

minimum default threshold for initiating proceedings under Part III is fixed at ₹1,000, with the Central Government empowered to enhance it up to ₹1 lakh. Furthermore, the provisions pertaining to the insolvency and bankruptcy of personal guarantors (individuals and partnership firms) under the IBC were notified on November 15, 2019, and became effective from December 01, 2019. Consequently, the insolvency proceedings for Personal Guarantors (PG) to Corporate Debtors (CD) shall be conducted in accordance with the IBC, for whom the AA would be the NCLT. In contrast, the insolvency proceedings for individuals who do not qualify as Personal Guarantors will be carried out under the Presidency Towns Insolvency Act, 1909, and the Provincial Insolvency Act, 1920.

## 2. Pre-Initiation of the Bankruptcy Process

Under Part III of the IBC, a bankruptcy order under Section 126 is passed only after specific preconditions specified under Section 121 are met following the failure of the CIRP. These include:

- (i) rejection of the CIRP application by the AA under Section 100(4),
- (ii) rejection of the repayment plan under Section 115(2), or

- (iii) premature termination of the repayment plan under Section 118(3).

Once any of these events happen, a bankruptcy application must be filed within three months—either by the debtor under Section 122 or by the creditor under Section 123 of the IBC. During this time, an interim moratorium is in effect until the AA issues the bankruptcy order. When accepted, the IP assumes the role of Bankruptcy Trustee, and the debtor is officially declared bankrupt. This begins the bankruptcy process, including the vesting of the estate of the Bankrupt with the Bankruptcy Trustee under the supervision of the Committee of Creditors (CoC).

## 3. Bankruptcy Process

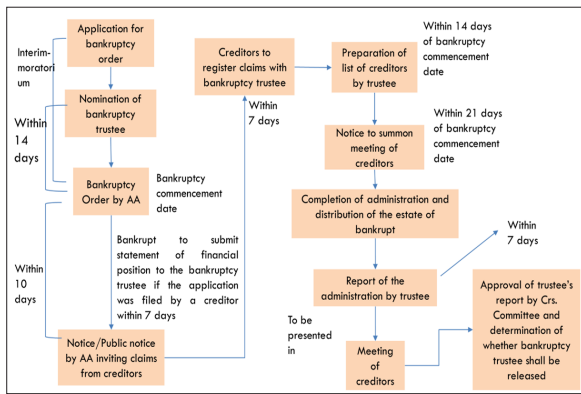
Following the pre-initiation stage, once a bankruptcy order has been issued, the subsequent steps will be undertaken:

- (a) **Public Notice and Claim Collection:** The court or the bankruptcy trustee will issue a public notice

*The minimum default threshold for initiating proceedings under Part III is fixed at ₹1,000, with the Central Government empowered to enhance it up to ₹1 lakh.*

inviting all creditors to submit their claims within a period of seven days. The trustee will compile these claims and prepare a comprehensive list of creditors.

**(b) Meeting with Creditors:** A meeting of creditors will be convened by the trustee within twenty-one days from the commencement of the bankruptcy process. In cases where the bankruptcy is initiated by a creditor, the guarantor or debtor must also provide details regarding their financial status.



**(c) Management of the Guarantor’s or Debtor’s Assets:** The trustee will assume responsibility for the following:

- (i) Selling or managing the assets of the guarantor,
- (ii) Paying creditors in accordance with their priority,
- (iii) Maintaining accurate records of all actions undertaken.
- (iv) The duration of this process is not predetermined and is contingent upon the complexity of the case.

**(d) Final Report and Closure:** Upon the completion of the trustee’s assignments, a report will be submitted to the creditors. The creditors will then determine whether the trustee may be released from their duties.

**(e) Discharge of the Guarantor/ the Debtor:** The guarantor or debtor will be officially discharged from bankruptcy when one of the following conditions is met:

- (i) Court approval is granted,
- (ii) One year has elapsed from the start date of the bankruptcy,

- (iii) Creditors agree to a discharge prior to the one-year mark.

This discharge signifies that the guarantor or debtor is no longer legally obligated to repay the debts encompassed within the bankruptcy proceedings.

**“ There is no explicit provision for extending the bankruptcy period, which raises concerns when concealed assets are discovered late. ”**

#### 4. Some of the Grey areas under the Bankruptcy Process

Even though the IBC—along with its supporting Rules and Regulations—lays out a comprehensive framework for the bankruptcy process applicable to personal guarantors, several practical and interpretive gaps remain. These grey areas, if left unaddressed, can lead to procedural inconsistencies, stakeholder disputes, and operational inefficiencies for bankruptcy professionals, adjudicating authorities, and affected parties.

While the IBC provides end-to-end coverage of the bankruptcy process—from initiation to discharge—there are still numerous questions that require regulatory clarity. These include concerns around asset disclosure, treatment of jointly held or foreign assets, quantification of excluded assets and domestic needs, handling of ongoing litigation, and trustee responsibilities in complex scenarios such as imprisonment, absconding debtors, or post-discharge discoveries. The following section outlines key questions that remain unanswered, highlighting the need for interpretive guidance, regulatory amendments, or judicial precedents to ensure uniformity and fairness in the administration of bankruptcy estates.

**(a) Extension of Bankruptcy Period:** There is no explicit provision for extending the bankruptcy period, which raises concerns when concealed assets are discovered late. This can undermine the recovery process, especially in cases where

assets are hidden and later uncovered through asset tracing. The current system allows for the discharge of bankrupts after one year, potentially releasing assets that were not yet recovered.

**(b) Initiating Bankruptcy Proceedings against Legal Heirs:**

There is no provision addressing the initiation of bankruptcy proceedings against the legal heirs of a deceased personal guarantor. The introduction of such a provision is crucial for ensuring that creditors can recover debts from the estates of deceased debtors or personal guarantors.

**(c) Handling of Jointly Held or Foreign Assets:** The treatment of jointly held assets and foreign assets remains ambiguous. There is no clear guidance on how these should be managed or how trustees should handle the repatriation of foreign assets or liabilities.

**(d) Disclosure and Asset Transparency:** They are of two kinds:

**(i) Asset Transfers to Relatives/Third Parties:** The Code lacks clarity on tracing and clawing back assets transferred before bankruptcy, especially if done without fraudulent intent.

**(ii) Jointly Held Assets:** No specific guidance exists on how to apportion or administer jointly owned assets, especially in matrimonial or family contexts.

**(e) Excluded Assets and Daily Needs**

**(i) Excluded Assets:** Section 79(14) defines excluded assets, but monetary limits (e.g., tools of trade, basic household items) are not quantified in regulations.

**(ii) Daily Needs:** The term “domestic needs” is undefined. Trustees lack guidance on quantifying reasonable living expenses or approving recurring costs like food, utilities, or dependent care.

**(f) Legal Proceedings and Enforcement**

**(i) Civil/Criminal Cases:** The Code does not specify how ongoing litigation against the bankrupt should be treated—whether stayed, continued, or transferred.

**(ii) Untraceable Bankrupts:** No procedural roadmap exists for cases where the bankrupt absconds or cannot be located.

**(iii) Post-Discharge Discoveries:** There is no provision for reopening or revisiting the estate if hidden assets are discovered after discharge.

“  
*It is unclear whether trustees must file tax returns or other statutory documents on behalf of the bankrupt.*  
”

**(g) Cross-Border and Foreign Assets**

**(i) Foreign Persons:** The Code is silent on applicability to foreign nationals acting as personal guarantors.

**(ii) Foreign Assets:** No mechanism exists for recognition, tracing, or repatriation of offshore assets into the bankruptcy estate.

**(iii) Foreign Liabilities:** Ambiguity remains on whether discharge under Indian law extinguishes liabilities owed to foreign creditors.

**(h) Asset Classification and Management**

**(i) Unencumbered Assets:** The Code defines “excluded assets” under Section 79(14) (such as unencumbered tools, dwelling units, etc.) as automatically excluded from the insolvency estate, but the text does not explicitly require the debtor to keep them. This creates an interpretive gap regarding their definite non-inclusion in the estate.

**(ii) Ownership vs. Lease:** Treatment of leased or rented assets (e.g., vehicles, homes) is unclear—whether they form part of the estate or are excluded.

**(i) Operational and Compliance Oversight**

**(i) Bank Account Pooling:** No clear process for freezing, consolidating, or accessing the bankrupt’s bank accounts.

**(ii) EMIs and Credit Cards:** No guidance on managing ongoing EMIs or blocking credit facilities after bankruptcy, restricting the bankrupt from utilizing any additional credit from financial institutions.

**(iii) Trustee’s Operational Role:** The extent to which the trustee manages the bankrupt’s daily affairs is vague.

- (iv) **Statutory Filings:** It is unclear whether trustees must file tax returns or other statutory documents on behalf of the bankrupt.
  - (v) **Post-Dated Commitments:** No clarity on whether future-dated obligations (e.g., club memberships, subscriptions) must be honored or terminated.
- (j) Special Situations**
- (i) **Club Memberships:** No guidance on whether such privileges are considered assets or liabilities.
  - (ii) **Imprisoned Bankrupts:** The Code does not address how to proceed if the bankrupt is imprisoned.
  - (iii) **Third-Party Recovery:** The trustee’s power to initiate recovery against third parties is not explicitly defined. This third-party recovery may include money lent on oral agreement, any financial assistance pending recovery etc.
  - (iv) **Domestic Needs Quantification:** Trustees lack benchmarks for evaluating what constitutes reasonable domestic expenditure.
  - (v) **Karta of HUF:** The Code is silent on how to treat Hindu Undivided Family (HUF) assets and liabilities when the bankrupt is a *Karta*.

**5. Suggestions to Address Grey Areas in the Bankruptcy Process**

The IBC provides a framework to address individual and partnership firm bankruptcy, but several grey areas remain that can cause delays, confusion, and disputes. To enhance the efficiency, transparency, and fairness of the bankruptcy process, the following suggestions are proposed:

**(a) Disclosure and Asset Transparency**

**Issue:** There are several issues related to asset disclosure, including incomplete or hidden assets, asset transfers to relatives or third parties, and the treatment of jointly held assets.

**Suggestions for Improvement:**

- (i) **Asset transfers to relatives/third parties:** Implement clawback provisions similar to those in Sections 45–51 of the IBC for suspect transactions

made within two years prior to a bankruptcy filing. This would empower the trustee to reverse these transactions if they are deemed inappropriate. Additionally, introduce explicit provisions under Part III of the IBC to facilitate the avoidance or clawback of fraudulent transactions for individuals and personal guarantors, mirroring the provisions available for CIRP. This would enable trustees to reverse suspicious transactions that occurred in the years leading up to the bankruptcy.

- (ii) **Jointly held assets:** Establish clear guidelines in regulations for the apportionment of bankruptcy trustee for jointly held assets. This will enable the trustee to realize the proportionate value of these assets or seek court directions when necessary. Additionally, introduce specific provisions for handling jointly held assets in bankruptcy cases to clarify how they should be divided.
- (iii) **Allow for Extension of Bankruptcy Period:** Implement a provision permitting the extension of the bankruptcy period if concealed assets are discovered late, ensuring that assets found after the bankruptcy process should be brought into the estate. This would provide creditors with more time to recover hidden assets.

*“Permit ex parte proceedings and allow estate administration in absentia, with public notice and substituted service to handle cases where the bankrupt is untraceable.”*

**(b) Excluded Assets and Domestic Needs**

**Issue:** The treatment of excluded assets and determining what constitutes “domestic needs” are often unclear, causing confusion and disputes during the bankruptcy process.

**Suggestions for Improvement:**

- (i) **Undefined monetary limits for excluded assets:** The Insolvency and Bankruptcy Board of India (IBBI) should notify standard monetary thresholds

for tools of trade, household items, and basic living expenses to provide clarity on what can be excluded from the bankruptcy estate.

- (ii) **Daily/domestic needs:** Create a benchmark matrix (e.g., per capita expense bands) for evaluating reasonable living expenses, subject to creditor committee oversight and trustee approval. This would help in quantifying the debtor's domestic needs.

#### (c) Legal Proceedings and Enforcement:

**Issue:** Managing ongoing legal cases and determining the scope for enforcement during bankruptcy can be challenging, especially when the bankrupt party is untraceable or involved in litigation.

#### Suggestions for Improvement:

- (i) **Civil/ Criminal cases against bankrupt:** Clarify the moratorium scope under Section 124 of the IBC; allow civil cases to be stayed while criminal cases may be allowed to proceed unless directly related to the debt being resolved under bankruptcy.
- (ii) **Untraceable bankrupt:** Permit *ex parte* proceedings and allow estate administration *in absentia*, with public notice and substituted service to handle cases where the bankrupt is untraceable.
- (iii) **Post-discharge asset discovery:** Enable the reopening of the estate under the trustee's application to the DRT, with clawback rights for any undisclosed assets discovered after the bankruptcy discharge.
- (iv) **Proceedings against the legal heir:** Create a regulation that clarifies how Section 169 (liability of legal heirs) functions concerning a deceased personal guarantor. The regulation should specify the procedure, timeline, and scope of heirs' liability.

#### (d) Cross-Border and Foreign Assets

**Issue:** The IBC framework does not provide sufficient clarity on how to handle foreign assets, liabilities, or debtors who are not Indian nationals.

#### Suggestions for Improvement:

- (i) **Non-Indian citizens:** Clarify the jurisdictional applicability of the IBC to non-Indian citizens through necessary amendments, requiring a local nexus for initiating proceedings.
- (ii) **Foreign assets:** Empower the trustee to seek recognition of foreign assets under the UNCITRAL Model Law or bilateral treaties, allowing the AA to issue letters rogatory for asset recovery.
- (iii) **Foreign liabilities:** Define the scope of discharge of foreign liabilities—whether it is limited to Indian creditors or universally applicable through regulatory clarification.

#### (e) Asset Classification and Management

**Issue:** There are challenges related to the classification and management of various assets, including unencumbered assets and leased assets.

#### Suggestions for Improvement:

- (i) **Unencumbered assets:** Mandate the inclusion of unencumbered assets in the estate unless exempted under Section 79(14) and require the trustee to document the rationale for exclusion.
- (ii) **Ownership vs. lease:** Clarify the treatment of leased assets, specifying that leased assets should be excluded unless the leasehold interest has a realizable value.

#### (f) Operational and Compliance Oversight

**Issue:** The bankruptcy process requires extensive compliance with procedural requirements, but current guidelines/ provisions are not clear, leading to delays and confusion.

#### Suggestions for Improvement:

- (i) **Pooling bank accounts:** Trustees should notify banks under Section 132 of the IBC, and the Reserve Bank of India (RBI) may issue Standard Operating Procedures (SOP) for freezing and consolidating the bankrupt's bank accounts.
- (ii) **Pension/insurance benefits:** Clearly define exempt categories (e.g., death benefits) and other categories (e.g., Gratuity, EPFO etc) to avoid confusion regarding the treatment of retirement or insurance benefits.

- (iii) **EMIs and credit cards:** Trustees should notify lenders and suspend EMIs unless secured. Additionally, credit cards should be blocked post-bankruptcy order to prevent further financial risk.
- (iv) **Foreign travel:** The trustee should seek the AA's order to restrict travel if the estate is at risk and notify passport authorities accordingly.
- (v) **Trustee's operational role:** Clearly define the scope of the trustee's responsibilities, stating that the trustee manages the estate, not the bankrupt's personal affairs, with exceptions for incapacitated bankrupts.
- (vi) **Statutory filings:** It should be clarified whether it is required to file the Income Tax returns on behalf of the bankrupt and who shall file the same.
- (vii) **Post-dated commitments:** The trustee should evaluate the enforceability of future commitments (e.g., club memberships, subscriptions) and seek approval from the AA to terminate non-essential contracts.

#### (g) Special Situations

**Issue:** Certain unique situations arise during bankruptcy that require specific treatment, such as club memberships, imprisoned bankrupts, and recovery from third parties.

#### Suggestions for Improvement:

- (i) **Club memberships:** Treat club memberships as luxury assets; the trustee may liquidate or disclaim them under Section 160 of the IBC.
- (ii) **Imprisoned bankrupt:** Allow the trustee to act on behalf of the bankrupt with the court's permission and utilize necessary options to retrieve financial data to ensure transparency.
- (iii) **Recovery from third parties:** Empower the trustee to file recovery suits against third parties under Section 171 of the IBC; the AA should adjudicate these claims.
- (iv) **Karta of HUF:** Clarify whether HUF assets are part of the bankruptcy estate, requiring a family court or AA direction for asset partition.



## 6. Conclusion

The bankruptcy process under the Insolvency and Bankruptcy Code (IBC) represents a significant reform in India, providing a structured framework for resolving personal and individual insolvency. It ensures a fair and orderly mechanism for both debtors and creditors, enabling efficient debt management and offering financially distressed individuals and businesses an opportunity for a fresh start.

However, several grey areas continue to affect the effectiveness of the process. These include ambiguities in asset disclosure, the treatment of foreign and jointly owned assets, and the handling of ongoing legal proceedings. Such uncertainties often lead to procedural delays and operational inefficiencies, undermining timely resolution. Addressing these issues through regulatory clarification and targeted reforms can substantially improve the system's efficiency. Clear guidelines on asset transfers, a more precise definition of domestic needs, and robust frameworks for managing cross-border assets and liabilities would enhance transparency and fairness. These measures would reduce disputes and make outcomes more predictable, thereby strengthening the credibility of the IBC framework.

By refining these aspects, the IBC can inspire greater confidence among individuals, businesses, and creditors, facilitating smoother resolutions and faster recoveries. A streamlined and transparent insolvency regime will also contribute to economic growth by fostering a healthier business environment and improving India's global standing in insolvency resolution. In conclusion, while the IBC has established a strong foundation for bankruptcy resolution, addressing its existing grey areas is essential to maximize its potential. With continued reforms, the system can better serve all stakeholders and support the broader economic ecosystem.