



**IBC KNOWLEDGE CAPSULE 13**  
**Framework for Personal Guarantors under IBC, 2016**

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**Introduction:**

Sections 94 to 187 of the Insolvency and Bankruptcy Code, 2016(IBC), read with sec. 60 (1) and (2), w.r.t. insolvency and bankruptcy of personal insolvency of corporate guarantors have been notified vide notification dated 15.11.2019, along with rules and regulations for insolvency and bankruptcy process of Personal Guarantors.

The following table shows the provisions (Code/Regulations/Notifications/Circulars) under the IBC framework and the case laws that deal with the insolvency and bankruptcy of Personal Guarantors under IBC.

The table has been color coded as follows:

Code	
Regulations/Rules	
Case laws	
Circulars/Notifications and Others	

**TABLE: Personal Guarantors under IBC**

<b>Source</b>	<b>Details</b>	<b>Explanation</b>
Section 2(e) of the Code	The provisions of this Code shall apply to— <b>(e) personal guarantors to corporate debtors;</b>	This Section talks of applicability of IBC to personal guarantors to corporate debtors. It was inserted by way of Insolvency and Bankruptcy Code (Amendment) Act, 2018 and came into with retrospective effect from 23.11.2017.
Section 5(22) of the Code	<b>“personal guarantor” means</b> an individual who is the surety in a contract of guarantee to a corporate debtor	This Section defines Personal Guarantor. A comprehensive definition is also provided in Rule 3(e) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 which defines it as: <b>“guarantor means a debtor who is a personal guarantor to a corporate debtor and in respect of whom the guarantee has been invoked by the creditor and remains unpaid in part or full”</b> .
Section 60 of the Code	(1) The Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons <b>including corporate debtors and personal guarantors thereof</b> shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of a corporate person is located.	This Section states that the personal guarantors whose Corporate Debtors are already undergoing CIRP will be subject to Insolvency Resolution Process in the National Company Law Tribunal. Under section 79(1) of the Code, the debt recovery tribunal has been named as the Adjudicating Authority for insolvency resolution and bankruptcy for individuals.
Section 234(2) of the Code	The Central Government may, by notification in the Official Gazette, direct that the application of provisions of this Code in relation to assets or property of corporate debtor or debtor, <b>including a personal guarantor of a corporate debtor</b> , as the case may be, situated at any place in a country	This section brings with it the personal guarantors of corporate debtors which may be situated in a foreign country, under the ambit of IBC as well if the Central Government notifies any guidelines for it.

	outside India with which reciprocal arrangements have been made, shall be subject to such conditions as may be specified.	
Sections 94 to 187 of the Code that are applicable Insolvency Process of Individuals	Some important provisions: Section 94 and 95: Initiate Insolvency Process against Individuals Section 96: Interim Moratorium Section 99: Submission of Report by Resolution Professional Section 100: Admission or rejection of application Section 101: Moratorium Section 105: Repayment Plan Section 110: Rights of secured creditors in relation to repayment plan Section 116: Implementation and supervision of repayment plan Section 119: Discharge Order	The Central Government (by a notification dated 15th November 2019) has from 1st of December, 2019 brought into effect Part III (Section 94 to 187) of the Insolvency and Bankruptcy Code, 2016 dealing with the Insolvency and Bankruptcy of Individuals and Partnership Firms in so far as it is applicable to Personal Guarantors of a Corporate Debtor.
Regulations and Rules	<ol style="list-style-type: none"> <li>1. The Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 ("<b>Insolvency Rules</b>") (Link for entire Rules: <a href="https://ibbi.gov.in/uploads/legalframwork/8e0ab9331455200b402d91257113805c.pdf">https://ibbi.gov.in/uploads/legalframwork/8e0ab9331455200b402d91257113805c.pdf</a>)</li> <li>2. The Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019</li> </ol>	The Central Government via Ministry of Corporate Affairs, by a notification dated 15.11.2019, brought into effect a new set of Rules and Regulations that shall apply to Personal Guarantors of Corporate Debtors which came into force from 01.12.2019.

	<p style="text-align: center;"><b>("Bankruptcy Rules")</b></p> <p>(Link for entire Rules: <a href="https://ibbi.gov.in/uploads/legalframework/17662452f16d75fe4c221f39e303033f.pdf">https://ibbi.gov.in/uploads/legalframework/17662452f16d75fe4c221f39e303033f.pdf</a>)</p> <p>3. The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 ("<b>Insolvency Regulations</b>")</p> <p>(Link for entire Regulations: <a href="https://ibbi.gov.in/uploads/legalframework/2019-11-22-171205-h10bx-8573c02ee31bba941201aff84b95ae4.pdf">https://ibbi.gov.in/uploads/legalframework/2019-11-22-171205-h10bx-8573c02ee31bba941201aff84b95ae4.pdf</a>)</p> <p>4. The Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 ("<b>Bankruptcy Regulations</b>")</p> <p>(Link for entire Regulations: <a href="https://ibbi.gov.in/uploads/legalframework/2019-11-22-172331-pdm3h-40c64dd41380b7d710b874a8d1152fe6.pdf">https://ibbi.gov.in/uploads/legalframework/2019-11-22-172331-pdm3h-40c64dd41380b7d710b874a8d1152fe6.pdf</a>)</p>	
<p>Ferro Alloys Corporation Limited v Rural Electrification Corporation Limited (Comp. App (AT) (Ins) No. 92 of 2017)</p>	<p><i>"34. The provision of the I&amp;B Code do not bar a 'financial creditor' from initiating 'corporate insolvency resolution process' against the 'guarantor', who comes within the meaning of 'corporate debtor'. The aforesaid matter can be noticed from the statutory inter-se rights, obligations and liabilities of : (i) A surety qua the creditor (the relationship as defined under the Indian Contract Act); or (ii)</i></p>	<p>Date of the Order: 08.01.2019</p> <p>Link for the full order: <a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Jan/8th%20Jan%202019%20in%20the%20matter%20of%20Ferro%20Alloys%20Corporation%20Ltd.%20&amp;%20Ors.%20Vs.%20Rural%20Electrification%20Corporation%20Ltd.%20CA%20(AT)%20(Insolvency)%20No.%2092.93">https://ibbi.gov.in/webadmin/pdf/order/2019/Jan/8th%20Jan%202019%20in%20the%20matter%20of%20Ferro%20Alloys%20Corporation%20Ltd.%20&amp;%20Ors.%20Vs.%20Rural%20Electrification%20Corporation%20Ltd.%20CA%20(AT)%20(Insolvency)%20No.%2092.93</a></p>

	<i>Guarantor qua financial creditor"</i>	<a href="#">%20&amp;%20148-2017 2019-01-10%2012:10:07.pdf</a>
Lalit Mishra & Ors. Vs. Sharon Bio Medicine Ltd. & Ors. Company Appeal (AT) (Insolvency) No. 164 of 2018	<i>"9. It was not the intention of the legislature to benefit the 'Personal Guarantors' by excluding exercise of legal remedies available in law by the creditors, to recover legitimate dues by enforcing the personal guarantees, which are independent contracts. It is a settled position of law that the liabilities of guarantors is co-extensive with the borrower. This Appellate Tribunal held that the resolution under the 'I&amp;B Code' is not a recovery suit. The object of the 'I&amp;B Code' is, inter alia, maximization of the value of the assets of the 'Corporate Debtor', then to balance all the creditors and make availability of credit and for promotion of entrepreneurship of the 'Corporate Debtor'. While considering the 'Resolution Plan', the creditors focus on resolution of the borrower 'Corporate Debtor', in line with the spirit of the 'I&amp;B Code'."</i>	Date of the Order: 19.12.2018  Link for full order: <a href="https://ibbi.gov.in/webadmin/pdf/order/2018/Dec/19th%20Dec%202018%20in%20the%20matter%20of%20Lalit%20Mishra%20&amp;%20Ors.%20Vs.%20Sharon%20Bio%20Medicine%20Ltd.%20&amp;%20Ors.%20CA%20(AT)%20No.%20164-2018 2018-12-19%2018:02:46.pdf">https://ibbi.gov.in/webadmin/pdf/order/2018/Dec/19th%20Dec%202018%20in%20the%20matter%20of%20Lalit%20Mishra%20&amp;%20Ors.%20Vs.%20Sharon%20Bio%20Medicine%20Ltd.%20&amp;%20Ors.%20CA%20(AT)%20No.%20164-2018 2018-12-19%2018:02:46.pdf</a>
State Bank Of India Vs. V. Ramakrishnan & Anr Civil Appeal No. 3595 Of 2018	<i>"The object of the Code is not to allow such guarantors to escape from an independent and coextensive liability to pay off the entire outstanding debt, which is why Section 14 is not applied to them. However, insofar as firms and individuals are concerned, guarantees are given in respect of individual debts by persons who have unlimited liability to pay them. And such guarantors may be complete strangers to the debtor – often it could be a personal friend. It is for this reason that the moratorium mentioned in Section 101 would cover such persons, as such moratorium is in relation to the debt and not the debtor."</i>	Date of Order: 14.08.2018  Link for full order: <a href="https://ibbi.gov.in/webadmin/pdf/order/2018/Aug/1958 2018 Judgement 14-Aug-2018 2018-08-14%2022:04:34.pdf">https://ibbi.gov.in/webadmin/pdf/order/2018/Aug/1958 2018 Judgement 14-Aug-2018 2018-08-14%2022:04:34.pdf</a>

<p>Sanjeev Shriya Vs. State Bank of India and Ors. WRIT - C No. - 30285 of 2017</p>	<p><i>"It has also been submitted that the entire proceeding before the DRT is completely without jurisdiction precisely in the backdrop that once the proceeding has already been commenced under the IBC,2016 and the Moratorium under Section 14 of IBC, 2016 has already been issued and even the parties have put their appearance before the Insolvency Professionals, then the impugned proceedings only against the guarantors of a principal debtor are per se bad specially in the present situation where there is a legal bar/moratorium against the principal debtor imposed by operation of law IBC, 2016. The NCLT has already ceased of the process of insolvency resolution against the company (in liq.) under IBC, 2016. Moreover, the SBI has also put their appearance in the said proceedings regarding its claim, and by no stretch of imagination the DRT could adjudicate any claims of alleged debt of the second respondent and without determination of debt the DRT cannot proceed against the guarantors."</i></p>	<p>Date of Order: 06.09.2017</p> <p>Link for full order: <a href="https://ibbi.gov.in/webadmin/pdf/order/2017/Oct/6th%20Sept%202017%20in%20the%20matter%20of%20Sanjeev%20Shriya%20WRIT%20-C%20Nos.%2030285,%2030033-2017%2017-10-20%2016:29:17.pdf">https://ibbi.gov.in/webadmin/pdf/order/2017/Oct/6th%20Sept%202017%20in%20the%20matter%20of%20Sanjeev%20Shriya%20WRIT%20-C%20Nos.%2030285,%2030033-2017 2017-10-20%2016:29:17.pdf</a></p>
<p>Schweitzer Systemtek India Pvt. Ltd. Vs. Phoenix ARC Pvt. Ltd. &amp; Ors. Company Appeal (AT) (Insolvency) No. 129 of 2017</p>	<p><i>"In this respect one may also refer to Section 60 of the I &amp; B Code, as per which under sub-section (2) if Corporate Insolvency Resolution Process, or liquidation proceeding of a corporate debtor is pending before the 'Adjudicating Authority', <b>an application relating to the 'insolvency resolution' or 'bankruptcy' of a personal guarantor required to be filed before the same Bench of Adjudicating Authority, meaning thereby, separate application for initiation of resolution process require to be filed against the guarantor before the same very</b></i></p>	<p>Date of Order: 09.08.2017</p> <p>Link for full order: <a href="https://ibbi.gov.in/webadmin/pdf/order/2017/Jun/9thAug2017%20in%20the%20matter%20of%20Schweitzer%20Systemtek%20India%20Pvt%20Ltd%20Vs%20Phoenix%20ARC%20Pvt%20Ltd%20and%20Ors%20CA%20AT%20Insolvency%20No%20129%202017.pdf">https://ibbi.gov.in/webadmin/pdf/order/2017/Jun/9thAug2017 in the matter of Schweitzer Systemtek India Pvt Ltd Vs Phoenix ARC Pvt Ltd and Ors CA AT Insolvency No 129 2017.pdf</a></p>

	<p><b><i>Bench of the Adjudicating Authority who is hearing the corporate resolution process or liquidation proceeding against principal corporate debtor.”</i></b></p>	
<p>Report of Insolvency Law Committee (February, 2020)</p>	<p><i>It was pointed out that Section 5 of the Code only applies to Part II and not the rest of the parts of the Code. Therefore, the definition provided in Section 5(22) will not be applicable to ‘personal guarantors’ in Section 2(e).</i></p> <p><i>Therefore, an Explanation should be provided in Section 2(e) of the Code to clarify that a personal guarantor to a corporate debtor shall be an individual guarantor in respect of whom guarantee has been invoked by the creditor and remains unpaid in full or in part.</i></p>	<p>The meaning of the term ‘personal guarantor to corporate debtor’ in Section 2(e) of the Code may require to be clarified. The intended meaning of a personal guarantor to a corporate debtor in Section 2(e) is distinct from the definition provided in Section 5(22) of the Code. While this has been clarified through the rules regarding insolvency<sup>199</sup> and bankruptcy<sup>200</sup> of personal guarantors to corporate debtors, recently notified by the Central Government, the Committee agreed that an explanation be provided in Section 2(e) of the Code to state that a personal guarantor to a corporate debtor shall be an individual, who is a surety in a contract of guarantee to a corporate debtor, in respect of whom guarantee has been invoked by the creditor and remains unpaid in full or in part.</p> <p>Full Report available at:  <a href="https://ibbi.gov.in/uploads/whatsnew/4e94077d49f9dbd49c875097dbdcf791.pdf">https://ibbi.gov.in/uploads/whatsnew/4e94077d49f9dbd49c875097dbdcf791.pdf</a></p>

**Notes:**

**Abbreviations used:**

IBBI: Insolvency and Bankruptcy Board of India  
IPA: Insolvency Professional Agency  
ICSI IIP: ICSI Institute of Insolvency Professionals  
IP: Insolvency Professional  
CIRP: Corporate insolvency resolution process  
IRP: Interim Resolution Professional  
AR: Authorised Representative  
COC: Committee of Creditors  
CD: Corporate Debtor  
FC: Financial Creditor  
OC: Operational Creditor  
Code: Insolvency and Bankruptcy Code, 2016

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