



PERSONAL AND CROSS-BORDER INSOLVENCY IN INDIA



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India's insolvency regime, when compared to that of the UK or US, is still very much in its infancy. However, as it develops, the speed at which it fine-tunes and implements new regulation continues to impress. At its outset, the 2016 Insolvency and Bankruptcy Code in India (IBC) had no provisions for the insolvency of individuals (personal insolvency). For a country with approximately 1.4 billion people (one-sixth of the world's population) personal insolvency poses a difficult question on how the infrastructure and logistics (ie. Court resources, geographical spread of bankrupts, access to an electronic property registry, available number of insolvency practitioners) could support the potential increased volume of personal insolvency work.

The IBC has tackled this hurdle by implementing personal insolvency in stages, and therefore allowing itself

to test the waters before looking at a much wider implementation. Provisions on insolvency and bankruptcy relating to personal guarantors to corporate debtors came into force on 1 December 2019 making personal insolvency possible, albeit limited to the personal guarantors (promoters in India) of corporates who have already entered IBC proceedings (corporate insolvency).

Liability of the guarantor under the IBC is co-extensive to that of the principal debtor; creditors should be allowed to proceed against the guarantor while also seeing remedies against the principal debtor. The

Insolvency and Bankruptcy Board of India has said that the "resolution of insolvency of personal guarantors complements [the] corporate insolvency regime, particularly when there is high incidence of applications being filed in respect of preferential, fraudulent, undervalued and extortionate transactions. It also puts personal guarantors and corporate guarantors at the same level playing field".

The country's banking sector anticipates that this new revision will allow larger recoveries to be achieved against debts that have been generated through the corporate insolvency process. Moreover, it is hoped that personal guarantors will be motivated to come to the table and arrive at a settlement to protect their own credit profiles and reputation.

However, as of December 2021, applications filed against personal guarantors stood at 678, with even fewer applications being admitted due to legislative disputes. Unfortunately, there has been little progress on those admitted cases with many of these guarantors claiming to hold no

significant assets available in India. For this revision of the IBC to be a success, it is key for petitioning creditors to ensure they are putting forward resolution professionals who are experienced and skilled at investigating fraud and who have access to a global network to unravel complex offshore asset holding vehicles to make recoveries.

As we are all aware, it is increasingly common for wealthy Indian promoters to hold their assets in foreign jurisdictions via corporate entities or in the names of family or close associates.

A remedy that may assist here is the imminent implementation of new cross-border insolvency law in India. The approved legislation proposes that liability can be applied to both the corporate debtor as well as the personal guarantor in line with the current IBC provisions, aligning India with best practices globally by adopting UNCITRAL Model Law with certain modifications to make it palatable to the India context.

We have seen how powerful cross-border assistance was in the resolution plan of India's Jet Airways, and the hope is that this new law will enable lenders to recover their dues from foreign assets for both corporate and personal cases.

No doubt the Indian insolvency story has many more chapters, but the speed at which amendments are made to perfect the process is encouraging, with recent developments giving the IBC additional bite to pursue those instances where fraud and asset dissipation have taken place.

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