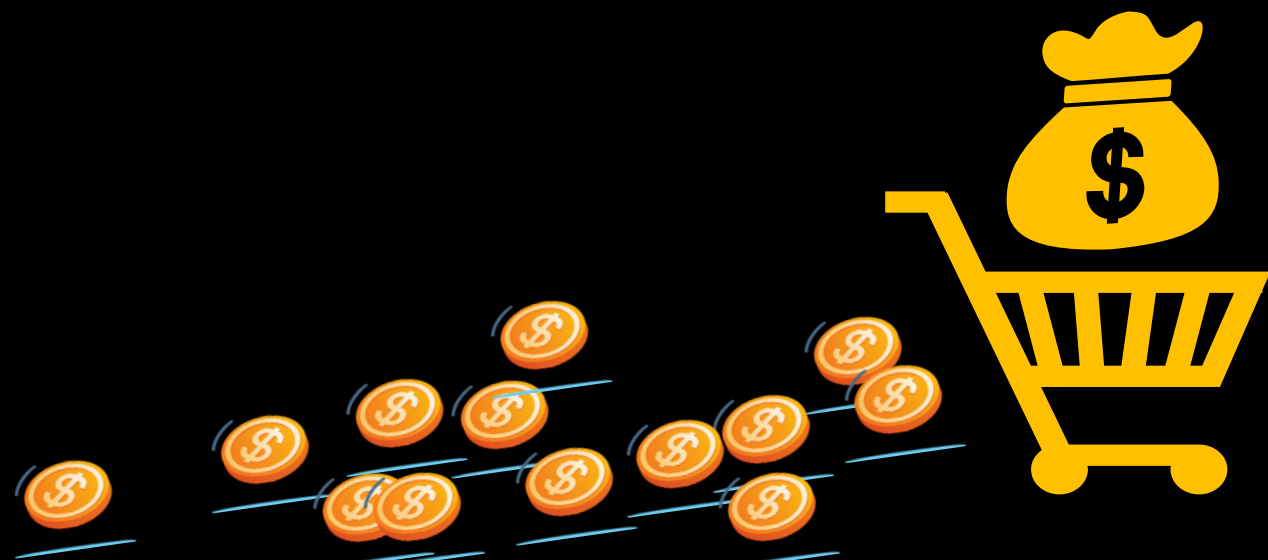




# PROPOSED PRE-PACKAGED

# INSOLVENCY RESOLUTION PROCESS

Manoj Kumar  
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Corporate Professionals



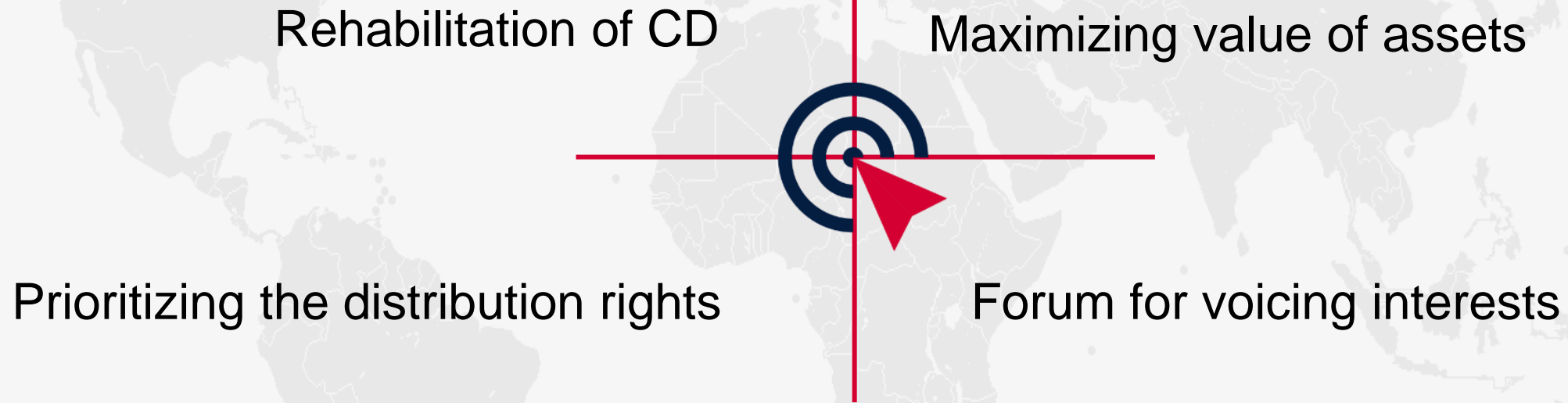
# Pre-packaged Insolvency - *The best of both worlds?*

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- Informal (out-of-court) and formal (judicial) insolvency proceeding
- Prior understanding among or approval by stakeholders about the course of action to address the stress of a CD, before invoking the formal part of the process.
- The course of action could be a sale of business of the CD or a reorganisation plan to resolve stress of the CD.
- CD usually remains under the control and possession of the promoters.
- The current promoters and management usually have the first right or the exclusive right to buy the business of the CD or submit a reorganisation plan
- Outcome of pre-pack process, where approved by the court, is binding on all stakeholders.



# Objectives of Pre Pack





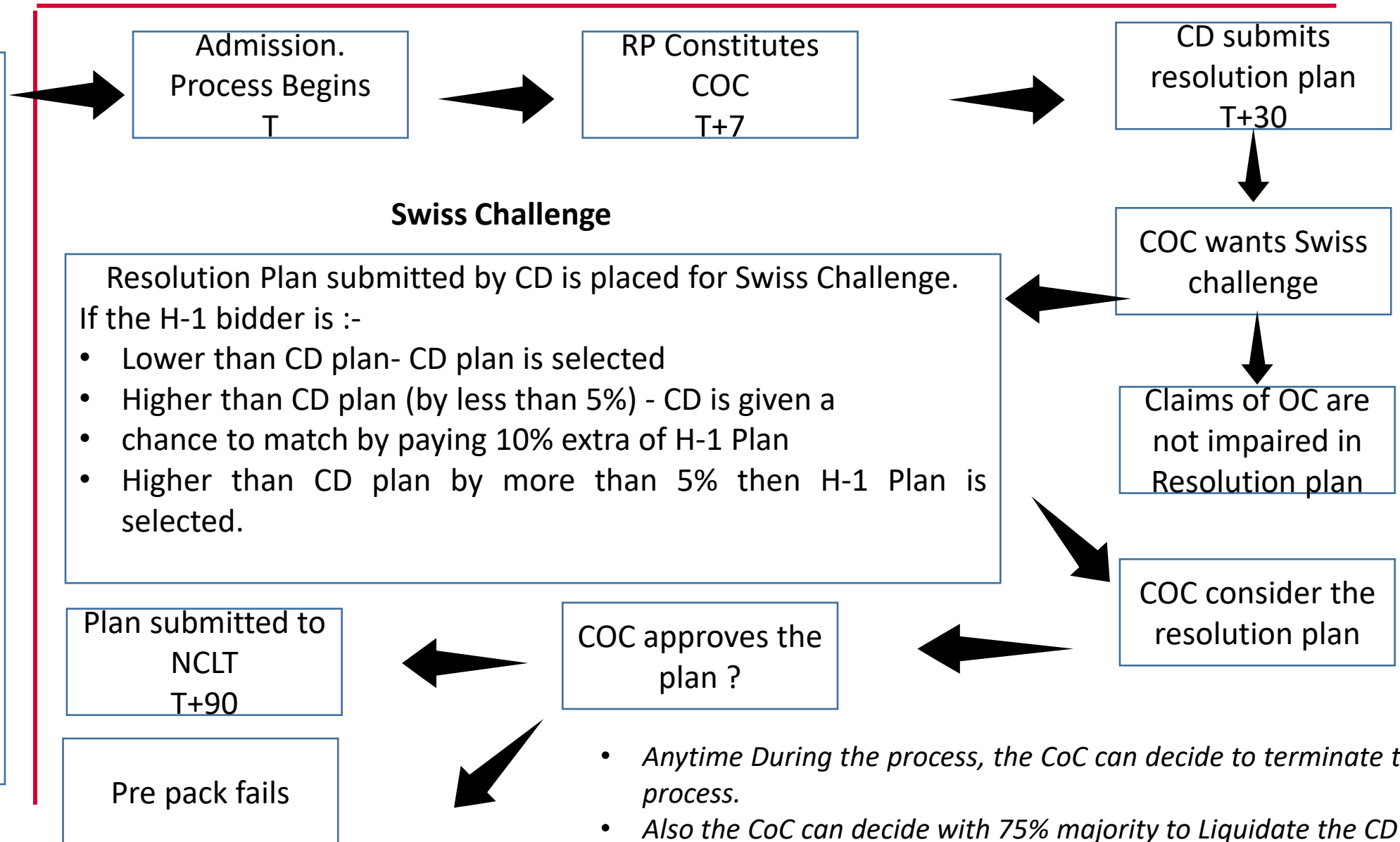
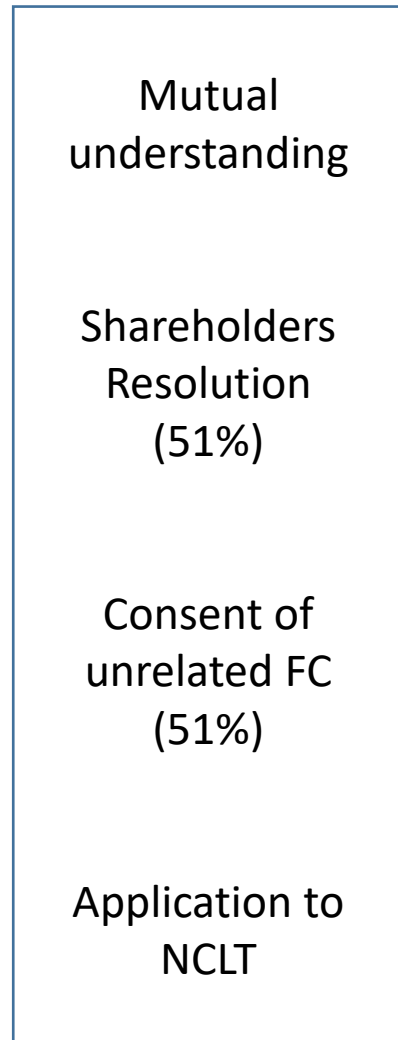
# Pre-pack Process chart

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## Limited moratorium

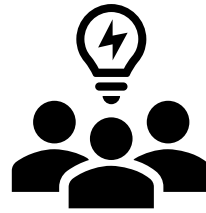
### Pre Admission





# Recommendations of Committee

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## **Availability of Pre Pack :**

Pre-pack is available for all CD's and for any stress - pre-default and post-default. It may commence in respect of defaults from Rs.1 lakh to Rs.1 crore and COVID-19 defaults for which CIRP is not available today.

## **Who should initiate?**

Corporate debtor itself can initiate pre pack (with consent of unrelated FC majority )

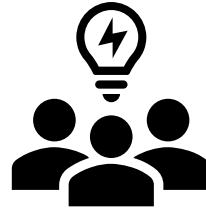
## **Who should authorize initiation?**

The CD shall initiate pre-pack with consent of simple majority of (a) unrelated FCs (b) its shareholders. Wherever the CD does not have any unrelated FC, approval of unrelated OCs may be taken.



# Recommendations of Committee

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## **When to Initiate?**

Default is the basis of initiation of pre pack.

## **When not to Initiate?**

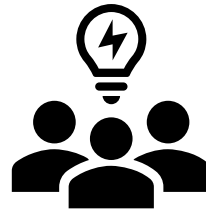
Two proceedings - pre-pack and CIRP - shall not run in parallel. There shall be a cooling off period that a pre-pack cannot be initiated within three years of closure of another pre-pack

## **Management of CD**

The CD shall remain under the control and possession of the current promoters and management during pre-pack process. Decisions on matters enumerated under section 28 of the Code (i.e. approval of COC in certain actions), including interim finance, shall be taken by the CD with the approval of the CoC.

# Recommendations of Committee

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## **Role of RP?**

RP should ensure transparency and fairness of the process, safeguard the interests of stakeholders, business, and the public, and ensure compliances with the law as regards the process.

## **Appointment of RP**

Choice of IP to act as RP, and the terms of his appointment may have consent of majority of unrelated FCs (unrelated OCs in case CD does not have any unrelated FC) and such IP may be appointed as RP by the NCLT.

## **Constitution of COC**

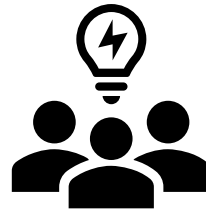
RP should constitute CoC comprising of unrelated FCs (unrelated OCs in case CD does not have any unrelated FC) within seven days of the prepack commencement date.





# Recommendations of Committee

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## Role of COC

CoC should approve or reject a resolution plan, like it does in a CIRP. It shall also approve decisions relating to (a) termination of process, (b) liquidation of the CD, and (c) matters u/s 28 of IBC (i.e. approval of COC in certain actions)

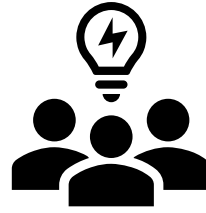
## Approvals of COC

The CoC shall take decisions with the approval of required **majority of votes, present and voting i.e. 66%.** Only the decision to liquidate the CD would require approval by **75% of voting share.**



# Recommendations of Committee

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## **Public announcement/ Claims collation/ IM**

Electronic publication of PA , a simplified and faster claim verification process, CD shall prepare a draft IM which shall be certified by the Chairman/Managing Director on behalf of the Board for its completeness and accuracy.

## **Valuation of Assets**

RP shall appoint two registered valuers to determine the 'fair value' and 'liquidation value' of the CD.

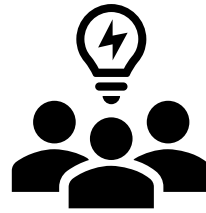
## **Interim Finance**

Interim finance should be available subject to the approval of CoC and it shall be included in the insolvency resolution process cost.



# Recommendations of Committee

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## **Moratorium:**

The moratorium under section 14 shall be available from the Pre pack commencement date till closure or termination of process, whether by approval of resolution plan or otherwise. It shall not, however, cover essential and critical services.

## **Timeline:**

90 days for market participants to submit the resolution plan to the NCLT, and 30 days thereafter for the NCLT to approve or reject it.

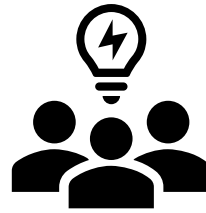
## **Promoters participation:**

There is no bar on the CDs from submitting resolution plans. However no relaxation has been given from the provisions of the section 29A.



# Recommendations of Committee

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## **Value Maximization :**

Pre-pack should offer two optional approaches, namely, (i) without swiss challenge but no impairment to OCs, and (ii) with swiss challenge with rights of OCs and dissenting FCs subject to minimum under Code. The pre-pack should start with a base resolution plan, which will face swiss challenge. This should come from the promoters if they are eligible and interested. Otherwise, the CoC may arrange a base plan.

## **Resolution Plan:**

The pre-pack should allow 90 days for market participants to submit the resolution plan to the NCLT, and 30 days thereafter for the AA to approve or reject it. The resolution plan approved by the NCLT shall be binding on everyone. The successful resolution applicant shall start on a clean slate



# CIRP vis-à-vis Proposed Pre-pack

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Parameter	CIRP	Proposed Pre Pack
Initiation of process	Default above Rs.1 crore, excluding COVID-19 Default	Pre and post default stress, including COVID-19 default. In a phased manner, if required
Initiation by	FC, OC or CD	CD with consent of majority of unrelated FC's
Management of CD	IP in possession with creditor in control	Debtor in possession with creditor in control
Claim collation	IRP to invite and collate	CD to provide. RP to verify
IM	Prepared by RP	Draft prepared by CD and finalized by RP.
Moratorium	Moratorium u/s 14	Limited moratorium



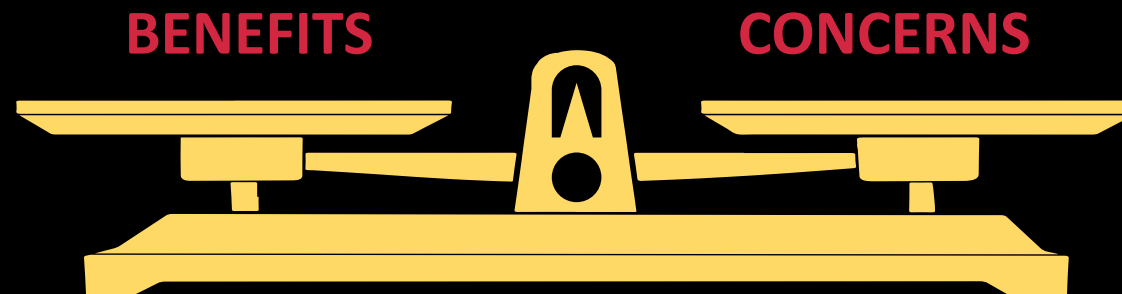
Parameter	CIRP	Proposed Pre Pack
Invitation of resolution plan	Public process	First right of promoters, Swiss challenge.
Early closure of process	U/s 12A on request of the applicant	With approval of 66% of voting share present and voting. Suo moto by CoC.
Consequences of termination	No termination allowed	Liquidation, with 75% share of CoC
Timeline	180 days till the approval of resolution plan	90 days for filing resolution plan with NCLT plus 30 days for NCLT approval.
Cooling off	12 months between two CIRP's	3 yrs between two pre packs

# Benefits & Concerns

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- Quick Resolution
- Cost Effective
- Value Maximization
- Job preservation
- Lighter on Courts
- Lacks Transparency
- Insufficient Marketing of business
- Valuation Methodology
- No consideration is given to the future viability of the new company







# Thank You

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