

BURNISHED LAW JOURNAL

PERSONAL GURANTOR UNDER I&B CODE, 2016

INTRODUCTION

Insolvency & Bankruptcy law has always been very dynamic and developing. The scope of this I&B Code, 2016 is growing day by day, as per the changing environment. Under this code, an individual is classified into three categories i.e. personal guarantors to corporate debtors, partnership or proprietor firm and other individuals. The category of other individuals is nowhere defined, that who will fall within this category, therefore this category is open to the interpretation of the courts.

Through a notification¹ dated 15th November, 2019, the government notified that the personal guarantors i.e. first category in the above mentioned, will now be responsible if in case, their related companies or the companies they are representing won't able to repay the debt in any circumstances. From this particular notification, two things need to be noted, firstly the person should necessarily be a guarantor to be covered under the purview of this notification and secondly, this notification only talks about one of the categories of the individuals. It does not have any connection or jurisdiction over the remaining two categories.

In addition to this, the Central Government also enacted some rules and regulations² with effect from the 1st of December, 2019, to give effective implementation of the earlier notification. These rules and regulations are as follows:

- The Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 ("Insolvency Rules")
- The Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019 ("Bankruptcy Rules")

¹ PIB Delhi, Notification of provisions under the Insolvency and Bankruptcy Code, 2016 relating to Personal Guarantors to corporate debtors (15th November, 2019)

<https://ibbi.gov.in/uploads/legalframework/1fb8c2b785f35a5126c58a2e567be921.pdf>

² PIB Delhi, IBBI notifies Regulations for Insolvency Resolution and Bankruptcy Proceedings of Personal Guarantors to Corporate Debtors (20th November, 2019),

<https://pib.gov.in/Pressreleaseshare.aspx?PRID=1592517>

- The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 ("Insolvency Regulations"); and
- The Insolvency and Bankruptcy Board of India (Bankruptcy Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 ("Bankruptcy Regulations")

PERSONAL GUARANTOR

Section 5(22) of the Code³, defines personal guarantors as an individual who is the surety in a contract of guarantee to a corporate debtor. Alternatively, It has been defined under the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Guarantors) Rules, 2019 under Section 3(e), which defines a guarantor as the personal guarantor to the corporate debtor and in respect of whom guarantee has been invoked by the creditor and remains unpaid in full or part. So, basically a guarantor is a person who promises to pay the amount to the creditor, in case the borrower fails to do so.

PROCEDURE FOR APPLICATION

- **Application U/S 94:** For initiating an insolvency proceeding in respect of a personal guarantor, an application under section 94 {A debtor who commits a default may apply, either personally or through a resolution process to the Adjudicating Authority for initiating the insolvency process, by submitting an application} has to be filed. The application should be attached with form A.
- **Application U/S 95:** As an alternative, for initiating an insolvency process, application can be made under Section 95⁴ also. A creditor can himself or jointly with the other creditors, can make an application to Adjudicating Authority or it can be made through a resolution professional (RP) also. Form C should mandatorily be attached with the application.

Interim Moratorium:

As soon as an application is filed before the Adjudicating Authority, "interim moratorium" is provided under Section 96 which is in relation to any debt, in addition to a moratorium under Section 101 (Moratorium Period). This interim moratorium is only effective, once the application is admitted.

Appointment of Resolution Professional:

The direction has to be given by the Adjudicating Authority, to IBBI to make sure that there are no disciplinary proceedings pending against the Resolution Professional. This confirmation

³ Insolvency and Bankruptcy Code, 2016

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has to be made within 7 days, if in case the application is made by the Resolution Professional. This period will be of 10 days, where the application is made by the Debtor/Creditor, and IBBI need to appoint a resolution professional by requesting the adjudicating authority.

Report by Resolution Professional:

After the appointment of the Resolution Professional, he shall submit the report within 10 days of his appointment, after examining the application to the Adjudicating Authority.

While carrying the task of examination of the application, the Resolution Professional can ask for the information from creditor or debtor or any other person, from whom the information can be extracted out.

Admission/ Rejection of Application:

Once the report has been submitted by the Resolution Professional, within 14 days of the submission of the report, the Adjudicating Authority within 14 days of the submission shall admit or reject the application filed under section 94 or 95.

Repayment Plan

If the Adjudicating Authority admits the application, it can on request of RP issue the conducting of negotiation which should be held between the debtor and creditor to construct a repayment plan. The creditor is entitled to file for bankruptcy, if the application is rejected on the basis that the application was made with the intention to defraud the creditor or the resolution professional.

Public Notice by the Adjudicating Authority

The Adjudicating Authority itself issues the notice under Section 102 {Public Notice and claims from creditors} of the Code within seven days of passing the order under Section 100 {Admission or rejection of the Claim} inviting claims from all the creditors within 21 days of such issue.

Execution of the Plan by RP

For the execution and the successful implementation of the plan, the RP is to be responsible. Once the plan is successful, a notice has to be sent to the Adjudicating Authority. The RP shall issue a notice to the Guarantor asking the Guarantor to pay the remedial amount, where the guarantor fails to pay the amount and where such a remedy is not implemented, and then the Adjudicating Authority should be approached by the RP for getting the directions.

It is the right of the affected creditors to initiate the bankruptcy proceedings against the Guarantor, if there is a failure in the implementation of the Resolution Plan. This will be in the

similar manner as liquidation proceedings are initiated against the corporate debtor, in the event where the resolution plan fails.

Discharge Order

The plan in terms of Section 119⁵ {Discharge Order}, may provide for an early discharge or a discharge upon the completion of the repayment of the debts in terms of the plan. On the basis of the plan, the RP shall apply to the Adjudicating Authority for passing an order in relation to the same and upon the implementation of the plan, the Adjudicating Authority shall pass the Discharge Order.⁶

CONCLUSION

The Insolvency and Bankruptcy of the personal guarantors is indeed a strong move in the favour of the creditors. There is a scope of move improvement in respect of transparency and the implementation of the plan. It will save the time of the Debtors, avoiding multiple suits in various jurisdictions.



⁵ Insolvency and Bankruptcy Code, 2016

⁶ V V S N Raju , Shreya Kurudi and Virajitha Chintalapudi, A Note On Personal Guarantors To Corporate Debtors Under Insolvency And Bankruptcy Code, 2016 (3rd January, 2020)

<https://www.mondaq.com/india/InsolvencyBankruptcyRe-structuring/870978/Personal-Guarantors-Now-Subject-To-IBC-A-Brief-Overview-Of-The-Insolvency-Resolution-Process>