



**INTERNATIONAL JOURNAL OF HUMAN RIGHTS LAW REVIEW**

*An International Open Access Double Blind Peer Reviewed, Referred Journal*

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Volume 4 | Issue 3 | 2025

Art. 37

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under IBC 2016**

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**Recommended Citation**

R. Lalthasangzeli and Jyotirmoy Banerjee, *Insolvency Resolution for Micro, Small and Medium Enterprises (MSMEs) under IBC 2016*, 4 IJHRLR 587-604 (2025).

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# Insolvency Resolution for Micro, Small and Medium Enterprises (MSMEs) under IBC 2016

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**Manuscript Received**  
19 May 2025

**Manuscript Accepted**  
23 May 2025

**Manuscript Published**  
27 May, 2025

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## ABSTRACT

*Micro, Small, and Medium Enterprises (MSMEs) form the backbone of the Indian economy, contributing significantly to GDP, employment, and innovation. Despite their vital role, MSMEs are particularly vulnerable to financial distress due to limited access to credit, market fluctuations, and structural constraints. The enactment of the Insolvency and Bankruptcy Code (IBC), 2016 introduced a unified and time-bound mechanism for insolvency resolution, aiming to improve credit discipline and ease of doing business. However, the standard Corporate Insolvency Resolution Process (CIRP) under the IBC often proves complex and resource-intensive for MSMEs, which typically lack the financial and legal wherewithal to engage in prolonged proceedings. Recognizing these limitations, the Government of India introduced the Pre-Packaged Insolvency Resolution Process (PPIRP) in 2021, exclusively for MSMEs. This reform seeks to offer a faster, cost-effective, and debtor-friendly resolution mechanism while ensuring minimal disruption to business operations. This study offers a comprehensive examination of the evolving insolvency framework for MSMEs under the IBC, focusing on the efficacy, challenges, and policy implications of both CIRP and PPIRP models. Through a critical analysis of legislative developments, case studies, and empirical insights, the research explores key concerns such as procedural delays, lack of awareness, enforcement bottlenecks, and the need for capacity building among stakeholders. It also compares international practices to derive contextual recommendations for strengthening India's*

*MSME insolvency ecosystem. The study concludes that while the IBC has created a strong foundation for insolvency resolution, the success of its application to MSMEs will depend on continued legal innovation, effective institutional support, and targeted policy interventions. Strengthening MSME insolvency resolution mechanisms is imperative not only to protect entrepreneurship but also to foster resilient and inclusive economic growth.*

## **KEYWORDS**

*MSME Insolvency, Pre-packaged Insolvency, Debtor-in-possession, Corporate Rescue, Regulatory Framework.*

## **INTRODUCTION**

The Micro, Small, and Medium Enterprises (MSMEs) form the backbone of the Indian economy. They contribute nearly 30% to India's GDP and comprise over 63 million units across the country. MSMEs employ about 110 million individuals, making them the second largest employment generator after agriculture. These enterprises operate across diverse sectors including manufacturing, services, and infrastructure. Their significance extends beyond mere numbers. They foster entrepreneurship, reduce regional disparities, and ensure more equitable distribution of national income.<sup>1</sup>

Financial vulnerability remains an inherent characteristic of the MSME sector in India. Limited access to credit, delayed payments, and technological constraints amplify this vulnerability. The COVID-19 pandemic exposed these structural weaknesses with unprecedented clarity. Nearly 67% of MSMEs reported severe impact on their business operations during the pandemic. Many faced existential threats due to liquidity crunch and disrupted supply chains. This scenario highlighted the urgent need for robust insolvency frameworks tailored to MSME requirements.<sup>2</sup>

The Insolvency and Bankruptcy Code (IBC), enacted in 2016, represented a paradigm shift in India's insolvency regime. It consolidated fragmented laws and created a unified framework for resolving insolvency. The Code initially adopted a one-size-fits-all approach towards corporate debtors. This approach proved inadequate for addressing unique challenges faced by smaller businesses. MSMEs struggled with the conventional Corporate

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<sup>1</sup> Ministry of Micro, Small and Medium Enterprises, "Annual Report 2022-23" (Government of India, 2023), 15-17.

<sup>2</sup> Reserve Bank of India, "Report of the Expert Committee on Resolution Framework for COVID-19 related Stress" (August 2020).

Insolvency Resolution Process (CIRP). The high costs, procedural complexities and time constraints undermined its effectiveness for smaller entities.<sup>3</sup>

Recognition of these challenges prompted legislative intervention specifically targeted at MSMEs. The Insolvency and Bankruptcy (Amendment) Act, 2021, introduced an alternate insolvency resolution process for Micro, Small and Medium Enterprises (MSMEs) with defaults up to ₹1 crore called the Pre-packaged Insolvency Resolution Process (PIRP). This represented a significant policy shift towards acknowledging the distinct needs of smaller businesses. The PIRP mechanism enables an MSME to work on a resolution plan while the corporate debtor and its management stays in possession of the company (debtor-in-possession model) as opposed to the creditor-in-control model for the CIRP. It seeks to preserve business continuity while ensuring creditor protection.<sup>4</sup>

### **LEGISLATIVE FRAMEWORK FOR MSMEs UNDER THE INSOLVENCY AND BANKRUPTCY CODE**

#### **• *Definition and Classification of MSMEs in India***

The conceptual framework for Micro, Small, and Medium Enterprises in India traces its origin to the MSMED Act, 2006. This legislation provided the first statutory recognition to MSMEs as a distinct business category. The Act initially classified enterprises based on investment thresholds in plant and machinery. Manufacturing and service enterprises had different classification criteria. This classification mechanism continued for over a decade until significant economic transformations necessitated a revision.<sup>5</sup>

The classification criteria underwent a paradigm shift in 2020. The government introduced composite criteria combining investment and turnover thresholds. The notification dated June 26, 2020 established new parameters for MSME classification. The revised definition for micro enterprises set investment limits at “Rs. 1 Crore” and turnover threshold at “Rs. 5 Crore”. Small enterprises now encompass businesses with investments up to Rs. 10 Crore and turnover not exceeding Rs. 50 Crore. Medium enterprises include entities

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<sup>3</sup> Bankruptcy Law Reforms Committee, “The Report of the Bankruptcy Law Reforms Committee Volume I: Rationale and Design” (November 2015), 24-26.

<sup>4</sup> Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 (No. 3 of 2021).

<sup>5</sup> Micro, Small and Medium Enterprises Development Act, 2006 (No. 27 of 2006).

with investments up to Rs. 50 Crore and turnover ceiling of Rs. 250 Crore.<sup>6</sup>

The revised classification framework eliminated the distinction between manufacturing and service sectors. This represented a significant departure from the sectoral categorization under the original MSMED Act. The unified classification approach recognizes the increasingly blurring boundaries between manufacturing and services. It also reflects the evolving nature of business operations where many MSMEs operate across sectoral domains. The turnover-based criteria facilitates better alignment with contemporary market realities.<sup>7</sup>

The definitional change was not merely semantic but substantively expanded the MSME ecosystem. It allowed larger enterprises previously outside the MSME ambit to qualify for various benefits and protections. This classificatory evolution demonstrates policy recognition of the growing capital intensity and technological sophistication of Indian MSMEs. The registration mechanism transitioned from manual filing to the Udyam Registration Portal, simplifying the formalization process and creating a unified identification system for MSMEs nationwide.<sup>8</sup>

• ***Evolution of MSME-Specific Provisions in the IBC***

The Insolvency and Bankruptcy Code, 2016 initially maintained a uniform approach toward corporate insolvency without distinguishing between enterprise sizes. This uniform framework soon revealed implementation challenges for smaller businesses. MSMEs confronted disproportionate burdens under the regular Corporate Insolvency Resolution Process. The procedural complexities, financial costs, and loss of management control deterred MSMEs from accessing the insolvency resolution framework.<sup>9</sup>

The first significant legislative intervention for MSMEs came through the 2018 Amendment to the IBC. This amendment introduced Section 240A, which created special dispensations for MSMEs. The provision made “an exception for MSMEs from Section 29A, which specifies the corporate persons not eligible to be resolution applicants”. This crucial exemption allowed

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<sup>6</sup> Ministry of Micro, Small and Medium Enterprises, Notification S.O. 2119(E), (June 26, 2020).

<sup>7</sup> Ministry of Micro, Small and Medium Enterprises, “Annual Report 2021-22” (Government of India, 2022), 15-18.

<sup>8</sup> Ministry of Micro, Small and Medium Enterprises, “Udyam Registration Portal: User Guidelines” (Government of India, 2020).

<sup>9</sup> Bankruptcy Law Reforms Committee, “The Report of the Bankruptcy Law Reforms Committee Volume I: Rationale and Design” (November 2015), 24-26.

MSME promoters to bid for their enterprises during resolution proceedings. It represented regulatory recognition of the distinct ownership characteristics of MSMEs, where promoters often possess domain expertise critical for business continuity.<sup>10</sup>

The COVID-19 pandemic dramatically intensified financial distress across the MSME landscape. Economic disruptions threatened the viability of numerous small businesses, highlighting the need for more accessible resolution frameworks. The government initially responded with a moratorium on fresh insolvency proceedings between March 2020 and March 2021. However, this temporary measure required replacement with structural reforms to address MSME insolvency challenges. This contextual backdrop precipitated the most significant legislative intervention for MSMEs under the IBC.<sup>11</sup>

The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021, later enacted as the IBC Amendment Act, 2021, introduced the Pre-packaged Insolvency Resolution Process (PIRP) exclusively for MSMEs. This represented a watershed moment in the evolution of MSME-specific provisions under the IBC. The preamble to the Ordinance explicitly acknowledged that “COVID-19 pandemic has impacted businesses, financial markets and economies all over the world, including India, and has impacted the business operations of micro, small and medium enterprises”. The PIRP framework introduced Chapter III-A into the IBC, establishing a distinct resolution pathway tailored to MSME requirements.<sup>12</sup>

### • **Key Amendments and Notifications**

The Pre-packaged Insolvency Resolution Process incorporated several innovative features. The most revolutionary aspect was the debtor-in-possession model that departed from the creditor-in-control approach of the conventional CIRP. “When an application for initiation of PIRP is admitted, the management and control remains with the Corporate Debtor and is monitored by a Resolution Professional”. This arrangement allows business continuity while safeguarding creditor interests through professional oversight. The PIRP also

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<sup>10</sup> Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 (No. 26 of 2018).

<sup>11</sup> Reserve Bank of India, “Report of the Expert Committee on Resolution Framework for COVID-19 related Stress” (August 2020).

<sup>12</sup> Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 (No. 3 of 2021).

prescribed an expedited timeline of 120 days for resolution completion, significantly shorter than the 330-day outer limit for regular CIRP.<sup>13</sup>

The PIRP established a default threshold of Rs. 10 lakhs for application eligibility. This significantly lower threshold compared to the Rs. 1 crore limit for regular CIRP facilitates earlier intervention in financial distress scenarios. The process requires prior consent from financial creditors representing 66% of debt value. This consent mechanism aims to prevent frivolous applications while ensuring creditor participation from the outset. The corporate debtor must submit a base resolution plan during application filing, enabling negotiation from a concrete starting point.<sup>14</sup>

According to Section 54C to Section 54P outline the procedural framework for PIRP implementation. These provisions integrate selected elements from the regular CIRP while introducing MSME-specific adaptations. The “Swiss Challenge” mechanism allows market testing of the base resolution plan through competitive bidding. This innovative feature balances debtor control with market efficiency considerations. The resolution plan requires approval from financial creditors representing at least 66% of voting rights, maintaining the creditor control principle of the IBC.<sup>15</sup>

### **PRE-PACK INSOLVENCY RESOLUTION PROCESS FOR MSMEs**

#### **• *Introduction to Pre-Packaged Insolvency***

The Pre-Packaged Insolvency Resolution Process represents a paradigm shift in India's insolvency jurisprudence. It introduces a hybrid mechanism that blends informal negotiations with formal judicial oversight. It is essentially “an out-of-court informal resolution plan worked out and drafted by the creditors and corporate debtor (CD) for the insolvency resolution before initiating formal insolvency proceedings”. This innovative approach was introduced through the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021, later enacted as the IBC Amendment Act, 2021. The Amendment inserted Chapter III-A, encompassing Sections 54A to 54P, specifically designed for MSMEs.<sup>16</sup>

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<sup>13</sup> Insolvency and Bankruptcy Code (Amendment) Act, 2021 (No. 26 of 2021).

<sup>14</sup> Insolvency and Bankruptcy Board of India, “Discussion Paper on Pre-Packaged Insolvency Resolution Process” (January 8, 2021).

<sup>15</sup> Insolvency and Bankruptcy Board of India, Circular No. IBBI/PIRP/36/2021 (April 13, 2021).

<sup>16</sup> Insolvency and Bankruptcy Code (Amendment) Act, 2021 (No. 26 of 2021).

The PIRP emerged as a targeted response to the unprecedented financial distress faced by MSMEs during the COVID-19 pandemic. Prior to this amendment, smaller enterprises struggled to access meaningful remedies under the conventional CIRP framework. The procedural complexities, substantial costs, and management displacement under CIRP created insurmountable barriers for MSMEs. The pandemic exacerbated these challenges, necessitating a more accessible insolvency resolution pathway. PIRP aims to provide precisely such an alternative by leveraging the distinct characteristics of MSMEs.<sup>17</sup>

The conceptual underpinnings of PIRP derive from pre-pack insolvency mechanisms prevalent in mature insolvency regimes globally. The United Kingdom and United States have successfully implemented variations of pre-pack frameworks. The Indian variant, however, incorporates distinctive features aligned with domestic commercial realities. It seeks to balance creditor protection with business continuity. The debtor-in-possession model represents a significant departure from the creditor-in-control approach under regular CIRP. This feature recognizes the centrality of promoters in MSME operations.<sup>18</sup>

#### • ***Eligibility Criteria and Application Process***

The threshold eligibility criteria for accessing PIRP are meticulously calibrated to ensure appropriate utilization. Only corporate entities qualifying as MSMEs under the MSME Development Act, 2006 can initiate proceedings. The corporate debtor must establish its MSME status through either Udyam Registration Certificate or documentation demonstrating compliance with investment and turnover thresholds. This categorial limitation reflects the legislative intent to create a specialized framework for smaller businesses with simpler organizational structures.<sup>19</sup>

The financial default threshold triggers accessibility to PIRP. A corporate debtor must have “committed a default of at least Rs.10,00,000/- (Rupees Ten Lakh Only)” to qualify for initiating proceedings. This substantially lower threshold compared to the Rs. 1 crore requirement for CIRP enables earlier intervention in financial distress scenarios. However, an upper limit of Rs. 1 crore constrains PIRP accessibility.

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<sup>17</sup> Insolvency and Bankruptcy Board of India, “Discussion Paper on Pre-Packaged Insolvency Resolution Process” (January 8, 2021).

<sup>18</sup> Ministry of Corporate Affairs, “Pre-Packaged Insolvency Resolution Process - Rules and Regulations” (Notification, April 9, 2021).

<sup>19</sup> Insolvency and Bankruptcy Code, Section 54D (Time-limit for Completion of Pre-packaged Insolvency Resolution Process).



Defaults exceeding this ceiling necessitate resolution through the conventional CIRP framework. This calibrated range seeks to balance accessibility with appropriate utilization.<sup>20</sup>

Several disqualifying conditions restrict PIRP eligibility. The corporate debtor must not have undergone PIRP or completed CIRP within the preceding three years. This cooling-off period prevents forum shopping and repeated restructuring attempts. Entities already undergoing CIRP or ordered into liquidation are similarly excluded. These temporal restrictions ensure that PIRP remains available to enterprises experiencing genuine financial difficulty rather than habitual defaulters. PIRP and CIRP cannot run concurrently for the same corporate debtor due to potential jurisdictional conflicts.<sup>21</sup>

### • ***Role of Resolution Professional***

The resolution professional occupies a pivotal position within the PIRP framework with multifaceted responsibilities. The initial appointment occurs through a bifurcated process. An interim resolution professional is nominated by financial creditors representing at least ten percent of debt value. This nomination requires approval from financial creditors holding sixty-six percent voting rights. The nominated professional prepares a preliminary report confirming eligibility criteria and subsequently transitions to the role of resolution professional upon application admission. This pre-confirmed appointment eliminates delays associated with post-admission selection processes in CIRP.<sup>22</sup>

The primary function involves process administration while maintaining debtor-in-possession dynamics. “When an application for initiation of PIRP is admitted, the management and control remains with the Corporate Debtor and is monitored by a Resolution Professional”. This supervisory role contrasts sharply with the management displacement in CIRP. The resolution professional maintains oversight on business operations without assuming direct control. This delicate balancing ensures business continuity while safeguarding creditor interests. The professional must flag any fraudulent transactions or gross mismanagement to the Committee of Creditors.

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<sup>20</sup> Insolvency and Bankruptcy Code, Section 54K (Consideration and Approval of Resolution Plan).

<sup>21</sup> Insolvency and Bankruptcy Board of India (Pre-packaged Insolvency Resolution Process) Regulations, 2021, No. IBBI/2021-22/GN/REG073.

<sup>22</sup> Ministry of Corporate Affairs, “Report of the Sub-Committee of the Insolvency Law Committee on Pre-packaged Insolvency Resolution Process” (October 2020).

Creditor coordination represents another critical responsibility. The resolution professional must constitute the Committee of Creditors within seven days of commencement date. They facilitate CoC meetings, document deliberations, and implement decisions. This coordination extends to managing information flow between the corporate debtor and financial creditors. The resolution professional serves as the conduit for negotiation facilitation while maintaining procedural integrity. They ensure statutory compliance while creating space for constructive engagement between stakeholders.

- ***Base Resolution Plan and Swiss Challenge***

The base resolution plan constitutes the foundational element of PIRP's distinctive architecture. The corporate debtor must prepare this plan before filing the PIRP application. The base plan represents the debtor's proposed financial restructuring and business reorganization strategy. Upon admission, "the Applicant shall submit a base resolution plan within 2 days from the Pre-Packaged Insolvency Commencement Date to the resolution professional and the unrelated committee of creditors". This requirement contrasts with CIRP where resolution plans emerge only after significant process advancement. The frontloaded plan preparation expedites resolution discussions and establishes a concrete negotiation starting point.

The Committee of Creditors evaluates the base plan against statutory requirements and commercial viability. Section 54K provides two potential outcomes following evaluation. If the base plan does not impair operational creditor claims, the CoC may approve it directly for submission to the Adjudicating Authority. However, if the plan impairs such claims, the CoC must initiate a competitive process through the Swiss Challenge mechanism. This bifurcated approach balances procedural efficiency with stakeholder protection. The direct approval pathway accelerates resolution when the base plan adequately protects all claims.

## **JUDICIAL PRONOUNCEMENTS ON MSME INSOLVENCY**

- ***Landmark Cases***

The evolving jurisprudence on MSME insolvency reflects judicial attempts to balance creditor protection with business rehabilitation. GCCL Infrastructure & Projects Ltd. pioneered the MSME-specific insolvency landscape. On September 14, 2021, GCCL became "the first case to initiate the Pre-Packaged Insolvency Resolution Process (PIRP), which was subsequently admitted by the Ahmedabad bench of National Company Law

Tribunal”. The case established procedural benchmarks for PIRP applications. The corporate debtor successfully fulfilled all statutory prerequisites including special resolution approval by members and base resolution plan submission. This seminal case demonstrated PIRP's practical viability while highlighting implementation challenges.<sup>23</sup>

The ***Shree Rajasthan Syntex Limited*** (SRS) case addressed the interplay between competing insolvency applications. SRS “had obtained the consent of 66% of its Financial Creditors and had applied to initiate the process of PIRP in March 2022”. Notably, a bank filed a Section 7 petition seeking CIRP initiation while PIRP negotiations were ongoing. The Tribunal determined that the CIRP application was filed in bad faith since the bank was aware of ongoing PIRP efforts. The ruling emphasized PIRP's priority when meaningfully pursued by debtors engaging creditors in good faith. It cemented the principle that adversarial CIRP filings cannot derail substantive PIRP negotiations.<sup>24</sup>

The ***Krrish Realtech*** case established critical limitations on PIRP admissibility. In this matter, objections were raised against the PIRP application's propriety. The debtor appealed to NCLAT arguing that objections should only be entertained post-admission. The appellate tribunal upheld NCLT's decision permitting pre-admission objections. The NCLAT “prima facie found that the regulations had not been complied in obtaining approval of the FCs for filing the PIRP application”. This judgment established that procedural compliance and stakeholder consent are not mere formalities but substantive prerequisites for PIRP eligibility. It reinforced judicial scrutiny at admission stage to prevent forum shopping.<sup>25</sup>

The landmark ***Hari Babu Thota case*** fundamentally reshaped MSME eligibility parameters. The Supreme Court addressed whether MSME status acquired post-CIRP commencement could qualify for Section 240A exemptions. The Court determined that “the law laid down in Digambar Anand Rao Pingle case by the Tribunal is not the correct position in law and the cut-off date will be the date of submission of resolution plan”. This ruling expanded MSME benefits by allowing post-commencement MSME registration. It emphasized business rehabilitation goals over technical eligibility constraints. The

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<sup>23</sup> In re: GCCL Infrastructure & Projects Ltd., CP (IB) No. 83/NCLT/AHM/2021, (NCLT Ahmedabad, Sept. 14, 2021).

<sup>24</sup> Shree Rajasthan Syntex Ltd. v. Bank of Baroda, CP (IB) No. 161 of 2022, (NCLT Jaipur, Oct. 14, 2022).

<sup>25</sup> Krrish Realtech Pvt. Ltd. v. Objectors, Company Appeal (AT) (Ins.) No. 153 of 2022, (NCLAT New Delhi, Feb. 22, 2022).

judgment marked significant judicial interpretation favoring MSMEs by liberalizing qualification criteria.<sup>26</sup>

The ***ETCO Denim Private Ltd.*** case further clarified MSME registration timelines. The case “raised critical issues regarding MSME registration during the Corporate Insolvency Resolution Process (CIRP)”. When ex-promoters submitted a resolution plan claiming MSME benefits, NCLT rejected it despite 77.56% CoC approval. NCLAT overturned this decision, citing the Hari Babu Thota precedent. This progressive interpretation reaffirmed that MSME status obtained before plan submission suffices for Section 240A exemptions. The case consolidated jurisprudence on timeline issues while reinforcing CoC commercial wisdom primacy.<sup>27</sup>

• ***Interpretation of MSME Provisions by NCLT/NCLAT***

The adjudicatory authorities have progressively refined interpretative parameters for MSME insolvency provisions. The NCLAT in ***Digambar Anandrao Pingle v. Shrikant Madanlal Zawar*** initially adopted a restrictive approach. The tribunal held that when “application for MSME certification was made during the CIRP and the promoters claimed exemption under Section 240A,” such claims must be rejected. It characterized post-CIRP commencement MSME registration as an unauthorized backdoor entry. This restrictive interpretation aimed to prevent regulatory arbitrage by potentially unscrupulous promoters. The decision established temporal limits on MSME qualification that were later reconsidered by higher judicial forums.<sup>28</sup>

The NCLT Mumbai in Sudal Industries Limited addressed competing insolvency applications. When faced with pending CIRP petitions alongside a PIRP application, the Tribunal observed that both mechanisms pursued identical goals. It dismissed the “*section 7 petitions and approved the PPIRP application*”. This purposive interpretation prioritized rehabilitation outcomes over procedural technicalities. The adjudicatory authority recognized PIRP's specialized suitability for MSMEs and accorded preference to consensual resolution frameworks. This decision established important principles on

<sup>26</sup> Hari Babu Thota v. [None], Civil Appeal No. 4422 of 2023, (Supreme Court of India, Nov. 29, 2023).

<sup>27</sup> Central Bank of India v. ETCO Denim Pvt. Ltd., Company Appeal (AT) (Ins.) No. 110 of 2023, (NCLAT New Delhi, June 2, 2023).

<sup>28</sup> Digambar Anandrao Pingle v. Shrikant Madanlal Zawar & Ors., Company Appeal (AT) (Ins.) No. 43-43A of 2021, (NCLAT Mumbai, July 24, 2021).

adjudicatory discretion when confronted with parallel proceedings.<sup>29</sup>

The NCLT Delhi Bench in ***Hi-Tech Resource vs. Overnite Express Limited*** addressed management authority during insolvency. The Tribunal “categorically held that if during the CIRP, a suspended director or promoter obtains an MSME Certificate it shall be an 'ultra vires' act”. The decision emphasized that suspended management lacks authority to act on behalf of corporate debtors post-CIRP commencement. This limitation sought to preserve the integrity of insolvency processes by preventing unauthorized managerial interference. The ruling highlighted concerns about procedural manipulation through self-declaration certification systems.<sup>30</sup>

The NCLAT elaborated on resolution professional responsibilities in MSME contexts. The appellate tribunal clarified that resolution professionals must secure CoC approval for substantive actions during PIRP. In a significant distinction from Digambar Anandrao Pingle approach, NCLAT indicated that MSME registration obtained with CoC knowledge and implicit approval could satisfy regulatory requirements. This nuanced interpretation recognized resolution professionals' role as facilitators rather than obstacles. It emphasized substance over form when procedural requirements serve broader rehabilitation objectives.<sup>31</sup>

The NCLT Hyderabad Bench in ***G Yoganand vs. Birendra Kumar Agarwal*** addressed registration authority questions. The Tribunal noted that “MSME registration is an online, free, paperless, and self-declaration-based process,” that could potentially be misused. It disallowed resolution plans based on MSME certifications obtained by suspended directors post-CIRP commencement. This pragmatic approach recognized practical vulnerabilities in registration systems. The Tribunal balanced procedural flexibility with substantive safeguards against manipulation. Its interpretive framework acknowledged legitimate registration possibilities while preventing circumvention of disqualification provisions.<sup>32</sup>

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<sup>29</sup> Sudal Industries Ltd., CP (IB) No. 2026/MB/C-II/2019, (NCLT Mumbai, March 15, 2022).

<sup>30</sup> Hi-Tech Resource v. Overnite Express Ltd., CP (IB) No. 339/(ND)/2023, (NCLT New Delhi, June 15, 2023).

<sup>31</sup> Resolution Professional vs. Committee of Creditors, Company Appeal (AT) (Ins.) No. 112 of 2022, (NCLAT Chennai, Aug. 10, 2022).

<sup>32</sup> G Yoganand v. Birendra Kumar Agarwal and Anr., IA No. 1203 of 2024 in CP (IB) No. 369/7/HDB/2022, (NCLT Hyderabad, May 3, 2024).

- **Supreme Court Perspectives**

The Supreme Court has issued authoritative pronouncements clarifying MSME provisions within the insolvency framework. In *Swiss Ribbons Pvt. Ltd. v. Union of India*, the Court upheld the constitutional validity of Section 29A while noting MSMEs' special position. It recognized the legislative intent to shield MSMEs from stringent disqualification norms that might impede their rehabilitation. The Court endorsed special treatment for MSMEs based on their distinctive operational characteristics and economic significance. This constitutional endorsement provided foundational jurisprudential support for subsequent MSME-specific interpretations.<sup>33</sup>

The landmark *Hari Babu Thota* judgment fundamentally recalibrated MSME eligibility parameters. The Supreme Court “set aside the NCLT and NCLAT orders and has held that even if the MSME registration was obtained post commencement of CIRP, the Promoter of such Corporate Debtor would be eligible to submit a resolution plan in terms of Section 240A of IBC”. This liberal interpretation prioritized rehabilitation goals over temporal technicalities. The Court examined legislative history and textual construction to conclude that submission date rather than commencement date should determine eligibility. This watershed decision expanded rehabilitation opportunities for financially distressed MSMEs.<sup>34</sup>

The Supreme Court addressed procedural irregularities in MSME cases through subtle interventions. In *Hari Babu Thota*, the Court observed that “the cut-off date for determining the eligibility of the resolution applicant under Section 29A of the Code in case of an MSME is the date of submission of resolution plan”. This interpretation introduced practical flexibility to accommodate business realities. It acknowledged that MSMEs might not proactively secure formal certifications until necessity arises during insolvency. This pragmatic approach balanced procedural compliance with substantive rehabilitation objectives within specialized MSME frameworks.<sup>35</sup>

The Court has emphasized purposive interpretation when examining MSME provisions. It has recognized that MSME exemptions under Section 240A reflect legislative intent to

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<sup>33</sup> *Swiss Ribbons Pvt. Ltd. v. Union of India*, (2019) 4 SCC 17, (Supreme Court of India, Jan. 25, 2019).

<sup>34</sup> *Hari Babu Thota v. [None]*, Civil Appeal No. 4422 of 2023, (Supreme Court of India, Nov. 29, 2023).

<sup>35</sup> *Hari Babu Thota v. [None]*, Civil Appeal No. 4422 of 2023, (Supreme Court of India, Nov. 29, 2023).

facilitate business continuity. The Court noted that “MSMEs form the foundation of the economy and are key drivers of employment, production, economic growth”. This contextualized interpretive approach situates individual provisions within broader economic objectives. It acknowledges MSMEs' structural vulnerabilities and their dependence on promoter involvement for operational viability. This purposive framework guides lower tribunals in resolving interpretive ambiguities.<sup>36</sup>

The Supreme Court in *Arcelormittal India Private Limited v. Satish Kumar Gupta* established resolution plan submission timing as crucial for eligibility determination. This principle acquired special significance in MSME contexts through *Hari Babu Thota*. The Court observed that “Section 29-A was added as an amendment with effect from November 23, 2017 with the objective to cure the mischiefs”. While maintaining these protective objectives, the Court acknowledged MSMEs' unique characteristics necessitating modified application of disqualification norms. This nuanced interpretation balanced creditor protection with economic rehabilitation imperatives.<sup>37</sup>

### **INTERNATIONAL BEST PRACTICES AND INDIAN CONTEXT**

Global insolvency frameworks have increasingly recognized the unique challenges faced by MSMEs. The UNCITRAL Legislative Guide on Insolvency Law represents a milestone in developing standardized approaches. UNCITRAL has developed “Part five: Insolvency law for micro- and small enterprises (2021)” specifically addressing MSME insolvency issues. This specialized guidance acknowledges MSMEs' distinct characteristics requiring tailored resolution mechanisms. The guide emphasizes simplified procedural frameworks, reduced costs, and debtor-in-possession models as essential elements for effective MSME insolvency resolution. These principles have significantly influenced India's MSME insolvency framework design.<sup>38</sup>

The World Bank has spearheaded initiatives for developing effective MSME insolvency regimes. The World Bank Task Force observed that “efficient and predictable insolvency regimes enhance micro, small and medium-sized enterprises' (MSMEs) access to credit that they need to thrive”. The Bank's Principles

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<sup>36</sup> *Hari Babu Thota v. [None]*, Civil Appeal No. 4422 of 2023, (Supreme Court of India, Nov. 29, 2023).

<sup>37</sup> *Arcelormittal India Private Limited v. Satish Kumar Gupta*, (2019) 2 SCC 1, (Supreme Court of India, Oct. 4, 2018).

<sup>38</sup> United Nations Commission on International Trade Law, “UNCITRAL Legislative Guide on Insolvency Law, Part Five: Insolvency Law for Micro- and Small Enterprises” (2021).

for Effective Insolvency and Creditor/Debtor Regimes provide standards for evaluating insolvency systems globally. Notably, these principles emphasize that MSMEs require “potential to reduce formality, streamline procedures and create alternative remedies to lengthy insolvency court processes”. India's Pre-packaged Insolvency Resolution Process aligns with these recommendations by establishing expedited timelines and simplified requirements.<sup>39</sup>

The United Kingdom's pre-pack administration framework has inspired India's PIRP model. UK pre-packs enable distressed companies to negotiate sales before formal insolvency proceedings commence. “Comparatively, it has been better in preserving business value, recovery for creditors, and in safeguarding of jobs” through debtor-friendly provisions. The UK framework permits existing management to retain control while being overseen by an insolvency practitioner. India has adopted similar features while adding safeguards against potential misuse by unscrupulous promoters. This balanced approach demonstrates how India has customized international models to suit domestic requirements.<sup>40</sup>

The European Union's harmonized framework for preventive restructuring offers valuable insights. Unlike traditional insolvency, preventive frameworks allow “out-of-court resolution to some extent, while preserving the sanctity of a formal insolvency process under law”. The EU framework emphasizes early intervention before technical insolvency while maintaining appropriate creditor protections. India's PIRP similarly seeks to enable consensual resolution while providing judicial oversight. The incorporation of elements from multiple jurisdictions underscores India's sophisticated approach to legislative design in addressing MSME financial distress.<sup>41</sup>

The debtor-in-possession model represents a significant international trend in MSME insolvency. “An important advantage of PIRPs is the debtor-in-possession model which allows the existing management of the MSME to continue to control, manage and focus on the turnaround”. This approach recognizes promoters' centrality in MSMEs' operational viability. However, this model has generated debate within Indian legal circles. Some critics argue it contradicts the Code's fundamental principle of creditor primacy. Others maintain it appropriately acknowledges

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<sup>39</sup> World Bank Group, “Experts Discuss MSME Finance and Insolvency at World Bank Task Force Meeting” (November 25, 2015).

<sup>40</sup> LiveLaw, “Pre-Pack Insolvency Resolution: A Solution for MSME Distress?” (November 23, 2024).

<sup>41</sup> Mondaq, “Unpacking The Pre-Pack: The New MSME Insolvency Regime Explained” (April 16, 2021).



MSMEs' unique characteristics. This tension highlights India's evolving engagement with international norms.<sup>42</sup>

## CONCLUSION

The Pre-packaged Insolvency Resolution Process for MSMEs represents a watershed moment in India's insolvency landscape. It acknowledges the distinctive characteristics of smaller businesses that necessitate specialized treatment. The PIRP framework masterfully balances debtor rehabilitation with creditor protection mechanisms. The debtor-in-possession model maintains operational continuity while preserving crucial domain expertise. Financial creditors retain significant oversight through approval thresholds and management displacement powers. This calibrated approach demonstrates regulatory sophistication in addressing sectoral peculiarities.<sup>43</sup>

The jurisprudential evolution surrounding MSME insolvency provisions has clarified interpretative ambiguities. Hari Babu Thota established MSME registration timing flexibility, prioritizing rehabilitation over technical constraints. Judicial pronouncements have increasingly emphasized purposive interpretation of MSME provisions. They recognize the socioeconomic significance of MSMEs within the national economic fabric. This contextual interpretation aligns with legislative intent to create facilitative frameworks for business continuity.<sup>44</sup>

The international comparative analysis reveals India's selective adaptation of global best practices. India has incorporated key features from UK's pre-pack administration and US's Subchapter V frameworks. The innovative Swiss Challenge mechanism represents India's distinctive contribution to insolvency practice. This judicious approach towards legislative borrowing demonstrates nuanced understanding of domestic requirements. It positions India as an emerging thought leader in specialized insolvency frameworks globally.<sup>45</sup>

Future reforms should target specific operational impediments within the current framework. The base resolution plan requirements need standardization to enhance quality and viability. Financial institution hesitancy in accepting voluntary

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<sup>42</sup> Mondaq, "Pre-Packaged Insolvency Process For MSMEs" (November 15, 2021).

<sup>43</sup> Ministry of Corporate Affairs, "Report of the Sub-Committee of the Insolvency Law Committee on Pre-packaged Insolvency Resolution Process" (October 31, 2020).

<sup>44</sup> Hari Babu Thota v. [None], Civil Appeal No. 4422 of 2023, (Supreme Court of India, Nov. 29, 2023).

<sup>45</sup> World Bank Group, "Report on the Treatment of MSME Insolvency" (2017).

haircuts requires incentivization through regulatory measures. The jurisdictional conflicts between multiple forums adjudicating MSME matters need resolution. These targeted interventions would enhance PIRP's operational effectiveness on the ground.<sup>46</sup>

The integrated creditor protection mechanisms deserve commendation for balancing competing interests. The Committee of Creditors retains approval authority for significant business decisions during PIRP. The management displacement provisions upon fraud detection safeguard against potential misuse. The Swiss Challenge mechanism ensures value maximisation through market competition. These multi-layered protections maintain creditor confidence while facilitating debtor rehabilitation.<sup>47</sup>

The 120-day resolution timeframe represents a significant procedural efficiency enhancement. It substantially reduces the resolution timeline compared to conventional CIRP's 330-day outer limit. This temporal compression minimizes value deterioration during insolvency proceedings. It reduces professional costs associated with extended proceedings. The requirement for CoC approval within 90 days further expedites the process. This timeline optimization directly enhances recovery outcomes for all stakeholders.<sup>48</sup>

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<sup>46</sup> Reserve Bank of India, "Report of the Expert Committee on Resolution Framework for COVID-19 related Stress"

<sup>47</sup> Insolvency and Bankruptcy Code, Section 54J (Consideration of Resolution Plan), No. 31 of 2016 (as amended).

<sup>48</sup> Insolvency and Bankruptcy Code, Section 54D (Time-limit for Completion of Pre-packaged Insolvency Resolution Process), No. 31 of 2016 (as amended).