

Challenges in the Personal Insolvency Resolution Process under the IBC



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This article examines the critical challenges faced in the Personal Insolvency Resolution Process (PIRP) under the Insolvency and Bankruptcy Code, 2016 (IBC), particularly with respect to Personal Guarantors (PGs) to Corporate Debtor (CD). Despite the Code's time-bound framework, practical issues such as delay in obtaining details of PGs, incomplete Statements of Affairs, outdated limits on excluded assets, rigid voting thresholds for repayment plan approval etc. hinder resolution. The challenges inherent in the PIRP underscore the pressing need for thoughtful amendments and reforms. In this backdrop, the present article analyses various hurdles and recommends specific solutions to address them, which according to the author, will not only benefit individual PGs by affording them a fair chance to recover but will also safeguard the interests of creditors, ultimately fostering a more resilient financial ecosystem in the country.

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1. Introduction

The Insolvency and Bankruptcy Code (IBC) represents a significant reform in the regulatory landscape of India particularly concerning insolvency resolution processes. Even after over eight years of implementation of the IBC, which is aimed at streamlining the resolution mechanism and provide a time-bound framework for addressing insolvency, challenges still persist, especially in the context of Insolvency resolution Process for Personal Guarantors (PGs) to Corporate Debtor (CD). This article aims to identify key issues that hinder the effective implementation of

the IBC regarding personal insolvency in respect of PGs to CD and to recommend suggestions that could enhance the efficiency, fairness, and overall functionality of the insolvency resolution process for PGs to CD. Thus, the article contributes to the ongoing discourse surrounding insolvency reform in India and advocate for necessary amendments to the existing framework.

2. Contact Details of Person Guarantors (PGs)

(a) Challenge: Obtaining the contact details, specifically personal email IDs and mobile numbers of PGs, often

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causes delays in completing the Individual Insolvency Resolution Process.

(b) Suggestion: The contact details of PGs should be included in the order itself by Adjudicating Authority (AA) while passing the order u/s 100 of IBC, 2016. This will mitigate delays in contacting PGs and enable timely retrieval of necessary information. Additionally, the AA may direct the counsel for PGs to provide such information to the Resolution Professional (RP) at the time of passing the order u/s 100 of the IBC, 2016.

3. Preparation of Statement of Affairs

(a) Challenge: The preparation of a Statement of Affairs (SoA) as per the Section 107(3) (b) of the IBC and Regulation 10 of the IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate debtor) Regulations- 2019, is a critical component of the Insolvency Resolution Process for Personal Guarantors (PGs) under the IBC. Resolution Professionals (RPs) are required to provide a copy of the SoA along with the repayment plan while convening the meeting under Section 107. However, RPs often encounter significant challenges in compiling an accurate and comprehensive SoA due to incomplete or inadequate information provided by the PGs themselves. This lack of complete information can hinder the RP's ability to assess the true financial position of the PG and can also affect the creditors' understanding of the repayment plan. It can ultimately lead to lack of confidence in the Repayment Plan submitted by the PGs.

(b) Suggestion: To facilitate the efficient preparation of the SoA and to enhance the accuracy of the information submitted, it is essential to empower the RP with the authority to obtain necessary information from various government agencies. Specifically, the RP should be authorized to access records and data from tax authorities, development authorities, and other relevant agencies that hold pertinent information about the assets and liabilities of PGs. If deemed necessary, the RP may after seeking approval of the creditors, engage the services of professional/s to trace the assets held in the name of the PGs. This empowerment would enable RPs to effectively trace and verify the assets of PGs, ensuring that the SoA is as complete and accurate as possible. By having access to official records, RPs can corroborate the information provided by PGs and

reduce the likelihood of discrepancies. Furthermore, this approach would streamline the process, improve transparency, and build greater trust among creditors and stakeholders, thereby enhancing the overall efficiency of the insolvency resolution framework.

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4. Limit of Excluded Assets

(a) Challenge: One of the prominent challenges within the Personal Insolvency Framework under the IBC relates to the excluded assets as defined in the Section 79 (14) (e) of the IBC as an unencumbered single dwelling unit owned by the debtor of such value as may be prescribed. Further, these limits as specified in the Rule 5 of the Application to the AA for Personal Insolvency of the PG to CD Rules-2019, stands at ₹20 lakh for urban areas. However, this threshold is becoming increasingly inadequate in light of soaring property values in urban centres, where real estate prices often far exceed this limit. As a result, PGs may find themselves in unwarranted financial distress, as their assets that ought to qualify for exemption are instead subjected to the insolvency proceedings.

Additionally, there is considerable ambiguity surrounding the treatment of properties that are jointly owned by PGs and their family members. The absence of clear guidelines sometimes leads to confusion and disputes regarding the valuation and division of these assets during the insolvency resolution process, which can complicate the proceedings further.

(b) Suggestion: The exclusion limit for property value should be realistic and adjusted to reflect current market conditions. To effectively address these challenges, it is crucial to revisit and revise the exclusion limit for property value under the IBC so that it reflects realistic and contemporary market conditions. A thorough analysis of current property valuation trends in urban areas may help in arriving at a more appropriate exclusion limit that offers adequate protection to PGs while considering the rights of creditors.

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Furthermore, clear guidelines be provided to delineate the treatment of jointly owned properties during insolvency proceedings. These guidelines should specify how the ownership stakes in jointly held assets are assessed and modalities for dealing of such assets for asset liquidation and the insolvency resolution process.

5. Late Claims Submission by Creditors

- (a) **Challenge:** As per Section 102 (1) of the IBC, the Creditors are required to submit their claims within 21 days of the notice issuance. However, some creditors may not be aware of the notice, resulting in late claims. The current lack of provision in the IBC prevents the RP from admitting late claims, which complicates the PG's ability to submit a repayment plan, particularly when properties are mortgaged to those creditors.
- (b) **Suggestion:** It is desirable to provide for allowing the RP, with prior approval of creditors, to admit late claims under specific circumstances, such as when creditors demonstrate genuine unawareness of the notice or unavoidable delays. This amendment would ensure that all legitimate claims are considered, promoting fairness in the insolvency resolution process. A relaxation of the submission timeline should also be considered, extending it by at least 60-90 days or until the repayment plan is submitted by the PG.

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6. Timeliness of Filing Report under Section 106

- (a) **Challenge:** The requirement for the RP to file a report under Section 106 (1) of IBC along with the repayment plan, within 21 days of the last submission date (i.e. within 51 days from the public announcement), often proves challenging. PGs seek time for submission of data and Repayment Plan necessitating the RP to approach the AA for extensions. Furthermore, without clear provisions in the IBC, some NCLT benches are reluctant to grant extensions.
- (b) **Suggestion:** The Repayment Plan may be submitted

by the RP within 120 days of the admission of the application under Section 100 of the IBC, thereby eliminating the need for RP to seek AA's approval for late submission of reports under Section 106, which arises due to the late submission of repayment plans by PGs.

7. Compliance with Provisions of the IBC regarding submission of Repayment Plan

- (a) **Challenge:** One of the significant challenges in the insolvency resolution process for PGs under the IBC is the compliance with provisions relating to the submission of repayment plan. The AA expects the RP to provide substantial assistance to PGs in preparing repayment plan that align with various IBC requirements. Despite this expectation, many PGs display reluctance or hesitation in submitting their plans within the stipulated timelines. This reluctance can stem from several factors, including a lack of understanding about requirements, insufficient data or documentation, or simply a tendency to defer responsibility to the RP. Consequently, these delays can prolong the resolution process, hinder effective communication with creditors, and create additional complications in managing claims.
- (b) **Suggestion:** To address these challenges, it is suggested that standardized proformas be designed for PGs to use when preparing their repayment plans. These proformas would serve as structured templates, guiding PGs through the necessary components and requirements that need to be included in their plans. By providing a clear and consistent format, these standardized proformas would not only simplify the process for PGs but also minimize the potential for errors or omissions that could arise from inconsistent submissions. Furthermore, such templates would encourage PGs to take ownership of their submissions while reinforcing the importance of adhering to IBC provisions.

8. Voting Percentage for Repayment Plan Approval

- (a) **Challenge:** In the current framework under the IBC, the approval of a repayment plan requires a significant consensus—specifically, three-fourths (75%) of the creditors needs to agree on the proposed plan as stated in Section 111 of the IBC. This high threshold poses considerable challenges in practice.

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It often leads to lengthy negotiations and can frustrate the resolution process, especially when dealing with a diverse group of creditors who may have varying interests and priorities. The stringent requirement can inadvertently empower a minority of creditors to stall the approval process, making it difficult for PGs to finalize their repayment plans and exacerbating delays within the insolvency resolution timeline. This can ultimately undermine the overarching goal of the IBC, which is to facilitate timely and efficient resolution of insolvency cases.

- (b) **Suggestion:** To enhance the efficiency of the repayment plan approval process, it is recommended that the voting percentage required for approval be decreased to 66%. Lowering the voting requirement would create a more manageable consensus among creditors, thereby facilitating quicker approvals and allowing the PGs to proceed with their repayment plans without undue delays. This adjustment would not only streamline the approval process but also reduce friction among creditors, encouraging a more collaborative approach toward reaching consensus. Furthermore, by making the process more flexible, it aligns with the IBC's intent to provide a time-bound resolution framework, ultimately benefiting both creditors and PGs. A voting threshold of 66% would still ensure that a majority support exists for the repayment plan, while also recognizing the reality of the diverse interests involved in the process.

9. Evaluation of Repayment Plans by Creditors

- (a) **Challenge:** A significant challenge in the evaluation of repayment plans submitted by PGs under the IBC is that creditors frequently assess these plans solely against their respective individual claims. This narrow focus can lead to an incomplete understanding of the PG's overall financial situation and may result in rejection of repayment plans that could otherwise be viable. By not considering the overall net worth of PGs, creditors miss important context that could inform their decision-making and ultimately hinder the resolution process. This practice can create an environment where creditors are less inclined to approve repayment plans, prolonging insolvency proceedings and exacerbating financial difficulties for PGs.

- (b) **Suggestion:** To address this issue, it is essential to

encourage creditors to evaluate repayment plans with a broader perspective that includes the PG's net worth as recorded in bank records, along with their current financial standing at the time of evaluation. This comprehensive assessment would provide creditors with a clearer picture of the PG's ability to repay debts and the feasibility of long-term repayment plans. Additionally, it is crucial for financial institutions, particularly banks, to develop tailored policies for cases involving PGs that are distinct from those applied in Corporate Insolvency Resolution Process (CIRP) cases. Such policies should recognize the unique nature of personal insolvency, offer flexibility and understand based on individual circumstances rather than merely applying standardized corporate protocols. By fostering an approach that assesses repayment plans against the full financial profile of PGs, creditors can make more informed and fair decisions regarding repayment plan approvals. This shift toward a holistic evaluation can promote collaboration and ensure a more balanced resolution process for all parties involved, ultimately enhancing the effectiveness of the insolvency framework under the IBC.

10. Determination of the RP's Fee

- (a) **Challenge:** The fee for the RP is determined by a single creditor banker at the time of appointment. This fee may not accurately reflect the subsequent workload or additional responsibilities, particularly after an order is passed under Section 100 of the IBC. As the RP invites and verifies claims from additional creditors, entities often hesitate to increase the RP's fee and even linking it to the repayment plan. Furthermore, RPs face challenges in getting reimbursements to the expenses they incur during the process.
- (b) **Suggestion:** The minimum fee for the RP be fixed in the IBBI (Insolvency resolution Process for Personal Guarantors to Corporate debtors) Regulations- 2019, based on the total claims admitted. This would ensure fair compensation for the RP and align their remuneration with the complexity and volume of their work.

11. Stringent Timeline to Complete the entire Personal Insolvency Resolution Process (PIRP)

- (a) **Challenge:** One of the significant challenges faced

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in the PIRP under the IBC is the stringent timeline mandated for the completion of the process, which is set at 120 days. This timeline sometime proves to be excessively tight, especially considering various factors that can impede progress. Issues such as lack of cooperation from PGs, delays in the submission of required documents or information to prepare the SoA and the time taken by PGs to prepare and submit their repayment plans can significantly hinder the RP's ability to adhere to the prescribed timelines. This pressure can lead to insufficiently considered decisions, rushed negotiations with creditors, and ultimately impact the effectiveness and fairness of the resolution process. Moreover, the complexity of individual cases can further complicate matters, as some PGs may have multifaceted financial situations requiring more time for thorough assessment and stakeholder engagement. Rushed timelines may also elevate stress levels among PGs and creditors, thus creating an environment that is not conducive to amicable negotiations.

- (b) **Suggestion:** To ensure a more effective and fair resolution process, it is recommended that the timeline for completing the PIRP be revised to allow for more reasonable timeframes. Extending the current 120-day limit to accommodate the complexities involved in personal insolvency cases would enable RPs to manage the process more effectively. A revised timeline would allow adequate opportunities for comprehensive data collection, thorough discussions between PGs and creditors, and the opportunity to explore potential arrangements that could satisfy all parties involved. This approach would not only enhance the quality of the resolution outcomes but also promote a greater sense of collaboration and understanding among stakeholders. By ensuring that timelines are realistic and reflective of the intricacies of personal insolvency cases, the IBC can better achieve its objectives of providing a fair and efficient resolution framework for PGs.

12. No Provision in IBC for Extension of PIRP Timeline

- (a) **Challenge:** There is currently no specific provision in the IBC that allows an extension of the timeline to complete the PIRP process. It has become common practice for PGs to delay the submission of repayment plan. Further, creditors also take time to decide and vote on repayment plan. This can create complications in adhering to the prescribed 120-day

timeline. Without clear Regulations for extending the timeline, RPs often face difficulties in obtaining necessary extensions from the NCLT. This lack of clarity can lead to unnecessary legal hurdles and additional delays, ultimately creating a bottleneck in the resolution process. The pressure to conform to a rigid timeline may compromise the thoroughness of negotiations and evaluations, making it challenging for RPs to effectively manage the interests of both PGs and creditors. Addressing this issue is crucial for fostering a more flexible and accommodating insolvency resolution environment that recognizes the complexities of individual cases and the need for adequate time to reach a fair resolution.

- (b) **Suggestion:** To address these challenges and enhance the overall efficiency of the PIRP, it is suggested that the Regulations under the IBC be amended to include a provision that allows for the extension of the timeline up to 180 days. This amendment should delineate specific circumstances under which extensions can be granted and outline the process for obtaining such extensions. By introducing a formalized mechanism for extending the PIRP timeline, the IBC can provide greater clarity and flexibility to RPs.

13. Conclusion

The challenges inherent in the PIRP under the IBC regime underscore the pressing need for thoughtful amendments and reforms to develop a more equitable and efficient system. By proactively addressing critical issues such as evaluation of repayment plans by creditors, the voting percentage for approval of Repayment Plan and the establishment of clear provisions for extensions, we can significantly enhance the insolvency resolution ecosystem. These proposed suggestions are aimed to promote fairness and transparency throughout the process and also to ensure that the legitimate claims of creditors are duly acknowledged while providing PGs a genuine opportunity to fulfil their financial obligations. As the IBC evolves, it is paramount for all stakeholders including regulatory authorities, legal practitioners, and financial institutions, to collaborate effectively to strengthen the Personal Insolvency Framework under the IBC.

A balanced approach to PIRP in India will not only benefit individual PGs by affording them a fair chance to recover but will also safeguard the interests of creditors, ultimately fostering a more stable financial ecosystem.