II. SUPPORTING GUARANTEES AND CORPORATE INSOLVENCY: IBBI'S PROPOSED OVERHAUL AND A COMPARATIVE EXPLORATION OF GLOBAL INSOLVENCY PARADIGMS

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ABSTRACT

Imagine a boardroom disarray- executives scrambling as corporate giant teeters on the edge of insolvency. Among the chaos, personal guarantors-often key promoters or third parties-brace for the financial storm about to engulf them. India's Insolvency and Bankruptcy Code (IBC) has been a transformative force in corporate distress resolution, but its latest chapter addressing the liability of personal guarantors, has introduced a dramatic new twist. Recent rulings, such as the pivotal Lalit Kumar Jain case, coupled with regulatory protocols, have ignited a fierce debate: Should third-party guarantees be mandatorily enforced or should flexibility reign in insolvency proceedings?

This paper ventures into the labyrinth of guarantor liability, tracing its evolution from the Indian Contract Act 1872 to the IBC's current framework. It juxtaposes India's legal landscape with global perspectives, from the United States' flexible Chapter 11 to the UK and Singapore's approaches to balancing creditor recovery with corporate rehabilitation. As India contemplates amendments mandating the enforcement guarantees, questions loan over the potential for heightened litigation, delays, and unique challenges.

From a comparative perspective, strict enforcement can obstruct effective resolutions and undermine the overarching goals of the IBC. Instead, it champions a more adaptable framework that grants creditors greater discussion while protecting guarantors from excessive burdens. By weaving together international lessons and India's evolving legal context, this paper charts a path toward a balanced, resilient insolvency framework for the future.

Keywords: Personal guarantor liability, Third-party guarantees, Creditor Recovery, Comparative Insolvency frameworks.

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I. INTRODUCTION *28*

II. INDIA'S LEGAL LANDSCAPE: UNPACKING THE FRAMEWORK FOR GUARANTOR LIABILITY . 33

A. Tracing guarantor liability from the Indian Contract Act 1872 to the Insolvency Bankruptcy Code 2016 33

1.The Indian Contract Act 1872: The Genesis of Guarantor Liability.............................33

2.Judicial Interpretation of Guarantor Obligations in the Pre-IBC Era.............................34

B. The Insolvency and Bankruptcy Code 2016: A Watershed in Guarantor Liability 34

1.The Doctrine of Co-Extensive Liability in the Post-IBC Era.....................................35

C. IBBI's Proposed 2024 Amendments to the CIRP Regulations: Clarifying the Treatment of Guarantor Liability in Insolvency Resolution................................ 38

1.Analysis of the Suggested Revision to the CIRP Regulations 39

2.Legal Framework and Historical Context 39

3.Examination of the Suggested Modification................................ 41

4.Harmonizing the Interests of Stakeholders 42

5.Promoting Uniformity and Minimising Legal Disputes 44

6.Wider Consequences of the Amendment................................ 44

III. GLOBAL PLAYBOOK: COMPARATIVE PERSPECTIVES ON THIRD-PARTY GUARANTEES 445

A. Guarantor Liability and Subrogation Rights in the United States under Chapter 11 Bankruptcy. 445

B. The Role of Guarantors in Corporate Rescues: Navigating UK Insolvency Law........................ 45

C. Singapore's Approach to Guarantees and the Insolvency Restructuring Framework………...48

IV. BALANCING THE SCALES: CREDITOR RIGHTS V. INSOLVENCY EFFICIENCY………52

A. Equilibrium of Interests: The Rights of Creditors Concerning the Efficiency of Insolvency........... 52

B. Dual Avenues for Rehabilitation: Sureties and Corporate Obligors........................ 53

V. CONCLUSION *54*

I. INTRODUCTION

SETTING THE STAGE: THIRD-PARTY GUARANTEES IN INSOLVENCY

The framework for insolvency law has seen significant change in recent decades, necessitated by the need to adapt to more intricate financial

structures and linkages. The transition is primarily driven by the adoption of laws concerning personal guarantors and third-party guarantees, which broaden the scope of obligation beyond the corporate debtor, so altering the legal framework of creditor-debtor relations.[1] In contemporary corporate finance, the function of personal guarantors has grown essential. A personal guarantor, often a promoter, director, or controlling shareholder, willingly accepts responsibility for the corporate debtor's obligations, thereby offering creditors an additional level of assurance.

The incorporation of personal guarantor clauses in bankruptcy law formalizes this connection, guaranteeing that guarantors are responsible for the financial commitments they have assumed.[2] This development signifies a substantial shift from the conventional debtor-centric paradigm of insolvency law, which largely emphasized the liquidation or reorganization of the corporate entity's assets. The legislation, under Section 60(2) holds personal guarantors accountable, ensuring that individuals with a vested interest in the corporate debtor's financial arrangements are responsible in the case of failure. This provision aligns the insolvency resolution process of the corporate debtor and the guarantor, streamlining accountability and enforcement.[3] Third-party guarantees include pledges of repayment to creditors from people or organizations outside the bankrupt corporation.[4] Such assurances often emerge in intricate commercial agreements where financial risk is distributed among several parties. When a corporate debtor goes

[1] *Craise On Statue Law* (Goodman and Greenberg (eds), 7th edn 1999, Indian reprint,) 219.
[2] Y Honjo, A Ono and D Tsuruta, 'The Effect of Physical Collateral and Personal Guarantees on Business Startups.' (2022) *SSRN Electronic Journal* <https://doi.org/10.2139/ssrn.4292922 > accessed 8 October 2024.
[3] Insolvency Bankruptcy Code, s60.
[4] B Bulkat, 'What Happens to A Personal Guarantee in Bankruptcy: Learn How to Discharge A Personal Guarantee in Bankruptcy,' *ALLLAW* <http://www.allaw.com/articles/nolo/bankruptcy/personal-guarantee-bankruptcy.html > accessed 9 October 2024.

bankrupt, the presence of a third-party guarantor provides creditors with an alternative means of recovery, therefore reducing the risk of financial loss. The integration of third-party guarantees into insolvency law reflects an acknowledgment of the complex financial networks that support contemporary commerce and the necessity for legal frameworks capable of addressing the varied relationships inherent in corporate borrowing.

The ramifications of these laws are far more substantial and extensive for personal guarantors.[5] The expansion of obligation to personal assets elevates financial exposure, substantially amplifying the risks linked to offering guarantees. Personal guarantors must now contend with the potential for their private assets to be implicated in bankruptcy procedures, so obscuring the distinction between corporate and personal financial liability. By treating the liabilities of corporate entities and their guarantors as interconnected, the framework blurs traditional boundaries, challenging the separation of financial risks and increasing the stakes for personal guarantors. This transition significantly impacts corporate governance and personal financial planning, as people must meticulously assess the dangers of offering personal guarantees against the prospective benefits of their engagement with the corporate debtor.

Indian courts have regularly affirmed the legitimacy of actions filed against personal guarantors, confirming that their obligations remain intact notwithstanding the corporate debtor's bankruptcy.[6] This jurisprudence indicates an increasing acknowledgment that personal guarantors, having willingly accepted the debtor's financial responsibilities, must face the repercussions of failure. Such verdicts underscore the need for bankruptcy law

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[5] M Lockwood, 'When (and Why) Should You Sign a Personal Guarantee to Secure Financing?' *BPLANS,* <http://articles.bplans.com/personal-guarantees-to-securefinancing/> accessed 7 October 2024.

[6] State Bank of India v. V. Ramakrishnan & Anr. [(2018) 17 SCC 394].

to maintain a nuanced equilibrium between safeguarding creditor interests and ensuring that guarantors fulfil their legal obligations.

The implications of personal guarantor and third-party guarantee clauses are numerous and complex. They improve the effectiveness of the bankruptcy system by offering creditors more options for debt collection, therefore reducing the risk of financial loss.[7] This twofold consequence requires a reassessment of risk management techniques for creditors aiming to protect their interests and for guarantors who must now traverse a more complex legal environment.[8] The current legal framework, while offering certain safeguards to creditors has left room for ambiguity regarding the continued enforceability of guarantees, raising concerns about potential discrepancies in the interpretation of creditor rights. It arises from the lack of clear guidelines regarding the enforceability of personal guarantees within the insolvency process. While the IBC allows creditors to initiate actions against personal guarantors, it is unclear whether such guarantees can be enforced during the corporate debtor's resolution process or only after its conclusion. Additionally, the role of personal guarantors in the moratorium period and how their obligations interact with the corporate debtor's insolvency proceedings remains uncertain, leading to varying interpretations of creditor rights and the scope of recovery.

In response to the uncertainties, proposed amendments to the CIRP Regulations 2016 aim to provide much-needed clarity. Specifically, these amendments seek to reinforce creditors' rights to proceed against guarantors and enforce guarantees independently, even when the resolution plan reduces

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[7] M. A. Kamath, 'India: Personal Guarantors Now Subject To IBC: A Brief Overview of the Insolvency Resolution Process.' (2 December 2019) Delhi, India.

[8] *Mahapatra, d. (2021, May 22). Guarantors for loans liable unde IBC proceedings: SC. Times of India.*

the amounts recoverable from the corporate debtor.[9] By preserving the enforceability of guarantee agreements, these changes would significantly strengthen the recovery mechanism available to creditors, ensuring that personal guarantors remain liable for their obligations despite any reductions in the debtor's liabilities under the resolution plan.[10] This regulatory shift promises to enhance creditor protection while fostering greater accountability among guarantors within the insolvency framework.

This study highlights the complexities of personal guarantor clauses and third-party guarantees within the context of bankruptcy, offering a critical analysis of their origins, legal foundations and practical consequences. It explores the evolution of these laws and their impact on corporate finance, the dynamics between creditors and debtors and the core principles of bankruptcy law. This review seeks to clarify how personal and third-party guarantors have become integral to modern bankruptcy practice, providing a refined method for reconciling the interests of creditors, debtors, and guarantors. It will enhance the knowledge of the changing role of guarantors in contemporary insolvency frameworks, highlighting their significance in promoting a more just and efficient debt settlement system.

II. INDIA'S LEGAL LANDSCAPE: UNPACKING THE FRAMEWORK FOR GUARANTOR LIABILITY

A. Tracing guarantor liability from the Indian Contract Act 1872 to the Insolvency Bankruptcy Code 2016

From the Indian Contract Act of 1872 **(ICA)** to the revolutionary Indian Bankruptcy Code **(IBC)**, the development of guarantor responsibilities

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[9] Robert W. Stetson, 'Four Tips for Drafting Enforceable Personal Guarantees' *Bloomberg Law* (2 May 2014), <http://www.bna.com/four-tips-drafting-n 17179890142.> accessed 4 October 2024.

[10] Lawrence Gardner, 'Getting Personal: What If the Banker Needs a Loan Guarantee Beyond the Assets of the Business?' [1997] PRE 43.

in India is a remarkable legal adventure that traverses the country. The notion of suretyship, in which a guarantor takes on the responsibility of accounting for the debt or default of another individual, is at the core of the voyage.[11] This concept has been subjected to a dramatic reinterpretation over the course of many decades, and it has been transformed by both judicial reasoning and legislative change.

1. THE INDIAN CONTRACT ACT 1872: THE GENESIS OF GUARANTOR LIABILITY

The ICA delineates the legal framework governing suretyship within Sections 126 to 147.[12] Section 126 highlights the tripartite relationship between the creditor, debtor, and guarantor, while Section 128 establishes the principle of co-extensive liability, indicating that the guarantor's obligation mirrors that of the debtor unless explicitly specified otherwise.[13] This enables creditors to pursue repayment directly from the guarantor in the event of the debtor's default.

2. JUDICIAL INTERPRETATION OF GUARANTOR OBLIGATIONS IN THE PRE-IBC ERA

Indian courts have consistently upheld the interconnected nature of guarantor liability. Significantly, the Supreme Court determined creditors are entitled to pursue immediate action against guarantors without first depleting their options against the debtor.[14] In instances where the agreements between the debtor and the creditor are modified without the guarantor's approval,

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[11] Sam Thacker, 'Personal Guarantees Required in Small Business Loans' <http://www.allbusiness.com/technology/software-services-applications-markup/1 0753236-1. html> accessed 4 November 2014.

[12] Indian Contract Act 1872, s126.

[13] Indian Contract Act 1872, s128.

[14] ICICI Bank v. APS Star Industries Ltd. [(2010) 10 SCC 1].

judicial decisions as seen in *State Bank of India v. Ramakrishnan*[15] have established that such alterations absolve the guarantor of any liability. This judicial balancing act guarantees that guarantors fulfil their obligations while safeguarding them against unexpected alterations in the contract.

B. The Insolvency and Bankruptcy Code 2016: A Watershed in Guarantor Liability

The IBC has fundamentally transformed the dynamics between creditors and debtors, especially concerning guarantors. According to Section 60(2)[16], the NCLT possesses concurrent jurisdiction regarding insolvency proceedings for both the debtor and the guarantor, thereby facilitating the management of creditor claims. Section 14 of the IBC, which establishes a moratorium on proceedings against the debtor, clearly does not apply to guarantors, thereby permitting creditors to pursue or commence actions against guarantors during insolvency proceedings.[17] This guarantees that guarantors continue to bear responsibility even amidst the debtor's insolvency proceedings. However, this protection does not extend to personal guarantors. The liabilities of personal guarantors are treated as distinct and independent, allowing creditors to initiate or continue recovery proceedings against them even while the corporate debtor is undergoing insolvency resolution. This distinction ensures that the moratorium safeguards the corporate debtor's assets without restricting creditors' rights against guarantors.

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[15] ibid.
[16] Insolvency Bankruptcy Code 2016, s 60(2).
[17] Insolvency Bankruptcy Code 2016, s 14.

1. THE DOCTRINE OF CO-EXTENSIVE LIABILITY IN THE POST-IBC ERA

Within the context of the post-IBC framework, the liability of guarantors has been significantly strengthened.[18] The Supreme Court has consistently upheld this principle in various rulings, notably highlighting that a guarantor's liability is co-extensive and independent of the debtor's financial circumstances.[19] Personal guarantors continue to bear responsibility, irrespective of whether the debtor experiences restructuring or resolution, reinforcing their crucial role in the creditor-debtor relationship under the IBC.

Table 1: Examining Judicial Interpretations: An Empirical Analysis of Creditor Recovery in Guarantee Disputes

Case	Year	Types of Guarantees	Creditors Post-Resolution Plan	Judicial Interpretation of Creditor Rights	Rates for Creditors from Guarantors	Length of Litigation Process
BRS Ventures Investments Ltd. v. SREI Infrastructure Finance Ltd.	2024	Corporate Guarantee	Guarantor liability remains intact despite the debtor's resolution.	Co-extensive liability of guarantor and principal borrower	Partial recovery, as per the approved resolution plan	2 years
Puro Naturals JV v. Warana Sahakari Bank & Ors.	2023	Corporate Guarantee	Security interests and guarantees can be extinguished in resolution plan.	Guarantor liabilities extinguished as per creditor agreement.	Partial or no recovery based on the plan	2.5 years

[18] Nitin Chandrakant Naik v. Sanidhya Industries LLP (Company Appeal (AT) (Insolvency) No. 257 of 2020).

[19] Vijendra Kumar Jain, Resolution Professional of the Television Network Limited v. Sab Events & Governance Now Media Ltd.

Eldweiss ARC v. V Mahesh IRP, Vasan Healthcare	2023	Corporate Guarantee	Rejection of claim overturned guarantor held liable.	Establishment of a corporate guarantee is confirmed.	Moderate recovery allowed.	2 years
SVA Family Welfare Trust & Anr. v. Ujaas Energy Ltd.	2023	Personal Guarantee	Liability was addressed within resolution plan; some guarantees were relinquis hed.	Guarantors' liabilities may be varied within the resolution plan.	Partial recovery based on the agreed plan.	3 years
J.C Flowers Asset Reconstruction v. Deserve Exim	2023	Corporate Guarantee	Guarantor liable post-demand issuance, not before.	Default arises only upon demand by the creditor	Limited recovery, post-demand notice.	1.5 years
Lalit Kumar Jain v. Union of India & Ors.	2021	Personal Guarantee	Guarantors were held liable even after resolution plan approval	Approval of the resolution plan does not absolve guarantors of their liability.	Full recovery pursued by guarantors	3 years
State Bank of India v. V Ramakrishnan & Anr.	2018	Personal Guarantee	Section 14(3) IBC moratorium does not apply to guarantors.	Moratorium is not appliable to personal guarantors under IBC.	Full recovery from personal guarantors.	3 years
Economic Transport Organization v. Charan Spinning Mills	2010	Personal Guarantee	Subrogation rights of the guarantor recognized upon debt discharge	Doctrine of subrogation upheld, allowing guarantors to claim securities.	Full recovery due to subrogation rights	4 years

The table presents a thorough comparative examination of diverse judicial cases concerning personal, corporate, and bank guarantees in creditor recoveries post-resolution plans, focusing on key variables: a) type of guarantee, b) the outcome for creditors following resolution, c) judicial interpretation of creditor rights, d) recovery rates for creditors, and e) the duration of the litigation process.

The nature of the guarantee significantly influences the results for creditors. Personal guarantees, as illustrated in *Lalit Kumar Jain v. Union of India*[20] and *State Bank of India v. V. Ramakrishnan,*[21] invariably lead to enhanced recovery rates for creditors, with judicial bodies confirming that the endorsement of a resolution plan does not exempt guarantors from their obligations. Corporate guarantees demonstrate a notable variability in recovery rates, as illustrated in *BRS Ventures Investments Ltd. v. SREI Infrastructure Finance Ltd.,*[22] where only a partial recovery was realized, and in *Puro Naturals JV v. Warana Sahakari Bank & Ors.,*[23] where the liabilities of the guarantor were nullified following the creditor agreement.

The judicial interpretation of creditor rights has consistently upheld the principle of guarantor liability, albeit with variations that reflect the specific characteristics of the guarantee and the stipulations outlined in the resolution plan. In the case of *J.C. Flowers Asset Reconstruction v. Deserve Exim Pvt. Ltd.,*[24] the court elucidated that the liability of the guarantor is contingent upon a formal demand from the creditor, thereby influencing the temporal aspects of recovery. Comparably, the *Economic Transport Organisation v. Charan Spinning Mills*[25] case underscored the principle of subrogation, allowing guarantors to reclaim from securities following the discharge of debt, thereby facilitating complete recovery.

Recovery rates for creditors illustrate a notable pattern: personal guarantees generally, yield complete recovery, as evidenced by various cases,

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[20] Lalit Kumar Jain v. Union of India AIRONLINE 2021 SC 40.

[21] State Bank of India v. V. Ramakrishnan & Anr. AIR 2018 SCC 3876.

[22] BRS Ventures Investments Ltd. v. SREI Infrastructure Finance Ltd CIVIL APPEAL NO. 4565 OF 202.

[23] Puro Naturals JV v. Warana Sahakari Bank (Company Appeal (AT) (Insolvency) Nos.661-663 of 202.

[24] J.C. Flowers Asset Reconstruction v. Deserve Exim Pvt. Ltd. (NATIONAL COMPANY LAW APPELLATE TRIBUNAL) MANU/NL/0413/202.

[25] Economic Transport Organisation Delhi v M/S Charan Spinning Mills (P) Ltd.& Anr on 17 February, 2010 CIVIL APPEAL NO.5611 OF 199.

including *State Bank of India v. V. Ramakrishnan*, whereas corporate guarantees frequently culminate in partial or restricted recovery, as observed in *Edelweiss ARC v. V Mahesh IRP, Vasan Healthcare*.[26]

Ultimately, the duration of legal proceedings is contingent upon the nature of the guarantee and the intricacies involved in the case. Cases involving personal guarantees typically have a prolonged duration, averaging between 2 to 4 years, as evidenced in the instances of *Lalit Kumar Jain* and the *Economic Transport Organisation*. Cases involving corporate guarantees tend to resolve in a relatively swift manner, generally within 1.5 to 2.5 years, as evidenced by *J.C. Flowers Asset Reconstruction* and *Puro Naturals JV*. Due to their direct nature and judicial clarity, personal guarantees yield more stable and advantageous results for creditors. Creditors can independently pursue personal guarantors, as their liabilities are co-extensive with the debtor's, ensuring predictable recovery paths. In contrast, corporate guarantees depend heavily on the specifics of resolution plans, which may restructure or extinguish the guarantor's liability, leading to variable outcomes. Additionally, personal guarantor's private assets are more accessible, whereas corporate guarantees often involve interdependent liabilities tied to the debtor's insolvency process, making recoveries less certain and subject to judicial interpretation.

C. IBBI's Proposed 2024 Amendments to the CIRP Regulations: Clarifying the Treatment of Guarantor Liability in Insolvency Resolution

The Insolvency and Bankruptcy Board of India **(IBBI)** released a discussion paper on June 19, 2024, outlining significant amendments to the

[26] Edelweiss ARC v. V Mahesh IRP, Vasan Healthcare Company Appeal (AT) (CH) (INS) No. 226 of 2021.

Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 **(CIRP Regulations)**. The purpose of these amendments is to elucidate the handling of guarantees and guarantors within corporate insolvency resolution plans, with a particular emphasis on the rights of creditors to enforce guarantees against both personal and corporate guarantors. This proposal arises in light of divergent judicial interpretations regarding the matter, highlighting the need for regulatory clarification to achieve coherence within the insolvency framework.

1. ANALYSIS OF THE SUGGESTED REVISION TO THE CIRP REGULATIONS

The proposed amendment by the IBBI focuses on Regulation 37(f) of the CIRP Regulations, detailing the content and structure required for resolution plans submitted by resolution applicants.[27] The amendment incorporates a stipulation that forbids a resolution plan from obstructing creditors in their pursuit of rights against the guarantors of the corporate debtor. Essentially, it prohibits resolution applicants from incorporating provisions in their plans that would eliminate the liability of guarantors, thus preserving the interconnected nature of guarantor obligations.

2. LEGAL FRAMEWORK AND HISTORICAL CONTEXT

The proposal put forth by the IBBI arises from the necessity to address the ambiguities engendered by the disparate rulings issued by the NCLT, the National Company Law Appellate Tribunal **(NCLAT)**, and the Supreme Court.

[27] Insolvency And Bankruptcy Board Of India, '(Insolvency Resolution Process For Corporate Persons) Regulations, 2016' (2016) <https://ibbi.gov.in/webadmin/pdf/legalframwork/2018/Apr/word%20copy%20updated%20upto%2001.04.2018%20CIRP%20Regulations%202018_2018-04-11%2016:12:10.pdf> accessed 10 October 2024.

In the matter of *SVA Family Welfare Trust & Anr. v. Ujaas Energy Ltd & Ors,*[28] the NCLAT overturned a decision made by the NCLT's Indore Bench, which had dismissed a resolution plan on the basis that it included provisions for the extinguishment of guarantor obligations. The NCLAT affirmed the legitimacy of the resolution plan, determining that the extinguishment of the guarantor's liability may be permissible. The Supreme Court later upheld this ruling in *Bank of Baroda v. Ujaas Energy Limited & Ors.*[29], establishing a precedent that the elimination of guarantees within resolution plans is legally permissible.

Nevertheless, this stance diverges from a prior Supreme Court decision in *Lalit Kumar Jain v. Union of India*, wherein the Court determined that the endorsement of a resolution plan for a corporate debtor does not inherently absolve the guarantors of their responsibilities. In this instance, the Court reiterated the principle that guarantors continue to bear responsibility for the obligations of the corporate debtor, notwithstanding the approval of the debtor's resolution plan.

There is a lack of clarity about the processing of guarantees within bankruptcy procedures due to the discrepancy among these decisions, which has led to various interpretations being offered by different tribunals. As a result of the misunderstanding that ensued, the IBBI proposed a regulation modification to provide specific advice on the enforcement of guarantees, bringing the approach into alignment across a variety of circumstances. The amendment aims to establish a consistent framework, thereby facilitating a harmonious approach among courts and tribunals, which would diminish the potential for conflicting judgements that have, in the past, resulted in

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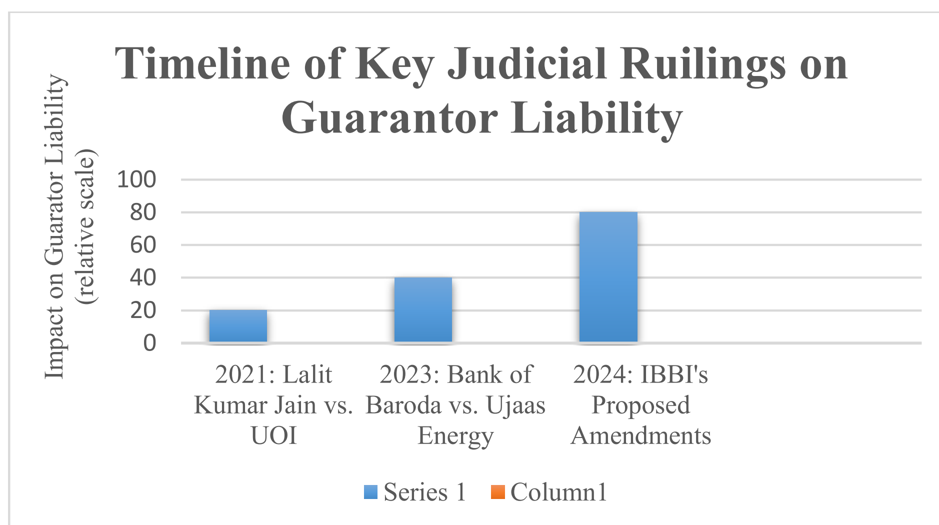
[28] Sva Family Welfare Trust & Anr v. Ujaas Energy Limited and Ors Company Appeal (AT) (Insolvency) No. 266 of 2023.

[29] Bank of Baroda v. Ujaas Energy Limited & Ors, CA No. 6602 of 2023.

considerable confusion. This holds particular significance in instances where guarantors contend for the release of their obligations subsequent to the endorsement of a resolution plan for the primary debtor.



The timeline above outlines significant court decisions that have influenced guarantor liability in India. The first decision, *Lalit Kumar Jain v. Union of India* (2021), confirmed the autonomy of guarantor liability. The second case, *Bank of Baroda v. Ujaas Energy* (2023), permitted the extinguishment of guarantees under specific resolution plans. The goal of the 2024 IBBI revisions is to strengthen creditors' ability to enforce guarantees independent of resolution plans by standardizing and defining the handling of guarantors.

3. Examination of the Suggested Modification

The suggested modification to Regulation 37(f) signifies an important transition in safeguarding the rights of creditors during the insolvency resolution process.[30] The proposed amendment reinforces the principle of guarantor liability as codified under Section 128 of the Indian Contract Act

[30] Ananya Rao, 'Resolving Inconsistencies in Insolvency: The Role of Regulatory Clarity' (2023) Insolvency Review <https://www.insolvencyreview.com/articles/resolving-inconsistencies-in-insolvency > accessed 20 September 2024.

1872, which establishes that a guarantor's obligations are co-extensive with those of the principal debtor. By explicitly affirming that resolution plans cannot absolve guarantors of their commitments, the amendment ensures that creditors retain the right to enforce guarantees irrespective of the outcome of the debtor's insolvency resolution. This approach not only secures an additional layer of recovery for creditors in cases where the corporate debtor is unable to fulfill its obligations but also addresses inconsistencies in judicial interpretations regarding the enforceability of guarantees.

4. HARMONIZING THE INTERESTS OF STAKEHOLDERS

The proposed amendment, while designed to safeguard the rights of creditors, also carries significant ramifications for the equilibrium of interests among creditors, guarantors, and resolution applicants.[31] The restriction on nullifying guarantor liability may be perceived as placing a considerable obligation on guarantors, who could find themselves accountable for the full debt even after the debtor's insolvency restructuring. This may be viewed as positioning guarantors unfavourably, particularly in instances where the debtor's responsibilities are considerably diminished or reorganized within the framework of the resolution plan. Guarantors play a crucial role in the dynamics of the creditor-debtor relationship, as their liability offers creditors essential confidence in the likelihood of repayment. The amendment consequently guarantees that creditors retain this essential protection.

5. PROMOTING UNIFORMITY AND MINIMISING LEGAL DISPUTES

The amendment seeks to rectify the discrepancies in judicial opinions, thereby enhancing legal certainty. This amendment's clarity is poised to diminish disputes regarding the enforceability of guarantees within insolvency

[31] Sharma, 'The Evolution of Insolvency Law in India' (Oxford University Press 2024) 78.

resolution, thereby promoting more efficient resolution proceedings.[32] Both creditors and resolution applicants will possess a more defined understanding of the parameters and constraints of the resolution plan, thereby diminishing the chances of extended legal disputes.

6. Wider Consequences of the Amendment

The proposed amendment introduces a potential challenge for guarantors, as they could remain liable for substantial debts even after the debtor's restructuring.[33] This additional burden might discourage both individuals and corporations from offering guarantees, potentially affecting lending practices and limiting access to credit. The balance between safeguarding creditor rights and ensuring fair treatment of guarantors poses a significant test for judicial interpretation as the regulation comes into force.

Nevertheless, the amendment provides a crucial clarification in the context of guarantor liabilities within the insolvency resolution process, addressing inconsistencies in previous judicial interpretations. By affirming that resolution plans cannot nullify guarantors' obligations, it reinforces the interconnectedness of guarantor liabilities and corporate insolvency. This step enhances the enforceability of guarantees, protecting creditors while ensuring the foundational role of guarantors in the financial ecosystem.

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[32] Amitabh Kyotesev, 'Contemporary Reforms in Insolvency Law: An Analytical Approach to the Evolving Landscape of Creditors' Rights and Corporate Guarantees' (Oxford University Press 2023) 10.

[33] Neha Bansal, 'Navigating the Complexities of Insolvency and Bankruptcy: A Critical Examination of Creditor Protections in India' (Cambridge University Press 2024) 76.

III. GLOBAL PLAYBOOK: COMPARATIVE PERSPECTIVES ON THIRD-PARTY GUARANTEES

A. Guarantor Liability and Subrogation Rights in the United States under Chapter 11 Bankruptcy

In the United States, the Chapter 11 provisions of the Bankruptcy Code present a methodical approach to corporate restructuring, establishing a framework that thoughtfully weighs the interests of debtors, creditors, and guarantors.[34] It facilitates the reorganization of debts for companies facing financial distress, enabling them to maintain operations with the primary objective of rehabilitation instead of liquidation.

According to Chapter 11, guarantees typically retain enforceability unless explicitly altered in the reorganization plan. The Bankruptcy Code allows the debtor to engage in the renegotiation or restructuring of its obligations, potentially encompassing third-party guarantees. In specific instances, an approved reorganization plan may encompass clauses that facilitate the discharge of guarantors from their obligations, especially when such discharges are essential for the debtor's effective recovery.[35] Nonetheless, these releases generally require the consent of creditors and may lead to disputes, as they significantly affect the creditors' capacity to reclaim the sums owed by guarantors.

It is essential to recognize that creditors maintain the authority to seek recourse from guarantors without being contingent upon the debtor's reorganization process. Should a guarantor fulfil the debt obligation for the debtor, the principle of subrogation permits the guarantor to assume the position of the creditor and pursue reimbursement from the debtor. The

[34] United States Bankruptcy Code, Chapter 11.

[35] Mark A. McNeilly, 'The Impact of Chapter 11 on Personal Guarantees' (2020) 45(2) *American Bankruptcy Law Journal* 239-261.

principles of this doctrine were further solidified in the case of *Stearns v. United States*[36], which established that a guarantor who fulfils the debt obligation is entitled to the rights of the creditor against the principal debtor. Subrogation guarantees that guarantors retain avenues for recourse after meeting their obligations, offering a protective measure that recognizes their equitable rights.

The U.S. Chapter 11 framework provides significant insights for India regarding the management of guarantor liability within the context of corporate insolvency proceedings. The capacity to renegotiate or eliminate guarantees, along with the safeguarding of subrogation rights, as illustrated in cases such as *Stearns v. United States*, establishes a sophisticated framework that harmonizes the interests of creditors, protections for guarantors, and relief for debtors. As India advances its insolvency framework, it may benefit from this methodology to establish a fairer system that safeguards the interests of all parties involved, thereby enhancing the effectiveness and resilience of the insolvency resolution process.

B. The Role of Guarantors in Corporate Rescues: Navigating UK Insolvency Law

The legal framework that delineates guarantor obligations within the realm of corporate insolvency in the United Kingdom is principally articulated in the Insolvency Act 1986.[37] The legislation establishes a thorough framework for addressing third-party guarantees within the context of insolvency proceedings, to achieve an equilibrium between the recovery of creditors and the rehabilitation of debtors. The primary concern pertains to the

[36] Stearns v. United States, 291 U.S. 54 (1934).
[37] Insolvency Act 1986 (UK) (c45).

degree of liability that a guarantor retains once the obligations of the principal debtor have been fulfilled via insolvency proceedings.

One of the fundamental tenets of UK insolvency law is that the legal discharge of the principal debtor does not inherently absolve the guarantor of their obligations. The principle was reiterated in the case of *In re Fitzgeorge Ex parte Robson,*[38] wherein the court determined that a guarantor's liability endures despite the discharge of the principal debtor. This ruling, underscores the perpetual nature of the guarantor's responsibilities, highlighting that creditors maintain the authority to seek recourse from guarantors for any outstanding debts, irrespective of the debtor's discharge from insolvency.

The handling of guarantor liabilities within the framework of UK insolvency law is elucidated in the 1976 study conducted by the Commission of the European Communities, titled "*The Law of Suretyship and Indemnity in the United Kingdom of Great Britain and Northern Ireland and Ireland*."[39] The research offers a comprehensive examination of the legal doctrines that regulate suretyship and indemnity contracts. This emphasizes that a contract of guarantee essentially constitutes a commitment by the guarantor to assume responsibility for the principal debtor's obligations to the creditor.

The insolvency law in the UK establishes a distinct separation between the responsibilities of the principal debtor and those of the guarantor, thereby ensuring that the obligations of the guarantor are not automatically nullified by the insolvency of the debtor. The legal framework safeguards the interests of creditors by allowing them to pursue repayment from guarantors, even in instances where the principal debtor has been absolved of their financial obligations. Concurrently, it facilitates corporate recovery by enabling debtors

[38] In re Fitzgeorge Ex parte Robson, [1905] 1 K.B. 462.
[39] Commission of the European Communities, 'The Law of Suretyship and Indemnity in the United Kingdom of Great Britain and Northern Ireland and Ireland' (1976).

to reorganize their obligations under judicial oversight, while safeguarding the rights of guarantors to pursue reimbursement or subrogation after they have satisfied the commitments.

The United Kingdom's methodology regarding guarantor responsibilities in the realm of insolvency provides significant insights into the development of India's emerging insolvency framework. The focus on preserving guarantor liability, exemplified in *In re Fitzgeorge*, presents a framework that harmonizes the concerns of creditors with the potential for corporate recovery. Through an examination of the UK's legal framework regarding suretyship and indemnity, India has the opportunity to cultivate a more sophisticated methodology for addressing third-party guarantees, thereby ensuring that guarantors are held responsible while simultaneously fostering the effective rehabilitation of debtors.

C. Singapore's Approach to Guarantees and the Insolvency Restructuring Framework

The legal framework in Singapore that regulates guarantees in bankruptcy and restructuring is mostly outlined in the Bankruptcy, Restructuring, and Dissolution Act **(IRDA).**[40] This extensive legislation, implemented to optimize bankruptcy processes and reconcile the interests of debtors, creditors, and guarantors, demonstrates Singapore's dedication to cultivating a business-friendly atmosphere while maintaining robust creditor safeguards. A significant case in Singapore that illustrates the implementation of subrogation rights concerning guarantees is *United Overseas Bank Ltd v. Lippo Marina Collection Pte Ltd.*[41] The Singapore Court of Appeal determined that a guarantor who discharges the debt of the primary debtor is

[40] Insolvency, Restructuring and Dissolution Act 2018 (Singapore).
[41] United Overseas Bank Ltd v. Lippo Marina Collection Pte Ltd [2019] SGHC 23.

entitled to subrogation rights. This theory permits the guarantor to assume the creditor's position, thus inheriting the rights to collect the debt from the primary debtor. The verdict confirms the equitable character of subrogation, ensuring that guarantors are not left at a disadvantage after meeting their responsibilities and upholding the notion that they should be able to reclaim their contributions from the debtor.

Under Singapore's IRDA, the legal position on guarantees is consistent with the overarching objective of reconciling company rehabilitation with creditor recovery.[42] The Act permits restructuring procedures that may amend or eliminate specific commitments; nonetheless, promises typically remain enforceable until explicitly modified in a restructuring plan.[43] This method guarantees that creditors may continue to seek repayment from guarantors for unpaid obligations, regardless of whether the principal debtor has completed restructuring. Furthermore, after the guarantor has settled the obligation, the right of subrogation ensures their ability to pursue reimbursement from the debtor. Singapore's bankruptcy regime offers a systematic equilibrium between facilitating company recovery and safeguarding the interests of guarantors and creditors.

Table 2: Drawing Parallels: A Cross-Jurisdictional Comparative Snapshot

Aspect	**United Kingdom**	**United States**	**Singapore**	**India**
Legal Framework	Insolvency Act 1986	Bankruptcy Code, Chapter 11	Insolvency, Restructuring, and Dissolution Act **(IRDA)**	Insolvency and Bankruptcy Code 2016

[42] Insolvency, Restructuring and Dissolution Act 2018 (Singapore) ss 25-26.
[43] Insolvency, Restructuring and Dissolution Act 2018 (Singapore) s 2.

Guarantor Liability	Guarantor remains liable-post discharge	The guarantor remains liable unless modified.	Guarantor remains liable; subrogation rights upheld	Guarantor remains liable.
Subrogation Rights	Confirmed; guarantor can seek reimbursement	Confirmed; guarantor can pursue debtor after payment.	Confirmed; guarantor can seek reimbursement	Recognized, but varies based on case specifics.
Creditor Rights	Can pursue guarantors despite debtor's discharge	Can pursue guarantors independently.	Can pursue guarantors even during debtor's restructuring	Can pursue guarantors; rights recognized.
Debtor's Rehabilitation	Focus on corporate recovery	Focus on corporate recovery	Focus on corporate recovery	Focus on corporate recovery
Judicial Oversight	Courts mediate disputes	Courts oversee reorganization	Courts oversee restructuring	NCLT oversees proceedings.

In corporate insolvency, the treatment of guarantees plays a pivotal role in balancing guarantor obligations, debtor rehabilitation, and creditor rights. This analysis examines the approaches adopted by the United Kingdom, the United States, Singapore and India in enforcing guarantees within their insolvency frameworks. Insights from these jurisdictions highlight both commonalities and differences, offering valuable lessons for India as it refines its insolvency regime.

1. COMMUNALITIES

i. Enduring Guarantor Liability: Across all four jurisdictions, guarantors remain obligated even after the discharge of the principal debtor. This ensures that creditors can pursue unpaid debts, preserving their rights to recovery. Additionally, the principle of subrogation, enabling guarantors to

recover payments made on behalf of debtors, is universally recognized as safeguarding their financial interests post-payment.

ii. **Focus on Corporate Recovery:** All jurisdictions prioritize corporate recovery by establishing frameworks to facilitate debt restructuring for distressed entities, underscoring the collective emphasis on economic stability and creditor repayment.

2. DIFFERENCES

i. **Flexibility in Guarantee Renegotiation:** The U.S. insolvency framework, particularly under Chapter 11, offers greater flexibility in renegotiating or terminating guarantees during restructuring. In contrast, the UK and Singapore adhere more strictly to existing guarantee obligations unless explicitly altered in restructuring plans.

ii. **Judicial Role in Dispute Resolution:** The U.S. judiciary tends to adopt a flexible approach, actively mediating disputes and shaping outcomes during insolvency proceedings. However, courts in the UK and Singapore emphasize adherence to statutory guidelines and legal precedents, reflecting a more restrained approach.

iii. **Variances in Subrogation Implementation:** While subrogation rights are universally acknowledged, their application varies significantly. In India, the enforcement of these rights often depends on case specific interpretations, reflecting a less standardized approach compared to the consistency observed in the other jurisdictions.

This comparative analysis underscores the need for India to address its unique challenges while incorporating best practices from international insolvency systems. Strengthening clarity around guarantee enforcement and subrogation rights can enhance creditor confidence and align the Indian framework with global standards.

i. **Insights for India:** The comparative analyses from these jurisdictions provide numerous enlightening lessons for India as they enhance, its insolvency framework: India stands to gain from more precise regulations concerning the enforcement of guarantees and the distinct rights afforded to guarantors. This level of clarity would significantly improve the predictability for all stakeholders engaged in insolvency proceedings.

ii. **Striking a Harmonious Balance**: Embracing a more adaptable strategy, similar to that of the United States, may allow India to facilitate the renegotiation of guarantees while ensuring that accountability for guarantors remains intact. This adaptability would cultivate a setting favourable to organizational rejuvenation. By fortifying subrogation rights, India can safeguard guarantors who intervene to meet debtor obligations, thus fostering equity in the insolvency process and protecting the interests of those who assist distressed entities.

IV. BALANCING THE SCALES: CREDITOR RIGHTS V. INSOLVENCY EFFICIENCY

A. Equilibrium of Interests: The Rights of Creditors Concerning the Efficiency of Insolvency

Insolvency frameworks worldwide endeavour to harmonize creditor recovery with the effective resolution of distressed assets, and this intricate equilibrium frequently depends on the treatment of guarantors and their associated obligations. IBC, especially in light of its developing jurisprudence regarding personal and corporate guarantees, underscores the intricate balance between the rights of creditors and the fundamental objectives of insolvency law, which include the revitalization of distressed enterprises and the fair treatment of all stakeholders involved.

B. Dual Avenues for Rehabilitation: Sureties and Corporate Obligors

Creditors typically have two concurrent avenues for recovery: targeting corporate debtors and enforcing claims against guarantors. The mechanisms of personal and corporate guarantees within the IBC afford creditors enhanced security, guaranteeing access to secondary assets in the event of a default by the primary debtor. Nonetheless, one must consider whether these dual recovery paths compromise the integrity of the insolvency resolution process.

Within the framework of the IBC, the resolution plan for a corporate debtor frequently encompasses stipulations regarding creditor recovery from guarantors. The decision in *Lalit Kumar Jain v. Union of India* underscored the continued liability of guarantors following the endorsement of a resolution plan, thereby affirming that the rights of creditors concerning guarantors are inherently aligned with their rights against the principal borrower. This duality enables creditors to enhance recovery rates by leveraging various sources. Nonetheless, it prompts apprehensions regarding the pressure it exerts on guarantors, potentially overwhelming individuals and entities already associated with the financially troubled borrower.

Strict regulations regarding the implementation of guarantees may, in certain instances, hinder the adaptability required for successful insolvency resolutions. Strict enforcement of guarantor liabilities, devoid of any possibility for negotiation, could potentially dissuade guarantors from engaging in the resolution process, thereby obstructing consensual restructuring initiatives.

Striking a balance between the rights of creditors and the efficiency of insolvency necessitates a meticulous evaluation of the functions of guarantors and corporate debtors within the insolvency structure. Although creditors should be given the chance to reclaim their dues, an inflexible application of

guarantees may hinder the fundamental objectives of the IBC facilitating effective resolution and the rejuvenation of distressed enterprises.

V. CONCLUSION

The relationship between third-party guarantees and insolvency law in India, particularly under the IBC, underscores a critical need for a balanced approach to protect creditors while maintaining fairness to guarantors and facilitating effective debtor rehabilitation. The IBC's transformative provisions on guarantor liabilities, which are rooted in the principle of co-extensive liability under the Indian Contract Act 1872, have strengthened creditor recovery mechanisms. However, ambiguities surrounding subrogation rights and inconsistent judicial interpretations have created challenges, necessitating a nuanced, more predictable legal framework.

Recent reforms proposed by the IBBI, which mandate the enforcement of guarantees even post-corporate resolution, significantly enhance creditor recovery mechanisms. These proposals strengthen creditor confidence and enforceability by ensuring that guarantor liabilities remain unaffected by the resolution of principal debtor obligations. However, they also raise critical concerns regarding their broader implications, including the potential escalation of litigation, procedural inefficiencies, and limitations on commercial adaptability. These complexities necessitate a delicate balancing act to uphold creditor rights while addressing procedural justice and economic efficiency issues.

Global Insolvency frameworks offer invaluable lessons for India as it refines its insolvency regime to meet the demands of a dynamic and complex economic environment. The Chapter 11 framework in the United States showcases a dynamic and debtor-focused approach, enabling renegotiation or termination of guarantees as a pivotal element of corporate restructuring. In

contrast, The United Kingdom enforces a more rigid approach, ensuring steadfast creditor protections unless explicit modifications to guarantees are embedded in restructuring plans. Singapore with its insolvency, Restructuring and Dissolution Act adopts a sophisticated integrative model that balances procedural precision with judicial oversight, harmonizing creditor recoveries with debtor rehabilitation and guarantor protections. In unison, these jurisdictions demonstrate the imperative of striking a delicate balance among creditor recoveries, financial responsibility, and corporate rehabilitation to cultivate a sustainable insolvency ecosystem.

India's path forward lies in drawing from these international paradigms while tailoring its insolvency framework to its unique socio-economic and legal milieu. Addressing ambiguities in subrogation rights through statutory clarification and harmonized judicial interpretation is paramount to reducing litigation and fostering legal certainty. Additionally, embedding provisions for equitable renegotiation of guarantor liabilities would not only enhance procedural fairness but also promote adaptability in insolvency proceedings. The creation of streamlined dispute resolution mechanisms, alongside fostering collaboration between creditors and guarantors could significantly bolster recovery outcomes while safeguarding credit accessibility and fostering economic stability.