

## THE EVOLUTION OF PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS (PRE-PACKS) UNDER IBC

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### ABSTRACT

*The introduction of the Insolvency and Bankruptcy Code (IBC) in 2016 marked a pivotal moment in India's legal and economic landscape, providing a unified and time-bound framework for insolvency resolution. Among the various mechanisms embedded within the IBC, the Pre-Packaged Insolvency Resolution Process (Pre-Packs) has emerged as a noteworthy innovation, particularly designed to address the insolvency challenges of Micro, Small, and Medium Enterprises (MSMEs). This research paper delves into the evolution of Pre-Packs under the IBC, tracing their legislative genesis, operational dynamics, and their broader implications for India's insolvency regime. Pre-Packs, a hybrid insolvency resolution process, allow for the resolution plan to be negotiated and finalized between the debtor and creditors before formal court proceedings are initiated. This mechanism, which has been successfully implemented in jurisdictions like the United Kingdom and the United States, was introduced in India in 2021 to offer a more efficient and less disruptive alternative to the traditional Corporate Insolvency Resolution Process (CIRP). This study critically examines the introduction of Pre-Packs in India, their legislative foundation, and the early applications and outcomes within the Indian context. The paper further explores the operational mechanisms of Pre-Packs under the IBC, including the roles and responsibilities of stakeholders such as debtors, creditors, insolvency professionals, and the National Company Law Tribunal (NCLT). It highlights the key advantages of Pre-Packs, including expedited resolution, cost-effectiveness, and the preservation of business continuity, while also addressing the potential challenges, such as the risk of promoter misuse, transparency concerns, and the limited scope of application to MSMEs. By comparing the Indian Pre-Pack framework with international practices, the research identifies global best practices and discusses their applicability in the Indian context. The paper also emphasizes the need for policy reforms to expand the scope of Pre-Packs to larger enterprises, enhance regulatory safeguards, and strengthen the role of insolvency professionals to ensure the integrity and effectiveness of the process. In conclusion, this research underscores the significance of Pre-Packs as a progressive step in India's insolvency framework. While acknowledging the challenges and limitations, the study argues that with appropriate reforms and enhancements, Pre-Packs have the potential to become a vital tool in the resolution of corporate distress in India, contributing to economic stability and growth. The findings of this research provide valuable insights for policymakers, legal practitioners, and academics, offering a comprehensive understanding of the evolution and future potential of Pre-Packs under the IBC.*

**KEYWORDS:** CIRP, NCLT, MSMEs, IBC, Stakeholders.

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### Introduction

The Insolvency and Bankruptcy Code (IBC) 2016 marked a watershed moment in India's approach to resolving corporate distress. It introduced a time-bound process for insolvency resolution, significantly improving the legal framework surrounding bankruptcy. Among the various innovations under the IBC, the Pre-Packaged Insolvency Resolution Process (Pre-Packs) stands out as a flexible and efficient mechanism designed to expedite the resolution process. This research paper explores the evolution of Pre-Packs under the IBC, their significance, operational mechanism, and the challenges they

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pose, while drawing comparisons with global practices. The Insolvency and Bankruptcy Code (IBC) 2016 marked a significant shift in India's approach to insolvency resolution, providing a more streamlined and efficient mechanism to address corporate distress. Among the various mechanisms introduced under the IBC, the Pre-Packaged Insolvency Resolution Process (Pre-Packs) has emerged as a noteworthy innovation, aimed at expediting the resolution process while preserving the value of the distressed enterprise. This paper examines the evolution of Pre-Packs under the IBC, their significance, and the challenges associated with their implementation.

Pre-Packs, which originated in jurisdictions like the United Kingdom and the United States, have gained recognition for their ability to balance the interests of creditors and debtors while preserving business value. In India, the introduction of Pre-Packs in 2021 was a response to the need for quicker and less disruptive insolvency resolutions, particularly in the context of Micro, Small, and Medium Enterprises (MSMEs). This paper delves into the legislative and operational aspects of Pre-Packs under the IBC, critically analyzing their impact and potential in the Indian insolvency landscape.

### Literature Review

**Global Practices of Pre-Packs:** Pre-Packs have been successfully implemented in several jurisdictions, including the UK and the US, where they have been used to expedite insolvency proceedings while maintaining business continuity. In these countries, Pre-Packs have evolved into a robust mechanism that allows debtors and creditors to negotiate and finalize a resolution plan before approaching the court, thus minimizing disruption to business operations.

**Insolvency Law in India Pre-IBC:** Before the enactment of the IBC, India's insolvency regime was fragmented and ineffective, governed by multiple legislations such as the Sick Industrial Companies Act (SICA), 1985, and the Recovery of Debts Due to Banks and Financial Institutions Act (RDBFI), 1993. These laws were marred by delays and inefficiencies, often leading to protracted insolvency proceedings.

**Development of the IBC 2016:** The IBC was introduced as a comprehensive legislation to consolidate and amend existing laws relating to reorganization and insolvency resolution. Since its enactment, the IBC has undergone several amendments, reflecting the evolving needs of the Indian economy. The introduction of Pre-Packs in 2021 was a significant amendment, aimed at addressing the unique challenges faced by MSMEs.

**Pre-Packs in the Indian Context:** The adoption of Pre-Packs in India represents an adaptation of a globally recognized mechanism to suit the local legal and economic context. Given the challenges associated with traditional insolvency proceedings, the integration of Pre-Packs into the IBC framework was seen as a necessary step to improve the efficiency of insolvency resolution, particularly for MSMEs, which form the backbone of the Indian economy.

### The Genesis of Pre-Packs under IBC

**Legislative Framework:** The introduction of Pre-Packs under the IBC was preceded by a series of legislative amendments aimed at refining India's insolvency framework. The COVID-19 pandemic and its economic fallout expedited the need for alternative insolvency mechanisms, leading to the promulgation of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021, which formally introduced Pre-Packs for MSMEs.

**Comparative Analysis with CIRP:** The Pre-Pack mechanism under the IBC differs significantly from the Corporate Insolvency Resolution Process (CIRP). While CIRP is a court-driven process that often involves the transfer of management control to a resolution professional, Pre-Packs allow the existing management to retain control, with the resolution plan being negotiated out of court before being presented to the National Company Law Tribunal (NCLT) for approval.

**Case Studies and Early Applications:** Early applications of Pre-Packs in India have demonstrated the potential for quicker and less disruptive resolutions. However, the limited scope of its application to MSMEs has also highlighted the need for broader implementation across different sectors.

### Operational Mechanism of Pre-Packs under IBC

The Pre-Pack process under the IBC begins with informal negotiations between the debtor and creditors, leading to the formulation of a resolution plan. This plan is then submitted to the NCLT for approval, bypassing the lengthy procedures associated with traditional insolvency processes. The process involves several stages, including the appointment of an insolvency professional, creditor approval, and final submission to the NCLT.

The success of Pre-Packs depends on the active participation and cooperation of various stakeholders, including the debtor, creditors, insolvency professionals, and the NCLT. The insolvency professional plays a crucial role in ensuring that the process is transparent and in compliance with the IBC's provisions.

One of the primary concerns associated with Pre-Packs is the potential for misuse by promoters who may seek to regain control of the company at a reduced cost, often at the expense of creditors. To address this, the IBC incorporates several safeguards, including stringent disclosure requirements and the need for creditor approval at multiple stages.

The introduction of Pre-Packs under the IBC has had a significant impact on MSMEs, providing them with a viable alternative to liquidation. By allowing businesses to continue operations during the insolvency process, Pre-Packs help preserve jobs and maintain economic stability.

### **Critical Analysis of Pre-Packs**

**Advantages:** Pre-Packs offer several advantages over traditional insolvency processes. They provide a faster resolution, reducing the time and cost involved in insolvency proceedings. Additionally, by allowing the debtor to retain control, Pre-Packs minimize disruptions to business operations and help preserve the value of the distressed company's assets.

**Challenges and Limitations:** Despite their advantages, Pre-Packs are not without challenges. The potential for misuse by promoters, the limited scope of application to MSMEs, and concerns about transparency are some of the key issues that need to be addressed to ensure the effectiveness of Pre-Packs under the IBC.

**Judicial Interpretation and Precedents:** The success of Pre-Packs under the IBC will largely depend on how the judiciary interprets and applies the provisions related to Pre-Packs. Early rulings by the NCLT and NCLAT will set important precedents that will shape the future of Pre-Packs in India.

**Stakeholder Perception:** The perception of stakeholders, including debtors, creditors, and insolvency professionals, will play a crucial role in determining the success of Pre-Packs. While some stakeholders view Pre-Packs as a positive development, others have expressed concerns about the potential for abuse and the lack of transparency in the process.

### **Comparative Perspective**

**Global Comparison:** The Pre-Pack mechanism in India shares similarities with those in other jurisdictions but also reflects the unique challenges of the Indian insolvency landscape. While the core principles of Pre-Packs remain consistent globally, the implementation and operational aspects differ significantly based on local legal and economic conditions.

**Lessons from Global Experiences:** The experiences of other countries with Pre-Packs offer valuable lessons for India. Best practices from jurisdictions like the UK and the US, such as stringent regulatory oversight and robust creditor protection mechanisms, can be adapted to improve the effectiveness of Pre-Packs under the IBC.

**Adaptation and Localization:** Adapting the global Pre-Pack model to the Indian context requires a careful balancing of interests. While the principles of speed and efficiency are universally applicable, India's unique economic and legal environment necessitates specific safeguards to protect the interests of all stakeholders.

### **Policy Recommendations**

**Expanding the Scope:** One of the key recommendations for improving the Pre-Pack mechanism under the IBC is to expand its scope beyond MSMEs to include larger enterprises. This would provide a broader range of businesses with access to a faster and more efficient insolvency resolution process.

**Enhancing Transparency:** To address concerns about the potential for misuse, it is essential to enhance transparency in the Pre-Pack process. This could include stricter disclosure requirements, greater oversight by insolvency professionals, and more robust safeguards to protect creditor interests.

**Strengthening the Role of Insolvency Professionals:** Insolvency professionals play a crucial role in the success of Pre-Packs. Strengthening their role through training, certification, and regulatory oversight would enhance the effectiveness of the Pre-Pack process.

**Future Legislative Amendments:** The IBC is a dynamic piece of legislation that will continue to evolve in response to changing economic conditions. Future amendments should focus on addressing the challenges and limitations of Pre-Packs, with a particular emphasis on expanding their scope, enhancing transparency, and protecting the rights of all stakeholders.

### Conclusion

The evolution of the Pre-Packaged Insolvency Resolution Process under the IBC represents a significant development in India's insolvency regime. Pre-Packs offer a faster and more flexible alternative to traditional insolvency processes, with the potential to significantly enhance the efficiency of insolvency resolution in India. However, to fully realize their potential, it is essential to address the challenges associated with Pre-Packs, including concerns about transparency, misuse, and the limited scope of application. As the Pre-Pack mechanism continues to evolve, it has the potential to become a cornerstone of India's corporate distress management strategy, contributing to the stability and growth of the Indian economy. Further research and policy developments will be necessary to refine the Pre-Pack process and ensure its effectiveness in the long term.

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