
POSITION OF PERSONAL GUARANTORS UNDER THE IBC: PRE-2025 BILL AND POST-2025 BILL

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ABSTRACT

The paper examines the Amendments of the law on personal guarantor in the Insolvency and Bankruptcy code, 2016 (IBC) in India which have taken place up to the date of the Amendment Bill of 2025 and after. It is pursuant to the judicial interpretations, statutory provisions and practical issues, particularly on the moratorium, enforcement of creditors and exposure to bankruptcy of personal guarantors. The 2025 Bill is a tremendous change as it limits interim moratorium, defines the responsibility of repayment and lets creditors exercise power whereas the guarantors take responsibility. The paper presents an analytical description of the manner in which the interest of creditors and personal guarantors are captured under the legislative reforms as being part of the larger interests of the IBC in effecting an effective and timely insolvency process.

Keywords: Personal Guarantors, Amendment Bill, Interim Moratorium, Insolvency, Creditor, Enforcement, Insolvency & Bankruptcy Code, 2016.

I. Introduction

Insolvency and Bankruptcy Code, 2016 is an elaborate statutory framework of insolvency in India, which tries to put into consideration the interests of creditors and debtors and offer an effective and timely methodology of insolvency resolution. In this regard, personal guarantors of corporate debtors have been a complex and emerging concept of treatment. Though legally personal guarantors and corporate debtors are not comparable, they are more likely to have a consequential liability in the insolvency process since they may be asked to guarantee corporate debt personal liabilities. The status of personal guarantors to IBC has had an extraordinary judicial and legislative evolution, namely in the way the moratorium operates, the insolvency liability and the rights to enforce creditors.

The *Lalit Kumar Jain v. Union of India ((2021) ibclaw.in 61 SC)* case is a landmark Supreme Court judgment that upheld the constitutional validity of the 2019 government notification extending IBC provisions to personal guarantors of corporate debtors. The notification bringing Part III of the IBC into effect for personal guarantors was valid and not ultra vires.

Before the implementation of reforms in 2025, the legal environment relating to personal guarantors was characterized by judicial interpretation of the terms of moratorium, selective statutory coverage and practical difficulties due to the ambiguities in procedures. The Insolvency and Bankruptcy Code (Amendment) Bill, 2025 is aimed at re-setting this balance by creating more stringent timelines, defining the roles and liabilities of personal guarantors, and limiting the opportunities to abuse procedural protections. This paper compares the status of personal guarantors under the IBC prior to and after the 2025 Bill based on judicial decisions, statutory provisions, and practice.

II. Position Before the 2025 Bill

A. Judicial Position Prior to the 2019 Notification

The statutory provisions were silent on how the Personal Guarantors should be treated until the Central Government made a notification in 2019 that the statutory provisions of IBC would apply to the Personal Guarantors. Section 96, governing the resolution of insolvency of personal guarantors under the current law, was only not operationalized and the courts only applied the general terms of IBC, especially Section 14, which imposes a moratorium on any

proceedings against a corporate debtor in case a corporate insolvency resolution proceeding (CIRP) has been commenced.

During this run-up to 2019, the judiciary continued to believe that the moratorium in Section 14 applied only to corporate debtors and did not provide any protection to personal guarantors against creditor action. *State Bank of India v. V. Ramakrishnan (2018) ibclaw.in 29 SC*, expressly stated that the protections to Section 14 moratorium only apply to corporate debtors and not to guarantors, and, therefore, allowed creditors to proceed with recovery action against PGs in CIRP. The decision was reiterated in other cases including *Alpha and Omega Diagnostics vs Asset reconstruction company of India Ltd. and Ors*¹ (NCLAT) the Appellate Tribunal, where with Ramakrishnan leading the way, pointed out that guarantors are not in any way covered by the fact that the company is being forced into insolvency and the guarantor is not being pursued. In the same manner, Allahabad NCLT in *Punjab National Bank v. Vindhya Vasini*², the decision supported the right of creditors to target personal guarantors, emphasizing on the fact that the benefits of moratorium in Section 14 of the Act was limited to corporations.

The role of personal guarantors changed significantly following the adoption of the 2019 notification that introduced Section 96 to personal guarantors and broadened some of the protections of the IBC. Section 96 established an interim moratorium which would come into force automatically once an insolvency application has been filed against or against a personal guarantor. This statutory moratorium made only temporary limitations on creditor enforcement, which in effect halted recovery proceedings before even the formal filing of the insolvency application.

B. Interim Moratorium and Its Practical Challenges

Section 96 automatic interim moratorium, meant to give the PGs time to, in effect, relieve themselves of immediate pressure of creditors, immediate creditors, soon showed practical weaknesses. Courts and practitioners noted that this provision had been abused by personal guarantors who made early or frivolous insolvency applications just to stay off the enforcement exercise. In *Bank of Baroda vs. Union of India*³, in 2024 Bombay High Court pointed to the

¹ Alpha and Omega Diagnostics v. Asset Reconstruction Co. of India Ltd., Company Appeal (AT) (Insol.) No. 116 of 2017 (NCLAT 2017) (India).

² Punjab National Bank v. Vindhya Vasini Industries Ltd., Company Appeal (AT) (Insolvency) No. 854 of 2019 (NCLAT 2019) (India).

³ Bank of Baroda v. Union of India, MANU/MHOR/9725/2024 (Bom. HC 2024) (India)

possible abuse nature of the interim moratorium, where the guarantors were able to use Section 96 to postpone enforcement when the substantive quality of the case did not have any merit. Therefore, with the debt of the corporate debtor continuing to be attributed to the liability of the PGs, Section 96 created a procedural device that may in effect protect the latter in the short term against creditor enforcement, leading to delays and uncertainties in the recovery procedures.

III. Position Under the 2025 Bill

The bill Insolvency and Bankruptcy code (Amendment) 2025 suggests some important amendments to compensate the gaps and abuses which were established under the pre-2025 framework. The overall aim of the 2025 Bill is to re-focus the treatment of personal guarantors on the overall objectives of the IBC, namely, timely resolution, effective enforcement of creditors and reduction of procedural abuse.

A. Limitations in the Interim Moratorium.

Under the 2025 Bill, the potential to slow down creditor action by personal guarantors unilaterally with premature insolvency filings is removed as the scope of automatic interim moratorium under Section 96 is curtailed. The Bill limits the moratorium protections so that enforcement by creditors can proceed unless a formal insolvency resolution has begun, meaning that the Bill confines the moratorium protections to cases in which a substantive insolvency action has been admitted. This modification is a direct response to the issues that were stated in *Bank of Baroda v. Union of India* and such like judicial observations.

B. Clarification of Obligations at Liability and Process.

The Bill also explains the personal guarantor liability structure. The Bill not only lifts automatic moratorium protections, exposing the guarantors to creditor enforcement, but also puts in place procedural mechanisms that both guarantee participation and accountability by the guarantors. Section 106 provides that the personal guarantors should present a repayment plan within twenty-one days and creditors will conduct a meeting to deliberate on her/his proposal. Such organized involvement guarantees that the

guarantors are represented in the repayment process, and at the same time, avoids the abuse of the procedural protection. Section 121 also enables the process of bankruptcy to happen after

the ending of repayment plans hence creating a clear cut to the end of repayment efforts and the beginning of the formal insolvency.

C. Bankruptcy Exposure and Enforcement.

The 2025 Bill strengthens enforcement by creditors by enabling the transfer of guarantor assets into the CIRP of the corporate debtor only with the Committee of Creditors and secured creditors approval where the latter exists. In the cases where the guarantor is in bankruptcy, the transfer of the assets must be endorsed by three-fourths of the creditors. Moreover, the amended Code in Sections 121 and 124 explains that the default in observing the repayment plans will subject personal guarantors to bankruptcy courses. New subsection 124(4) in the 2025 Bill expressly provides that discharge orders in the case of the corporate debtor do not releases personal guarantors of their liability.

Section 64A introduced by the Bill gives the Adjudicating Authority a power to impose a penalty of ₹1 lakh to 2 crores on frivolous or vexatious proceedings; the scope of this provision must be interpreted alongside the marginal notes to the Bill and the text as it is ultimately enacted.

IV. Analytical Observations

The change in the legislative base in the form of the 2025 Bill is a paradigm shift of the approach to the treatment of personal guarantors. Before 2025, there were weak protections against personal guarantors and the opening of the Section 96 moratorium meant they could be exploited through procedures. The conflict between the rights of the creditors and the procedural protection of the PGs was pointed out in the judicial statements, especially in the Supreme Court and in NCLAT. The 2025 Bill rebalances that by eliminating interim moratoriums, creating strict timelines, and demystifying liabilities, the participatory rights of guarantors in the process of repayment planning are upheld. As a result, the amendments enhance accountability of personal guarantors and effectiveness in recovery of creditors, which is in line with the larger goals of the IBC.

V. Conclusion

The Bill 2025 is a significant reform of the legal and procedural framework of the treatment of personal guarantors under the IBC. The Bill closes a loophole that was used to exploit the

interim moratorium that allows creditors to enforce their claims in the most efficient manner possible. Introduction of clear obligations, timelines and liability provisions, structurally strategic involvement in repayment planning through personal guarantors in a uniform and responsible process makes the bill more reliable. Together, these reforms offer enhanced protection to creditors, eliminate the risk of misuse of procedure and better align the personal guarantor obligations of corporate bankruptcy insolvency. The case law of pre-2019, the 2019 notification, the Bill of 2025, represents a carefully balanced framework of rights, duties and enforcement procedures that are characteristic of the changing view of the role of personal guarantors in the Indian insolvency regime.