
BEYOND THE MORATORIUM: RECALIBRATING PERSONAL GUARANTOR LIABILITY UNDER THE INSOLVENCY AND BANKRUPTCY CODE AFTER THE 2026 AMENDMENT

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*A Contemporary Analysis of Section 96(4), Pending Proceedings and the
Creditor-Guarantor Balance*

ABSTRACT

The bankruptcy system has been fundamentally revamped in respect of personal guarantors of corporate debtors by the Bankruptcy and Bankruptcy Code (Amendment) Act, 2026. The operation of the interim moratorium under section 96 of the Insolvency and Bankruptcy Code, 2016 would continue. However, Article 96 (4) does provide one exception. We omit from 96 bankruptcy actions involving a personal guarantor of a debtor corporation. Section 124 grants a parallel exemption during the bankruptcy process. That's a breakthrough. The legislative expiration of the temporary moratorium is not the removal of the protection from a specific demographic. Last update May 26, 2026. The existing procedures have raised the question of vested rights and retrospectivity. In IDBI Trusteeship Services Ltd. v. Manish Jain & Ors. the Delhi High Court held that the revised provision was a continuous process from the outset and the operation was retroactive and not a retroactive nullification of the legitimate past. The study investigates whether the change is a proper solution for the tactical use of the moratorium in the filing phase or it tends to unduly favour individual creditor enforcement in the event of insolvency.

Keywords: IBC Amendment Act 2026, Insolvency & Bankruptcy Code, Personal Guarantor, Section 96, Interim Moratorium, Section 96(4) Corporate Debtor, Rights of Creditors, Individual Insolvency.

Introduction: The Moratorium has not disappeared- its reach has changed

The tension between the need to preserve an effective collective insolvency process and the need to prevent that process from becoming a vehicle for postponing lawful recovery has periodically changed the Insolvency and Bankruptcy Code, 2016. This tension is nowhere more acute than in the legislation relating to personal guarantors of corporate debtors. Personal guarantees occupy a strange place in corporate insolvency. Although the debt is created out of financial commitments of a corporate borrower, the guarantee generates a separate contractual obligation against a person. The insolvency of the corporate debtor does not automatically terminate the creditor's remedies.

The Supreme Court's jurisprudence has steadily reinforced this distinction. In *State Bank of India v. V. Ramakrishnan*, the idea that the moratorium under Section 14 automatically applies to personal guarantors was rejected. In *Lalit Kumar Jain v. Union of India*, the Court maintained the specific application of Part III to personal guarantors and stated that acceptance of a corporate resolution plan did not in itself discharge the duty of the guarantor which is independent. The statutory framework for personal insolvency was thereafter considered and supported in *Dilip B. Jiwrajka v. Union of India*.

The next big stage is the 2026 amendment. It is important to say it correctly. Parliament has not repealed Section 96 or the concept of interim moratorium under IBC. It added Section 96(4) which created a particular exclusion where an insolvency resolution application was filed by a personal guarantor to a corporate debtor. Section 96 consequently survives, but its protection at the filing stage is not available to the identified class. This divergence is more than semantic, for it names the actual legislative choice: not abolition, but selective exclusion.

The Personal Guarantee: A Distinct and Continuing Obligation

Liability of Guarantor is based on Indian Contract Act, 1872. Section 126 recognises the contract of guarantee. Section 128 puts out the general rule that the duty of the surety is co-extensive with that of the primary debtor unless the contract provides otherwise. In corporate finance, personal guarantees carry the credit risk with an individual who agrees to be responsible for the collapse of the company.

This structure is not affected by corporate insolvency. The *Lalit Kumar Jain* case is important

because the Supreme Court held that statutory restructuring of a corporate debtor does not automatically free a guarantor from an independent contractual commitment. Consequently, culpability and moratorium should be separated. The liability question is: Is the creditor entitled to a claim? Such claim is subject to a moratorium on the timing and manner of enforcement. The pre-2026 moratorium does not affect the assurance and section 96(4) does not create the underlying liability. It changes the procedural context in which liability is sought.

Section 96 Before 2026: Why Filing Mattered

The architecture of individual insolvency until Section 96(4) was fundamentally different from that of corporate insolvency. The Section 14 corporate moratorium comes into effect following admission and beginning of CIRP while the Section 96 interim moratorium comes into effect upon the submission of an application under Section 94 or Section 95. It protected the time within which a resolution expert might scrutinise the application before the adjudicating authority took a decision on admission or rejection.

The reasoning was understandable: without interim protection the debtor's financial condition may be dramatically changed before any substantive consideration was given. But the same feature generated a structural weak point. The filing led to a substantial legislative consequence, not a prior judicial determination on the merits. A guarantor who is subject to enforcement proceedings may be able to obtain an injunction until the insolvency application is resolved. This incentive at the filing stage was a major part of the legislative reconsideration.

The Judicial Road to the Amendment

According to Ramakrishnan, a personal guarantor could not simply transfer the moratorium under Section 14 of the Act to the corporate debtor. Lalit Kumar Jain reiterated the independent enforceability of guarantees and supported the differential treatment of personal guarantors under Part III. Dilip B. Jiwrajka then supported the personal insolvency architecture and explained the preliminary role of the resolution professional before the adjudicating authority decides admission.

These rulings constitute the conceptual framework of the reform of 2026. The revision is not a repudiation of personal insolvency; It is a recalibration of a procedural protection in that framework.” That distinction is important, because the new rule should not be understood as

abolishing collective resolution for guarantors, but removing the automatic filing-stage shield that was once accessible to them.

Section 96 [4]: Exclusion, Not Abolition

The basic doctrinal proposal is simple. Section 96 lives on, but its application is explicitly excluded for personal guarantors to corporate debtors. Three propositions have to be different. First, Parliament has not abolished Section 96. Secondly, Parliament has not repealed temporary moratorium throughout Part III. Third, Parliament has chosen to not to extend the Section 96 protection to the class protected by Section 96(4).

There is a parallel section 124(4) at the stage of bankruptcy. Sections 96(4) and 124(4) read together demonstrate a determined policy on personal guarantors rather than an isolated drafting fix. The proper policy question, therefore, is whether this particular class is sufficiently distinct to justify withholding automatic interim protection.

26 May 2026 and Pending Proceedings

The revisions in question come into effect on 26 May 2026. The answer for more applications is really rather straightforward. See s 96(4). Filing does NOT provide you Section 96 protection. This was a more difficult problem for previous applications where there was an interim moratorium.

A very important reference on the point is the ruling of Delhi High Court in the case of IDBI Trusteeship Services Ltd. V Manish Jain & Ors. decided on 19th August, 2026. The Court rejected the notion that the present temporary moratorium will be continued because the Section 95 application was lodged prior to the amendment. In the relevant sense it treated the changed term as retroactive: not as invalidating the legal history retroactively. The new legislation may relate to either a status or a procedure. which was enacted earlier, but which is in effect at the time the new law is effective. Hence the moratorium may have been legally extended under the old statute until the legislative change and its future applicability were assured by the new clause.

This is a more precise statement than that Parliament retrospectively cancelled all previous moratoriums. The past in law is not the future in law.

Thereafter, IBBI published Circular No. IBBI/II/106/2026 dated 21st September, 2026 for restoration of interim moratorium on personal guarantors to corporate debtors, pointing out the practical importance of judicial position on pending petitions.

Why Parliament Intervened: The Anti-Abuse Rationale

The legislative documents express concern that the moratorium at the filing stage might be used strategically. Where the act of filing itself affords a useful procedural shield, a party subject to recovery may have an incentive to invoke insolvency for the primary purpose of delay. Here is a fundamental problem. It does not mean that every application submitted before 2026 was an abusive application.

The modification is a determined response to remove the automatic consequence for personal guarantors. So, it is not the strongest rationale that guarantors are not entitled to any protection because they are liable. A moratorium is not a release. The better reason is that a substantial limitation on creditor enforcement should not be presumed from an untested petition where experience suggests the potential for strategic use.

The Parallel-Process Paradox

The modification is positive for the practical situation of creditors. A personal guarantee can be enforced more quickly, because the guarantor cannot simply rely on Section 96 to obtain an automatic stay at the filing stage. This could also help credit discipline and retain the commercial value of guarantees. Yet the empowerment of creditors does not inevitably mean the efficiency of insolvency.

The law of insolvency is collective. Its typical concern is that unrestricted self-help by individuals may lead to a race among creditors, squander value and frustrate orderly restructuring. After Section 96(4) there might be concurrent personal insolvency and individual enforcement. Individual action prior to the decision on the insolvency application may realise significant assets, which may lead to a fundamentally different economic basis for a subsequent repayment plan.

The essay explains that the tension is what the author calls the parallel-process dilemma. The amendment corrects the problem of an over-protective filing rule but may produce the mirror-image problem of an under-protective resolution process. The challenge is not to ignore Section

96(4), but to reconcile the legal proceedings still open.

A Moratorium is not a Discharge

A moratorium provides a period of regulation of enforcement; a discharge affects the ongoing enforceability of the responsibility itself. The difference is fundamental. Lalit Kumar Jain has held that corporate resolution does not automatically discharge the personal guarantor, but that assumption does not logically require denial of every interim procedural protection.

The 2026 amendment should then be defended on the basis of its actual legislative rationale: automatic protection pending admission was judged vulnerable to strategic abuse and to interfere disproportionately with creditors' rights without proper inspection. This narrower rationale is more convincing than a general assumption that guarantors do not deserve protection from insolvency.

Parallel Remedies cannot become Double Recovery

The possibility of pursuing the corporate debtor and the guarantor through distinct lawful processes does not allow for multiple satisfaction of the same obligation. There must be one source from which the balance payable elsewhere can be recovered. This accounting principle is more relevant in cases when Section 96(4) makes it more feasible to have simultaneous proceedings.

Courts, resolution specialists and financial creditors should maintain transparent reconciliation of amounts claimed and realised through corporate resolution, security enforcement and guarantor processes. The diversity of cures does not warrant the multiplicity of satisfaction. Procedural freedom, unless carefully reconciled, can lead to disagreements about the actual outstanding liability and weaken faith in the system.

Has the Pendulum Swung too Far?

The case for reform is substantial, but the method chosen is strong. Parliament could have considered expedited scrutiny, continuation of the moratorium only after preliminary judicial confirmation, sanctions for demonstrably abusive filings or a shorter filing-stage protection. Instead, it adopted a categorical exclusion for personal guarantors to corporate debtors.

The virtue of this approach is certainty. Its weakness is rigidity. A rule designed to remove abusive protection also removes automatic protection from bona fide personal-guarantor insolvency proceedings. Future jurisprudence must therefore consider how other lawful procedural mechanisms can preserve the integrity of a genuine collective process without judicially recreating the moratorium that Parliament expressly excluded.

Towards A Justified Shield

Courts should not re-interpret section 96 in a manner contrary to section 96(4). We have to respect the decision of Parliament. But where the statutory scheme otherwise enables adequate relief, adjudicatory institutions can be alert to conduct that would make a bona fide insolvency process effectively worthless.

Any protective intervention should require a high showing: the application should be bona fide; the parallel action should pose a material threat to the insolvency process; protection should be necessary, not convenient; creditor prejudice should be taken into account; and relief should be narrow and proportionate. The aim would not be to restore an automatic shield but recognition, where lawfully available, of a justified shield.

A Three-Pillar for the Post-2026 Regime

A coherent post-amendment framework is based on three ideas. First, enforcement without automatic immunity: the filing of an insolvency application against a personal guarantor of a corporate debtor does not by itself trigger the Section 96 temporary moratorium. Second, resolution without procedural destruction: absence of automatic protection should not make bona fide insolvency resolution economically useless. Third, recovery without over-recovery: amounts realised through parallel procedures must be reconciled publicly.

Those principles respect the legislative choice, while respecting the communal logic of insolvency. Moreover, they do not cast the issue as a basic conflict of creditor versus debtor interests. Insolvency law aims to create a predictable process that balances valid contractual rights with an orderly reaction to financial difficulty.

Conclusion: Beyond The Moratorium

Insolvency and Bankruptcy Code (Amendment) Act, 2026 This is a major development in the

law relating to personal guarantors of business borrowers. But the case for reform has to be articulated effectively. Section 96 preserves the definition of the interim moratorium. 96. Continuation in force. However, an exception is provided in section 96(4) of the Act in case of personal guarantors of corporate debtors if the statutory prerequisites are complied with. Section 124(4) confirms the exact classification under the policy mentioned.

The actual question was when the transition would happen, on the date the relevant statute was due to go into effect, May 26, 2026. One of the early prominent examples is the decision in IDBI Trusteeship Services Ltd v Manish Jain & Ors. The reform was retrospective in the sense that it was directed at existing practices, and not against the history of the law. The interim moratorium does not apply to the previous application prior to the change. This idea again found favour in practice in a circular of IBBI of September 2026.

There are a lot of policy reasons for reform. The ease of filing an insolvency petition could create a perverse incentive to file a petition as a means of reducing payments under a protection that is triggered by a petition. The adjustment does not alter the core argument. Individual enforcement is also conceivable in the event of insolvency of a group. Automatic withdrawal of temporary protection.

The problem was that a surety may simply go bankrupt, and then enforcement would be delayed until 2026. Another, equally significant concern is whether enforcement can be done in a way that decreases the practical need for insolvency resolution post-2026.

Nor does personal bankruptcy constitute a recovery of claims. may not be interpreted in the old moratorium. A mature system has three essential criteria: (i) real enforceable promises; (ii) bona fide insolvency resolution that matters; and (iii) no parallel recovery from duplicative remedies. The future of personal guarantor insolvency will not be a function of the mere existence of a moratorium in the abstract but the ability of the legal system to function without it.

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