aims to be quicker and less costly, issues such as delays in case handling and procedural complexities have been reported.
- iii. **Criticisms:** Some criticisms focus on the adequacy of the process for more complex cases and the potential for inconsistent outcomes.

## **RECOMMENDATIONS FOR IMPROVING PRE-PACK AND FAST-TRACK INSOLVENCY PROCESSES IN INDIA**

**Streamlining the Regulatory Framework:** To enhance the efficiency of Pre-pack and Fast-track Insolvency Processes in India, it is crucial to streamline the regulatory framework. Simplified procedures should be implemented, focusing on standardizing documentation and eliminating redundant steps. This will reduce the administrative burden on stakeholders and expedite the insolvency process. Furthermore, providing clear and detailed guidelines is essential to avoid ambiguities and delays, ensuring that all parties involved have a clear understanding of the processes. A periodic review of the regulations should also be conducted to identify and address any bottlenecks, ensuring that the framework remains relevant and effective in the evolving economic landscape.

**Enhancing the Role of Insolvency Professionals:** Insolvency Professionals (IPs) play a pivotal role in the success of Pre-pack and Fast-track Insolvency Processes. To improve their

effectiveness, it is important to ensure that IPs have the necessary skills and knowledge through rigorous training and certification programs. Additionally, strengthening the code of conduct for IPs will enhance ethical standards and accountability, thereby fostering trust among stakeholders. Performance monitoring mechanisms should be implemented to regularly assess the efficiency and effectiveness of IPs, ensuring that they adhere to the highest standards of professionalism.

**Fostering Greater Creditor Participation:** Active and informed participation of creditors is vital for the success of insolvency processes. To encourage greater involvement, regular and transparent communication among all stakeholders should be established. Simplified voting mechanisms can facilitate quick and fair decision-making, enabling the process to move forward without unnecessary delays. Furthermore, offering incentives for creditor participation can motivate creditors to engage more actively, ensuring that their interests are adequately represented and protected throughout the insolvency process.

**Strengthening the Role of the National Company Law Tribunal (NCLT):** The NCLT is a critical institution in the insolvency resolution process, and its capacity needs to be enhanced to meet the growing demand. Increasing the resources and membership of the NCLT will allow it to handle cases more efficiently. Additionally, the creation of specialized benches dedicated to insolvency cases can expedite the resolution process by ensuring that cases are handled by experts in the field. Regular training programs for NCLT members on the latest developments in insolvency law will further enhance their ability to adjudicate cases effectively.

**Promoting Greater Use of Technology:** The integration of technology into the insolvency process can significantly improve its efficiency and transparency. Developing digital platforms for filing and processing cases will streamline the administrative aspects of insolvency, reducing the time and effort required from all parties involved. Online dispute resolution mechanisms can provide quick and efficient solutions to conflicts, minimizing delays. Moreover, utilizing data analytics to monitor and improve insolvency processes can lead to more informed decision-making and better outcomes for all stakeholders.

**Encouraging Pre-insolvency Resolution Mechanisms:** Proactive measures should be taken to resolve financial distress before it escalates into insolvency. Encouraging mediation and negotiation as out-of-court settlement options can lead to quicker resolutions and reduce the burden on formal insolvency processes. Early warning systems should be implemented to

identify financial distress at an early stage, allowing for timely intervention. Expanding the Pre-pack framework to include larger firms, with appropriate safeguards in place, can also provide more flexible and effective resolution options.

**Ensuring Fair Treatment of All Stakeholders:** A balanced approach is essential to protect the interests of all stakeholders in the insolvency process, including creditors, employees, and other affected parties. Ensuring transparent and standardized asset valuation methods will provide clarity and fairness in the distribution of proceeds. Additionally, equitable distribution of assets should be prioritized to ensure that all stakeholders receive fair treatment, thereby fostering trust and cooperation in the insolvency process.

In conclusion, enhancing Pre-pack and Fast-track Insolvency Processes in India requires a multifaceted approach that includes streamlining the regulatory framework, empowering insolvency professionals, fostering greater creditor participation, and strengthening the role of the NCLT. Leveraging technology and encouraging pre-insolvency resolution mechanisms will further optimize the process, ensuring quicker and more efficient resolutions. By prioritizing the fair treatment of all stakeholders and maintaining a balanced approach, these recommendations aim to create a more robust, transparent, and effective insolvency framework that can better serve the needs of India's evolving economic landscape.