

Inclusion of pre-packs in IBC

Why in news?

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There has been a speculation recently about the introduction of pre-packs in the Indian insolvency regime.

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What is a pre-pack?

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• Pre-pack is a description for an insolvency regime that involves both formal and informal processes.

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- Under that, a plan for restructuring the debtor company is solicited in advance of commencement of a formal insolvency procedure.
- \bullet The distressed company and its creditors negotiate and conclude a plan to restructure the debtor company. $\ensuremath{\backslash} n$
- Advisors or insolvency practitioners are engaged to find investors and assist in consulting creditors, negotiating the plan, and seek the support of major creditors and ensure that the plan is <u>legally compliant</u>.
- The plan must be agreed upon by financial creditors holding 66% of the debt of a corporate debtor.
- If approved, insolvency proceedings may be initiated under the IBC to get the resolution plan formally approved by the committee of creditors and confirmed by the NCLT.
- \bullet The plan approved by the NCLT will become binding on creditors, members of the company, guarantors, employees and other stakeholders. \n

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• Restructuring plan can be negotiated and agreed to while the business of debtor continues uninterrupted.

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Other benefits include - \n

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1. Lower costs

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2. Faster approval and implementation of restructuring plan

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3. Protection for and retention of employees

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4. Maximisation of return to creditors

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5. Maximise value realised in sale

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6. Minimise risks associated with trading and preservation of value.

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7. Reduces possibility of litigation and delays

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• The promoter and management of debtor will have greater incentives to cooperate as it will allow them to <u>negotiate directly</u> with creditors and investors to achieve a plan.

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• This will maximise the value of assets of debtor while balancing the interest of all stakeholders.

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Pre-packs can significantly reduce the time-frame, since obtaining approval
of financial creditors can be achieved before commencement of insolvency
process.

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• These very financial creditors, when assembled as committee of creditors, can swiftly approve the plan when presented by the insolvency professional under the IBC.

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What was the related amendment made?

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- Amendments to the insolvency law (as part of the Companies Act 2013) approved by the Parliament were inspired from pre-packs.
- The amendment required the debtor to file, together with application of commencement of insolvency, an implicitly pre-negotiated plan.
- Once the plan was submitted, the debtor was allowed to remain in possession under the oversight of an independent insolvency professional appointed as chairman of the board of directors.
- \bullet This prevented disruption in cases where there was no trust deficit between the creditor and the debtor. $\mbox{\sc h}$
- If no pre-negotiated plan was submitted, the debtor was to be displaced and make way for an independent insolvency professional who would run the enterprise and invite plans from the market.
- \bullet However, the amendment was not notified by the central government and correspondingly the Bankruptcy Law Reforms Committee (BLRC) was set up. $\mbox{\ensuremath{\backslash}} n$

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What should be done?

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- A secured creditor is generally a bank or other asset-based lender that holds a fixed or floating charge over business assets, whereas operational creditors are suppliers of goods or services to a defaulting company.
- \bullet Operational creditors and statutory dues holders may feel left out of negotiations and advisors may be conflicted. $\$
- However, safeguards can be built to address these concerns by making the process of <u>negotiation inclusive</u>.
- Thus, IBC framework needs an amendment to make way for a pre-negotiated plan conforming to the laws currently in force.

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Source: Financial Express

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