

# **Personal Guarantors under the Insolvency and Bankruptcy Code-**

## **A comprehensive guide**

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**The Insolvency and Bankruptcy Code (IBC) 2016** is a critical piece of legislation that has fundamentally altered the way insolvency and bankruptcy proceedings are conducted in India. The IBC provides a framework for the resolution of distressed assets and debt, while protecting the interests of all stakeholders, including creditors, shareholders, and the economy as a whole. There are several contemporary topics under the IBC that are worth exploring, I would like to discuss the issue of personal guarantor under the code before and after the amendment of 2019.

the issue of personal guarantors. A personal guarantor is a person who guarantees the repayment of a loan taken by a company. The IBC was amended in 2019 to include personal guarantors under the ambit of the IBC, which means that they can now be declared insolvent and have their assets liquidated to repay their debts. This has led to significant concerns among personal guarantors, who fear that they could lose their personal assets as a result of a default by the company they have guaranteed.

Before the Insolvency and Bankruptcy Code (IBC) was amended in 2019, personal guarantors were not included within the ambit of the IBC. This meant that in case of a default by the borrower, the creditor could only recover the outstanding amount from the assets of the borrower company, and not from the personal assets of the guarantor. However, this changed after the IBC was amended to include personal guarantors within its purview.

Under the amended IBC, a personal guarantor can now be declared insolvent and have their assets liquidated to repay their debts. This means that if a company defaults on its loan, and the personal guarantor has guaranteed the repayment of that loan, then the creditor can initiate insolvency proceedings against the personal guarantor to recover the outstanding amount.

The provisions related to personal guarantors are included in the Insolvency and Bankruptcy Code, 2016 (IBC), specifically in Section 60(2) and Section 179 of the Code.

**Section 60(2) of the IBC** deals with the liability of the personal guarantor. It states that if a corporate debtor defaults on a debt, and a personal guarantor has provided a guarantee for that debt, then the creditor can initiate insolvency proceedings against the personal guarantor. The liability of the personal guarantor is the same as that of the corporate debtor, and they are jointly and severally liable for the outstanding debt.

**Section 179 of the IBC** deals with the application of the Code to personal guarantors. It states that the provisions of the IBC that are applicable to corporate debtors are also applicable to personal guarantors. This includes the provisions related to insolvency proceedings, the appointment of interim resolution professionals and resolution professionals, and the process for filing and admitting claims.

The IBC does not provide a separate insolvency process for personal guarantors. Therefore, personal guarantors are subject to the same process as corporate debtors. The process begins with the filing of an application for insolvency by a creditor or group of creditors. **The National Company Law Tribunal (NCLT)** then examines the application and determines whether to admit it. If the application is admitted, an interim resolution professional is appointed to manage the affairs of the personal guarantor during the insolvency process.

The interim resolution professional assesses the assets and liabilities of the personal guarantor and prepares a resolution plan for the repayment of the outstanding debt. The plan must be approved by the committee of creditors before it can be implemented. If the creditors accept the plan, the personal guarantor can be discharged from their debts, and the insolvency process ends. However, if the creditors do not accept the resolution plan, the NCLT may order the liquidation of the personal guarantor's assets to repay the outstanding debt.

It is important to note that the liability of the personal guarantor is limited to the extent of the guarantee provided by them. Therefore, the personal guarantor is only liable for the outstanding

debt to the extent of the guarantee, and their personal assets are not automatically at risk. However, if the guarantee is unlimited, then the personal guarantor may be liable for the entire outstanding debt.

In addition to the IBC, there are other statutes that govern the rights and obligations of personal guarantors. For example, the **Indian Contract Act, 1872**, provides the legal framework for contracts and guarantees. Under this Act, a guarantee is a contract between the creditor, the debtor, and the guarantor. The guarantor agrees to pay the outstanding debt if the debtor defaults on the loan. The guarantee must be in writing and must be signed by the guarantor.

**The Recovery of Debts Due to Banks and Financial Institutions Act, 1993**, also provides for the recovery of outstanding debt from personal guarantors. This Act empowers banks and financial institutions to recover outstanding debt from individuals who have provided a guarantee for a loan. The Act establishes **Debt Recovery Tribunals (DRTs)** to hear cases related to the recovery of debt. The DRTs have the power to attach the personal guarantor's assets to recover the outstanding debt.

Overall, the IBC is the primary statute that governs the insolvency proceedings of personal guarantors. The provisions of the IBC provide a fair and transparent insolvency process for personal guarantors, with safeguards to protect their rights and interests. However, personal guarantors should also be aware of their rights and obligations under other relevant statutes, such as the **Indian Contract Act** and the **Recovery of Debts Due to Banks and Financial Institutions Act, 1993**.