

BASICS OF PPIRP FOR MSMEs

1. What is the PPIRP?

It refers to the manner of resolution of a corporate person, wherein a resolution plan is formulated by the management of the Corporate Debtor (CD) in consonance with their creditors while retaining control over the management and operations of the CD.

2. How PPIRP is different from Corporate Insolvency Resolution Process (CIRP)?

PPIRP is a quicker, cost-effective process than the CIRP, designed to serve the MSME sector, which is considered as the engines of economic growth and promotes equitable development. PPIRP also guarantees the continuity of the businesses by adopting Debtor in Possession model compared to the CIRP where the board of CD is suspended. PPIRP ensures that the promoter continues to run the business.

3. Who are classified as MSMEs?

MSMEs are Micro, Small and Medium Enterprises that engage in the Manufacturing, Processing, Production and Preservation of goods or services sector that are categorized according to below parameters –

Composite Criteria of Investment in Plant & Machinery or Equipment and Turnover*

Classification	Micro	Small	Medium
Manufacturing & Services	Investment does not exceed Rs 1 crore and Turnover does not exceed Rs 5 crore	Investment does not exceed Rs 10 crore and Turnover does not exceed Rs 50 crore	Investment does not exceed Rs 50 crore and Turnover does not exceed Rs 250 crore

*Please refer to MSME Act, 2006 and subsequent amendments for applicability and eligibility

Note

- A composite criterion of investment in Plant & Machinery or Equipment and Turnover, as detailed in the matrix above, shall apply for classification of an enterprise as micro, small or medium.
- The criterion is applicable to enterprises for both manufacturing and services sector.

- If an enterprise crosses the ceiling limits specified for its present category in either of the two criteria of investment or turnover, it will cease to exist in that category and be placed in the next higher category, but no enterprise shall be placed in the lower category unless it goes below the ceiling limits specified for its present category in both the criteria of investment as well as turnover.
- All units with Goods and Services Tax Identification Number (GSTIN) listed against the same Permanent Account Number (PAN) shall be collectively treated as one enterprise and the turnover and investment figures for all of such entities shall be seen together and only the aggregate values will be considered for deciding the category as MSMEs.

4. Why is there a need for PPIRP?

The cumulative stress faced by MSMEs accelerated by Covid 19 pandemic has resulted in cash flow mismatch and need assistance in matters of liquidity, debt management, etc. PPIRP provides an efficient alternative insolvency resolution process under the IBC ensuring quicker, cost-effective and value maximizing outcomes for all the stakeholders.

5. What is the role of an IP in PPIRP?

Insolvency Professionals (IPs) have a dual role to play as Advisor to CD till the filing of Application to Adjudicating Authority (AA) and thereafter as Resolution Professional (RP) as appointed by the Financial Creditors (FC) under PPIRP for MSMEs. IP may be same or different during above phases.

6. Who can file an application to initiate the PPIRP?

Any corporate person i.e., a company or a Limited Liability Partnership (LLP), classified as an MSME under Section 7(1) of the MSME Act, 2006 (CD).

7. When can the PPIRP be initiated?

Minimum default threshold of Rs. Ten lakh only but the Central Government holds the power to increase the default threshold to Rs. One crore only.

8. What is the meaning of Default?

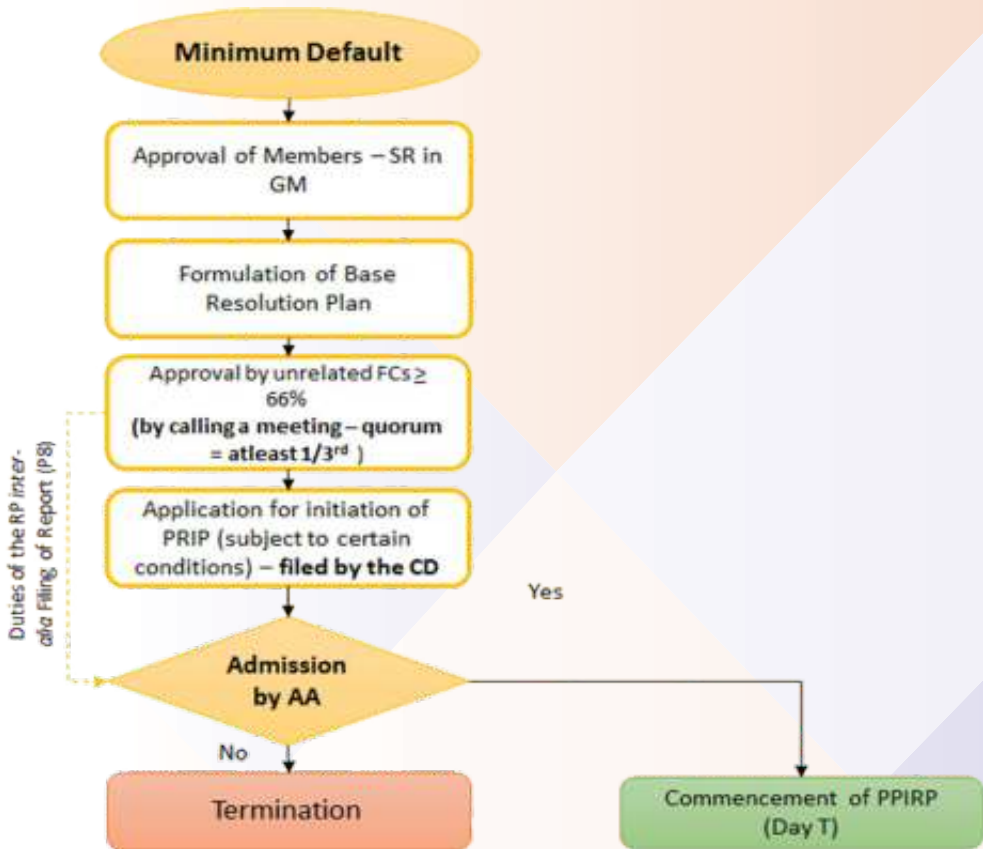
“Default” under Section 3(12) of the Code means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the CD, as the case may be. Defaults can be from multiple accounts aggregating to a minimum threshold of Rs. 10 lacs.

9. What are the eligibility criteria for a CD before filing a PPIRP application?

- a. Not undergone PPIRP during the preceding 3 years;

- b. Not undergoing Corporate Insolvency Resolution Process (CIRP);
- c. No liquidation order has been passed against the CD under Section 33 of IBC; and
- d. Eligible to submit a resolution plan under Section 29A of the Code.

Checklist Before Filing The Application for PPIRP



10. What are the actions to be taken by the Corporate Debtor before filing the application?

- a. Pass a special resolution or more than 3/4th of the partners must pass a resolution approving the filing of the application for initiating PPIRP;
- b. Prepare a base resolution plan;
- c. Director's declaration that: (i) application would be filed within 90 days; (ii) PPIRP is not being initiated to defraud any entity; (iii) particulars of the resolution professional;

- d. Approval of filing of the application by 66% of the unrelated financial creditors;
- e. Nominate an insolvency RP and such nomination must be approved by 66% of the unrelated financial creditors who are not related parties of the corporate debtor.

11. What is a base resolution plan?

A base resolution plan is the resolution plan prepared by the CD in conformity with Section 30 of the Code and presented in the first instance to its Committee of Creditors (CoC) for consideration after the PPIRP application is admitted.

12. Who are unrelated Financial Creditors?

Financial Creditors who are not related parties of the CD are unrelated Financial Creditors (FC).

13. What is the eligibility norm for the Resolution Professional?

Subject to consent in Form P1, an Insolvency Professional (IP) shall be eligible to be appointed as an Interim Resolution Professional (IRP) or Resolution Professional (RP), as the case may, if he, and all partners and directors of the Insolvency Professional Entity (IPE) of which he is a partner or director, are independent of the CD.

14. What is the notice period required for the meeting of the unrelated FCs?

Not less than 5 days.

15. What are the documents to be attached with the notice of the meeting of the unrelated FCs

- List of creditors in Form P2
- Copy of Declaration in Form P6 u/s 54A(2)(f)
- Copy of special/partners resolution u/s 54A(2)(g)
- Base Resolution Plan

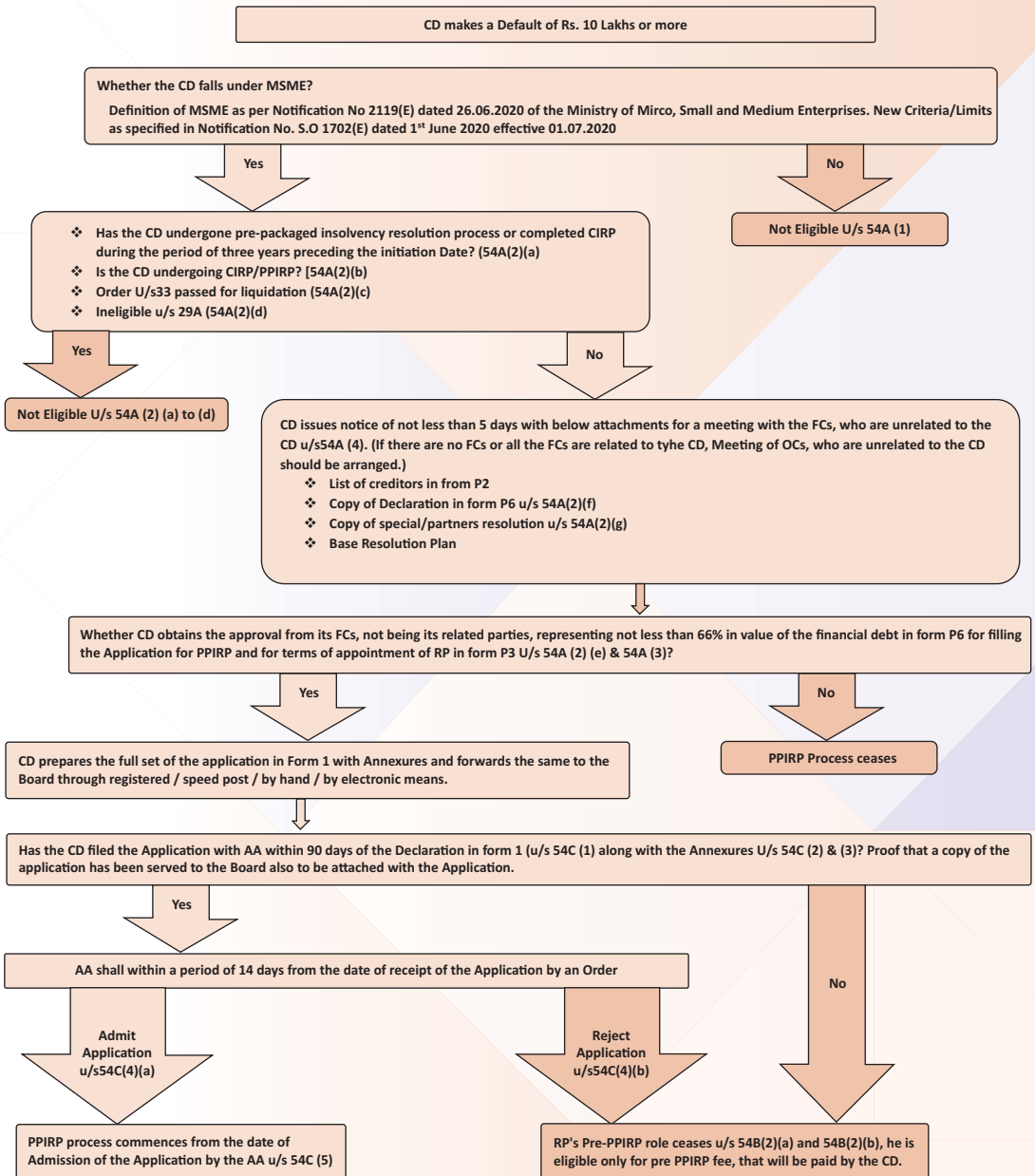
16. What is the role of the RP after their nomination is approved but before the application is filed?

Role of RP is to prepare a report on the CD

- a. confirming compliance with the eligibility criteria as mentioned in Sr. Nos. (6), (7) and (9) above;
- b. stating the completion of the actions as laid down in Sr. No. (10) above;
- c. any other information/ reports required by the IBBI.

FILING OF THE APPLICATION WITH THE ADJUDICATING AUTHORITY (AA)

Flow Chart of Pre-Application Stage of PPIRP



17. What is the form of application and what all documents are required for filing with Adjudicating Authority (AA)?

Form I in the Rules prescribe the application form for initiation of PPIRP. The application form is to be accompanied with the following:

- a. copies of the action items in Sr. no. (10) above;
- b. RP's report under Sr. No. (16);
- c. written consent of the insolvency professional proposed to be appointed as authorised representative of a class of creditors (if applicable);
- d. a declaration regarding any avoidance transactions under Chapter III of the Code or fraudulent or wrongful trading under Chapter VI of the Code;
- e. information pertaining to the books of accounts of the CD.
- f. A fee of Rs.15,000/-

18. With whom the corporate applicant files the Application Form?

- The corporate applicant files the Application in Form 1 with the AA (Jurisdictional NCLT Bench).
- The corporate applicant serves a copy of the application to the Board (IBBI) before filing the same with the AA.
- The acknowledgement of serving a copy to the Board shall be attached with the Application Form filed with the AA.

19. What happens after filing the application for initiation of PPIRP?

- a. Admission or rejection by the jurisdictional NCLT (Adjudicatory Authority) within 14 days of filing. The date of admission is the insolvency commencement date. (ICD);
- b. A moratorium is declared effective from the ICD;
- c. Confirmation of the appointment of the RP;
- d. Public announcement of the initiation of the PPIRP to be made by RP.

20. What happens if simultaneous application for CIRP and PPIRP are filed?

- a Admission/Rejection of PPIRP application would be considered before application for CIRP, when:
 - Application of CIRP is filed during the pendency of the PPIRP;
- b. Application of CIRP is pending and an application for PPIRP is filed within the succeeding 14 days.

- Admission/Rejection of CIRP application would be considered before PPIRP, when
- c. Application of PPIRP has been filed after the expiry of 14 days from the date of filing of the CIRP application.
- However, if an application to initiate CIRP under Section 7 or Section 9 of the Code have been filed/ admitted in relation to MSMEs on the date of commencement of the Ordinance, such MSMEs would not have an option to switch to PPIRP.

21. Under what circumstances the RP's Pre-PPIRP role will cease?

The duties of the Insolvency Professional (IP) under sub-section (1) shall cease, if, —

- the CD fails to file an application for Initiating PPIRP within the time period as stated under the declaration referred to in clause (f) of sub-section (2) of section 54A; or
- the application for initiating PPIRP is admitted or rejected by the Adjudicating Authority AA, as the case may be.

22. What are the disclosure requirements of the RP?

- RP shall make disclosures at the time of his appointment and, thereafter, in accordance with the code of conduct as set out in the IBBI (Insolvency Professionals) Regulations, 2016.
- RP shall disclose item wise process costs in such manner as may be required by the Board.

23. What are the consequences of the admission of the application by the AA?

- The AA by an order admits the application form in which it -
- Moratorium is declared for the purposes referred to in sub-section (1) read with sub-section (3) of section 14 of the Code. Moratorium commences on commencement of PIRP and ends on termination of PPIRP.
- Appoints an RP as named in the application and he is eligible for the appointment
- And cause a public announcement of the initiation of the PPIRP

24. What is the date of commencement of PPIRP?

- The date on which the AA admits the application will be the date of commencement of PPIRP.

COMMENCEMENT OF PPIRP AND CONSTITUTION OF THE CoC

25. What is the timeline specified for PPIRP?

The PPIRP shall be completed within 120 days from the date of commencement – 90 days for approval of resolution plan by CoC and 30 days for AA.

26. Who prepares the list of claims?

The CD prepares a list of claims along with details of security interest and the same is confirmed by the RP based on the information submitted by the CD.

27. What is the process of formation of the CoC?

The RP within 7 days from the ICD shall constitute the committee of creditors based on the list of claims.

28. What is the remedy if certain information captured in the list of claims/ preliminary information memorandum is omitted or misleading?

An aggrieved person, who demonstrates having sustained a loss or damage as a consequence of such omission or inclusion of misleading information, can seek compensation from the promoters and other persons involved in the preparation of the list of claims/ preliminary information memorandum from an action introduced in any civil court. Further, the promoters and other persons involved in the preparation of the list of claims/ preliminary information memorandum would be liable to penalties prescribed under the Code. It is therefore important for Corporate Debtors to carefully scrutinize information provided.

29. What are the steps to be taken by the CD and the RP after formation of CoC?

- The CD submits the base resolution plan to the RP within 2 days of the ICD;
- The CD submits the preliminary information memorandum to the RP within 2 days of the ICD;
- RP submits the base resolution plan and the preliminary information memorandum to the CoC;
- First meeting of the CoC is held within 7 days of formation.

30. What is the role of the CoC in the management of the CD?

- The CD must take the consent of the CoC before undertaking certain actions laid down in Section 28 of the Code, such as availing interim finance, creating security, related party transactions, etc.;

- CoC may also set a ceiling to the expenditure that could be undertaken by the CD during PPIRP.

31. With whom does the management of the CD vest during PPIRP?

The management of the CD during the PPIRP continues to vest with the Board of Directors, subject to monitoring by the RP and consent requirement of the CoC for matters laid down in Section 28 of the Code.

32. What is the role of the RP in the management of the CD?

During the pendency of the PPIRP the RP must inter alia carry out the following functions:

- Monitor the management of the CD;
- Inform the CoC of any breach by the board of directors;
- Prepare an information memorandum based on the preliminary information memorandum prepared by the CD;
- File application for any avoidance of transactions and/or fraudulent and wrongful trading under the Code.

33. What are the powers of the RP during the pendency of the PPIRP?

- Access to books of accounts of the CD;
- Access to the records with the information utility;
- Attend board/shareholders meeting and CoC meetings;
- Appoint accountants, legal or other professionals as required;
- Collect information regarding assets, finances and business to determine the financial position and existence of any avoidance transactions;
- Access to data from financial institutions maintaining accounts of the CD.

The personnel of the CD, its promoters and any other person associated with the management of the CD shall extend all assistance and co-operation to the RP as may be required by him to perform his duties and exercise his powers.

34. Can the Board of directors be divested of the management of the CD?

At any time prior to the completion or termination of PPIRP, 66% of the CoC can vote to divest the management of the CD and handover the management to the RP. AA may pass an order on the application made by the RP in this regard, if AA is satisfied that:

- Affairs of the CD have been conducted in a fraudulent manner;
- Gross mismanagement of the affairs of the CD.

RESOLUTION PLAN AND ITS APPROVAL

35. What is the process of approval of the base resolution plan?

The base resolution plan is presented to the CoC within 2 days of its formation and must be approved by 66% of the CoC for it to be approved and implemented.

36. What are the reasons for rejection of the base resolution plan?

CoC evaluates the plan based on its commercial feasibility and viability. Other than the issue of the CoC on the commercial feasibility and viability criteria of the base resolution plan, if the base resolution plan impairs any claim owed by the CD to the operational creditors it shall be rejected.

37. What is meant by impairment of the claims?

A claim is impaired where a resolution plan does not provide for the full payment of the said claim.

38. What happens if the base resolution plan is not approved by the CoC?

In the event that the base resolution plan is not approved on the grounds in Sr. No. 36, the following steps are taken:

- RP shall invite prospective resolution applicants (PRA) to submit resolution plans;
- CoC shall lay down eligibility criteria for a PRA and basis for evaluation to evaluate the resolution plans received from PRAs;
- Based on the criteria mentioned above, highest scoring plan is considered for competition with the base resolution plan, in the manner captured in Sr. No. 40 below;
- If such plan (i.e. the plan with highest eligibility score) is 'significantly better' than the base resolution plan, then, such plan may be approved with 66% votes of the CoC.

'Basis for evaluation' includes the parameters to be applied and the manner of applying such parameters, as approved by the committee, for evaluating a resolution plan to assign a score to the plan, and disclosed in the invitation for resolution plans.

39. What is the criteria to determine if an eligible plan is a 'significantly better' than the base resolution plan?

'Significantly better' shall mean such higher score (than the base resolution plan) in accordance with the basis for evaluation prescribed by the CoC by a

certain number or percentage, as approved by the committee and disclosed in the invitation for resolution plans.

40. What happens if none of the plans received from the PRAs qualify to be significantly better than the base resolution plan?

- RP shall disclose the scores of PRA's plan selected in accordance with Sr. No. 38 above and the base resolution plan;
- RP shall provide an opportunity to such PRA and the CD to improve their respective plans by making alternative improved submissions starting with the plan with lower score;
- Improved submissions process shall continue till one of the submitters (either CD or PRA) fails to utilize the opportunity to improve the plan;
- The disclosure of the scores by the RP and submissions of prospective improved plans takes place in a 48-hour window upon the expiry of which, the resolution plan with the higher score shall be considered for approval.

41. Is it mandatory to dilute the promoter shareholding in the resolution plans?

- When base resolution plan is proposed to be approved by the CoC, dilution of promoter shareholding may be considered and sought by the CoC if such base resolution plan impairs any claim owned by the CD;
- Where CoC has applied for divesting the management from the Board of Directors in accordance with Sr. No. 34 above, CoC can only approve resolution plans that dilute the promoter shareholding.

42. What is the timeline for completion of PPIRP?

PPIRP must be completed within a period of 120 days from the ICD wherein the resolution plan approved by the CoC must be submitted to the AA within 90 days from the ICD.

43. What is the time period in which AA approved the resolution plan?

If the AA is satisfied that the resolution plan as approved by the CoC under sub-section (4) or sub-section (12) of section 54K, meets the requirements as referred to in sub-section (2) of section 30 of the Code, it shall, within thirty days of the receipt of such resolution plan, by order approve the resolution plan.

44. Can an appeal be filed against an order of the AA approving the resolution plan?

Yes, an appeal can be filed against such an order within 30 days of the date of the order. However, the grounds of such appeal are limited and include instances such as non-compliance with the criteria laid under the Code and other material irregularities.

TERMINATION

45. When can the PPIRP be terminated?

The AA may pass an order of termination in the following cases:

- CoC passes a resolution seeking termination;
- Resolution plan is not submitted to the AA within 90 days;
- Resolution plan approved by the CoC is rejected by the AA.

46. Could the PPIRP be converted into a CIRP?

The CoC can pass a resolution to convert the PPIRP into CIRP and the AA would pass an order terminating the PPIRP.

47. Would the time elapsed in the PPIRP be considered towards the computation of timelines under the CIRP?

No. The CIRP shall be deemed to have initiated on the date of the order admitting the CIRP against the CD and the timelines shall be computed from such date.

However, the date of order confirming the admission of the CD under PPIRP would be considered towards computation of the relevant time for determination of “preferential”, “undervalued”, “extortionate-credit” and “fraudulent” transactions under the Code.

48. Can a CD who has been resolved under the PPIRP file an application for CIRP?

A CD, in respect of whom a resolution plan under the PPIRP has been approved in the 12 months preceding the CIRP application, is barred from initiating CIRP.

49. Would there be a mandatory liquidation order if there is no resolution plan at the end of PPIRP?

No. A liquidation order would be passed by the AA under the following situations:

- An order for vesting the control / management of the CD with the RP was passed by the AA and subsequently the CoC approves a resolution plan which does not provide for change in control / management;
- An order for vesting the control / management of the CD with the RP was passed by the AA and subsequently PPIRP is sought to be terminated citing any of the instances mentioned in Sr. No. 44 above;
- Resolution plan approved by the CoC and the AA is contravened and/or not implemented, any stakeholder other than CD can then apply for a liquidation order.

50. What is the remedy available if the approved resolution plan is contravened?

The aggrieved person can seek an order from the AA for liquidation of the CD.

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RELEVANT SECTIONS OF PPIRP UNDER IBC (FOR REFERENCE)

Sl. No.	Particulars	Section
1	Corporate Debtors eligible for PPIRP	Section 54-A
2	Duties of Resolution Professional before initiation of PPIRP	Section 54-B
3	Application to initiate PPIRP	Section 54-C
4	Time-limit for completion of PPIRP	Section 54-D
5	Declaration of moratorium and public announcement during PPIRP	Section 54-E
6	Duties and Powers of Resolution Professional during PPIRP	Section 54-F
7	List of claims and Preliminary Information Memorandum	Section 54-G
8	Management of Affairs of Corporate Debtor	Section 54-H
9	Committee of Creditors	Section 54-I
10	Vesting Management of Corporate Debtor with Resolution Professional	Section 54-J
11	Consideration and Approval of Resolution Plan	Section 54-K
12	Approval of Resolution Plan	Section 54-L
13	Appeal against order u/s 54-L – Approval of Resolution Plan.	Section 54-M
14	Termination of PPIRP	Section 54-N
15	Initiation of CIRP	Section 54-O
16	Application of provisions of Chapter II, III, VI and VII to this Chapter i.e. Chapter III-A	Section 54-P

TIMELINE PRESCRIBED FOR CONDUCTING PPIRP (FOR REFERENCE)

- PPIRP must be completed within a period of 120 days from the ICD.
- Admission or rejection by the jurisdictional NCLT (Adjudicating Authority) within 14 days of filing of application of PPIRP.
- CD to submit list of claims along-with details and a preliminary information memorandum containing information relevant for formulating resolution plan, within 2 days of ICD (Section - 54G(1)).
- CD to submit base resolution plan (either individually or jointly (54K(15) (Explanation I)) within 2 days of ICD as per Section 54.
- Constitution of CoC within 7 days of ICD as per Section 54-I (i).
- First Meeting of CoC with 7 days of its constitution Section 54-I (ii).
- If no resolution plan is approved by the CoC within 90 days of ICD, RP to file application for termination of PPIRP.
- The CoC may decide to terminate the PPIRP of a CD any time after initiation of the process but before approval of the resolution plan by a vote of $\geq 66\%$ of the voting share (Section 54N read with 54K(12), Section 54D(3)).
- If resolution plan is approved by CoC, application be filed before AA (within 90 days) for approval of such resolution plan. The AA to approve or reject the resolution plan within 30 days of receipt (Section 54L).

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