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LESSONS FROM PRE-PACKAGED INSOLVENCY CASES IN INDIA: A LONG ROAD AHEAD

- M. P. Ram Mohan and Sriram Prasad

INTRODUCTION

Insolvency regimes experiment and evolve, responding to the needs of the market. The Report of the Sub-Committee on pre-packaged insolvency resolution process (PPIRP) noted that the introduction of the pre-pack insolvency scheme represents such an evolution of the Indian insolvency regime.¹ In the aftermath of the COVID-19, the Pre-pack Committee stated that it was the 'right time to introduce pre-packs in India' as there was a likelihood of an increase in insolvency cases.² Pre-pack insolvency aimed to ease the burden of the Tribunals and Courts, as the final resolution would be consensually negotiated between the financial creditors (FCs) and the debtor. Thus, insolvency would be 'pre-packaged' - it would be presented before the court along with an initial resolution plan, for judicial approval.

The aim of PPIRP is a speedy and more cost-effective resolution, with lesser disruption to business than the corporate insolvency resolution process (CIRP).³ To achieve these goals, the pre-pack framework in India consciously shifted away from many procedures and practices as seen in a CIRP while trying to maintain the core features of the Insolvency and Bankruptcy Code, 2016 (IBC/ Code).

The Pre-pack Committee recommended a phased rollout of PPIRP, envisaging it to eventually becoming available for all corporate debtors (CDs).⁴ For the first phase, the Committee recommended 'the size of default which is objective rather than on the size of the company' as a criterion.⁵ However, the legislative rollout of pre-packs was based on the size of the company which they limited to MSMEs under the MSME Act, 2006.⁶

Pre-pack insolvency was notified on April 4, 2021. In the two years following the introduction of pre-pack insolvency, there have only been eight cases (as on May 31, 2023). In this paper, authors have analysed the timeline of the cases and explored the challenges faced. Authors undertook unstructured interviews with lawyers who were involved in the PPIRP cases to understand their perspectives. As the paper only engages with lawyers involved in PPIRP cases, a comprehensive stakeholder perception study is beyond the scope of this research.

INITIATING A PPIRP

To initiate a PPIRP, the MSME should have committed default of an amount of at least ₹ 10 lakh.⁷ The defaulting MSME i.e. the CD requires approval of at least 66% of the unrelated FCs to initiate a PPIRP (section 54A(3)). The FCs will then identify a Resolution Professional (RP) for guiding the PPIRP (section 54A(2)(e), 54C(3)(b)). The CD has to prepare a base resolution plan for review by the FCs (section 54A(4)(c)). These are the key requirements, among other procedural requirements, needed

to initiate a PPIRP.⁸ The application is to be filed before the National Company Law Tribunal (NCLT).

Once a PPIRP application is submitted, it must be admitted or rejected within 14 days. If the NCLT rejects the application, it has to provide seven days for the CD to rectify any defects in the application.

Once admitted to the PPIRP, a resolution plan has to be submitted to the NCLT within 90 days (section 54D), with 30 days provided to NCLT to either approve or reject the plan (section 54L). If no resolution plan is submitted within 90 days, the PPIRP is terminated (section 54D). Alternatively, a PPIRP can end if 66% of the committee of creditors (CoC) approves the termination of the PPIRP and the NCLT passes an order terminating the PPIRP (section 54N, 54-O).

The statutory timeline envisaged for the PPIRP is provided in *Annexure 1*. Part IIIA of IBC provides various requirements such as safeguards towards transparency of information (sections 54C, 54G, 54K); interest of operational creditors (OCs) (section 54K); deterring malfeasance (sections 54F, 54G, 54K) amongst others.

The interplay of the PPIRP (section 54A) and CIRP (under sections 7, 9 and 10) before the Tribunals is covered by section 11A of the IBC. In three of the eight cases filed, the Tribunal faced the issue of applicability of section 11A. Section 11A was introduced along with the pre-pack insolvency amendment, and provides the manner of giving precedence to either the PPIRP or CIRP. Section 11A provides as follows:

- PPIRP to prevail when,
 - PPIRP applications filed first; or
 - PPIRP is filed within 14 days of the CIRP application.
- CIRP to prevail if the PPIRP application is filed more than 14 days after a CIRP application.
- CIRP to prevail if the CIRP application was filed before the pre-pack amendment was introduced.

UNDERSTANDING THE EIGHT CASES WHICH ATTEMPTED TO INITIATE A PPIRP

As discussed above, so far only eight applications have been filed to initiate pre-pack insolvency, of which only six have been admitted. Of the six admitted, one was withdrawn before resolution. Of the five remaining cases, only one case has seen resolution under PPIRP. Currently four cases remain pending as on May 31, 2023.

In this section, the authors discuss the course of these eight cases.

Table 1: Overview of applications filed under Part IIIA of IBC

| Sl. | Case name | Industry | Date of default | Date of admission | Outstanding debt (₹ in approx.) | No. of FCs | Cause of default |
|-------------------------------------|--|---|-----------------|-------------------|--|---------------|--|
| Resolved | | | | | | | |
| 1. | Amrit India ⁹ | Trading and Consultancy | Not provided | 28.11.22 | 12 lakh (Financial) 25 lakh (Contingent) | 1 | Defunct + COVID |
| Admitted and Pending | | | | | | | |
| 2. | GCCL Infrastructure and Projects ¹⁰ | Construction | 31.12.20 | 14.09.21 | 54 lakh | Not Available | Not Available |
| 3. | Enn Tee International Limited ¹¹ | Manufacture of apparel & supply of yarn | 01.04.22 | 10.10.22 | 12 crore (Financial) 4.1 crore (Operational) | 1 | Demonetisation, GST, COVID |
| 4. | Shree Rajasthan Syntex ¹² | Manufacture of yarn | 15.09.20 | 19.04.23 | 30.8 crore (Financial) 7.8 crore (Operational) 1.8 crore (Workers) | 3 | Financial management and regulation of pet coke in Rajasthan |
| 5. | Sudal Industries Limited ¹³ | Manufacture of aluminium extrusions and base alloys | 21.02.19 | 20.04.23 | 132 crore (Financial) 9 crore (Operational) | 10 | Not Available |
| Admitted and Withdrawn | | | | | | | |
| 6. | Loon Land Developers Limited ¹⁴ | Real Estate | 16.07.21 | 29.11.21 | > 10 lakh (Operational) | Not Available | Not Available |
| Withdrawn prior to admission | | | | | | | |
| 7. | Krrish Realtech ¹⁵ | Real Estate | 08.10.21 | NA | 673 crore | Not Available | Not Available |
| Dismissed | | | | | | | |
| 8. | CHD Developers ¹⁶ | Real Estate | 12.07.22 | NA | Not Available | Not Available | Not Available |

The authors begin by examining the two unsuccessful cases, as it helps better contextualise the six cases which were admitted.

The two unsuccessful cases

In *Krrish Realtech Private Limited* (Krrish Realtech) the application for PPIRP was withdrawn prior to its admission. In *CHD Developers Limited* the application for PPIRP was rejected in favour of CIRP. CHD Developers Limited is currently under appeal.¹⁷

Krrish Realtech Private Limited

In the case of *Krrish Realtech*, there was substantial debt due, involving numerous FCs and homebuyers from incomplete real estate projects.¹⁸ Objections against the PPIRP application were filed soon after its filing with the NCLT. Notices were issued, and the objecting parties were in the process of being heard. Response had been sought from Krrish Realtech to the objections raised.

The objections claimed that the PPIRP application was not filed properly and the consent of the FCs was not taken as mandated under the IBC.¹⁹ In response, Krrish Realtech filed an appeal before the NCLAT seeking that the objections be heard after the admission of the PPIRP application. They argued that PPIRP under IBC did not allow the hearing of objections during the admission process. The objectors argued that the manner of filing the PPIRP application indicated Krrish Realtech's malafide and fraudulent intentions.

The NCLAT upheld NCLT's decision to hear the objections.²⁰ NCLAT *prima facie* found that the regulations had not been complied in obtaining approval of the FCs for filing the PPIRP application. NCLAT reasoned, when an application under section 54C did not fulfil the statutory requirement, a person having a claim in PPIRP could point out the infirmity and object to the admission of an improper application. The NCLAT further held that NCLT was guided by the principles of natural justice, and it was appropriate to provide reasonable time to file the objections.²¹ Subsequent to the decision of the NCLAT, Krrish Realtech withdrew the PPIRP application. The time taken from the date of filing to the date of withdrawal was 137 days.

CHD Developers Limited

CHD Developers Limited initiated the application for PPIRP while CIRP applications by homebuyers were already pending before the NCLT. The CIRP applications under section 7 had been filed prior (in October, 2020) to the coming into effect of the PPIRP ordinance providing for PPIRP. In these cases, CHD admitted the default and did not dispute the section 7 application.²²

The NCLT had to determine whether to admit the pending section 7

petition or the newly filed section 54C application. Section 54C covers the procedure to initiate an application and section 54A covers eligibility. The NCLT drew upon section 11A(4) of the IBC, which states that if a section 7 application was filed before the coming into effect of Part IIIA of IBC, then the order of precedence provided under section 11A (1), (2), and (3) would not be applicable. Accordingly, the PPIRP application was rejected. In this case, the time taken between the date of filing and the rejection of the PPIRP application was 55 days. The decision of the NCLT is currently under appeal.²³

The six cases admitted to PPIRP

The six cases which were admitted to PPIRP can mainly be divided into two categories. In the first, the key question was the completeness of the PPIRP application. In the second, the issue pertained to the conflict between section 7 and section 54A applications. The latter dealt with similar questions as discussed in the *CHD Developers* case above.

4 cases on completeness of the PPIRP application

While the facts of all four cases are different, the primary question before the NCLT was the completeness of the PPIRP application. These four cases were:

1. GCCL Infrastructure and Projects Limited
2. Loon Land Developers Limited
3. Enn Tee International Limited
4. Amrit India Limited

In the case of both *GCCL Infrastructure* (Annexure 2) and *Loon Land Developers* (Annexure 7), no significant clarifications were sought by NCLT prior to the admission. In the case of GCCL, there was a default towards FCs; while in the case of Loon Land Development, the default was towards OCs.

In *Enn Tee International Limited* no significant clarifications were sought by the Tribunal, and a minor defect was corrected prior to admission of the application (Annexure 3).

In the case of *Amrit India Limited*, the main issue related to the admissibility arose, due to the filing of a defective application before the NCLT. The application did not include a base resolution plan. The Tribunal granted additional time for clearing the defect. The base resolution plan was then filed 49 days after the filing of the initial application (Annexure 4).

The Tribunal's approach to all these cases was similar. Upon finding that all the statutory requirements were fulfilled, the Tribunal admitted the PPIRP applications. In all four orders admitting the PPIRP application,

the Tribunal listed out all the requirements under the IBC to initiate a PPIRP (under sections 54A, 54B, and 54C) and observed how these had been complied with and fulfilled in the PPIRP application. The time taken between the filing and the admission of the application for the four cases on average was 79 days.

Application of Section 11A in two cases of admission

In *Shree Rajasthan Syntex* and *Sudal Industries Limited*, both section 7 and section 54A applications were filed. The cases are discussed in detail below.

a. *Shree Rajasthan Syntex*

Shree Rajasthan Syntex Limited (SRS), a publicly listed company had incurred losses since 2015 and was negotiating with the consortium of banks to restructure the loan. The three banks were—State Bank of India (SBI) [50.73% of debt], Industrial Development Bank of India (IDBI) [28.39% of debt], and Bank of Baroda (BoB) [20.88% of debt]. While engaged in negotiations, BoB unilaterally filed a section 7 application without informing the consortium or SRS. Consequently, SRS filed a PPIRP application.

BoB objected to the PPIRP application, and its main arguments were:

- a) SRS was not an MSME under the criteria revised by the Ministry of MSME under notification dated June 26, 2020.
- b) The PPRIP application was filed as a response by SRS after BoB had filed a section 7 application to initiate a CIRP.

The Tribunal observed that in the given case, BoB filed a section 7 application on April 18, 2022, post which notices were issued on May 4, 2022. The PPRIP application was filed on July 26, 2022. However, SRS submitted, the process to initiate PPIRP had commenced in March 2022 – when SRS had obtained consent to initiate PPIRP from SBI on March 29, 2022 and IDBI on April 13, 2022.

The Tribunal noted that BoB at the time of filing its CIRP application on April 18, 2022, was aware that an effort to file a PPIRP application was underway. Consequently, the Tribunal held that BoB's CIRP application was in bad faith – as more than 66% of the FCs had already approved the PPIRP scheme.

NCLT allowed the PPIRP application, finding it in the interest of all the stakeholders; even though the PPIRP application was filed after the 14 days period provided under section 11A(2). The Tribunal also questioned the practicality of allowing a CIRP where more than 75% of the FCs favoured initiating a PPIRP. Regarding whether SRS was an MSME, the Tribunal was satisfied with SRS's MSME certificate and SBI and IDBI's submission that SRS was an MSME. Consequently, the Tribunal dismissed

the CIRP application and admitted the PPIRP application, 267 days after it was filed.

b. Sudal Industries Limited

Sudal Industries Limited (Sudal), a publicly listed company, had submitted a PPIRP application while two CIRP applications were already pending. Of the two petitions, one was filed by Canara Bank (Canara) on July 17, 2020 which held 78.09% of total financial debt and had consented to the PPIRP. The other petition was filed by Jaldhara Properties & Trading Private Limited (Jaldhara) on December 9, 2020 which held 10.56% of the financial debt. Jaldhara objected to the PPIRP application and requested the Tribunal to decide the section 7 petition first, as was mandated under section 11A (4).

On examining section 11A (4), the Tribunal found that the law mandated examining the section 7 petition first. Be that as it may, the Tribunal observed both section 7 and section 54A intended to achieve the same goal, which was resolution of insolvency. As Canara had consented to the PPIRP application, NCLT dismissed its CIRP application as infructuous. The Tribunal further found that Jaldhara's '*opposition stems from its intent to displace the existing promoter(s) from its management than to resolve the Corporate Applicant*' and held that the application was not '*in accordance with the intent and object of the code and deserve[d] to be dealt with accordingly*'. Thus, the Tribunal found Jaldhara's application not maintainable.

After dismissing both section 7 petitions, the Tribunal found the section 54A application to be complete and admitted Sudal to PPIRP, 228 days after the initial filing of the PPIRP application. While this case was similar to *CHD Developers*, the Tribunal distinguished the case on facts and held that in *CHD Developers*, the CD had not disputed the section 7 application as was not the case in *Sudal Industries*.²⁴

The lone resolution till date: Amrit India

While pre-pack insolvency seems to be relatively straightforward, there has been only one resolution so far—the approval of the resolution plan of *Amrit India* by NCLT.

In the case of *Amrit India*, there was only one FC. *Amrit India* declared insolvency due to worsening relations with the FC, where the FC refused to provide further credit. The business was incorporated in 1981, and had been defunct since 2019. It also claimed to have been adversely affected by COVID-19. Consequently, *Amrit India* initiated PPIRP and proposed a base resolution plan with a 90% haircut for the FC and a 100% impairment of rights of contingent creditors. The CoC in its second meeting rejected the base resolution plan after *Amrit India* was unable to improve its plan and invited resolution plans from prospective resolution applicants.

The CoC received only one resolution plan from Aquarius Fincaps and Credits Private Limited (Aquarius). At the request of the CoC, some modifications to its resolution plan were made by Aquarius. Thereafter, in its 5th meeting, the CoC approved Aquarius's resolution plan. As per the plan, Aquarius was to pay ₹ 5 lakh to the FC against the amount of ₹ 12.7 lakh and provide ₹ 2.2 lakh for contingent claims valued at around ₹ 25.6 lakh. No amount was due to any OC per the information memorandum. The Tribunal approved the resolution plan after reviewing its compliance with the requirements under the IBC.

The whole process from the date of admission to the date of approval of the resolution plan took 156 days. Additionally, it took 75 days for a complete application to be filed with the Tribunal (Annex 4). Thus, bringing the total time spent between filing and approval to 231 days. This included three adjournments at the request of the CD.

NCLT'S APPROACH TO PRE-PACK CASES

Examining the eight cases shows that the time taken to process the initial application varies widely based on the complexity of the case. Ranging from 38 days taken in *Loon Land Developers* case to 267 days in *Shree Rajasthan Syntex*. If the application is incomplete or where there are some procedural shortcomings, the current practice adopted by the NCLT allows persons with claims to object. These objections would be heard before admitting the application. *CHD Developers*, *Shree Rajasthan Syntex* and *Sudal Industries Limited* are illustrative in this regard. In *CHD Developers*, the Tribunal accepted the objection and initiated a CIRP. In *Shree Rajasthan Syntex* and *Sudal Industries Limited*, only when the Tribunal heard and dismissed the objections, it examined the PPIRP applications.

The current status of the pending PPIRP cases highlights the difficulty in meeting the prescribed timeline. The problems faced and their causes are discussed below.

Protracted PPIRP cases

An application once filed has to be decided within 14 days. If the Tribunal finds a defect with the application, the Tribunal has to provide 7 days for the applicant to correct the defect. Once admitted, pre-pack insolvency is to be completed within 120 days. This means from the date of filing, a PPIRP has to be completed within 134 days (+7 days in case of a defect being corrected). Once PPIRP is initiated, the CD has 90 days to submit a resolution plan and the IBC envisages 30 days for the court to either approve or reject the plan. The timeline mandated for PPIRP under the IBC is provided in Annexure 1. However, for the timelines to be met in practice, this requires speedy hearings, submission of complete information, straightforward transactions, etc.

GCCL Infrastructure is illustrative of the bottlenecks that lead to delays in resolution. These bottlenecks are present not only in the case of PPIRP matters, but in many cases being dealt by NCLT. In *GCCL Infrastructure*, the application was filed on June 6, 2021. After the registry scrutinised the application, the application was registered on June 27, 2021. The first hearing occurred on September 6, 2021 when the NCLT sought a clarification. On September 14, 2021, the NCLT admitted the petition. However, after admitting the petition, the case was plagued with delays, as illustrated in Annexure 2.

In *GCCL Infrastructure*, 694 days had elapsed between the date of filing upto May 31, 2023, and the case is still pending. This case is symptomatic of the delay in approving the resolution plan. Since its filing, till May 31, 2023, there have been a total of 18 adjournments, of which 14 were due to paucity of time, or absence of the regular bench.

Of the other cases, in *Loon Land Developers Limited* there were a total of 13 adjournments, including five due to paucity of time. The CD and the RP had sought the other eight adjournments. The case spent approximately 16 months in the system (483 days) before it was withdrawn (Annexure 7). In *Enn Tee International Limited*, post admission, nearly 200 days have been taken by the CoC to consider the resolution plan (Annexure 3).

The only case to see resolution, *Amrit India Limited* was admitted on November 28, 2022. Amrit India took 231 days from the date of filing and 156 days from the date of admission to be resolved - as seen in its timeline in Annexure 4.

The review of the six admitted cases shows the average time taken between filing and admission was 135 days, against the mandated 14 days period under section 54C(4). In trying to understand the challenges faced in the pre-pack application process and its adjudication, the authors conducted unstructured interviews with some of the lawyers involved with PPIRP cases. These insights are discussed in the next part.

INSIGHTS INTO THE WORKING OF THE PRE-PACK PROCESS

The authors conducted interviews with four lawyers involved with PPIRP cases. They were, Mr. Ishan Shah²⁵ (involved with *GCCL Infrastructure*), Ms. Prachi Johri²⁶ (involved with *Enn Tee International*), Ms. Varsha Banerjee²⁷ (involved predominantly with *Amrit India* and, to a certain extent, with *Loon Land Developers*) and Mr. Prakul Khurana²⁸ (involved with *Shree Rajasthan Syntex*).

The unstructured interviews with the lawyers provided various insights and three common themes emerged - a) Source of delay; b) Hesitancy in utilising PPIRP; and c) Specific insights.

Source of delay in the PPIRP cases

All the lawyers agreed that there was much delay caused in PPIRP cases, as was evident in their timelines.

Ms. Varsha Banerjee noted that while lack of infrastructure was a problem, it was a problem across the Judiciary, not endemic to pre-pack insolvency. Ms. Banerjee also remarked that pre-pack insolvency was time sensitive—lose time and lose the advantage pre-pack insolvency offers. In this regard, Ms. Banerjee suggested some time could be saved if the NCLT registry scrutinised pre-pack cases on priority. Similarly, Mr. Ishan Shah suggested that the NCLT registry could adopt a checklist approach. Mr. Shah also noted that NCLT, in a general sense, was overburdened, which explained the time taken between filing the application and the date of the first hearing.

As seen in the timelines, significant time was lost as the judges were involved in other benches, or the matter could not be taken up due to paucity of time. In this regard, Ms. Prachi Johri observed, some time was always lost in adjournments. She also noted how initially, section 7, section 9 and section 10 petitions took time to be admitted when the IBC was newly enacted. Ms. Johri though is optimistic, believing that as judges deal with more cases and become more familiar with pre-pack insolvency, cases would be disposed of faster. Mr. Prakul Khurana noted that the Tribunal and judges have some leeway to try to ensure faster resolution in PPIRP cases. In this regard, the role played by judges gains significance.

The role played by judges

The judges' unfamiliarity with PPIRP caused some delay, according to Ms. Johri. In her case, the judges' had many questions. Ms. Johri made a checklist of the required documents to address all these questions. Ms. Johri then submitted the checklist along with the documents to the judges to address their concerns, after which the application was admitted. As noted by all the lawyers, the requirements are relatively straightforward and do not require a thorough examination by the NCLT at the admission stage in the first instance. Nonetheless, they observed judges to have a significant role in how quickly a case is resolved.

Mr. Khurana, in his experience noted how the judges were conscious of the legislative intent of the PPIRP and wanted to adjudicate the matter quickly. However, Mr. Shah's experience in GCCL was different, where GCCL was plagued with much delay. Mr. Shah attributed the significant delay in PPIRP cases to a lack of precedent which limited the practical understanding of how PPIRPs function among the judges. He noted how the lack of precedent partly contributed to some hesitancy the judges have in approving the base resolution plan. According to Mr. Shah, the hesitancy is most observable when resolution plans try to extinguish government dues, where the NCLT does not approve the resolution plan

until someone representing the government department appears before NCLT.

Mr. Shah also attributes some hesitancy in approving the resolution plan in pre-pack cases to the fact that the NCLT is unable to internalise that by design, the NCLT is not to be involved in the pre-pack process. According to him, minimising the NCLT's involvement is by design, where the law allows for the CD to be creative to sustain the company during a difficult period. It was stressed that the courts need to develop trust that PPIRP is not a mechanism to cover up or engage in fraud and not be paranoid when the company itself initiates insolvency.

Ms. Banerjee also agrees that there is not much adjudication involved in PPIRP, yet judges take time and ask many questions. Such conduct, as Ms. Banerjee observes, can be attributed to restructuring being viewed with paranoia when a company initiates the restructuring. Ms. Banerjee explains that this paranoia arises from cases of past abuse under the previous insolvency regime. However, Ms. Banerjee stresses that the current insolvency regime, including pre-pack insolvency, does not leave scope for much abuse or fraud. She further notes how PPIRP does not prejudice any creditor, as FCs have to consent and OCs have to be paid in full. Therefore, Ms. Banerjee advocates for a procedural approach similar to what is envisaged in a voluntary liquidation proceeding to speed up the process of approval of PPIRP.

Delays are also attributable to the issuance of notice by the Tribunal to the creditors at the first hearing. Ms. Banerjee believes a notice is, per se, not needed in PPIRP. Mr. Shah attributes the tendency to send a notice to a lack of trust and not being able to appreciate the intent of PPIRP. Ms. Johri opines that sending a notice should be seen on a case-to-case basis. For instance, there is no need for notice where there is only one FC who has already approved the PPIRP, as was the case in *Enn Tee International*.

Mr. Khurana agrees with Ms. Johri and notes that notice is not needed when there is only one creditor or all the FCs have consented. Mr. Khurana also proposes that the creditors can waive notice by being present at the first hearing as they receive advance notice of the hearing. However, according to Mr. Khurana, where there is a dissenting creditor, the Tribunal needs to send a notice to understand the dissenting creditor's objection.

Hesitancy in utilising PPIRP

When asked about the low number of PPIRP cases filed in the two-year period since the pre-pack scheme was introduced, all the lawyers indicated it might take some time and only successful resolution in the current cases can spur more PPIRP applications. However, they provided some reasons to explain the lack of applications so far.

Ms. Johri opines that the bankers would prefer a CIRP to a PPIRP, as a CIRP had the scope to be more competitive. Ms. Johri also believes that the promoters might not have enough funds, especially after COVID-19, to fund their base resolution plans—and hence preferred to try and sustain the company rather than proceed with a PPIRP. According to Mr. Shah, another reason could be that lawyers are not advising companies to use PPIRPs creatively. Mr. Shah further advocates for opening the pre-pack scheme to all companies and not limiting it to MSMEs (which is in some manner a proposal in the 2022 draft amendment).

Ms. Banerjee explained how the delay seen in current PPIRP cases could also disincentivise the use of PPIRP. According to Ms. Banerjee, financial projections and agreeing to any base resolution plan would be based on the current outlook, which may change once the critical time period is over. If PPIRPs are delayed, the base resolution plan which was submitted at the time of the PPIRP application would have less scope for approval. Consequently, the CD may be deterred from initiating a PPIRP, if the base resolution plan proposed by the CD would have less scope of approval—which is one of the predominant advantages a PPIRP offers over a CIRP.

Mr. Khurana opined that the lack of PPIRP cases could also be explained by how bankers at the lower level seem unwilling to take a call on approving PPIRPs and pass the responsibility onward. In this regard, Mr. Khurana observes that the toughest part of PPIRP was getting approval from the banks. In his case, only when SBI took the initiative and approved the PPIRP did IDBI approve the PPIRP, while BoB contested the PPIRP. However, Mr. Khurana also understands why banks may be hesitant—as they have to verify whether the losses are genuine or spurious when consenting to a PPIRP.

Apart from these general observations, certain specific insights were uncovered during the interview, as discussed in the following part.

Specific insights

Ms. Johri observed that as Tier-II cities would see a growing number of PPIRPs in the future, Tier-II bank branches would need to develop infrastructure to deal with PPIRPs at their level, which was not the case in her experience. According to Ms. Johri, such a delay at the creditor's level would endanger the success of the PPIRP, as it has to adhere to strict timelines. Mr. Khurana agreed with Ms. Johri's observations adding that banks must take responsibility for approving PPIRPs.

Mr. Khurana also bemoaned the lack of awareness of how IBC functions among government authorities, specifically stakeholders such as the electricity distribution companies (DISCOMs). Mr. Khurana noted that

the electricity DISCOMs are often unaware that the IBC overrides their statutory rights. Hence it is sometimes difficult to implement NCLT's order—as seen in Mr. Khurana's case, where an intervening application was required. While Mr. Khurana acknowledged awareness has improved compared to the initial years, a lot remains desired.

Mr. Shah observed that there is much scope to use PPIRP creatively to try and sustain the company. However, Ms. Banerjee pointed out that PPIRP may only face sector-specific success. All three unsuccessful cases were of real estate companies. Ms. Banerjee observed a lack of transparency amongst real estate companies and, consequently, a lack of trust to be a cause of such failure—which is also reflected in the failure of some real estate CIRPs.

Mr. Shah also observed that the NCLT does not follow the timeline for admissions of applications and the approval of resolution plans and is unlikely to do so. In this regard, Mr. Khurana observed how some issues may arise under section 11A, as was evident in his case. According to Mr. Khurana, section 11A uses language, which when literally interpreted, would not be in consonance with the legislative intent—where the CD is unable to file a PPIRP application within the 14 days period (from the filing of a CIRP application) under section 11A. Mr. Khurana explained this 14 days period arises from the language used by sections 7 and 9, where the application must be admitted within 14 days, which the Supreme Court has held as directory and not mandatory. Therefore, Mr. Khurana opined that the time period under section 11A must also be directory and not mandatory.

According to Mr. Khurana, such an interpretation is needed as getting all the approvals and documentation required for a PPIRP within the 14 days period under section 11A is impractical. Mr. Khurana proposed an alternative solution to comply with the 14 days period—filing a petition within the 14 days period to condone the delay and show that steps have already been undertaken to initiate a PPIRP. Regardless of these issues which may arise under section 11A, Mr. Khurana noted how PPIRP has all the tools it needs to be successful.

As stated before, this paper only engaged in a limited stakeholder analysis and a broader stakeholder analysis is much needed to understand better how all the stakeholders perceive PPIRPs. In that regard, some individual stakeholder insights are available in the public domain. The authors briefly examine one such insight which reflects some of the observations made by the lawyers.

A banker's perspective

A wide-ranging interview on the IBC with Mr. Ashwini Kumar Tewari²⁹ was published in the April, 2023 issue of the journal 'The Resolution Professional'.³⁰ In the interview, Mr. Tewari noted that pre-packs had

not gained traction in the market as reflected by the number of cases. He opined that the poor response to PPIRPs may be due to the ‘promoters of the defaulting MSME [not being] comfortable initiating PPIRP’ as it would entail much scrutiny of the affairs of the company and some powers would vest with the RP.

Responding further, he explained that another reason for the lack of market engagement with PPIRPs could be due to hesitancy on the part of the FCs in approving the PPIRP, as a haircut ‘is a last resort in the case of CIRP’, which would be a ‘voluntary one in case of PPIRP’. Mr. Tewari also observed that due to the voluntary nature of the haircut, ‘[t]here might be fear among operating officials of FCs that such a decision might be subject to scrutiny by various authorities at a later date’.

Mr. Tewari concluded that PPIRPs should be extended to other corporates beyond MSMEs and that awareness drives were needed, which the IBBI should conduct in association with FICCI, ASSOCHAM and other stakeholders. He also generally noted a lack of adjudicating infrastructure and how it caused delays in resolving cases. The interview raises issues, similar to those raised by the lawyers.

CONCLUSION

A law is only as good as its implementation. While PPIRP aims to be efficient and fast, it faces many roadblocks in its implementation for various reasons. To ensure that PPIRP is implemented as envisaged, efforts must be directed at training and spreading awareness amongst NCLT judges and registry, FCs, lawyers, Insolvency Professionals, and other stakeholders. A dedicated pre-packs desk at the IBBI would help in coordinating the effort.

Currently, PPIRP is stuck in a vicious cycle. The market seems to be waiting to see how PPIRPs progress. The process, unfortunately, is taking more time than envisaged as PPIRP is a new concept. This delay may disincentivise the market to use PPIRP, leading to fewer cases and a self-perpetuating cycle. To break this cycle, it is critical to fix the process and implementation issues at the earliest; otherwise, if this situation continues, expanding pre-packs to all types of companies will not find many takers.

Annexure 1**The timeline for a PPIRP provided under IBC**

| Timeline | Event | Section/Regulation |
|-----------------|---|---|
| 0 | Admission of PPIRP application | Section 54C |
| +7 days | Constitution of CoC | Section 54-I |
| +14 days | First meeting of CoC (within seven days of the constitution of CoC) | Section 54-I |
| +21 days | Publication of invitation for resolution plan | Regulation 43 of IBBI (Pre-Packaged Insolvency Resolution Process) Regulations, 2021 |
| +89 days | Evaluation and approval of resolution plan by the CoC | Regulation 47 and 48 of IBBI (Pre-Packaged Insolvency Resolution Process) Regulations, 2021 |
| +90 days | Application to the Adjudicating Authority for approval of the resolution plan or termination of the PPIRP if no resolution plan is approved | Section 54D |
| +120 days | Order for approval of resolution plan or termination of the PPIRP | Section 54L |

Annexure 2**The timeline of GCCL Infrastructure**

| Sl. | Date | Action | Timeline |
|------------|----------------------------------|--|----------------------------------|
| 1 | 6 th July, 2021 | Filing with the registry | Date of filing (F) |
| 2 | 27 th July, 2021 | Registration by the registry after scrutiny | 21 days |
| 3 | 6 th September, 2021 | First hearing, the Bench sought some clarifications | 62 days |
| 4 | 14 th September, 2021 | The Tribunal admitted the petition to PPIRP | 70 days Date of admission (A) |
| 5 | 30 th March, 2022 | Matter adjourned due to paucity of time | A + 197 days |
| 6 | 4 th April, 2022 | Matter adjourned due to paucity of time | A + 202 days |
| 7 | 13 th May, 2022 | Matter adjourned due to paucity of time | A + 241 days |
| 8 | 31 st May, 2022 | The Tribunal sought clarifications from the RP about some details in the accepted resolution plan. | A + 259 days |
| 9 | 20 th June, 2022 | The Tribunal sought further details of a merger happening under the resolution plan. | A + 279 days |
| 10 | 11 th July, 2022 | Counsel sought an adjournment which was granted | A + 300 days |
| 11 | 31 st August, 2022 | Matter adjourned as the Bench was conducting hearings related to a different bench | A + 351 days |
| 12 | 16 th September, 2022 | Counsel for resolution applicant complied with order dated 20.06.2022. Respondent's Counsel sought an adjournment | A + 367 days |
| 13 | 13 th October, 2022 | The Tribunal observed the pleadings to be complete and ordered the matter to be listed on 1 st November, 2022 | A + 394 days |
| 14 | 1 st November, 2022 | Ordered for listing high on board for 17 th November, 2022 | A + 413 days |
| 15 | 17 th November, 2022 | Matter adjourned due to paucity of time | A + 429 days |
| 16 | 24 th November, 2022 | Matter adjourned due to paucity of time | A + 436 days |

| Sl. | Date | Action | Timeline |
|----------------------------------|---------------------------------|--|-----------------|
| 17 | 9 th December, 2022 | Matter adjourned due to paucity of time | A + 451 days |
| 18 | 14 th December, 2022 | Matter adjourned due to paucity of time | A + 456 days |
| 19 | 22 nd December, 2022 | Matter adjourned due to paucity of time | A + 464 days |
| 20 | 6 th January, 2023 | The matter was ordered to be listed before the Regular Bench on 12.01.2023 | A + 479 days |
| 21 | 18 th January, 2023 | The Tribunal sought a clarification on the treatment of shareholders under the resolution plan and asked for a reply to be filed within a week. | A + 491 days |
| 22 | 7 th February, 2023 | The Tribunal noted the Counsel's reply (to order dated 18.01.2023) and adjourned to 17.02.2023. | A + 511 days |
| 23 | 17 th February, 2023 | The Tribunal considered the pleadings to be complete and listed the matter for 02.03.2023. | A + 521 days |
| 24 | 2 nd March, 2023 | The Tribunal heard counsels and adjourned. | A + 534 days |
| 25 | 13 th March, 2023 | The Tribunal noted Counsel's appearance and adjourned. | A + 545 days |
| 26 | 30 th March, 2023 | Matter adjourned due to paucity of time | A + 562 days |
| 27 | 21 st April, 2023 | The Tribunal noted that since the bench was reconstituted, matter had to be heard afresh and listed the matter high on board for hearing on 11.05.2023 | A + 584 days |
| 28 | 11 th May, 2023 | Matter was listed for hearing high on board on 17.05.2023. | A + 604 days |
| 29 | 17 th May, 2023 | Matter adjourned due to paucity of time and listed for hearing on 12.06.2023. | A + 610 days |
| As of 31 st May, 2023 | | | A + 624 days |

Annexure 3**Timeline for Enn Tee International Limited**

| Sl. | Date | Event | Timeline |
|----------------------------------|----------------------------------|--|-----------------------------------|
| 1 | 8 th June, 2022 | Filing with the registry | Date of filing (F) |
| 2 | 6 th July, 2022 | Registration by the registry after scrutiny | 28 days |
| 3 | 8 th July, 2022 | The Tribunal issued notice to respondents and non-applicants, returnable by 12 th July, 2021 | 30 days |
| 4 | 12 th July, 2022 | Proxy counsel sought a “short date” and matter was listed for physical hearing for 1 st August, 2021 | 34 days |
| 5 | 1 st August, 2022 | Matter adjourned due to paucity of time. In the meantime, the Tribunal ordered for the pleadings to be completed and filed | 54 days |
| 6 | 6 th September, 2022 | A minor defect in PPIRP application was pointed out by the Counsel who was given seven days to rectify the defect. The defect was that the special resolution by shareholders under section 54A(2)(g) was not filed. | 90 days |
| 7 | 12 th September, 2022 | Matter was adjourned as Bench was busy. | 96 days |
| 8 | 29 th September, 2022 | The Tribunal reserved the order. | 113 days |
| 9 | 10 th October, 2022 | Order admitting the PPIRP application was passed. | 124 days Date of admission (A) |
| 10 | 25 th January, 2023 | Report filed by the RP taken on record | A + 107 days |
| 11 | 24 th April, 2023 | RP’s Counsel sought 15 days as was granted by the Tribunal for the CoC to consider a resolution plan. | A + 196 days |
| As of 31 st May, 2023 | | | A + 233 days |

Annexure 4**Timeline for Amrit India**

| Sl. | Date | Event | Timeline |
|------------|----------------------------------|--|----------------------------------|
| 1 | 14 th September 2022 | Filing with the registry | Date of filing (F) |
| 2 | 21 st September 2022 | Registration by the registry after scrutiny | 7 days |
| 3 | 26 th September, 2022 | The Tribunal ordered notice to be issued to respondents and non-applicants to be returned by 4 th October, 2022. | 12 days |
| 4 | 4 th October, 2022 | At the request of the counsel, the Tribunal listed the matter for hearing on 6 th October. | 20 days |
| 5 | 6 th October, 2022 | At request of the counsel, the Tribunal listed the matter for a physical hearing on 11 th October. | 22 days |
| 6 | 11 th October, 2022 | Counsel sought time to rectify the defect of not submitting a base resolution plan with the pre-pack application. The Tribunal granted time till 2 nd November to rectify the defect. | 27 days |
| 7 | 2 nd November, 2022 | The Tribunal heard the applicant and reserved the order on admission of the application. | 49 days |
| 8 | 28 th November, 2022 | The Tribunal passed on order admitting Amrit India to PPIRP. | 75 days Date of admission (A) |
| 9 | 12 th December, 2022 | First CoC meeting—the CoC requested the CD to improve the base resolution plan which proposed the FC take a 90% haircut and a 100% write off of contingent debt. | A + 14 days |
| 10 | 14 th December, 2022 | Second CoC meeting—the CoC rejected the base resolution plan and invited applications for a resolution plan. | A + 16 days |
| 11 | 16 th December, 2022 | The minutes of the first CoC meeting were taken on record along with a list of creditors as submitted by the RP. | A + 18 days |
| 12 | 16 th December, 2022 | Third CoC meeting—the CoC approved the evaluation matrix and the deadline to submit the resolution plan which was 31 st December, 2022. | A + 18 days |

| Sl. | Date | Event | Timeline |
|------------|---------------------------------|--|-----------------|
| 13 | 9 th February, 2023 | Fourth CoC meeting-only one resolution plan was submitted in which the CoC sought some changes. | A + 73 days |
| 14 | 20 th February, 2023 | Modified resolution plan was submitted by the resolution applicant. | A + 84 days |
| 15 | 21 st February, 2023 | Fifth CoC meeting-the CoC approved the modified resolution plan. | A + 85 days |
| 16 | 27 th March, 2023 | At request of the counsel, the Tribunal listed the matter for a physical hearing on 17 th April. | A + 119 days |
| 17 | 17 th April, 2023 | Counsel for RP submitted that a resolution plan was unanimously approved by the CoC. The matter was listed for a physical hearing on 19 th April. | A + 140 days |
| 18 | 19 th April, 2023 | Tribunal heard the counsel and reserved the order on approval of the resolution plan. | A + 142 days |
| 19 | 3 rd May, 2023 | The Tribunal approved the resolution plan. | A + 156 days |

Annexure 5**Timeline for Shree Rajasthan Syntex**

| Sl. | Date | Event | Timeline |
|------------|----------------------------------|---|--------------------|
| 1 | 18 th April, 2022 | Bank of Baroda filed a section 7 application | NA |
| 2 | 26 th July, 2022 | Filing of the PPIRP application | Date of filing (F) |
| 3 | 29 th July, 2022 | Registration of the PPIRP application | 3 days |
| 4 | 4 th August, 2022 | First hearing—Respondent No. 3 (Bank of Baroda – BoB) disputed the applicant’s MSME status and claimed to have filed a section 7 CIRP petition. The Tribunal gave the applicant 7 days to respond to BoB’s objections. | 9 days |
| 5 | 6 th September, 2022 | Counsels appeared on behalf of Respondents 1 (State Bank of India - SBI) and 2 (Industrial Development Bank of India – IDBI) and were given 14 days to file a response, as sought. | 42 days |
| 6 | 29 th September, 2022 | Counsel for SBI sought time for filing a response. Counsels for both sides suggested an amicable settlement was being explored and sought a short adjournment. The Tribunal accepted the request and adjourned till 1 st November, 2022. | 65 days |
| 7 | 1 st November, 2022 | The Tribunal heard the Counsels and noted the Respondents to have filed the appropriate responses. | 98 days |
| 8 | 29 th November, 2022 | The Tribunal after hearing the applicant Counsel asked the Respondents to file appropriate responses. | 126 days |
| 9 | 8 th December, 2022 | The Tribunal could not hear the matter due to the paucity of time and listed the matter for the next day on top of the priority list. | 135 days |
| 10 | 9 th December, 2022 | The Tribunal heard the Counsels. Counsel for BoB sought time to instruct her client whether to pursue Section 7 application or consent to the section 54A application. The Counsel for SBI objected to BoB causing “unnecessary delay”. The Tribunal granted some time and listed the matter for 9 th January, 2023. | 136 days |

| Sl. | Date | Event | Timeline |
|----------------------------------|---------------------------------|---|-----------------------------------|
| 11 | 9 th January, 2023 | The Tribunal heard all the Counsels and listed the matter for 23 rd January, 2023 | 167 days |
| 12 | 23 rd January, 2023 | The Tribunal heard all submissions and reserved the order. | 181 days |
| 13 | 10 th February, 2023 | The Tribunal heard an IA filed by applicant to direct BoB not to take any coercive action against the applicant as BoB was attempting to take possession of the applicant's estate. The Tribunal prohibited BoB from taking any coercive action until the PPIRP application had been decided. | 199 days |
| 14 | 19 th April, 2023 | The Tribunal admitted the section 54A PPIRP application over the section 7 CIRP application. | 267 days Date of admission (A) |
| 15 | 23 rd May, 2023 | An IA was filed by the applicant against the electricity company which was threatening to disconnect electricity. | A + 34 days |
| 16 | 25 th May, 2023 | The Tribunal instructed the electricity company to not disconnect the connection and charge the disputed fuel surcharge on the next electricity bill. | A + 36 days |
| As of 31 st May, 2023 | | | A + 42 days |

Annexure 6**Timeline for Sudal Industries Limited**

| Sl. | Date | Event | Timeline |
|------------|---------------------------------|--|--------------------|
| 1 | 17 th July, 2020 | A section 7 application is filed by Canara Bank | NA |
| 2 | 9 th December, 2020 | A section 7 application is filed by Jaldhara Properties and Trading Private Limited | NA |
| 3 | 4 th September, 2022 | Filing of PPIRP application | Date of filing (F) |
| 4 | 6 th October, 2022 | Registration of PPIRP application | 32 days |
| 5 | 12 th October, 2022 | The Counsels petitioned Court-I, NCLT Mumbai, to move before the Principal Bench of NCLT, New Delhi, for transfer of the petition to NCLT Mumbai, Court-IV, where related matters were pending. The Tribunal granted liberty to take necessary steps and listed the matter for 2 nd December, 2022. | 38 days |
| 6 | 2 nd December, 2022 | Due to paucity of time, NCLT Mumbai, Court-I listed the matter for 6 th February, 2023. | 89 days |
| 7 | 5 th January, 2023 | NCLT Principal Bench, New Delhi transferred both, the pending section 7 petition and the section 54A petition to NCLT Mumbai, Court-IV. | 123 days |
| 8 | 23 rd January, 2023 | NCLT Mumbai, Court-IV listed the matter for hearing on 7 th February, 2023. | 141 days |
| 9 | 7 th February, 2023 | Counsel for the respondent sought and was given two weeks to file a reply. | 156 days |
| 10 | 3 rd March, 2023 | As requested by the Counsel, the matter was listed for 16 th March, 2023 | 180 days |
| 11 | 16 th March, 2023 | The Tribunal noted the Counsels' appearance and listed the matter for hearing on 20 th March, 2023 | 193 days |
| 12 | 20 th March, 2023 | The Tribunal noted the Counsels' appearance and listed the matter for hearing on 24 th March, 2023 | 197 days |
| 13 | 24 th March, 2023 | Applicant's Counsel was directed to submit auditor report to verify the debt. | 201 days |

| Sl. | Date | Event | Timeline |
|----------------------------------|------------------------------|---|-----------------------------------|
| 14 | 28 th March, 2023 | The Tribunal heard the Counsels and reserved the order. | 205 days |
| 15 | 19 th April, 2023 | The Tribunal deferred passing an order to the next day to pass a consolidated order in all three related matters. | 227 days |
| 16 | 20 th April, 2023 | The Tribunal admitted the PPIRP application and dismissed the one section 7 petition as not maintainable and dismissed the other section 7 petition as infructuous. | 228 days Date of admission (A) |
| 17 | 12 th May, 2023 | Report submitted by the RP certifying the constitution of the CoC was taken on record. | A + 22 days |
| As of 31 st May, 2023 | | | A + 41 days |

Annexure 7**Timeline for Loon Land Developers Limited**

| Sl. | Date | Event | Timeline |
|------------|---------------------------------|--|-----------------------------|
| 1 | 15 th October, 2021 | Filing with the registry | Date of filing (F) |
| 2 | 18 th November, 2021 | Registration by the registry after scrutiny | 27 days |
| 3 | 23 rd November, 2021 | The matter is listed for physical hearing at Counsel's request. | 32 days |
| 4 | 24 th November, 2021 | The Tribunal heard the matter and lists it for 29 th November, 2021. | 33 days |
| 5 | 29 th November, 2021 | The Tribunal passed an order admitting the application to PPIRP. | 38 days (Date of admission) |
| 6 | 28 th January, 2022 | Status report filed by the RP was taken on record. | A + 60 days |
| 7 | 23 rd February, 2022 | Matter adjourned as the Bench is operating as different bench. | A + 86 days |
| 8 | 7 th March, 2022 | Matter was rescheduled to 9 th March, 2022. | A + 98 days |
| 9 | 9 th March, 2022 | Matter adjourned as the Bench is operating as different bench. | A + 100 days |
| 10 | 11 th March, 2022 | Tribunal heard an IA which objected to the resolution plan. Tribunal sent a notice to the RP and lists the matter for 23 rd March, 2022. | A + 102 days |
| 11 | 23 rd March, 2022 | Matter was adjourned as the Bench is operating as different bench. | A + 114 days |
| 12 | 30 th March, 2022 | At the requests of the Counsels, matter was listed for physical hearing on 20 th April, 2022. | A + 121 days |
| 13 | 20 th April, 2022 | Counsel for the objector withdrew IA which the Tribunal dismissed as withdrawn. | A + 142 days |
| 14 | 21 st April, 2022 | Counsel for the RP sought time to prove the CD was a MSME. The Tribunal directed a copy of the order to be issued to the Ministry of MSME (MoMSME) and listed matter for physical hearing on 6 th May, 2022 | A + 143 days |
| 15 | 6 th May, 2022 | Representative of the MoMSME sought more time to get inputs from senior officer with regards to the process of MSME registration. | A + 158 days |

| Sl. | Date | Event | Timeline |
|-----|----------------------------------|--|--------------|
| 16 | 30 th May, 2022 | Matter was adjourned due to paucity of time | A + 182 days |
| 17 | 22 nd July, 2022 | At request of Counsel, matter was listed for physical hearing on 25 th July, 2022. | A + 235 days |
| 18 | 25 th July, 2022 | At request of Counsel, matter was listed for 3 rd August, 2022. | A + 238 days |
| 19 | 3 rd August, 2022 | Matter adjourned due to paucity of time. In the meantime, the Tribunal directed pleadings to be completed and hard copies to be filed by the date of next hearing. | A + 247 days |
| 20 | 2 nd September, 2022 | At request of Counsel, matter was listed for 30 th September, 2022. | A + 277 days |
| 21 | 30 th September, 2022 | At request of Counsel, matter was listed for 14 th November, 2022. | A + 305 days |
| 21 | 14 th November, 2022 | At request of Counsel who sought more time to argue the matter, the matter was listed for 23 rd January, 2023 | A + 350 days |
| 23 | 23 rd January, 2023 | At request of RP, one week was given by the Tribunal for answering the question whether the CD was a MSME. | A + 420 days |
| 24 | 17 th February, 2023 | The Tribunal, on the applicant's request, dismissed the petition as withdrawn. | A + 445 days |

¹ Report of the Sub-Committee of the Insolvency Law Committee on Pre-packaged Insolvency Resolution Process, Ministry of Corporate Affairs, October, 2020, pp. 2.

² *Ibid.*, pp. 31.

³ *Ibid.*, pp. 32.

⁴ *Ibid.*, pp. 36.

⁵ The Pre-pack Committee cautioned '*that limiting pre-pack either for MSMEs or non-MSMEs would require determination of the status of a CD at the admission stage, which could be an additional burden on the limited capacity of the AA*' but also conceded that '*[a]t the same time, making pre-pack available for all CDs, without commensurate capacity augmentation of the AA, could result in process delays*'.

⁶ Vide notification dated June 26, 2020, the classification is as follows:

- Micro companies: Investment in plant / machinery / equipment < ₹1 crore & turnover < ₹5 crore
- Small companies: Investment in plant / machinery / equipment < ₹10 crore & turnover < ₹50 crore
- Medium companies: Investment in plant / machinery / equipment < ₹50 crore & turnover < ₹250 crore.

⁷ MCA Notification 1543(E) dated 9th April, 2021.

⁸ Insolvency and Bankruptcy (Pre-Packaged Insolvency Resolution Process) Rules, 2021.

⁹ *In re Amrit India Limited*, CP (IBPP) No. 03 (PB)/2022.

¹⁰ *In re GCCL Infrastructure and Projects Limited*, CP(IB)/116(AHM)2021.

¹¹ *In re Enn Tee International Limited*, CP (IBPP) No. 01 (PB)/2022.

¹² *Shree Rajasthan Syntex v. State Bank of India*, CP No. (IBPP)- 01/54C/JPR/2022.

¹³ *In re Sudal Industries Limited*, CP (IBPP) No. 01/MB-IV/2022.

¹⁴ *In re Loon Land Developers Limited*, (IB)-(PP)-03(PB)-2021.

¹⁵ *In re Krrish Realtech Private Limited*, (IB)-(PP)-02(ND)/2021.

¹⁶ *In re CHD Developers Limited*, (IBPP)02(PB)/2022.

¹⁷ NCLAT New Delhi, Company Appeal No. 1168 of 2022.

¹⁸ NCLAT New Delhi, Company Appeal (AT) (Insolvency) Nos. 1008, 1009 & 1010 of 2021, Order dated 21st December, 2021.

¹⁹ *In re Krrish Realtech Private Limited*, IA-5344/2021, INV 32/2021, INV 33/2021, INV 34/2021 and INV 35/2021.

²⁰ *In the matter of Krrish Realtech Private Limited*, 2021 SCC Online NCLAT 429.

²¹ *Ibid.*, para 15, 18, 21.

²² *Rajeev Kumar v. CHD Developers Limited*, (IB)-1081(PB)/2020 order dated 7th June, 2021; see para 36 of *In re CHD Developers Limited*, (IBPP)02(PB)/2022, Judgement dated 5th September, 2022; see NCLAT order dated 15th February, 2021, in Company Appeal (AT) (Insolvency) No.114 of 2021 w.r.t debt owed to OCs.

²³ NCLAT Company Appeal No. 1168 of 2022.

²⁴ The Tribunal distinguished the cases on the fact that in CHD Developers, ‘*the Corporate Debtor had consented to admission of Financial Creditor’s application u/s 7 of the code prior to filing of application u/s 54C of the Code*’ and that was not the case in Sudal Industries.

²⁵ Mr. Ishan Shah is a Partner at I. P. Shah and Associates, Ahmedabad, specialising in insolvency and corporate litigation.

²⁶ Ms. Prachi Johri, an Advocate on Record, is an independent litigation attorney based in Delhi, specialising in insolvency and banking.

²⁷ Ms. Varsha Banerjee is a Partner at Dhir and Dhir Associates focusing her litigation practice on corporate restructuring and insolvency matters.

²⁸ Mr. Prakul Khurana is the Managing Partner at Chir Amrit Legal and specialises in litigation in fields such as taxation, banking, company law and insolvency.

²⁹ Mr. Ashwini Kumar Tewari is the Managing Director (Risk, Compliance & SARG) at the State Bank of India.

³⁰ Interview with Mr. Ashwini Kumar Tewari, “The Resolution Professional”, IIIPI, Vol. 3.2, (April, 2023), pp. 7.