

**GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS**

**LOK SABHA
UNSTARRED QUESTION NO. 2773
ANSWERED ON MONDAY THE 21ST MARCH, 2022
PHALGUNA 30, 1943 (SAKA)**

PROCEEDINGS UNDER SPECIAL INSOLVENCY RESOLUTION FRAMEWORK

QUESTION

2773. MS. DEBASREE CHAUDHURI:

Will the Minister of CORPORATE AFFAIRS

be pleased to state:

- (a) whether only debtors will be able to initiate proceedings under Special Insolvency Resolution Framework for Micro, Small and Medium Enterprises (MSMEs);**
- (b) if so, the intended benefits of allowing only debtors to initiate proceedings;**
- (c) the steps being taken by the Government to protect dues of MSMEs sector in resolution under the Insolvency and Bankruptcy Code, particularly in view of MSMEs and delayed payments Acts;**
- (d) the steps being taken by the Government towards simplification of procedural requirements for the resolution; and**
- (e) the steps being taken by the Government to ensure that valuations of MSMEs in resolution plans adequately factor in the informal nature of MSMEs and a majority of their transactions?**

ANSWER

MINISTER OF STATE (INDEPENDENT CHARGE) OF THE MINISTRY OF STATISTICS AND PROGRAMME IMPLEMENTATION; MINISTER OF STATE (INDEPENDENT CHARGE) OF THE MINISTRY OF PLANNING; AND MINISTER OF STATE IN THE MINISTRY OF CORPORATE AFFAIRS

[RAO INDERJIT SINGH]

(a) and (b): Yes Sir. Under special insolvency resolution framework for Micro, Small and Medium Enterprises (MSMEs), called the pre-packaged insolvency resolution process (pre-pack), provided in the Insolvency and Bankruptcy Code, 2016 (the Code/IBC), only eligible corporate debtors (CDs) may file applications for resolution under this framework. Such a provision was intended to address specific requirements of MSMEs owing to the unique nature of their businesses and simpler corporate structures, so that resolution is done in a least disruptive

manner to ensure the continuity of their businesses and preserving jobs. The framework is a debtor-in-control model envisaging a consensual approach wherein the creditors and CD reach a mutual understanding about the course of action for insolvency resolution before formal initiation of the process.

(c): Under the Code, MSMEs as operational creditors (OCs) are eligible to initiate insolvency proceedings against CD in the event of default. In the resolution plan under pre-pack framework or a corporate insolvency resolution process, protection for OCs is provided under section 30(2)(b) of the Code which provides that OCs shall receive higher of the two (i) the amount to be paid in the event of liquidation of the CD; or (ii) the amount that would have been paid, if the amount to be distributed in the resolution plan is distributed in accordance with the provisions of section 53 of the Code. Also, Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 provide that such payments to OCs shall be made in priority over financial creditors.

(d): The pre-pack framework is a simple process that is largely informal as it empowers stakeholders to resolve the stress of a CD as a going concern, with minimum intervention of the Adjudicating Authority. It is a time bound process requiring 120 days for completion. It aims at providing a faster, cost effective and efficient resolution of stress with minimal business disruptions.

(e): The pre-pack framework has been designed taking into account the unique nature of business of the MSMEs and has provisions in place to ensure that the resolution plan maximises value of the CD. The debtor remains in possession of the business and runs it as a going concern, thus maintaining its value. Further, the base resolution plan is prepared by the CD itself in accordance with the requirements of section 54K of the Code. In case the base resolution plan is not approved by the committee of creditors (CoC) or it impairs any claims owed by the CD to OCs, the resolution professional is required to invite prospective resolution applicants to submit resolution plans to compete with base resolution plan in accordance with the Insolvency and Bankruptcy Board of India (Pre-Packaged Insolvency Resolution Process) Regulations, 2020. The CoC then considers these plans and takes its decision on acceptance, or otherwise, of a plan in accordance with laid down criteria and subject to certain conditions provided in the regulations.
