

# Limitation and Individual Insolvency under the IBC: Challenges and Evolving Jurisprudence



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*The interplay between the Limitation Act-1963, and the Insolvency and Bankruptcy Code, 2016 (IBC) has been a subject of significant judicial scrutiny in India. While much has been adjudicated about the Limitation Act's applicability in corporate insolvency, its role in individual insolvency proceedings remains relatively unexplored. However, legal loopholes and judicial inconsistencies in interpreting the acknowledgment of debt, particularly in cases involving personal guarantors, create uncertainty regarding the enforceability of personal guarantees which may expose financial institutions to undue risks, potentially weakening the effectiveness of personal guarantees as a security mechanism. This article presents a thorough analysis of various legal provisions and related jurisprudence on applicability of limitation law to individual insolvency proceedings. Besides, the author has also made some crucial recommendations to ensure consistency in applying limitation laws across insolvency proceedings. **Read on to know more...***

## 1. Introduction

The Insolvency and Bankruptcy Code, 2016 (IBC), was enacted to consolidate and amend laws governing insolvency resolution for corporate entities, partnership firms, and individuals. While corporate insolvency and liquidation processes under Part II of the IBC have been extensively litigated and interpreted, individual

insolvency process under Part III remain underutilized and often misinterpreted. The applicability of the Limitation Act-1963, to individual insolvency applications and proceedings present multiple interpretational challenges. This article explores the legislative framework, judicial decisions, and policy implications regarding the applicability of the Limitation Act in the cases of individual insolvency.

## 2. Legislative Framework and Applicability of the Limitation Act to Individual Insolvency

**(a) The Role of Section 238A of IBC:** The insertion of Section 238A in the IBC through the IBC (Second Amendment) Act, 2018, clarified the applicability of the Limitation Act, 1963. The section reads, “The provisions of the Limitation Act, 1963, shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal, or the Debt Recovery Appellate Tribunal, as the case may be”.

This provision removed earlier ambiguities and aligned IBC proceedings, including individual insolvency matters, with the general principles of limitation law.

**(b) Limitation Period for filing Individual Insolvency Applications:** Individual insolvency applications can be filed under Section 94 (by the debtor) and Section 95 (by a creditor or resolution professional). The Limitation Act’s residuary provision, Article 137, prescribes a three-year limitation period for such applications, running from the date when the right to apply accrues.

“**Supreme Court in the case of B.K. Educational Services (P) Ltd. (2018) held that the limitation period for applications under Sections 7 and 9 of IBC starts from the date of default.**”

A key question arises regarding when the right to apply accrues in individual insolvency cases. The Supreme Court in the matter of *B.K. Educational Services (P) Ltd. v. Parag Gupta & Associates*<sup>1</sup> (2018) held that the limitation period for applications under Sections 7 and 9 of IBC starts from the date of default. As per the judgement, “the right to sue”, accrues when a default occurs and the Limitation Act has in fact been applied from the inception of the IBC. Thus, inference could be drawn that, the same principle would apply to individual insolvency cases, where default is a prerequisite.

### (c) Extension of Limitation under Sections 5, 14, and 18 of the Limitation Act

(i) Section 5: Delay Condonation – Courts have applied Section 5 of the Limitation Act to insolvency proceedings in exceptional circumstances where the applicant can show sufficient cause for delay.

(ii) Section 14: Exclusion of Time Spent in Other

Proceedings – This provision protects applicants who initially approached the wrong forum by allowing exclusion of such time in computing limitation.

(iii) Section 18: Acknowledgment of Debt – The Supreme Court in *Laxmi Pat Surana v. Union Bank of India*<sup>2</sup> (2021) confirmed that an acknowledgment of debt in writing before expiry of limitation resets the limitation period. This ruling is significant for personal guarantors and individual debtors.

## 3. Judicial Interpretations on Limitation and Individual Insolvency

**(a) B.K. Educational Services (P) Ltd. v. Parag Gupta & Associates (2018):** The Supreme Court ruled that the Limitation Act applies to applications filed under Sections 7 and 9 of the IBC from the very inception of the Code. It clarified that Article 137 of the Limitation Act governs such applications, prescribing a three-year limitation period from the date of default. This judgment established the fundamental principles for applying limitation provisions under the IBC.

**(b) Gaurav Hargovindbhai Dave v. Asset Reconstruction Company<sup>3</sup> (India) Ltd. (2019):** The Apex Court reiterated that Article 137 of the Limitation Act governs Section 7 applications under the IBC, with the limitation period starting from the date of default. It firmly stated that the three-year limitation period under Article 137 applies to the IBC proceedings, dismissing the argument for a 12-year period under Article 62 of the Limitation Act. This decision reinforced uniformity by bringing IBC cases in line with other statutory applications subject to the three-year limitation framework.

**(c) Jignesh Shah & Anr. v. Union of India<sup>4</sup> (2019):** The Supreme Court ruled that winding-up petitions transferred to the IBC proceedings must comply with the prescribed limitation period, preventing the indefinite revival of time-barred debts. It clarified that the limitation period begins from the date of default, not from the date of filing the winding-up petition. This judgment reaffirmed that limitation laws cannot be bypassed through procedural strategies. Furthermore, the Court emphasized that the limitation period starts from the day the default occurs, specifically when the company becomes unable to pay its debts.

“**Supreme Court in the case of Jignesh Shah & Anr. v. Union of India (2019) reaffirmed that limitation laws cannot be bypassed through procedural strategies.**”

<sup>1</sup>Civil Appeal No. 23988 of 2017 (SC)

<sup>2</sup>Civil Appeal No. 2734 of 2020 (SC)

<sup>3</sup>Civil Appeal No. 4952 of 2019 (SC)

<sup>4</sup>Writ Petition (Civil) No.455 of 2019 (SC)

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**(d) Laxmi Pat Surana v. Union Bank of India<sup>5</sup> (2021):** The Supreme Court has conclusively determined the applicability of Section 18 of the Limitation Act to insolvency proceedings under the IBC. The Apex Court ruled that Section 18 of the Limitation Act is applicable, allowing for an extension of the limitation period for filing an application under Section 7 of the IBC.

**(e) Sesh Nath Singh v. Baidyabati Sheoraphuli Cooperative Bank Ltd<sup>6</sup> (2021):** The Supreme Court upheld the applicability of Section 14 of the Limitation Act in cases of the IBC, permitting the exclusion of time spent in other forums while calculating the limitation period. It clarified that Section 14 allows the exclusion of time spent in bona fide proceedings before a court that lacked jurisdiction, ensuring that genuine claimants are not unjustly barred due to procedural technicalities. The Court further ruled that the period from the issuance of notice under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, (SARFAESI) Act - 2002, until the court's decision can be excluded while computing the limitation period under the IBC. This judgment safeguards claimants from losing their legal rights due to procedural delays.

**(f) Asset Reconstruction Company (India) Ltd. v. Bishal Jaiswal & Anr<sup>7</sup> (2021):** The Supreme Court held that an acknowledgment of debt in financial statements extends the limitation period, underscoring the importance of written acknowledgments in insolvency proceedings. It ruled that the inclusion of debt in the balance sheet of a corporate debtor constitutes an acknowledgment under Section 18 of the Limitation Act, thereby extending the limitation period. This decision reaffirmed the principle that a debtor's admission of liability can reset the limitation period, thereby ensuring that valid claims are not dismissed due to technical time constraints.

**(g) Vashdeo R Bhojwani v. Abhyudaya Co-Operative Bank Ltd<sup>8</sup> (2019):** The Supreme Court established that the issuance of a recovery certificate does not prolong the limitation period, emphasizing the principle of limitation finality. It held that the right to sue arises upon issuance of the certificate but does not restart or extend the limitation period. This ruling prevents creditors from perpetually reviving claims through administrative mechanisms, ensuring adherence to statutory limitation constraints.

**(h) Sagar Sharma & Anr v. Phoenix Arc Pvt. Ltd<sup>9</sup> (2019):** The Supreme Court reaffirmed that the enactment date of the IBC cannot be considered as the starting point for the limitation period and that only Article 137 of the

Limitation Act is applicable. This ruling provided further clarity on the correct interpretation and application of limitation principles under the IBC.

**(i) Babulal Vardhaji Gurjar v. JM Financial Asset Reconstruction Co. Ltd<sup>10</sup> (2020):** The Court clarified that mortgage-backed claims under the IBC are subject to a three-year limitation period, rejecting the contention that a 12-year period applies. This judgement established uniformity in the application of limitation laws to both secured and unsecured claims thereby ensuring consistency in insolvency proceedings.

**(j) State Bank of India v. Gourishankar Poddar and Anr<sup>11</sup> (2025):** The NCLAT ruled that the liability of the Corporate Debtor and the guarantor is simultaneous, meaning the guarantor's obligation arises after the Corporate Debtor's defaults on the payment of dues. It further held that any acknowledgment of the debt by the principal borrower also serves as an acknowledgment by the guarantor under the Limitation Act. The limitation period against the guarantor begins only when a formal demand is made specifically against them. Moreover, if

**The NCLAT, in the case of State Bank of India v. Gourishankar Poddar & Anr. (2025), ruled that liability of the Corporate Debtor and the guarantor is simultaneous.**

the principal borrower continues making payments, and no demand is raised against the guarantor, the limitation period will not commence.

**(k) Central Bank of India v. Mr. K. Shashidhar and Anr<sup>12</sup> (2025):** The NCLT Hyderabad Bench ruled that when a principal borrower acknowledges its liability either by signing a letter of acknowledgment or by recognizing the debt in its balance sheet after the declaration of the account as an NPA but before the expiration of the initial three-year limitation period, the limitation period gets extended under Section 18 of the Limitation Act. Consequently, any successive acknowledgment by the principal borrower leads to a renewed limitation period, and the Personal Guarantor cannot be exempted from this extended liability.

**(l) Jammu and Kashmir Bank Ltd. v. Mr. Kanumuru Raghu Rama Krishna Raju (2024):** In this case, the date

<sup>5</sup> Civil Appeal No. 2734 of 2020 (SC)

<sup>6</sup> Civil Appeal No. 9198 of 2019 (SC)

<sup>7</sup> Civil Appeal No. 323 of 2021 (SC)

<sup>8</sup> Civil Appeal No. 11020 of 2018 (SC)

<sup>9</sup> Civil Appeal No. 7673 of 2019 (SC)

<sup>10</sup> Civil Appeal No. 6347 of 2019 (SC)

<sup>11</sup> C.P.(IB)/203/HYD/2021-IA(I.B.C)/1250/HYD/2022and IA(I.B.C)/492/HYD/2021

<sup>12</sup> C.P. (IB)/54/HYD/2022

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of default by the Principal Borrower was December 31, 2014, and the demand notice for invoking the guarantee was issued on July 09, 2021, the NCLT Hyderabad Bench ruled as follows:

**(i) Equal Legal Standing of Personal Guarantor and Corporate Debtor:** The Personal Guarantor must be treated on the same legal footing as the Corporate Debtor since their liabilities are co-extensive under the law. Consequently, the provisions of the Limitation Act should apply uniformly to both the Corporate Debtor and the Personal Guarantor. This means the limitation period for both begins from the same default date.

**(ii) Bar on Limitation:** As the Principal Borrower (Corporate Debtor) defaulted on December 31, 2014, the limitation period commenced from that date. However, the demand notice invoking the Personal Guarantee was issued much later, on July 09, 2021, far beyond the prescribed three-year limitation period. Therefore, the application was deemed time-barred and could not be entertained.

#### 4. Unresolved Questions in Judicial Interpretation

Despite several judicial pronouncements, some regarding the interpretation and application of limitation laws in individual insolvency cases. Some of the key unresolved issues include:

**(a) Commencement of Limitation Period:** There remains a lack of definitive clarity on whether the limitation period begins from the date of default or from the date when the creditor becomes aware of the default. As highlighted in case laws referred to in Point no (j) and (l), there appear inconsistencies on commencement of limitation period. The NCLAT judgement opines “the limitation period against the guarantor begins only when a formal demand is made specifically against them” whereas as per judgement by NCLT Hyderabad it is stated that the liabilities of Personal Guarantor and its Corporate Debtor are co-extensive under the law. Consequently, the provisions of the Limitation Act should apply uniformly to both the Personal Guarantor and its Corporate Debtor. It means the limitation period for both begins from the same default date”. Thus, lack of definitive clarity holds significant implications for the enforceability of claims under the IBC.

**(b) Applicability of Section 14 of the Limitation Act:** While Section 14, which allows exclusion of the time spent in bona fide legal proceedings, has been consistently applied in corporate insolvency cases, its applicability in individual insolvency proceedings remains inconsistent and requires further judicial interpretation.

**“The interplay between limitation provisions under the IBC and other debt recovery statutes, remains an area where judicial clarity is needed.”**

**(c) Scope of Section 18 – Acknowledgment of Debt:** The extent to which an acknowledgment of debt under Section 18 of the Limitation Act can be applied in cases involving personal guarantors and joint debtors continues to pose interpretational challenges, particularly regarding its impact on extending limitation periods.

**(d) Overlap with other Debt Recovery Mechanisms:** The interplay between limitation provisions under the IBC and other debt recovery statutes, such as the SARFAESI Act and the Recovery of Debts and Bankruptcy Act (RDBA), remains an area where judicial clarity is needed. Determining the precedence and harmonization of these laws is crucial for ensuring consistency in debt resolution frameworks.

Addressing these unresolved issues through comprehensive judicial interpretation will be instrumental in bringing certainty to limitation laws within the realm of individual insolvency, to provide resolution of ambiguities and to avoid unnecessary litigation.

#### 5. Impact of Limitation Laws

**(a) Impact on Financial Creditors and Operational Creditors:** The application of limitation laws in individual insolvency proceedings has significant consequences for both financial creditors and operational creditors, influencing their ability to recover outstanding debts and enforce legal claims effectively:

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- (i) Financial Creditors:** For financial creditors, including banks and financial institutions, strict adherence to limitation period is critical to ensuring timely filings under Sections 95 and 97 of the IBC. The acknowledgment of debt under Section 18 of the Limitation Act serves as an essential mechanism to extend the limitation period, providing creditors with a legal avenue to sustain their claims. However, judicial inconsistencies in interpreting the acknowledgment of debt, particularly in cases involving personal guarantors, create uncertainty regarding the enforceability of personal guarantees. This lack of clarity may expose financial institutions to undue risks, potentially weakening the effectiveness of personal guarantees as a security mechanism.
- (ii) Operational Creditors:** Unlike financial creditors, operational creditors such as suppliers, vendors, and service providers, often lack access to formal acknowledgments of debt, making it significantly more challenging for them to extend limitation periods. The inconsistent judicial application of Section 14 of the Limitation Act, which allows the exclusion of time spent in bona fide legal proceedings, further complicates their ability to recover dues. Since operational creditors frequently deal with informal agreements and delayed payments, the absence of clear legal precedents on limitation laws in individual insolvency matters puts them at a disadvantage compared to financial creditors.
- (b) General Impact:** The strict enforcement of limitation laws ensures that stale claims are not revived indefinitely, thereby promoting procedural efficiency in insolvency proceedings. However, courts have shown flexibility in condoning delays, particularly in cases where substantive justice necessitates an equitable approach. Given the existing judicial

uncertainties, policymakers may need to introduce clearer legislative provisions to strike a balance between creditor rights and procedural efficiency. A more structured framework would help mitigate litigation risks and create a more predictable insolvency regime, ensuring fair and timely resolution of debts for both financial and operational creditors.

#### 6. Policy Recommendations and Conclusion

While the introduction of Section 238A of the IBC largely resolved the issue of applicability of the Limitation Act to insolvency cases, several interpretational challenges persist. Courts continue to refine their understanding of limitation laws in the context of applications under Sections 94 and 95 of the IBC, particularly concerning what constitutes a default and the precise moment at which the limitation period begins. However, conflicting judicial interpretations and gaps in jurisprudence create uncertainty leading to prolonged litigation and inconsistent enforcement. The following recommendations would be helpful in removing the inconsistency and ensuring hassle free functioning of the process:

- (a) Clarification on the Commencement of the Limitation Period:** The government or judiciary should provide definitive guidance on whether the limitation period begins on the date of default or when the creditor becomes aware of the default? This will ensure consistency in applying limitation laws across insolvency proceedings.
- (b) Codification of Jurisprudence on Limitation:** To avoid conflicting interpretations as referred to in unresolved questions, key judicial precedents on limitation should be formally codified through an amendment to the IBC. This would provide greater certainty for creditors and debtors alike, reducing dependency on case-specific adjudication.
- (c) Judicial Training for Specialized Tribunals:** Given the complexities involved in interpreting limitation principles, specialized training should be mandated for members of the NCLTs and Debt Recovery Tribunals (DRTs). A standardized approach to limitation laws will enhance procedural efficiency and reduce inconsistencies in judicial decisions.

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**“To avoid conflicting interpretations as referred to in unresolved questions, key judicial precedents on limitation should be formally codified through an amendment to the IBC.”**

The interplay between the Limitation Act and individual insolvency proceedings remains an evolving area of law. Continued judicial and legislative efforts will be essential in ensuring that the IBC functions as a time-bound and

efficient mechanism for debt resolution, balancing the rights of creditors and debtors alike. While legislative amendments and judicial precedents have established the applicability of limitation laws under the IBC, persistent challenges demand further legal clarity and refinement. A well-defined limitation framework will not only enhance procedural efficiency and reduce litigation but also reinforce the core objective of the IBC—to facilitate timely and effective debt resolution. Future developments in this area will play a crucial role in shaping the evolving of insolvency laws in India.

