



INSOLVENCY PROFESSIONAL AGENCY  
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA



# IBC AU-COURANT

*Latest updates On Insolvency & Bankruptcy*

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**"If your voice is high, only a few people will hear. If your thought is high, then many people will listen"**

## ➤ **Pre-pack insolvency may get a facelift**

The government and the insolvency regulator are planning to rework the so-called pre-pack resolution scheme for micro, small and medium enterprises (MSMEs) to make it more attractive after the scheme failed to gather much interest among debtors and creditors.

The review may result in a higher amount of protection for financial creditors from post-resolution scrutiny and a longer time-frame for completion of the resolution process, according to sources.

The move came amid finance and corporate affairs minister Nirmala Sitharaman flagging the tepid response to the scheme. Only two insolvency cases – Delhi-based Loon Land Developers and Ahmedabad-based GCCL Infra-structure & Projects — have so far been admitted under the pre-pack programme, which came into force in April 2021.

The sources said that rules and regulations relating to the pre-pack scheme are being reviewed and suitable changes will follow. Also, a campaign to raise awareness about the scheme among both debtors and creditors are expected to be launched.

The sources said lenders are not enthused by the pre-pack framework, as they fear any decision on the admission of a case or the voluntary haircut by them under the scheme may lead to subsequent scrutiny or investigations. Even if no foul play is involved, the process of defending the decisions already taken by them may turn out to be costly and time-consuming. It doesn't make for an attractive proposition, more so when the assets involved are not large enough to take any such calculated risk.

The scheme allows only the debtor to trigger its own bankruptcy process with the approval of financial creditors having at least 66% of voting power. Promoters who are not wilful defaulters are allowed to submit a base plan for resolution, which will then be put to competitive bidding through Swiss challenge.

However, in cases where operational creditors are not required to take a haircut, the promoter's plan, backed by the two-thirds of financial creditors, can be presented

before the National Company Law Tribunal (NCLT) for clearance (without the need for Swiss challenge).

The fears override the appeal of some of the attractive features of the scheme, formulated with an intent to help resolve stress in MSMEs fast. Pre-pack resolution plans have to be submitted in only 90 days and the NCLT will have another 30 days to approve them. The IBC currently stipulates a maximum of 270 days for the completion of the CIRP.

Given that cash-starved MSMEs have limited wherewithal to go through a long and rigorous insolvency process, the government had introduced the compact and debtor-driven pre-pack scheme under the over-arching Insolvency and Bankruptcy Code (IBC).

Since the resolution of large assets under the CIRP in the past was delayed mainly due to litigations initiated by defaulting promoters, the government had assumed that a debtor-driven pre-pack process and a reduced time-frame will remove fears of such a delay and draw creditors. However, the situation didn't turn out as intended.

Last week, commenting on the pre-pack scheme, Sitharaman had said: "I still find that the wings that are so necessary for the bird to fly are still not there. The scheme has still not taken off (at the desired manner)," she said.

Jyoti Prakash Gadia, managing director at consultancy firm Resurgent India, said procedural delays can undermine the purpose of the pre-pack scheme. "Tight timelines, specifically the 90-day window allowed under section 54D(2), make it difficult to resolve cases. Financial creditors must have internal guidelines in place and need to take proactive measures while initiating pre-pack insolvency resolution scheme (PIRP)," he said. Furthermore, without a deadline extension, the PIRP may fail in respect of a number of CDs. With the automatic initiation of liquidation in section 54L(4), the CD and its stakeholders may not have a reasonable shot at reviving the business – something that might have been offered through CIRP. "However, it will save considerable time and resources before initiating the liquidation, where no possible resolution is envisaged," Gadia said.

**Source: Financial Express**

**Read Full news at:** <https://www.financialexpress.com/industry/sme/pre-pack-insolvency-may-get-a-facelift/2705278/>

## ➤ **Special judge denies bail to Vijayraj Surana citing investigation into ₹10,233-crore liability**

A special court to try cases under the Companies Act in Chennai recently denied bail to Surana Group managing director Vijayraj Surana, citing the ongoing investigation into the group's total liability of ₹10,233 crore to several banks. Last month, a principal sessions judge rejected his bail application in a case on similar grounds.

Mr. Surana was arrested by the Enforcement Directorate in July and then by the Serious Fraud Investigation Office (SFIO) in August.

The case of the prosecution (SFIO) is that the Surana Group, comprising Surana Industries Limited (SIL), Surana Power Limited (SPL) and Surana Corporation Limited (SCL), had cumulatively borrowed ₹1,000 crore from banks.

These were declared non-performing assets (NPAs) and are under liquidation under the Insolvency and Bankruptcy Code (IBC). The ED launched an investigation into the charge of money-laundering on the basis of three FIRs filed by the CBI, Bengaluru, against the three companies and others on charges of defrauding banks by floating a web of shell companies wherein they appointed employees and relatives as directors, proprietors and partners and indulged in paper transactions with them without actual movement of goods.

Dinesh Chand Surana, MD, Surana Industries Limited and Surana Power Ltd, Vijayraj Surana, MD, Surana Corporation Limited, and two dummy directors of shell companies P. Anand and I. Prabhakaran were arrested on July 12 by the ED and two of them were arrested by the SFIO in August.

Following this, Vijayraj Surana moved the special court for bail. The SFIO alleged that the petitioner had connived with the other accused to establish three shell companies abroad and had shown that the SCL had exported gold to these companies.

Using falsified financial statements and representations they allegedly obtained bank loans even at the time of the CDR process and the outstanding due is ₹2,729.94 crore. Dismissing the bail petition, V. Pandiaraj, Special Judge of XV Additional City Civil Court, said, "It is alleged that the Surana Group of Companies has made bank borrowings of thousands of crores and declared them as NPAs and the said companies are liquidated under the Insolvency and Bankruptcy Code, 2016, wherein the total liability of the Surana Group of Companies is fixed at ₹10,238 crore.

Considering the huge loss of public funds and a deep-rooted conspiracy, this court finds that it is not fit to allow this application at this stage."

**Source: The Hindu**

**Read Full news at:** <https://www.thehindu.com/news/cities/chennai/special-judge-denies-bail-to-vijayraj-surana-citing-investigation-into-10233-crore-liability/article65984925.ece>

## ➤ IPEs as Insolvency Professionals: A paradigm shift

What reform has insolvency regulator IBBI introduced for IPEs?

The IBBI has now allowed an Insolvency Professional Entity (IPE) to be registered as an Insolvency Professional (IP) and carry on the activity of such professionals under the insolvency and bankruptcy code (IBC). This is a big policy shift as earlier only individuals were permitted to register and function as an IP in India.

Although the IBC provides for a wider definition of person which includes both the natural as well as juristic persons who can act as IPs, the regulations had limited ambit of specifying only an individual i.e., a natural person to get enrolled, registered and act as an IP. This has now been taken care of by regulation change and allowing IPEs to act as IPs. This policy shift is also significant as only few countries (now India included) have allowed firms to undertake role of IPs.

So how will this move be a game changer and who could benefit?

Allowing an IPE to act as an IP will institutionalise the profession of IP and help establish better governance framework. IPEs will have better systems and be better placed to handle large and complex cases. This is expected to address the limitations posed by IP being an individual in dealing with large and complex processes requiring concurrent efforts and actions.

Also, this will foster collaboration amongst individual insolvency professionals to form an IPE and register as an 'Insolvency Professional'. The increase in collaboration amongst IPs to form an organisational set up will definitely assist them in managing their mandates efficiently, which will ultimately improve the outcome of resolution process of corporate debtor under IBC.

What had prompted IBBI to introduce this reform?

IBBI was keen to allow firms to perform the functions of IP as a single IP (as an individual) may not have required skills, knowledge and experience as may be required.

IBBI wanted to permit juristic persons to be enrolled as IPs given that in several large corporate insolvencies, the individuals appointed as the IRP's seek support services from IPEs, Process Advisors etc.

In IBBI's view these entities are not under a strong regulatory framework thereby impacting accountability. It is in this context that IBBI move to permit IPEs to become IPs is a major step.

How was this reform put in place?

Insolvency and Bankruptcy Board of India (IBBI) had in June this year issued a discussion paper that sought to widen the category of persons to also allow entities (company, limited liability partnerships, registered partnership firms) to get enrolled, registered and act as an insolvency professional (IPs). As a first step in this process of allowing such entities to perform role of IPs, the regulator has allowed IPE to act as an IP.

How have stakeholders reacted to this development?

Most stakeholders have welcomed the IBBI move as an overall movement from individual resolution professional (RP) to a corporate set up will also help in creating better credibility for RPs managing the process. However, some have raised question

mark on the liability of partners/directors of such firm for individual cases and reigning the cost of process.

Are there any safeguards or conditions to monitor the working of IPEs?

Yes. The latest reform provides that an IPE can now apply for registration as an 'Insolvency Professional' by filing Form AA under the IP Regulations. However, for such registration, the IPE and its partners/directors will have to meet the 'fit and proper person' criteria which is determined by IBBI considering certain qualitative and financial aspects including integrity, reputation, character, absence of convictions and restraint orders, financial solvency and net worth.

Can IPEs now continue to provide support services to IPs?

Yes. IPEs have been allowed to not only perform the associated activities of an IP, but they can also continue providing support services to IPs as well.

How has IBBI performed so far?

In the six years since it's enactment in 2016, the IBC — which is having a remarkable journey so far-has many positives for the economy. It is delivering the goods by a far mile when compared to the time consuming and low recovery rate processes like Lok Adalats, SARFAESI and DRTs.

However, the elephant in the room is still the high level of 'haircuts' that lenders are being forced to take to make a resolution successful in IBC.

But is IBC too expensive a medicine to administer to address stress of corporates and ensure their recovery? One thing is for sure — policymakers are gaining experience and slowly but surely closing the gaps to ensure that IBC does not end up being gamed by corporates. In sum, IBC has now evolved into a future ready legislation to take Indian economy to greater heights.

**Source: The Hindu Business line**

**Read Full news at:** <https://www.thehindubusinessline.com/blexplainer/ipes-as-insolvency-professionals-a-paradigm-shift/article65988437.ece>

