



# INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

## IBC Case Law Capsule

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**LALIT KUMAR JAIN VS. UNION OF INDIA & ORS.  
TRANSFERRED CASE (CIVIL) NO. 245/2020 WITH ORS.  
DATE OF JUDGMENT: MAY 21<sup>ST</sup>, 2021**

**“THE APPROVAL OF A RESOLUTION PLAN DOES NOT IPSO FACTO DISCHARGE A PERSONAL GUARANTOR OF A CORPORATE DEBTOR OF HER OR HIS LIABILITIES UNDER THE CONTRACT OF GUARANTEE.”**

### Facts of the Case: -

The Central Government, vide notification dated 15<sup>th</sup> November 2019, brought into force provisions relating to the personal guarantors (PGs) to CDs with effect from 1<sup>st</sup> December 2019. Several petitions were filed in different High Courts challenging the said notification and related rules and regulations. While directing transfer of petitions from High Courts to itself, the Supreme Court stated that the matters involved interpretation of common questions of law, in relation to provisions of the IBC, 2016. However, during the course of submissions, the parties stated that the challenge would be confined to the impugned notifications.

The petitioners under Article 32 claim to be aggrieved by the notification. At some stage or the other, petitioners had furnished personal guarantees to banks and financial institutions which led to release of advances to various companies which the petitioners were associated with as directors, promoters, chairman or managing directors. In many cases, the personal guarantees furnished by the petitioners were invoked, and proceedings are pending against companies which they are or were associated with, and the advances for which they furnished bank guarantees.

### Supreme Court's Observations: -

The Supreme Court noted that the Parliamentary intent is to treat PGs differently from other categories of individuals. The intimate connection between such individuals and corporate entities to whom they stood guarantee, as well as the possibility of two separate processes being carried on in different forums, with its attendant uncertain outcomes, led to carving out PGs as a separate species of individuals, for whom the adjudicating authority was common with the CD to whom they had stood



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guarantee. The fact that the process of insolvency in Part III is to be applied to individuals, whereas the process in relation to CDs set out in Part II is to be applied to such corporate persons, does not lead to incongruity.

The Court stated that the rationale for allowing directors to participate in meetings of the CoC is that the directors' liability as PGs persists against the creditors and an approved resolution plan can only lead to a revision of amount or exposure for the entire amount. Any recourse under section 133 of the Contract Act, 1872 to discharge the liability of the surety on account of variance in terms of the contract, without her or his consent, stands negated. Further, the sanction of a resolution plan and finality imparted to it by section 31 does not per se operate as a discharge of the guarantor's liability. However, an involuntary act of the principal debtor leading to loss of security would not absolve a guarantor of its liability.

The Court further stated that the Approval of a resolution plan does not ipso facto discharge a PG of a CD of her or his liabilities under the contract of guarantee. The release or discharge of a principal borrower from the debt owed by it to its creditor, by an involuntary process, i.e., by operation of law, or due to liquidation or insolvency proceeding, does not absolve the surety/guarantor of his or her liability, which arises out of an independent contract.

### **Order: -**

The Supreme Court dismissed writ petitions, transferred cases and transfer petitions stating that the impugned notification is legal and valid. It was also held that approval of a resolution plan relating to a corporate debtor does not operate so as to discharge the liabilities of personal guarantors (to CD).

**Case Review: - Appeals Dismissed.**