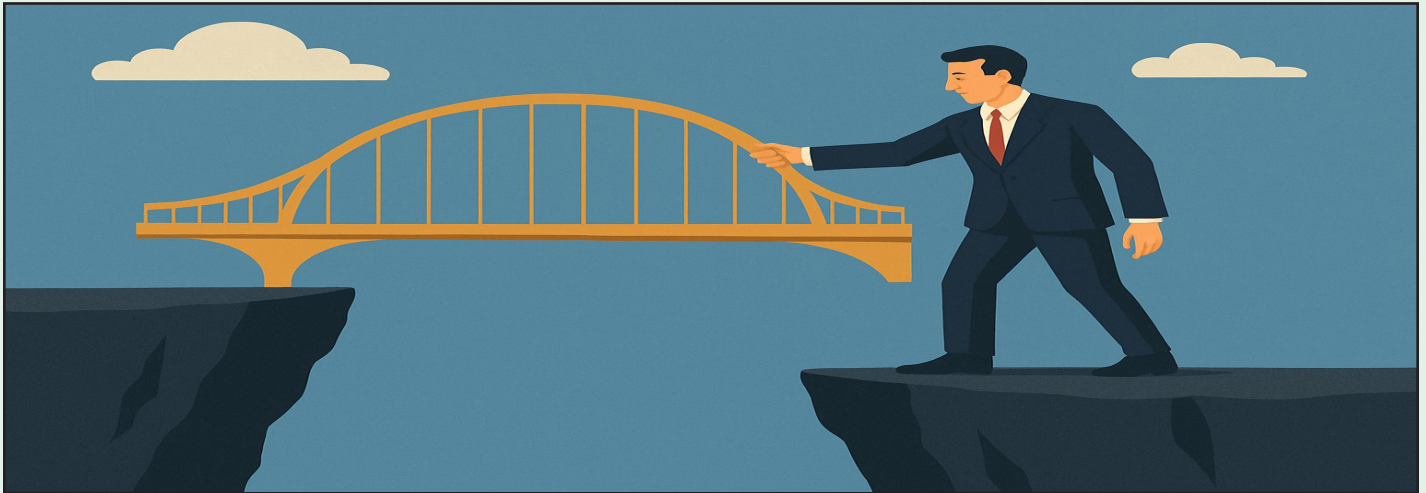


Bridging the Gap: Extending Moratorium Protection for Personal Guarantors Under IBC



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*The statutory moratorium under Section 101 of the IBC protects personal guarantors for only 180 days or until a repayment plan is approved. However, judicial extensions of the resolution timeline do not extend this protection, leaving guarantors vulnerable to fragmented creditor action and weakening the collective insolvency process. Drawing from recent case laws and comparative frameworks, this article examines the emerging jurisprudence on the moratorium gap, analyzes post-2024 legal developments, and evaluates international practices. It further proposes a model amendment that automatically aligns the moratorium period with any judicial extension of the resolution process, ensuring procedural coherence and creditor parity while maintaining the delicate balance between debtor protection and creditor rights. The author recommends that, pending legislative change, IBBI guidance, NCLT alerts, targeted Section 60(5) injunctions, and vigilant RP oversight can curb immediate harm. **Read on to know more...***

1. Introduction

The enactment of the Insolvency and Bankruptcy Code (IBC/ the Code) in 2016 marked a significant transformation in India's insolvency landscape, introducing a consolidated framework to resolve financial distress across corporate and individual domains. A notable evolution under this framework is the inclusion of personal guarantors within its scope, governed by Part III of the Code. This inclusion, affirmed by the Supreme Court in the case of *Lalit Kumar Jain v. Union of India & Ors*¹, established that the liability of personal guarantors is independent

yet coextensive under the Indian Contract Act, 1872. It further underscored that the insolvency of a Corporate Debtor (CD) does not automatically discharge the guarantor's obligations.

However, this framework is not without its shortcomings. A critical procedural gap emerges when the resolution process for personal guarantors is judicially extended under Rule 11 read with Rule 15 of the NCLT Rules, 2016, but the statutory moratorium under Section 101 does not automatically continue. This disconnect exposes personal guarantors to recovery actions, undermining the very objective of the resolution process.

1. *Lalit Kumar Jain v. Union of India & Ors*

2. Statutory Architecture Timelines

Particulars	Deadline
Admission (u/s 100)	Day 0
RP circulates admission order, RP report & application to creditors	Within 7 days of admission
Public notice: invite claims	Within 7 days of admission
Claims submission by creditors	≤ 21 days from public notice
List of creditors: names, amounts, security details	≤ 30 days from public notice
RP's repayment-plan report (u/s 102)	≤ 21 days from the last date of submission of claims
Creditor meeting: notice 14–28 days; hold within that window	After RP's report
File approved plan (u/s 106/112)	≤ 120 days of admission — extendable at NCLT's discretion
Circulate filed plan & docs to guarantor/creditors	Within 3 days of filing
Statutory moratorium (u/s 101)	Day 0 – Day 180 (fixed)

3. Sections 101 & 106: the mis-aligned clock

The issue of timing mismatch remains to be addressed, offering scope for aligning the 180-day moratorium with creditor actions more effectively. The Supreme Court, while issuing notice in the case of *Mukund Choudhary v. Union of India & Ors*², underscored the risk: "...if the moratorium period comes to an end, one creditor may seek to take a march over the others and that would be contrary to the entire object and purpose of the insolvency regime". This judicial observation highlights the urgency of closing the statutory gap before the courts are flooded with piecemeal enforcement actions.

The issue of timing mismatch remains to be addressed, offering scope for aligning the 180-day moratorium with creditor actions more effectively.

(a) **Section 101: Moratorium for Personal Guarantors:** Section 101 of the IBC governs the imposition of a statutory moratorium specific to personal guarantors. This moratorium is triggered upon the admission of an insolvency application under Section 100 of the IBC and is designed to temporarily halt any legal action or recovery proceedings against the personal guarantor's assets. Its scope is explicitly defined by the statute:

- (i) **Commencement:** The moratorium is effective from the date of admission of the insolvency application.
- (ii) **Duration:** It extends for a period of 180 days or until the Adjudicating Authority (AA) approves the repayment plan under Section 114, whichever is earlier.

While this provision is intended to protect personal guarantors, the rigid 180-day limitation introduces a structural concern. Once the specified period lapses, the moratorium ceases automatically, leaving the personal guarantor exposed to creditor actions, even if the resolution process is ongoing. This disconnect between the protection period, and the resolution timeline forms the core of the procedural gap.

- (b) **Section 106: Submission of Repayment Plan by the Resolution Professional (RP):** Section 106 of the IBC governs the submission of the repayment plan by the RP. It mandates that the RP to submit the repayment plan, along with a report on the plan, to the AA within 21 days from the last date of submission of claims under Section 102. This provision is designed to ensure that the resolution process is conducted efficiently.

However, there is a critical disconnect between the timeline for the moratorium under Section 101 and the timeline for the submission of the repayment plan under Section 106. The repayment plan is expected to be submitted within 120 days of the commencement of the resolution process. Yet, the moratorium under Section 101 is limited to 180 days. This means that:

- (i) If the resolution process continues beyond 180 days, the moratorium ceases, leaving the personal guarantor exposed to creditor actions.
- (ii) The submission of the repayment plan and its approval process may extend beyond the 180-day moratorium period, creating a period where the guarantor is unprotected.
- (iii) There is no statutory mechanism for extending the moratorium in line with the extended resolution process, creating a procedural gap.

2. Supreme court order dated 14.02.2025 in *Mukund Choudhary V. Union of India & Ors*, W.P. (C) No. 114/2025 C.A. No. 1576/2025

4. NCLT/NCLAT authority to extend the process but not the moratorium

While the resolution period for personal guarantor insolvency may be extended under Rule 11 read with Rule 15 of the NCLT Rules, 2016, there is no corresponding provision in the IBC to extend the statutory moratorium under Section 101.

- Rule 11 (Inherent Powers): Empowers the NCLT to pass any order necessary for the ends of justice or to prevent abuse of process.

Even if the AA extends the resolution period under Rule 11, the moratorium under Section 101 does not automatically continue.

- Rule 15 (General Powers): Grants the NCLT procedural flexibility, including the ability to extend the resolution period.

However, these rules cannot override the clear statutory language of Section 101, which rigidly limits the moratorium to 180 days. This means that even if the AA extends the resolution period under Rule 11, the moratorium under Section 101 does not automatically continue. The absence of a statutory link between the extension of the resolution period and the continuation of the moratorium under Section 101 of the IBC gives rise to several practical challenges, each of which directly undermines the protective framework intended for personal guarantors:

- (a) **Exposure of Personal Guarantors to Creditor Actions:** Once the moratorium period under Section 101 expires, personal guarantors are left unprotected, even if the resolution process is still underway. Creditors, recognizing this vulnerability, may initiate or resume independent recovery actions, including litigation, asset attachment, and enforcement measures. This exposes the guarantor to a multiplicity of legal proceedings, fragmenting the resolution process.
- (b) **Fragmentation of the Resolution Process:** The continuation of the resolution process without the accompanying protection of the moratorium disrupts the collective nature of the insolvency framework. While the repayment plan is still being negotiated or considered, creditors may bypass the resolution process and pursue their individual claims, leading to parallel recovery actions. This not only burdens the personal guarantor but also undermines the integrity of the structured resolution process.

(c) Undermining the Protective Objective of the Moratorium:

The fundamental purpose of the moratorium under Section 101 is to provide temporary relief to personal guarantors, ensuring that they are insulated from enforcement actions while the resolution process is ongoing. However, the inability to extend the moratorium in line with the extended resolution period directly contradicts this objective. The guarantor is left vulnerable to:

- (i) **Asset Seizure:** Creditors may initiate proceedings for attachment or sale of the guarantor's assets, disrupting their financial stability.
- (ii) **Multiple Litigations:** Guarantors may become embroiled in multiple legal proceedings across various forums, even as the repayment plan is being negotiated.
- (iii) **Enforcement Actions:** Creditors may pursue independent enforcement measures, including garnishment of bank accounts or sale of secured assets.
- (d) **Inconsistent Protection Compared to Corporate Insolvency:** Under the IBC, corporate debtors benefit from an automatically extended moratorium under Section 14 whenever the resolution period is extended. This ensures that the CD remains protected throughout the resolution process. In contrast, personal guarantors are denied similar protection, despite being integral to the resolution process. This disparity not only creates an imbalance but also exposes personal guarantors to undue hardship.

When personal guarantors are exposed to creditors' actions despite being part of a formal resolution process, the credibility of the IBC's protective framework is called into question.

- (e) **Increased Litigation and Procedural Complexity:** The disconnect between the moratorium period and the resolution timeline leads to increased litigation. Personal guarantors, seeking continued protection, are compelled to approach judicial forums for relief, while creditors seek to enforce their claims. This not only burdens the judicial system but also delays the resolution process.
- (f) **Loss of Stakeholder Confidence in the Resolution Process:** The procedural gap undermines the confidence of stakeholders, particularly personal guarantors, in the efficacy of the insolvency framework. When personal guarantors are exposed to creditor actions despite being part of a formal

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5. The Structural Gap: How Can the Resolution Process Continue when the Moratorium Ends?

The core problem is that the moratorium under Section 101 is designed to provide temporary protection to the personal guarantor, but it is not synchronized with the resolution process timeline. This creates a structural gap where:

- (i) The resolution process may be extended under Rule 11 and Rule 15 of the NCLT Rules, but the moratorium cannot be

extended beyond 180 days.

- (ii) The personal guarantor, who is supposed to be protected by the moratorium, is left vulnerable to creditor actions even as the repayment plan is being negotiated.
- (iii) Creditors may choose to bypass the resolution process and enforce their claims independently, undermining the collective nature of the resolution.

6. Recent Jurisprudence: From NCLT to the Supreme Court

Date	Forum	Case	Key Holding	Implication
04 Dec 2024	NCLT Delhi	<i>Anil Kumar v. Mukund Choudhary</i>	Extended PIRP timeline but declined to extend the Section 101 moratorium, citing the statutory 180day cap.	Demonstrates tribunal's strict textual approach, leaving guarantor unprotected mid-process.
22 Jan 2025	NCLAT	<i>Anil Kumar v. Mukund Choudhary</i> ³ (CA (AT) (Ins.) 38/2025)	Upheld NCLT order; ruled that the 180-day moratorium is "mandatory, not directory," and cannot be stretched by judicial interpretation.	Confirms the procedural gap and cements precedent against extension.
14 Feb 2025	Supreme Court	<i>Mukund Choudhary V. Union of India & Ors.</i> Writ Petition no (114/2025) (Civil Appeal 1576/2025)	Affirmed validity of Section 101; acknowledged risk once moratorium lapses; granted liberty to seek ad-hoc protection from NCLT but declined blanket extension.	Recognizes the gap, signaling need for legislative or structured judicial remedy.

7. Comparative Jurisdictional Insights: USA, UK, Australia, and Singapore

Jurisdiction	Moratorium Trigger	Extension Mechanism	Lessons for India
United States ⁴ : Chapter 13	Automatic stay till plan confirmation (11 USC Sec 362, Sec 1327).	Court may extend/shorten on cause; stay ends only on dismissal/closure.	Flexibility tied to process, not fixed days.
United Kingdom ⁵ : Individual Voluntary Arrangement (IVA)	Interim order (Insolvency Act 1986 Sec 252) leads to moratorium until creditors' meeting; if IVA approved, moratorium continues.	Court retains discretion to re-impose stay.	Demonstrates link between process phases and protection period.
Australia ⁶ : Bankruptcy Act 1966, Part IX	Debt agreement proposal triggers stay until acceptance/rejection; if accepted, stay subsists through agreement.	Administrator may apply for further relief.	Shows statutory synchronization.
Singapore ⁷ : Insolvency, Restructuring and Dissolution Act 2018	Court may grant moratorium extensions via bespoke orders.	Model for judicially managed rolling stays.	

Key takeaway: Mature systems tether the stay to milestones, ensuring seamless creditor standstill.

3. NCLAT Order dated 22.01.2025 in *Anil Kumar v. Mukund Choudhary, Company Appeal (AT) (Insolvency) No. 38 of 2025*

4. United States Code, Title 11 (Bankruptcy), Sec 362, 1327 (2024 ed.).

5. Insolvency Act 1986 (UK), Sec 252.

6. Bankruptcy Act 1966 (Cth) pt IX, ss 185C, 185H (Australia).

7. Insolvency, Restructuring and Dissolution Act 2018 (Singapore), ss 64-66.

8. Proposed Solutions: Harmonizing the Moratorium with the Resolution Period

Section 101 freezes creditors' action against a personal guarantor for a fixed 180-day period. Yet, repayment-plan negotiations often run longer because the AA may, in its case-management discretion, grant the RP additional time to finalize the Plan. When the moratorium lapses first, creditors can restart enforcement in a piecemeal fashion, splintering the collective process and breaking parity with corporate debtors, whose stay under Section 14 lasts for the entire resolution period. Because the moratorium's lifespan is set by statute, neither the AA nor the courts can lawfully enlarge it without fresh legislative authority.

A targeted amendment to Section 101 that automatically links the moratorium to any court-approved extension of the repayment-plan timeline is the only durable cure.

(a) Statutory Solution — Pros and Cons of Automatic Extension Clause: A targeted amendment to Section 101 that automatically links the moratorium to any court-approved extension of the repayment-plan timeline is the only durable cure.

(i) Pros: Such an amendment would:

- eliminate the need for repetitive moratorium applications, reducing both litigation burden and docket congestion.
- place personal guarantors on the same footing as corporate debtors, thereby harmonizing expectations across the insolvency ecosystem; and
- create predictable timeframes that foster stakeholder confidence and encourage voluntary settlements.

(ii) Cons and Safeguards: Creditors worry an open-ended stay could indefinitely delay recovery, and guarantors might misuse extended protection to avoid cooperation. These risks can be addressed by requiring the RP to certify the guarantor's cooperation and to file regular progress reports with every extension request. With such transparency mechanisms in place, efficiency and fairness gains clearly outweigh residual downsides.

(b) Drafting Recommendation:

"Section 101(2A) — Notwithstanding anything contained in sub-section (2), where the Adjudicating Authority—whether in exercise of its powers under Rule 15 of the National Company Law Tribunal Rules, 2016 or otherwise—extends the time for completion of the repayment plan, the



moratorium declared under that sub-section shall, ipso facto, stand extended for a period co-terminous with such extended time and no separate order shall be required.

Section 101(2A). — Notwithstanding subsection (2), where the Adjudicating Authority, whether under Rule 15 of the National Company Law Tribunal Rules, 2016 or otherwise, grants an extension of time for completion of the repayment plan, the moratorium under this section shall automatically stand extended for the same period. No separate order of extension shall be required.

(c) Interim Relief within Statutory Bounds:

Although benches cannot lengthen the moratorium, they can, under Section 60(5) and Rule 11, issue narrowly-tailored injunctions where specific enforcement would clearly torpedo a still-viable repayment plan. Such orders respect the statutory cap, remain reviewable, and buy the process breathing space until Parliament acts.

(d) Best-Practice Guidance for Resolution Professionals: From day one, RPs should calendar the 180-day deadline, notify creditors well in advance, and, where feasible, secure voluntary standstill agreements. Extension motions should: (i) seek additional plan time; (ii) include a prayer acknowledging moratorium continuity once the law is amended; and (iii) attach evidence of creditor engagement, guarantor cooperation, and concrete progress milestones. Continuous monitoring of creditor filings (SARFAESI, DRT, civil suits) and swift interlocutory applications against rogue enforcement remain essential.

(e) Legislative Versus Administrative Pathways: A statutory amendment delivers certainty and permanence but takes parliamentary time. Interim administrative measures—IBBI guidance, registry alerts, and focused injunctions—offer immediate, lawful stopgaps without infringing the separation of powers. Combined with diligent RP practice, they can keep the process intact until the permanent fix is enacted.

“Until Parliament enacts the change, IBBI guidance, NCLT alerts, targeted Section 60(5) injunctions, and vigilant RP oversight can curb immediate harm.”

(f) **Integrative Conclusion:** Only Parliament can legally fuse the moratorium to an extended repayment-plan period. A succinct Section 101(2A) achieves that objective while preserving transparency safeguards through the RP progress reporting. Until the amendment passes, carefully crafted injunctions and regulatory guidance can maintain functional alignment between the resolution timeline and creditor standstill, protecting value and ensuring fair treatment for all stakeholders.

9. Conclusion

The Section 101 moratorium is the anchor that shields personal guarantors while a repayment plan is being negotiated. Yet its fixed 180-day limit, set against extension-prone resolution timelines, leaves guarantors vulnerable to fragmented creditor enforcement and undermines the collective character of the process. The only durable solution is a targeted statutory amendment that automatically aligns the moratorium with any court-sanctioned extension of the repayment-plan period. Until Parliament enacts that change, interim administrative measures—IBBI guidance, NCLT registry alerts, and focused injunctions under Section 60(5)—together with diligent Resolution-Professional oversight, can mitigate immediate harm. Closing this structural gap will restore doctrinal coherence, protect guarantor rights, and reinforce market confidence in the Insolvency and Bankruptcy Code.

