

---

# EXAMINING THE GAPS IN THE EXECUTION OF INDIVIDUAL INSOLVENCY AND PERSONAL GUARANTEE MECHANISMS UNDER IBC

---

R. Arshiya Banu, LLM, Amity Law School, Amity University Bengaluru

Jyotirmoy Banerjee, Assistant Professor, Amity Law School, Amity University Bengaluru

## ABSTRACT

The IBC of India, introduced in 2016, marked a transformative shift in the country's insolvency framework, providing a streamlined approach for resolving financial distress across corporate entities. However, the execution of individual insolvency and personal guarantee mechanisms under the IBC remains a challenging area, with significant gaps affecting their effectiveness. This paper critically examines the practical shortcomings in implementing these mechanisms, focusing on procedural bottlenecks, jurisdictional complexities, and the evolving legal interpretations by the judiciary. Despite the IBC's intent to create a comprehensive insolvency resolution framework, the treatment of personal guarantors and individual debtors has been inconsistent, often leading to prolonged litigation and uncertain recoveries. The challenges include a lack of clarity in defining the liability of personal guarantors, difficulties in asset tracing, and the absence of standardized processes for individual insolvency resolution. Moreover, the interplay between the rights of creditors and the protections afforded to individual debtors under the IBC has led to conflicting judicial outcomes, further complicating the landscape. Through an analysis of recent case law and stakeholder perspectives, this study highlights critical areas where legislative and procedural reforms are needed to enhance the effectiveness of personal insolvency mechanisms. The paper also explores international best practices, drawing lessons from jurisdictions that have successfully balanced debtor protection with creditor recovery. By addressing these gaps, the Indian insolvency regime can better align with global standards, ensuring timely and fair resolution of financial distress for individuals. This analysis aims to provide actionable insights for policymakers, practitioners, and scholars seeking to strengthen the IBC's framework for individual insolvency and personal guarantees, ultimately fostering a more predictable and robust financial ecosystem.

**Keywords:** Individual Insolvency, Personal Guarantees, IBC, Debt Resolution, Financial Distress.

## 1. INTRODUCTION

The IBC of India, enacted in 2016, represents a significant reform in the country's financial and corporate legal landscape. It was designed to consolidate existing insolvency laws and provide a time-bound, efficient framework for resolving distressed assets. While the IBC has been widely acknowledged for its effectiveness in corporate insolvency, its provisions for individual insolvency and personal guarantees remain relatively underdeveloped and challenging to implement. Individual insolvency, which covers both personal debts and the liabilities of business proprietors and partners, is a critical component of the broader insolvency framework, as it directly impacts the financial stability and economic participation of individuals<sup>1</sup>.

Personal guarantees, in particular, play a pivotal role in the Indian credit ecosystem, as they often serve as a critical form of security for corporate loans. However, the enforcement of personal guarantees under the IBC has been fraught with legal and procedural complexities, leading to significant gaps in execution. The intricate relationship between corporate debt resolution and personal guarantees introduces unique challenges, including jurisdictional ambiguities, overlapping legal frameworks, and inconsistent judicial interpretations<sup>2</sup>. The absence of standardized processes for individual insolvency resolution, coupled with the complexities of tracing and recovering individual assets, has hindered the effective execution of these mechanisms.

This chapter aims to critically examine these gaps, exploring the challenges faced by creditors, debtors, and insolvency professionals in implementing the IBC's provisions for individual insolvency and personal guarantees. It also seeks to identify potential reforms and best practices that can bridge these gaps, drawing lessons from global insolvency frameworks. By addressing these critical issues, India can strengthen its insolvency regime, ensuring a more predictable, transparent, and balanced approach to financial distress resolution.

---

<sup>1</sup> The Impact Of The Insolvency And Bankruptcy Code (IBC) 2016 On Corporate Governance: Lessons From India's Experience | Legal Service India - Law Articles - Legal Resources, <http://www.legalserviceindia.com/legal/article-14912-the-impact-of-the-insolvency-and-bankruptcy-code-ibc-2016-on-corporate-governance-lessons-from-india-s-experience.html> (last visited May 9, 2025).

<sup>2</sup> Ritik Kumar Jha, *Personal Insolvency: Recent Judicial Interpretations*, Metalegal Advocates (2024), <https://www.metalegal.in/post/personal-insolvency-recent-judicial-interpretations> (last visited May 9, 2025).

## 2. EVOLUTION OF THE IBC FRAMEWORK FOR INDIVIDUAL DEBTORS

The IBC of 2016 marked a turning point in India's approach to resolving financial distress. While the IBC initially focused on corporate insolvency, its scope also included individual debtors, reflecting a comprehensive effort to streamline debt resolution across the financial spectrum. However, the framework for individual insolvency under the IBC has evolved slowly, influenced by legal challenges, regulatory adjustments, and changing economic realities<sup>3</sup>.

Before the IBC, individual insolvency in India was governed by outdated laws like the Presidency Towns Insolvency Act of 1909 and the Provincial Insolvency Act of 1920. These laws, characterized by lengthy procedures and limited creditor protection, were inadequate for the modern financial landscape<sup>4</sup>. Recognizing these gaps, the IBC sought to introduce a more structured, time-bound approach, emphasizing creditor rights and asset recovery. However, the rollout of individual insolvency provisions under the IBC has faced significant hurdles.

One of the critical steps in this evolution was the notification of the IBC's individual insolvency provisions in December 2019, which specifically included personal guarantors to corporate debtors. This move was intended to prevent personal guarantors from escaping liability when a corporate debtor defaulted, aligning individual and corporate insolvency processes for better creditor recovery. However, this integration has sparked extensive legal debates, particularly regarding the simultaneous insolvency proceedings against corporate debtors and their guarantors<sup>5</sup>.

The evolution of this framework has also been shaped by landmark judicial decisions, including the Supreme Court's rulings that clarified the applicability of the IBC to personal guarantors, reinforcing creditor rights. Despite these advances, challenges remain, including the need for clearer procedural guidelines, enhanced asset tracing mechanisms, and better integration with existing financial regulations. Moving forward, continued legal reforms and

---

<sup>3</sup> UNDERSTANDING THE INSOLVENCY & BANKRUPTCY CODE, 2016: A COMPREHENSIVE OVERVIEW » Lawful Legal, (Oct. 30, 2024), <https://lawfullegal.in/understanding-the-insolvency-bankruptcy-code-2016-a-comprehensive-overview/> (last visited May 9, 2025).

<sup>4</sup> Provincial Insolvency Act 1920, Rest The Case, <https://restthecase.com/knowledge-bank/provincial-insolvency-act-1920> (last visited May 9, 2025).

<sup>5</sup> Bhumika Indulia, *Upholding the Validity of Provisions Related to Personal Guarantors Under IBC - Good for Lenders, Bad for Guarantors*, SCC Times (Jan. 3, 2024), <https://www.sconline.com/blog/post/2024/01/03/upholding-the-validity-of-provisions-related-to-personal-guarantors-under-ibc-good-for-lenders-bad-for-guarantors/> (last visited May 9, 2025).

stakeholder collaboration will be essential for building a robust, predictable framework for individual debt resolution in India.

### 3. LEGAL PROVISIONS FOR PERSONAL GUARANTORS UNDER THE IBC

The IBC of 2016 introduced a unified framework for resolving financial distress across various debtor categories, including personal guarantors to corporate debtors. Personal guarantors play a critical role in corporate lending, often pledging their personal assets to secure business loans. Recognizing this, the IBC specifically included personal guarantors within its ambit to ensure a comprehensive and effective debt recovery mechanism.

In December 2019, the Indian government formally notified the provisions of the IBC concerning personal guarantors, marking a significant step in the evolution of India's insolvency framework. These provisions, primarily outlined in Sections 94 to 120 of the IBC, allow creditors to initiate insolvency proceedings against personal guarantors independently or concurrently with the corporate debtor. This alignment is intended to provide a more integrated approach to debt recovery, preventing guarantors from circumventing their obligations when the principal borrower defaults<sup>6</sup>.

Key features of the IBC's framework for personal guarantors include the right to initiate insolvency resolution by both the guarantor and creditors, the appointment of a resolution professional, and the preparation of a repayment plan. The process begins with the filing of an application before the National Company Law Tribunal (NCLT), which reviews the case and appoints a resolution professional to manage the proceedings<sup>7</sup>.

Importantly, the Supreme Court of India, in the landmark case of *Lalit Kumar Jain vs. Union of India* (2021), upheld the validity of these provisions, affirming the government's decision to bring personal guarantors under the IBC<sup>8</sup>. This ruling reinforced the principle that guarantors

---

<sup>6</sup> Bhumika Indulia, *Personal Guarantors of Corporate Debtors Finally in the Net of IBC*, SCC Times (Jun. 29, 2022), <https://www.sconline.com/blog/post/2022/06/29/personal-guarantors-of-corporate-debtors-finally-in-the-net-of-ibc/> (last visited May 10, 2025).

<sup>7</sup> Sandeep Bhuraria and Parijat, *Supreme Court's Verdict On The Constitutionality Of The Provisions Of Personal Guarantors Under The IBC*, (2024), <https://www.livelaw.in/law-firms/law-firm-articles-/supreme-court-personal-guarantors-ibc-presidency-towns-insolvency-act-cirp-nclat-resolution-professional-248885> (last visited May 10, 2025).

<sup>8</sup> Ayushi Srivastava, *Case Analysis: Lalit Kumar Jain vs. Union of India*, S&D Legal Associates (2021), <https://www.sndlegalassociates.com/post/case-analysis-lalit-kumar-jain-vs-union-of-india> (last visited May 10, 2025).

are equally responsible for debt repayment, ensuring a holistic approach to financial distress resolution. However, despite this clarity, practical challenges remain, including procedural delays, asset tracing difficulties, and the need for more comprehensive regulatory guidance.

#### 4. PROCEDURAL CHALLENGES IN PERSONAL INSOLVENCY RESOLUTION

Despite the inclusion of personal guarantors under the IBC of 2016, the practical execution of these provisions has faced significant procedural challenges. Unlike corporate insolvency, which has well-defined processes and institutional support, personal insolvency resolution remains a developing area, marked by procedural ambiguities and operational bottlenecks.

One of the primary challenges is the complex and time-consuming nature of the insolvency process for individuals. The initial step of filing an application before the National Company Law Tribunal (NCLT) requires detailed documentation, including proof of default, financial statements, and asset details, which can be cumbersome for both creditors and debtors. This often leads to delays in the admission of cases, prolonging the overall resolution timeline<sup>9</sup>.

The role of the resolution professional (RP) in personal insolvency cases is not as clearly defined as in corporate insolvency. RPs are required to assess the financial position of the debtor, prepare a repayment plan, and manage creditor meetings, but the lack of standardized guidelines for evaluating personal assets and liabilities creates significant challenges<sup>10</sup>. This ambiguity can lead to inconsistent outcomes and disputes over the valuation of personal guarantees. Asset tracking and recovery present substantial hurdles. Personal guarantors often have complex financial structures, including joint ownership of assets, foreign holdings, and diverse revenue streams, complicating the task of identifying and recovering assets. This challenge is further exacerbated by limited access to real-time financial data and inadequate enforcement mechanisms<sup>11</sup>.

The critical issue is the absence of a streamlined digital infrastructure to support case

---

<sup>9</sup> National Company Law Tribunal - NCLT - NCLAT, <https://legalserviceindia.com/company%20law/nclt.htm> (last visited May 10, 2025).

<sup>10</sup> Vanshika Kapoor, *All about Insolvency Resolution Professionals under IBC, 2016*, iPleaders (Apr. 13, 2024), <https://blog.ipleaders.in/all-about-insolvency-resolution-professionals-under-ibc-2016/> (last visited May 10, 2025).

<sup>11</sup> Bhumika Indulia, *Status of Personal Guarantors under Indian Insolvency Laws*, SCC Times (Jul. 8, 2022), <https://www.sconline.com/blog/post/2022/07/08/the-status-of-personal-guarantors-under-indian-insolvency-laws/> (last visited May 10, 2025).

management and documentation. This results in procedural inefficiencies, including delays in notice serving, verification of claims, and repayment plan approvals. Addressing these challenges through clearer procedural guidelines, technological integration, and enhanced training for RPs will be essential for improving the effectiveness of personal insolvency resolution under the IBC.

## **5. JURISDICTIONAL CHALLENGES AND REGULATORY OVERLAPS IN PERSONAL INSOLVENCY**

Personal insolvency in India, governed primarily under the IBC of 2016, faces significant jurisdictional challenges and regulatory overlaps that complicate its effective implementation. Unlike corporate insolvency, which has a well-defined jurisdiction under the National Company Law Tribunal (NCLT), personal insolvency involves a more fragmented legal landscape, creating hurdles for debtors, creditors, and resolution professionals<sup>12</sup>.

One of the primary jurisdictional challenges is the dual oversight of individual insolvency cases by both the NCLT and the Debt Recovery Tribunals (DRTs). While the NCLT handles insolvency cases involving personal guarantors to corporate debtors, the DRTs have jurisdiction over individual insolvency for other personal debtors. This creates confusion, as the procedural requirements, case management practices, and decision-making approaches differ significantly between these two bodies. This fragmentation often leads to jurisdictional conflicts, procedural delays, and inconsistent rulings, undermining the predictability of outcomes for stakeholders<sup>13</sup>. The overlap between the IBC and other existing laws, such as the Recovery of Debts and Bankruptcy Act (RDBA), the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, and the Indian Contract Act, further complicates personal insolvency proceedings<sup>14</sup>.

For example, creditors may simultaneously pursue recovery actions under these parallel frameworks, potentially conflicting with the moratorium protections provided under the IBC.

---

<sup>12</sup> The Role Of The National Company Law Tribunal (NCLT) In Insolvency Proceedings In India, <https://www.mondaq.com/india/insolvencybankruptcy/1583988/the-role-of-the-national-company-law-tribunal-nclt-in-insolvency-proceedings-in-india> (last visited May 10, 2025).

<sup>13</sup> Personal Guarantors: An Ambiguity in the Jurisdiction of NCLT and DRT under IBC, <https://www.vidhikarya.com/legal-blog/personal-guarantors-an-ambiguity-in-the-jurisdiction-of-nclt-and-drt-under-ibc> (last visited May 10, 2025).

<sup>14</sup> Ayush Verma, *An Overview of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI)*, iPleaders (Sep. 10, 2020), <https://blog.ipleaders.in/overview-securitisation-reconstruction-financial-assets-enforcement-security-interest-act/> (last visited May 10, 2025).

The lack of a unified case management system across NCLTs and DRTs exacerbates these jurisdictional challenges, making it difficult to track proceedings and enforce decisions consistently. This regulatory fragmentation can also lead to forum shopping, where parties strategically choose forums perceived to be more favourable, further complicating case resolution.

To address these issues, there is a need for clearer jurisdictional boundaries, streamlined procedural guidelines, and greater coordination among regulatory bodies to ensure a more coherent and efficient insolvency framework for personal debtors in India.

## **6. CHALLENGES IN ASSET TRACING AND RECOVERY FOR INDIVIDUAL INSOLVENCY**

Asset tracking and recovery are critical components of the individual insolvency process, directly impacting the ability of creditors to recover their dues. Unlike corporate insolvency, where assets are often centralized and easier to identify, individual insolvency involves more complex asset structures, including personal property, joint holdings, foreign investments, and hidden assets. This complexity creates significant challenges for resolution professionals and creditors seeking to recover their dues under the IBC of 2016.

One of the primary challenges in asset tracing is the lack of comprehensive financial disclosures by individual debtors. Personal assets are often spread across multiple jurisdictions, held in various forms like real estate, bank accounts, shares, and luxury items, making it difficult to compile a complete financial picture. For example, in the case of *Vijay Mallya*, the fugitive businessman and former owner of Kingfisher Airlines, the Indian authorities faced significant hurdles in tracing and recovering his global assets<sup>15</sup>. Despite the ongoing insolvency proceedings against him, substantial portions of his wealth remain outside India, protected by complex offshore structures and legal barriers.

Further, the lack of integrated financial databases and real-time access to asset information further complicates the tracing process. While corporate entities are required to maintain transparent financial records, individuals can often conceal or rapidly transfer assets to evade recovery efforts. This challenge is compounded by legal loopholes and regulatory

---

<sup>15</sup> The Vijay Mallya Scam Case: A Comprehensive Legal Analysis» Lawful Legal, (Jul. 19, 2024), <https://lawfullegal.in/the-vijay-mallya-scam-case-a-comprehensive-legal-analysis/> (last visited May 10, 2025).

inconsistencies that allow debtors to delay disclosure or dispute asset valuations. The recent case involving *Anil Ambani*, where the recovery of personal guarantees by banks was delayed due to prolonged legal battles over asset ownership and valuation, highlights this issue<sup>16</sup>.

Cross-border insolvency adds another layer of complexity. In cases where individual guarantors hold significant assets overseas, the lack of reciprocal enforcement mechanisms and international cooperation hampers effective recovery<sup>17</sup>. For instance, Indian banks attempting to recover funds from overseas assets held by defaulters have often struggled due to differences in legal frameworks and asset protection laws in foreign jurisdictions.

The limited digital infrastructure for managing individual insolvency cases in India creates additional procedural delays. Unlike corporate cases, which benefit from more robust data management systems, personal insolvency proceedings often rely on manual processes, increasing the risk of oversight and asset concealment. Addressing these challenges requires clearer procedural guidelines, enhanced digital infrastructure, and stronger international cooperation to ensure timely and efficient asset recovery in individual insolvency cases. Strengthening these aspects will be critical to improving creditor confidence and enhancing the overall effectiveness of the IBC framework for individual debt resolution.

## 7. BALANCING CREDITOR RIGHTS AND DEBTOR PROTECTIONS

The IBC of 2016 was designed to strike a delicate balance between the rights of creditors seeking debt recovery and the protections afforded to debtors facing financial distress. This balance is crucial to maintaining a fair and efficient insolvency framework that promotes financial stability while ensuring that distressed individuals are not unfairly penalized. Creditor rights are essential to maintaining market confidence and encouraging lending, as they provide financial institutions with a clear legal pathway to recover their dues<sup>18</sup>. Under the IBC, creditors are empowered to initiate insolvency proceedings, enforce personal guarantees, and participate in the decision-making process through creditor committees. This framework aims to ensure

---

<sup>16</sup> Rights of Personal Guarantors in Insolvency Proceedings, Supreme Court Observer, <https://www.scobserver.in/cases/rights-of-personal-guarantors-in-insolvency-proceedings/> (last visited May 10, 2025).

<sup>17</sup> taxguru\_in & RITIKA PRIYADARSHINI, *Complexities of Cross-Border Insolvency: A Comprehensive Guide*, TaxGuru (2024), <https://taxguru.in/corporate-law/complexities-cross-border-insolvency-comprehensive-guide.html> (last visited May 10, 2025).

<sup>18</sup> Joel F. Houston et al., *Creditor Rights, Information Sharing, and Bank Risk Taking*, 96 Journal of Financial Economics 485 (2010), <https://www.sciencedirect.com/science/article/pii/S0304405X10000401> (last visited May 10, 2025).



that creditors have a fair opportunity to recover their investments, reducing the overall risk of lending.

At the same time, the IBC also seeks to protect the rights of debtors, recognizing the need for a fresh start for individuals overwhelmed by financial obligations. Debtors are granted protection through the automatic moratorium on debt recovery actions, the right to propose repayment plans, and access to resolution processes that prioritize sustainable debt restructuring. These provisions aim to prevent aggressive recovery practices and ensure that debtors are treated with fairness and dignity<sup>19</sup>.

However, balancing these interests remains a challenging task. Excessive creditor control can lead to harsh outcomes for debtors, while overly protective debtor rights can discourage lending. Moving forward, refining this balance through clearer procedural guidelines, enhanced dispute resolution mechanisms, and more robust oversight will be essential to creating a more resilient and fair insolvency ecosystem in India.

## **8. CASE STUDY: LALIT KUMAR JAIN VS. UNION OF INDIA (2021)<sup>20</sup>**

This case is a landmark decision that significantly impacted the interpretation and application of the IBC concerning personal guarantors. This case has set a critical precedent for the treatment of personal guarantors to corporate debtors, reinforcing the IBC's intent to provide a comprehensive debt recovery framework.

### ***8.1 Background Of The Case***

In December 2019, the Government of India issued a notification bringing personal guarantors of corporate debtors within the purview of the IBC, allowing financial creditors to initiate insolvency proceedings against them independently. This move aimed to prevent personal guarantors from evading their obligations while ensuring that corporate debt resolution remained comprehensive and effective.

Several personal guarantors, including Lalit Kumar Jain, challenged this notification, arguing

---

<sup>19</sup> Sick Companies and Debt Recovery: Under IBC and Other legislation | Legal Service India - Law Articles - Legal Resources, <http://www.legalserviceindia.com/legal/article-10534-sick-companies-and-debt-recovery-under-ibc-and-other-legislation.html> (last visited May 10, 2025).

<sup>20</sup> LALIT KUMAR JAIN VS. UNION OF INDIA (2021), AIR ONLINE 2021 SC 402.

that the inclusion of personal guarantors under the IBC was unconstitutional and violated the principle of natural justice. They contended that the liabilities of personal guarantors should not be automatically linked to the insolvency of the principal corporate debtor, as this would unfairly expose them to financial risks without due process.

### **8.2 Supreme Court's Verdict**

In May 2021, the Supreme Court upheld the constitutionality of the government's notification, ruling that personal guarantors can be held jointly and severally liable for the debts of the corporate debtor. The Court emphasized that the financial obligations of guarantors are distinct from those of the principal borrower and can be enforced independently under the IBC<sup>21</sup>. This decision reinforced the principle that guarantors cannot escape their liabilities simply because the principal borrower is undergoing insolvency resolution.

### **8.3 Impact Of The Ruling**

This ruling has had a profound impact on India's insolvency landscape, providing clarity on the rights of creditors and the obligations of guarantors. It has strengthened the position of creditors, ensuring that personal guarantees remain a reliable form of collateral, thereby reducing the risk of financial losses. At the same time, it has prompted personal guarantors to exercise greater caution before pledging their assets, recognizing the significant personal financial exposure involved<sup>22</sup>. This case has reinforced the IBC's core objective of maximizing asset recovery and promoting financial discipline, while setting a critical precedent for future insolvency proceedings involving personal guarantors.

## **9. GLOBAL BEST PRACTICES IN INDIVIDUAL INSOLVENCY AND PERSONAL GUARANTEE MANAGEMENT**

Effective management of individual insolvency and personal guarantees is critical for maintaining financial stability and promoting responsible lending. While India's IBC has made significant strides in this area, global best practices provide valuable insights into creating a

---

<sup>21</sup> Oishika Banerji, *Lalit Kumar Jain v. Union of India: An Analysis*, iPleaders (Sep. 10, 2021), <https://blog.ipleaders.in/lalit-kumar-jain-v-union-india-analysis/> (last visited May 10, 2025).

<sup>22</sup> Case Comment: *Lalit Kumar Jain v. Union of India & others* SCC OnLine SC396 2021, LawBhoomi (Feb. 7, 2023), <https://lawbhoomi.com/case-comment-lalit-kumar-jain-v-union-of-india-others-scc-online-sc396-2021/> (last visited May 10, 2025).

more balanced, efficient, and fair insolvency framework. These practices emphasize transparency, creditor protection, debtor rights, and streamlined processes, ensuring a comprehensive approach to debt resolution.

### ***9.1 Transparent And Fair Treatment Of Debtors And Creditors***

One of the fundamental principles of successful insolvency frameworks is the equitable treatment of both debtors and creditors.<sup>23</sup> For example, the United States' Chapter 7 and Chapter 13 bankruptcy systems provide clear distinctions between liquidation and repayment options, ensuring that debtors have a realistic path to financial recovery while protecting creditor interests. These systems also include strict disclosure requirements, ensuring transparency in asset declarations and financial reporting.

### ***9.2 Efficient Asset Tracing And Recovery Mechanisms***

Countries like the United Kingdom and Singapore have developed advanced asset tracking and recovery systems that rely on digital infrastructure and real-time financial data. For instance, the UK's Individual Voluntary Arrangement (IVA)<sup>24</sup> system and Singapore's Insolvency, Restructuring, and Dissolution Act (IRDA)<sup>25</sup> emphasize efficient asset tracing through comprehensive financial disclosures, strict audit requirements, and collaboration with international financial networks. These measures help creditors recover a larger portion of their claims while reducing the risk of asset concealment.

### ***9.3 Integrated Digital Platforms For Case Management***

Modern insolvency frameworks increasingly rely on integrated digital platforms to streamline case management, reduce procedural delays, and enhance transparency. The European Union's Insolvency Regulation, for example, mandates the use of interconnected insolvency registers,

---

<sup>23</sup> Chapter 7 vs. Chapter 13 Bankruptcies: Understanding the Key Differences and Making the Right Choice, Upton Law, <https://www.uptonlawpllc.com/blog/chapter-7-vs-chapter-13-bankruptcies-understanding-the-key-differences-and-making-the-right-choice> (last visited May 10, 2025).

<sup>24</sup> Individual voluntary arrangement (IVA) protocol, GOV.UK (2025), <https://www.gov.uk/government/publications/individual-voluntary-arrangement-iva-protocol> (last visited May 10, 2025).

<sup>25</sup> New Insolvency, Restructuring and Dissolution Act 2018 effective from 30 July 2020, Allen & Gledhill, <https://www.allenandgledhill.com/sg/publication/articles/16678/new-insolvency-restructuring-and-dissolution-act-2018-effective-from-30-july-2020> (last visited May 10, 2025).

allowing creditors and insolvency professionals to track cases across borders efficiently<sup>26</sup>. This digital integration reduces the time and cost associated with asset recovery, providing a more predictable resolution process.

#### ***9.4 Support For Debtors' Financial Rehabilitation***

Leading jurisdictions also prioritize the financial rehabilitation of individual debtors, recognizing the importance of a fresh financial start. For instance, the U.S. bankruptcy system allows for the discharge of certain debts, providing debtors with a clear path to financial recovery. Similarly, Canada's Bankruptcy and Insolvency Act (BIA) includes debtor education programs and financial counseling, helping individuals rebuild their financial stability post-insolvency<sup>27</sup>.

#### ***9.5 Strong Legal Framework for Personal Guarantees***

Globally, personal guarantees are enforced through clear legal frameworks that outline the rights and responsibilities of guarantors. For example, Hong Kong's Personal Insolvency Arrangement (PIA)<sup>28</sup> and the U.S. Uniform Commercial Code (UCC) provide robust protections for creditors while ensuring fair treatment for guarantors, reducing the risk of prolonged litigation. Adopting these best practices can significantly strengthen India's individual insolvency and personal guarantee framework, ensuring a more predictable, transparent, and effective approach to financial distress resolution.

### **10. CONCLUSION**

The effective management of individual insolvency and personal guarantees is a critical component of a robust financial ecosystem, directly influencing creditor confidence, financial stability, and economic growth. The IBC of 2016 in India marked a significant step toward modernizing the country's insolvency framework, aligning it more closely with global standards. However, as this article has highlighted, the execution of individual insolvency and

---

<sup>26</sup> Advant Nctm-Fabio Marelli, *The Recast EU Regulation No. 2015/848 on Insolvency Procedures*, Lexology (2015), <https://www.lexology.com/library/detail.aspx?g=c3233aca-9045-42bc-88ed-58b33bcb0feb> (last visited May 10, 2025).

<sup>27</sup> A guide about insolvency and bankruptcy act in Canada, <https://www.lexpert.ca/news/legal-faq/a-guide-about-insolvency-and-bankruptcy-act-in-canada/377320> (last visited May 10, 2025).

<sup>28</sup> Ince & Co, *Cross-Border Insolvency Proceedings & Cooperation Arrangement • Ince & Co Hong Kong*, Ince & Co Hong Kong (Feb. 28, 2024), <https://incehk.com/2024/02/cross-border-insolvency-proceedings-cooperation-arrangement/> (last visited May 10, 2025).

personal guarantee mechanisms under the IBC remains fraught with challenges, including procedural inefficiencies, jurisdictional complexities, asset tracing hurdles, and regulatory overlaps. Addressing these gaps is essential for ensuring that the IBC fulfils its intended role as a comprehensive, transparent, and effective debt resolution framework.

One of the primary challenges in implementing personal insolvency provisions under the IBC is the fragmented jurisdictional landscape, where both the National Company Law Tribunal (NCLT) and the Debt Recovery Tribunals (DRTs) share oversight responsibilities. This division creates procedural uncertainties and delays, as each tribunal has its own case management practices, procedural timelines, and decision-making frameworks. Harmonizing these processes and establishing clear jurisdictional boundaries will be critical for improving the speed and predictability of individual insolvency proceedings.

Moreover, the asset tracking and recovery process in individual insolvency cases presents significant practical challenges. Unlike corporate assets, which are often consolidated and more easily identified, individual assets are frequently diversified across multiple jurisdictions, held in complex structures, or shielded by legal protections. The lack of integrated financial databases and real-time access to asset information further complicates this process, leading to prolonged recovery timelines and reduced creditor recoveries. Strengthening asset tracing mechanisms, integrating digital case management systems, and enhancing international cooperation will be essential for overcoming these challenges.

Further, the recent judicial interpretations, such as the *Lalit Kumar Jain vs. Union of India* case, have provided critical clarity regarding the rights and obligations of personal guarantors under the IBC. These rulings have reinforced the principle that personal guarantors cannot evade liability simply because the principal borrower undergoes insolvency resolution. However, they have also highlighted the need for more balanced protections to prevent the over-penalization of guarantors, ensuring that the IBC remains fair and just for all stakeholders.

Adopting global best practices can significantly strengthen India's approach to individual insolvency and personal guarantees. Lessons from jurisdictions like the United States, the United Kingdom, and Singapore demonstrate the value of clear legal frameworks, integrated digital platforms, efficient asset tracking systems, and strong creditor protections. These approaches can serve as valuable models for India as it seeks to refine its insolvency framework, reduce procedural delays, and improve financial outcomes for both creditors and

debtors. Further, achieving a balanced, transparent, and effective insolvency framework for individuals will require continuous legislative refinement, stronger institutional support, and enhanced stakeholder collaboration. By addressing these critical challenges and aligning with global best practices, India can create a more predictable, fair, and efficient debt resolution system, ultimately fostering a more resilient financial ecosystem and promoting broader economic stability.