ACTA SCIENTIAE

ISSN: 2178-7727

Personal Guarantors and Resolution Plans: The Effect of Corporate Debtor Resolution on Guarantor Liability

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ABSTRACT

Insolvency and Bankruptcy Code 2016 (IBC) clears the corporate debtor's liabilities via a resolution plan, yet the personal guarantee which secures the said debt stays unaffected post completion of the proceedings. This paper will analyze the reasons behind the Indian judiciary's refusal to interpret the resolution plan approval as discharge of the personal guarantor's liability, from the moratorium issue till the quantum and subrogation controversy. This paper will contend that the result is not merely a statutory lacuna but an intentional design of Parliament in joining the corporate and personal insolvency forums just to make sure that guarantors would be liable for recovery of the haircut that was taken by the resolution plan. Contribution of the paper does not lie in addressing discharge issue, since it has become a settled position by now; instead it will focus on issues which remain unresolved around it, such as quantum of liability and the time to enforce a guarantor who was actually paid off.

KEYWORDS: Personal Guarantee, Resolution Plan, Co-extensive Liability, Subrogation, Discharge of guarantor.

INTRODUCTION

Guarantees have an interesting status in corporate lending in India. In form, they represent an unremarkable suretyship contract covered by a law from the nineteenth century, whereas in essence, they have become the form of collateral which the Indian banks require from the promoters and directors of the company before providing the loan to a company that is not able to justify the loan on its own merits in the accounting books. The value of such guarantee in practice was very little for decades, as enforcement was slow, and the assets of the promoter who defaulted on the debt were hard to reach using traditional civil procedure. It all changed with the adoption of the Insolvency and Bankruptcy Code, 2016, which introduced a quick and streamlined procedure for the resolution of insolvency of companies and then the procedure for the resolution of insolvency of individuals that have guaranteed the debts of corporations. This code also raised the question that this research paper seeks to answer: what would happen to the personal guarantee after the insolvency of the corporation had already been resolved?

This issue is not one of an academic nature. As such, any CIRP procedure that is carried out by virtue of the provisions of the IBC will always result in a situation where the creditors receive significantly less than what they are entitled to since the restructuring plan will include haircuts up to 60%, 70% or even 90% of admitted claims. The result of a situation where the approval of the restructuring plan under section 31 of the Code amounts to the discharge of the guarantor as well will mean that there would be little or no value at all in a personal guarantee because the resolution applicant will simply decide how much of the debt the guarantor must pay in compensation to the corporate creditor.

The doctrinal foundation for this outcome predates the Code by more than a century. Section 128 of the Indian Contract Act, 1872 provides that the liability of a surety is co-extensive with that of the principal debtor unless the contract provides otherwise (Indian Contract Act, 1872, § 128). That provision was written for ordinary civil recovery, not statutory insolvency, and its interaction with the IBC's discharge-oriented philosophy required judicial mediation. The Supreme Court supplied that mediation in two stages. First, in State Bank of India v. V. Ramakrishnan (2018), it held that the moratorium imposed on the corporate debtor during CIRP under section 14 of the Code does not extend to protect personal guarantors, rejecting the argument that a

DOI: 10.22178/acta.27.3.12

ISSN: 2178-7727

guarantor's liability should be frozen alongside the principal debtor's. Second, and more directly on point, in Lalit Kumar Jain v. Union of India (2021) the Court upheld the government's notification bringing personal guarantors to corporate debtors within the insolvency framework, and held that approval of a resolution plan does not automatically discharge a personal guarantor of liability under the contract of guarantee — the extent of that liability instead depending on the guarantee's own terms.

That holding might have settled matters had the underlying statutory architecture been simpler. It is not. Part III of the Code, dealing with insolvency of individuals, was made applicable to personal guarantors only through a selective notification issued under section 1(3), following the insertion of the category "personal guarantors to corporate debtors" into the Code's definitional scheme by the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 (Insolvency and Bankruptcy Code, 2016, § 5(22)). Section 60 then unified the adjudicating forum, permitting the National Company Law Tribunal handling the corporate debtor's CIRP to also hear insolvency proceedings against that debtor's personal guarantors (Insolvency and Bankruptcy Code, 2016, § 60(2)). This is not incidental drafting. It reflects a considered legislative judgment that a committee of creditors should be able to frame a resolution plan for the company with full knowledge of what can separately be recovered from the guarantors standing behind it — a judgment that only makes sense if guarantor liability is understood to survive the plan's approval rather than evaporate with it.

The result is a body of law that is more settled at its centre than at its edges. The core discharge question — whether plan approval extinguishes the guarantee — has been answered. What remains genuinely contested, and increasingly litigated since 2023, is what a guarantor owes once the principal debt has been compromised, whether a resolution applicant that pays under the plan can simultaneously step into the creditor's shoes against the guarantor by subrogation, and how far a guarantor's contractual liability tracks the pre-resolution debt as opposed to the post-resolution recovery. This paper takes up that terrain in six further parts: the contractual foundation of co-extensive liability; the statutory architecture that folded personal guarantors into the IBC; the judicial arc from Ramakrishnan to the 2023–2024 decisions; a close analysis of what "discharge" means for a guarantor after plan approval; the subrogation and double-recovery problems that arise once a guarantor or resolution applicant actually pays; and a brief comparative assessment against English suretyship doctrine. It concludes that the unresolved risk in this area is not doctrinal uncertainty about whether guarantors remain liable, but practical uncertainty about how much — a gap best closed by requiring resolution plans to state guarantor treatment expressly, rather than by further appellate litigation.

A methodological note before proceeding. This paper is doctrinal rather than empirical: its claims rest on close reading of the leading Supreme Court and NCLAT decisions and on the statutory text, not on a quantitative survey of resolution plans or of the actual recovery rates creditors achieve against personal guarantors in practice. That empirical gap is worth flagging candidly, since the policy recommendation advanced in Part VII — that resolution plans be required to state guarantor treatment expressly — would benefit considerably from data on how often plans currently do, or fail to, address the point, and on how much litigation the current silence actually generates. In the absence of any centralised dataset tracking personal guarantor insolvency outcomes separately from corporate CIRP outcomes, this paper proceeds on the more modest basis that the doctrinal ambiguity identified in Parts V and VI is itself sufficient reason for the reform proposed, independent of its precise empirical magnitude.

THE CONTRACTUAL FOUNDATION: CO-EXTENSIVE LIABILITY UNDER SECTION 128

The starting point for any analysis of guarantor liability in India is not the IBC at all but the Indian Contract Act, 1872, a statute that has governed suretyship since before the country's independence. Section 128 states the default rule in the plainest possible terms: the liability of the surety is co-extensive with that of the principal debtor, unless the contract otherwise provides (Indian Contract Act, 1872, § 128). The provision does two things simultaneously. It makes the guarantor's obligation as large as the principal debtor's, so that a creditor need not prove any independent quantum of loss against the guarantor beyond what the principal debtor owes; and it makes the guarantor's obligation independent, in the sense that the creditor may proceed against the guarantor without first exhausting remedies against the principal debtor. The Supreme Court confirmed this

DOI: 10.22178/acta.27.3.12

ISSN: 2178-7727

independence long before the IBC existed, holding in Industrial Investment Bank of India Ltd. v. Biswanath Jhunjhunwala that a creditor is not obliged to exhaust its remedies against the principal debtor before proceeding against the surety, since the surety's liability is immediate upon default rather than contingent on a failed prior attempt to recover from the principal. This dual character — coextensive in quantum, independent in enforcement — is what later made it possible for courts to hold that a corporate debtor's resolution does not, without more, resolve the guarantor's exposure. If the surety's obligation were merely derivative of the principal's, discharging the principal would necessarily discharge the surety with it. Because the obligation instead arises from a separate contract of guarantee, its survival or extinguishment is, in principle, a separate inquiry governed by its own terms and by the general law of contract, not by whatever process the principal debtor happens to undergo.

The Contract Act does specify circumstances in which a surety is discharged notwithstanding this general rule of co-extensiveness. Section 133 discharges a surety where the creditor, without the surety's consent, varies the terms of the contract between the creditor and the principal debtor. Section 134 discharges a surety where the creditor releases the principal debtor or enters into a contract not to sue the principal debtor. Sections 135 and 139 provide further discharge in cases of compounding with, or impairing the surety's eventual remedy against, the principal debtor. These provisions matter because they supply the doctrinal hook for the argument, addressed in Part V below, that a resolution plan — which typically restructures the debt's terms and may bind the creditor not to pursue the corporate debtor further — ought to be read as a variance or release triggering discharge under sections 133–134.

The pre-emptive answer to that argument, developed more fully in the judicial decisions discussed in Part IV, rests on characterising the resolution plan's effect on the corporate debtor as a statutory extinguishment of a specific class of claims rather than a private variance of contractual terms negotiated between creditor and principal debtor. Section 133 is concerned with a creditor who bargains away or alters the deal with the principal debtor by private arrangement, thereby changing the risk the surety originally underwrote without the surety's knowledge or consent. A resolution plan approved under section 31 of the IBC is not that kind of bargain: it is a statutorily sanctioned restructuring binding the corporate debtor, all its creditors, and, under section 31(1), the Central Government and other statutory authorities, imposed through a collective adjudicatory process rather than negotiated bilaterally between one creditor and the debtor. Whether that formal distinction is sufficient to escape the substance of what sections 133–134 protect against — an unbargained-for alteration of the surety's risk — is precisely the tension this paper interrogates in Part V, where the fairness of holding guarantors to the original, uncompromised debt is examined directly.

A further feature of section 128 worth isolating here is its default, not mandatory, character. The provision applies "unless the contract otherwise provides," meaning the parties are free to draft guarantees that cap liability, tie it expressly to amounts realised from the corporate debtor, or provide for automatic reduction on any settlement or resolution of the principal debt. Indian banking practice has historically not done so: standard-form guarantee documents used by public and private sector lenders typically guarantee the "entire outstanding" without qualification, and expressly contemplate that the guarantee survives any composition, arrangement, or proceeding affecting the principal debtor. This drafting choice is significant because it means the harsh outcomes described in this paper are, in a strict sense, freely bargained for by guarantors — a point the Supreme Court has been willing to enforce even where the guarantor is, as is often the case, a promoter-director whose guarantee was less a considered risk allocation than a condition precedent to the company obtaining credit at all.

The distinction between a specific guarantee, confined to a particular advance or transaction, and a continuing guarantee under section 129 of the Indian Contract Act, extending to a series of transactions over time, adds a further layer of complexity that Indian bank lending practice tends to obscure rather than clarify. Continuing guarantees are the norm in working-capital and revolving-credit arrangements, precisely the kind of facilities most likely to be restructured or written down in a CIRP, and their open-ended character makes it correspondingly harder for a guarantor to argue that any single restructuring event was outside the

DOI: 10.22178/acta.27.3.12

ISSN: 2178-7727

contemplated scope of the guarantee. A guarantor who signed a continuing guarantee for a cash-credit facility that was renewed, enhanced, and eventually classified as a non-performing asset before the corporate debtor's admission into CIRP has, in substance, guaranteed the facility through each of those iterations; the resolution plan is simply the last event in a chain the guarantee was drafted broadly enough to capture from the outset. This is a further reason the discharge-by-variance argument under sections 133–134 tends to fail in practice: a continuing guarantee anticipates variation in the underlying facility as a matter of its own terms, which is difficult to reconcile with a claim that any particular variation — including a CIRP-sanctioned restructuring — was unforeseen or unconsented to. The remainder of this paper proceeds from this contractual baseline. Section 128 supplies the default of co-extensive, independent liability, qualified only by the guarantee's own terms and by the limited statutory discharge grounds in sections 133 to 139; the IBC does not purport to alter that default but instead builds an insolvency-specific procedural mechanism — examined in Part III — through which creditors can realise on it once the guarantee has matured on the principal debtor's default.

STATUTORY ARCHITECTURE: FITTING PERSONAL GUARANTORS INTO THE IBC

The IBC as originally enacted in 2016 did not squarely address personal guarantors to corporate debtors. Part II of the Code governs insolvency resolution and liquidation of corporate persons; Part III governs insolvency resolution and bankruptcy of individuals and partnership firms. A personal guarantor is, definitionally, an individual, and might therefore have been expected to fall within Part III's general scheme for individual insolvency, subject to the same procedures as any other individual debtor. Parliament instead chose to treat personal guarantors to corporate debtors as a distinct sub-category, a choice that became the subject of direct constitutional challenge in Lalit Kumar Jain v. Union of India (2021). The mechanics of that choice unfolded in stages. The Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 inserted a specific definition of "personal guarantor" into section 5(22) of the Code, and correspondingly amended section 60 so that the National Company Law Tribunal — the adjudicating authority for corporate insolvency under Part II — would also serve as the adjudicating authority for insolvency proceedings against a corporate debtor's personal guarantors, rather than the Debt Recovery Tribunal that would otherwise have jurisdiction over individual insolvency under Part III (Insolvency and Bankruptcy Code, 2016, § 60(2)). Because Part III's substantive provisions had not yet been brought into force for individuals generally, the government proceeded by selective notification: on 15 November 2019, it notified specific provisions of Part III as applicable, but only insofar as they concerned personal guarantors to corporate debtors, leaving the remainder of Part III's application to other individuals and partnership firms for a later, and to date still pending, date.

This selective and staggered notification was challenged before the Supreme Court on the ground that it amounted to an impermissible and discriminatory exercise of delegated legislative power — treating one class of individual debtors (personal guarantors) differently from others (ordinary individuals and partnership firms) without a rational basis, and doing so through executive notification rather than parliamentary enactment. The Court rejected the challenge in Lalit Kumar Jain, holding that there were sound reasons for the differentiated treatment. Personal guarantors to corporate debtors, the Court reasoned, are typically directors, promoters, or others intimately connected with the management of the corporate debtor, such that their financial affairs and the corporate debtor's are practically inseparable; unifying the forum for both under the NCLT allows that tribunal to assess the whole picture of available assets, which in turn helps the committee of creditors frame a realistic resolution plan for the company informed by what can additionally be recovered from the guarantors standing behind it. The Court's reasoning here does double duty: it rejects the Article 14 challenge to the notification, and — more importantly for present purposes — it supplies the policy rationale for why guarantor liability must survive plan approval, since a forum unified for exactly this purpose would serve no function if the guarantor's exposure disappeared the moment the plan for the company was approved. Section 60(2) and (3) of the Code give this unification practical teeth. Section 60(2) permits insolvency proceedings against a personal guarantor to be filed before the same NCLT already seized of, or which has already concluded, the corporate debtor's CIRP or liquidation. Section 60(3) provides that any pending insolvency proceeding against a personal guarantor before a different forum stands transferred to the NCLT once seized of the corporate debtor's proceedings. The combined effect, confirmed judicially in the decisions discussed in Part IV, is that a financial creditor is not required to wait for the corporate debtor's CIRP to conclude, nor for a resolution

ISSN: 2178-7727

plan to be approved, before initiating an insolvency resolution process against the personal guarantor — proceedings against the two may run simultaneously or sequentially, with the sequencing driven by creditor strategy rather than by any statutory requirement that one process conclude before the other begins.

The procedural regime for personal guarantors, once triggered, follows the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019, which prescribe a summary process: a creditor's application, appointment of a resolution professional to examine the guarantor's affairs and prepare a report on the viability of a repayment plan, an interim moratorium protecting the guarantor's assets from other proceedings while that report is prepared, and final adjudication by the NCLT either approving a negotiated repayment plan or, failing agreement, proceeding to a bankruptcy process against the guarantor's estate. This structure is deliberately more summary than, and procedurally distinct from, the ordinary individual insolvency and bankruptcy process contemplated more generally for other individuals and partnership firms under Part III, whose substantive provisions remain, as of this writing, largely un-notified outside the personal-guarantor context. The Reserve Bank of India has separately issued prudential guidance recognising personal guarantors to corporate borrowers as a category requiring differentiated treatment in banks' recovery and provisioning frameworks, reinforcing at the regulatory level the same structural distinction Parliament drew at the legislative level: a personal guarantor to a corporate debtor is not, for recovery purposes, treated as an ordinary individual borrower, but as an extension of the corporate credit relationship the guarantee was written to secure. It is worth noting, finally, that this architecture was constructed against the backdrop of the pre-IBC recovery regime under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) and the Recovery of Debts and Bankruptcy Act, 1993, both of which already permitted secured creditors to proceed against guarantors' personal assets outside any insolvency framework at all. The IBC's personal guarantor regime did not, therefore, create guarantor liability where none existed before; it added a collective, insolvency-specific route to a liability creditors could in any event have pursued individually through SARFAESI enforcement or a Debt Recovery Tribunal suit. This matters for the fairness debate addressed in Part V: the IBC route is, if anything, more protective of the guarantor than the alternatives it supplements, since it substitutes an orderly, moratorium-backed collective process for what would otherwise be a race among individual secured creditors to enforce against the same personal assets.

The interplay between these regimes is not, however, purely additive. A creditor holding both a SARFAESI-enforceable security interest over a guarantor's specific assets and a right to initiate the guarantor's personal insolvency resolution process under the IBC must, in practice, choose a sequencing strategy, since initiating the latter triggers an interim moratorium under the 2019 regulations that can, depending on its scope, constrain the creditor's ability to continue independent enforcement action against the same assets under SARFAESI while the personal guarantor insolvency process is pending. Tribunals have generally resolved apparent conflicts of this kind in favour of the IBC process taking precedence once initiated, consistent with the non-obstante character of section 238 of the Code, which gives the IBC overriding effect over other laws inconsistent with it, including SARFAESI, to the extent of such inconsistency. Creditors advising on enforcement strategy against a personal guarantor therefore face a genuine choice — proceed under SARFAESI for speed and asset-specific recovery, or under the IBC's personal guarantor process for its collective, moratorium-backed reach across the guarantor's entire estate — a choice this paper does not attempt to resolve normatively but flags as a further dimension of the practical complexity surrounding guarantor liability that pure discharge doctrine, the focus of Parts IV and V, does not by itself capture. Two features of this architecture deserve emphasis before turning to the judicial decisions that interpret it. First, nothing in sections 5(22), 60, or the 2019 notification purports to address the substantive question of what a guarantor owes once the corporate debtor's resolution plan has been approved; the architecture is exclusively procedural, establishing the forum and the process without touching the underlying quantum question left to the Contract Act and to the terms of the guarantee itself. Second, and consequently, the entire edifice of forum-unification would be pointless surplusage if resolution plan approval discharged the guarantor automatically — a point the Supreme Court would make explicit two years later in Lalit Kumar Jain when it turned from the constitutional validity of the notification to the substantive question of discharge, discussed next.

DOI: 10.22178/acta.27.3.12

ISSN: 2178-7727

JUDICIAL EVOLUTION: FROM RAMAKRISHNAN TO JIWRAJIKA

The judicial treatment of personal guarantor liability under the IBC has developed through a reasonably coherent sequence of decisions, each addressing a distinct sub-question left open by the preceding one. The sequence begins with State Bank of India v. V. Ramakrishnan (2018), decided before the 2019 notification extended Part III to personal guarantors, but concerned with a closely related question: does the moratorium imposed on the corporate debtor under section 14 of the Code during CIRP — which bars, among other things, the institution or continuation of suits against the corporate debtor and the enforcement of security interests — extend by implication to protect the corporate debtor's personal guarantors from separate enforcement action? The guarantors in that case argued that permitting simultaneous enforcement against them while the corporate debtor enjoyed a moratorium would undermine the coherence of the resolution process, since a guarantor's payment could effectively subrogate creditor claims in a manner disruptive to the CIRP. The Supreme Court rejected the argument, holding that section 14's moratorium is expressly confined to the corporate debtor and does not extend to persons other than the corporate debtor, including guarantors, whose liability under section 128 of the Contract Act is independent of the principal debtor's. Ramakrishnan thus established, at the earliest stage of this doctrinal development, that the CIRP's protective umbrella over the corporate debtor was never intended to shelter guarantors — a foundation on which the later discharge cases would build.

The central holding for this paper's purposes came three years later in Lalit Kumar Jain v. Union of India (2021). Beyond upholding the 2019 notification's constitutional validity, discussed in Part III, the Court addressed head-on the guarantors' substantive argument: that because a resolution plan approved under section 31 extinguishes all claims against the corporate debtor not covered by the plan — the so-called clean slate principle established for the corporate debtor in Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta (2020) — and because the guarantor's liability under section 128 is co-extensive with the corporate debtor's, the guarantor's liability must be extinguished in parallel once the corporate debtor's is. The Court rejected this reasoning, holding that approval of a resolution plan does not automatically discharge a personal guarantor from liability under the contract of guarantee, because the guarantee is a separate contract, and the extent of the guarantor's continuing liability depends on the guarantee's own terms rather than on the fate of the corporate debtor's residual liability. The Court also drew on its earlier decision in Vijay Kumar Jain v. Standard Chartered Bank, noting that the entire rationale for allowing suspended directors — who are frequently also personal guarantors — to participate in committee of creditors meetings is that their guarantee liability persists notwithstanding the resolution process, since an approved plan can only revise the amount or extent of the creditors' exposure to the corporate debtor, not extinguish the separate obligation the director-guarantor has independently undertaken.

The Court's reliance on Vijay Kumar Jain v. Standard Chartered Bank (2019) in Lalit Kumar Jain deserves closer attention than it is usually given, because the earlier decision was not, on its face, about guarantor discharge at all. Vijay Kumar Jain concerned the narrower question of whether suspended directors of a corporate debtor — who under the Code retain a right to participate in, though not vote at, committee of creditors meetings — are entitled to copies of the resolution plans placed before the committee, so that they can meaningfully exercise that participation right. The Supreme Court held that they were, reasoning that a suspended director's interest in the plan's contents is not merely sentimental but practical: where that director has also furnished a personal guarantee for the corporate debtor's debt, the terms ultimately agreed in the plan will directly shape the residual exposure the director-guarantor faces once the corporate debtor's process concludes. Lalit Kumar Jain's invocation of this reasoning two years later is doing real analytical work: it treats the Vijay Kumar Jain Court's assumption — that a director-guarantor's personal liability survives and is shaped by, rather than extinguished by, the resolution plan — as an implicit premise already accepted by the Court before the discharge question was ever argued directly, lending the eventual holding in Lalit Kumar Jain an air of doctrinal continuity rather than novelty.

Lalit Kumar Jain left open, deliberately or otherwise, a question of quantum: if the guarantor's liability is not

DOI: 10.22178/acta.27.3.12

ISSN: 2178-7727

automatically discharged, is it automatically preserved at its full, pre-resolution amount, or does it shrink to reflect whatever the creditor actually recovers under the plan? The Court's own language — that the extent of liability "would depend on the terms of the guarantee" — signalled that this was a contract-interpretation question to be worked out case by case rather than resolved uniformly by the judgment itself. The Supreme Court returned to this terrain in Surendra B. Jiwrajika v. Omkara Assets Reconstruction Pvt. Ltd. (2023), which is generally read as confirming that the co-extensive character of guarantor liability under section 128 of the Contract Act persists notwithstanding acceptance of a resolution plan by the committee of creditors, and that creditors retain a "dual safety net" — the ability to pursue recovery both through the corporate debtor's CIRP and, separately, through the personal guarantor's own insolvency resolution process — for whatever portion of the original claim the resolution plan leaves unsatisfied.

The most recent refinements have come from cases testing the outer edges of this framework. In State Bank of India v. BRS Ventures Investments Ltd. (2024), a successful resolution applicant that had paid a settlement sum to a financial creditor under an approved resolution plan argued that this payment constituted full and final satisfaction of the underlying debt, precluding the creditor from initiating a fresh insolvency process against the corporate debtor (in that case, framed as an argument against a second CIRP rather than against a guarantor directly, but resting on the same "extinguishment by resolution" logic examined throughout this paper). The Supreme Court again rejected the extinguishment argument, holding that the categorisation of guarantor liability as itself a species of financial debt under the Code confirms that there is no legal impediment to a financial creditor pursuing both the corporate debtor and connected obligors without one process being contingent on the other's outcome, and that the resolution applicant's payment under the plan did not, without more, extinguish separate claims arising from distinct financial debts. The decision is significant for this paper because the resolution applicant in BRS Ventures also raised a subrogation argument — asserting that by paying under the plan it had stepped into the original creditor's shoes — a claim examined more fully in Part VI below.

Parallel to these Supreme Court decisions, the National Company Law Appellate Tribunal has been building a consistent line of its own on a closely related question: does approval of a resolution plan, and the consequent assignment of the corporate debtor's debt to the resolution applicant, extinguish the creditor's or the resolution applicant's right to proceed against a third party — including a personal guarantor — in respect of the same debt? In UV Asset Reconstruction Co. Ltd. v. Electrosteel Castings Ltd. (NCLAT, 2024), the Tribunal held that approval of a resolution plan does not extinguish the right to proceed against a third party, and that personal guarantors remain jointly and severally liable with the corporate debtor notwithstanding the plan's approval, unless the plan itself expressly excludes the guarantee from what is being resolved or assigned — a qualification that becomes central to the recommendations advanced in Part VII of this paper.

A further point of doctrinal consolidation worth noting is the increasing willingness of NCLTs, following this Supreme Court and NCLAT line, to admit personal guarantor insolvency applications even where the guarantor disputes the quantum claimed on the ground that the corporate debtor's resolution plan has already reduced the underlying debt. The prevailing tribunal practice, consistent with Jiwrajika, is to treat the plan's approval as relevant only to the amount of the admitted claim against the guarantor — requiring the resolution professional to credit whatever the creditor has actually recovered under the plan against the guaranteed sum — rather than as a bar to admission of the application itself. This practice operationalises, at the level of tribunal procedure, the quantum-not-discharge distinction that Part V of this paper develops as the doctrine's true resting point. Read together, these decisions trace a single, if gradually elaborated, doctrinal line: the moratorium does not protect guarantors (Ramakrishnan); plan approval does not discharge them (Lalit Kumar Jain); their liability remains co-extensive and pursuable through a dual safety net (Jiwrajika); that liability survives even a settlement payment received by the original creditor from a resolution applicant (BRS Ventures); and it survives assignment of the underlying debt unless the plan expressly says otherwise (Electrosteel). The direction of travel across nearly the entire post-2018 period has been uniformly in favour of preserving, rather than curtailing, guarantor exposure.

DOI: 10.22178/acta.27.3.12

ISSN: 2178-7727

CORE ANALYSIS: WHAT "DISCHARGE" MEANS AFTER PLAN APPROVAL

Having traced the doctrine's development, this Part isolates three propositions that, taken together, define what "discharge" actually means for a personal guarantor once a corporate debtor's resolution plan has been approved — and examines the fairness objection each invites. The first proposition is that approval under section 31 discharges only the corporate debtor's residual liability for claims not provided for in the plan; it does not touch the guarantee contract, which remains a distinct legal instrument between the guarantor and the creditor. This is the direct holding of Lalit Kumar Jain, and it rests on a formal but defensible distinction between the object of the resolution plan (the corporate debtor's obligations) and the object of the guarantee (the guarantor's independent promise). The clean-slate principle articulated in Essar Steel — that a successful resolution applicant should take over the corporate debtor free of undecided claims so as to make the business viable going forward — is, on this reading, confined in its object to claims against the corporate debtor itself, and was never intended to reach obligations owed by third parties under contracts to which the resolution applicant is a stranger.

The second proposition, less settled but strongly implied by Jiwrajika's "dual safety net" language and by ordinary contract principles, is that a guarantor's liability is not reduced pro rata merely because the resolution plan compromises the corporate debtor's admitted claim. If a creditor is owed 100 and the resolution plan pays 30 in full and final settlement of the corporate debtor's liability, the guarantor is not, without more, obliged to pay only the remaining 70 discounted by some further adjustment; rather, absent a guarantee that expressly caps liability at, or ties it to, amounts recovered from the corporate debtor, the guarantor remains liable up to the full guaranteed amount, subject only to a set-off for whatever the creditor has actually already received. This is simply the co-extensive, independent character of section 128 liability applied consistently: the guarantor never promised to pay only what the corporate debtor's insolvency happened to leave outstanding; the guarantor promised to make the creditor whole up to the guaranteed sum, and a shortfall of that magnitude persists until actually paid, from whichever source. The third proposition is that this residual liability may be pursued through the personal guarantor's own, separate insolvency resolution process under the 2019 notification and the accompanying IBBI regulations, which is procedurally and substantively independent of the corporate debtor's CIRP — meaning a guarantor may face demand, admission of default, and appointment of a resolution professional over their personal assets for a debt that, from the guarantor's perspective, has already been "resolved" once, at the corporate level.

Each proposition compounds the fairness objection this paper must confront directly. A guarantor — very often a promoter or director whose guarantee was less a bargained risk allocation than a condition the lender imposed before extending credit to the company at all — ends up facing a liability that is calculated against the original, pre-haircut debt, is not reduced by whatever the creditor recovers through the resolution plan beyond a rupee-for-rupee set-off, and is enforceable through a summary insolvency process reaching the guarantor's personal assets. Critics reasonably ask whether this converts a contract of guarantee, meant to secure a specific, bounded exposure, into something closer to an unbounded personal liability triggered by events — the committee of creditors' commercial decision to accept a steep haircut — over which the guarantor typically has limited control, particularly where the guarantor is a minority director outvoted within the corporate debtor's own management, or has already ceased to have any influence over the company by the time the CIRP commences.

The strongest response to this objection is not to deny its force but to relocate it. The outcome the critics describe is, first and foremost, a pacta sunt servanda result: section 128's default rule is co-extensive, independent liability, and Indian guarantee documentation has historically not qualified that default by capping liability or tying it to amounts recovered from the principal debtor. Where guarantees have included such caps, or have been drafted to terminate on any composition or scheme affecting the principal debtor, courts have generally given effect to those terms, consistent with the "unless the contract otherwise provides" language of section 128 itself. The fairness problem, properly understood, is therefore less a defect in the doctrine than a drafting failure — guarantors (or their counsel) have historically not negotiated for the protections the Contract Act expressly permits them to negotiate for, and it is not obviously the judiciary's role to supply by

DOI: 10.22178/acta.27.3.12

ISSN: 2178-7727

interpretation a protection the parties could have, but did not, bargain for in the instrument itself. A second, complementary answer lies in the practical reality that a guarantor's exposure is not literally uncapped: it remains bounded by the guaranteed amount stated in the guarantee document, so that a guarantor who guaranteed a specific sum is never liable beyond that sum, however severe the corporate debtor's haircut; what compounds guarantor exposure in the cases discussed above is not judicial expansion of the guarantee beyond its terms but the fact that most guarantees, as drafted, guarantee the entire principal and interest outstanding without an inbuilt reduction mechanism.

A concrete illustration sharpens the point. Suppose a bank lends 100 to a company, and a director furnishes an unqualified personal guarantee for the "entire outstanding" under the facility. The company defaults, enters CIRP, and a resolution applicant's plan is approved paying the bank 25 in full and final settlement of its admitted claim against the company, with the balance of 75 written off as against the company only. Under the analysis developed above, the director-guarantor remains liable for up to 75 — the shortfall the bank did not recover — notwithstanding that, from the company's perspective, the debt has been fully "resolved." If, instead, the guarantee had been drafted to cap the director's exposure at 40, or to state that the guarantee terminates on approval of any resolution plan providing for less than full recovery, the director's exposure would be governed by those terms instead, and the fairness concern largely dissolves. The doctrine's harshness in the unqualified case is real, but it is a harshness of default contractual allocation, not of judicial overreach — the same director could have negotiated the second scenario at the time the guarantee was executed, and the reason most did not is bargaining power, not any legal bar to doing so.

This reframing also explains why reform proposals in this space have tended to focus on disclosure and drafting practice rather than on judicial reversal of Lalit Kumar Jain. The Reserve Bank of India's guidance to banks on personal guarantees, and periodic proposals within IBBI consultation papers, have gestured toward requiring lenders to more clearly disclose to prospective guarantors the consequences of the IBC's resolution framework for their exposure — an implicit acknowledgment that the problem is one of informed consent to a known default rule, not of the default rule's substantive unfairness. Whether such disclosure requirements would meaningfully change guarantor behaviour, given that a promoter-director is rarely in a position to refuse the guarantee a lender demands as a precondition of the underlying facility, is a separate and largely empirical question this paper does not attempt to resolve, but it correctly locates the site of reform as pre-contractual disclosure and drafting rather than post-resolution judicial relief. The practical upshot is that guarantor liability after plan approval is a matter of quantum and drafting, not a matter of unsettled discharge doctrine. Section VII of this paper returns to this conclusion in proposing that resolution plans, rather than leaving quantum to future contract litigation between creditor and guarantor, should be required to state explicitly what the plan's approval does and does not do to any personal guarantees connected with the corporate debtor's debt.

SUBROGATION, DOUBLE RECOVERY, AND CREDITOR OVERREACH

The final doctrinal complication this paper addresses arises not from the guarantor's liability in the abstract but from what happens once someone actually pays. Section 140 of the Indian Contract Act, 1872 provides that where a guaranteed debt has become due, and the surety pays it, the surety is invested with all the rights the creditor had against the principal debtor. This is the ordinary law of subrogation: a surety who pays out of pocket does not simply lose that money but steps into the creditor's shoes to recover it from the principal debtor.

The IBC-specific complication is that, in a resolution scenario, it is frequently not the guarantor who pays first but the resolution applicant — the entity that takes over the corporate debtor and pays creditors a settlement sum under the approved plan. BRS Ventures (2024) put this complication squarely before the Supreme Court: the resolution applicant, having paid a settlement sum to the financial creditor under the plan, argued that it had thereby stepped into the creditor's shoes by subrogation and could accordingly resist, or itself pursue, further claims connected with the same debt, including potentially against the corporate debtor's guarantors. The argument, if accepted without qualification, would create an odd asymmetry: the very payment that Parts IV and V of this paper establish does not discharge the guarantor would nonetheless entitle the payer to inherit

DOI: 10.22178/acta.27.3.12

ISSN: 2178-7727

the creditor's claim against that same guarantor, effectively allowing the resolution applicant, rather than the original lender, to be the one who ultimately recovers from the guarantor.

The concern this raises is double recovery: if a creditor is owed 100, receives 30 under the resolution plan (in effect, paid by or through the resolution applicant), and also recovers the full 100 from the guarantor without any credit for the 30 already received, the creditor — or, if subrogation operates as the resolution applicant argued, the resolution applicant standing in the creditor's shoes — ends up with 130 for a 100 debt. No court has sanctioned this outcome, and it is not, properly understood, what the decisions discussed in Part IV actually permit. The doctrinally sound position, consistent with ordinary set-off principles and with the language used in Jiwrajika's "dual safety net" description, is that a creditor (or a subrogated payer) may pursue the guarantor for the unpaid balance of the debt — the 70 remaining after the 30 recovered under the plan — not for the debt's full original amount without adjustment. The cases considered in this paper are consistent with recovering the shortfall from a second obligor, which is unremarkable and simply reflects that guarantors and corporate debtors are, in law, separate obligors each liable for the same underlying debt up to the point it is fully satisfied; none of them licenses recovering the identical sum twice over from different sources.

Where the law remains genuinely unsettled — and where BRS Ventures leaves the door ajar rather than closed — is the mechanics of who is entitled to pursue that shortfall once a resolution applicant, rather than the original creditor, has made the plan payment. If subrogation under section 140 operates in the resolution applicant's favour upon payment, the resolution applicant (a private commercial actor that has just acquired the corporate debtor, often at a substantial discount to the debt's face value) could itself pursue the guarantor for the shortfall, potentially profiting a second time from a transaction already priced to reflect the haircut it negotiated. This raises a policy concern distinct from the guarantor's own fairness objection addressed in Part V: it is a concern about creditor (or resolution-applicant) overreach, and about whether NCLTs and NCLATs have adequate tools to police the quantum a guarantor can actually be made to pay once multiple parties — the original lender, an assignee, and a subrogated resolution applicant — might each assert some claim to the same shortfall. The IBBI's personal guarantor insolvency regulations do not squarely address this multi-party quantum problem, leaving it to be worked out, transaction by transaction, in the resolution professional's assessment of admitted claims during the guarantor's own insolvency process — an ad hoc solution to what is, at bottom, a structural gap in the statutory scheme.

A further wrinkle concerns the timing of subrogation rights relative to the guarantor's own insolvency proceeding. Section 140 of the Contract Act contemplates subrogation only once the surety has actually paid the guaranteed debt in full; a resolution applicant that has paid the creditor a settlement sum under the plan has not paid the guarantor's debt at all, but rather satisfied, in part, the corporate debtor's separate obligation. Treating that payment as triggering subrogation against the guarantor therefore requires either reading section 140 expansively to cover payment of a co-obligor's debt by a third party standing in the principal debtor's shoes, or locating a distinct doctrinal basis — such as assignment of the creditor's residual rights under the resolution plan itself — for the resolution applicant's claim. The Supreme Court in BRS Ventures did not need to resolve this squarely, since the resolution applicant's claim failed on the more basic ground that its plan payment did not extinguish the underlying debt at all; but the reasoning leaves open, for a future case presenting the issue more directly, whether a resolution applicant can ever properly claim subrogation against a guarantor absent an explicit assignment clause in the approved plan. Until that question is authoritatively settled, prudent resolution applicants seeking to preserve a subrogation-based claim against connected personal guarantors would be well advised to have the plan itself expressly assign the creditor's rights against those guarantors, rather than relying on subrogation arising by implication from the settlement payment alone — a drafting practice that would also, usefully, give effect to the disclosure-based reform this paper recommends in Part VII.

From a resolution professional's vantage point during plan formulation, three practical steps would substantially reduce the likelihood of the disputes canvassed in this Part arising at all. First, the information memorandum placed before the committee of creditors should itemise, for each financial creditor's admitted

DOI: 10.22178/acta.27.3.12

ISSN: 2178-7727

claim, whether and to what extent that claim is secured by a personal guarantee, so that the committee can factor anticipated guarantor recovery into its assessment of the resolution applicant's offer rather than treating the corporate debtor's recovery in isolation. Second, the resolution plan itself should state, claim by claim, whether personal guarantees connected with each creditor's debt are being assigned to the resolution applicant, released, or left outstanding in the original creditor's favour — the very disclosure this paper's conclusion recommends be made a matter of regulatory requirement rather than optional drafting practice. Third, where a guarantee is left outstanding, the plan should specify the amount against which any future recovery from the guarantor will be credited, foreclosing the set-off disputes that would otherwise have to be litigated years later before the guarantor's own insolvency forum.

CRITICAL ASSESSMENT: A COMPARATIVE NOTE

It is worth briefly situating the Indian position within a broader comparative frame, not because English law binds or even persuasively controls Indian courts on this question, but because the comparison sharpens what is a deliberate policy choice rather than an inevitable feature of suretyship law as such. English law has long recognised, in cases such as Moschi v. Lep Air Services Ltd [1973] AC 331, that a guarantee is a distinct contractual promise whose survival after some compromise of the principal's obligation depends closely on the guarantee's own terms and on whether the compromise operates as a true release of the principal (which may discharge the guarantor) or merely as an agreement not to sue, or a statutory compromise, that leaves the underlying obligation legally intact (which typically does not). English courts have, if anything, been somewhat more attentive than their Indian counterparts to guarding against a creditor's unilateral variance of the principal debt prejudicing a surety who did not consent to that variance — a protective instinct rooted in centuries of suretyship case law predating both jurisdictions' modern insolvency statutes.

India's position, by contrast, has evolved through a statute-specific lens focused less on general suretyship fairness and more on the particular architecture and purposes of the IBC: the Supreme Court's reasoning in Lalit Kumar Jain and its successors is markedly instrumental, emphasising that guarantor liability must survive resolution because doing so serves the Code's overriding objective of maximising creditor recovery and because Parliament structurally designed the unified NCLT forum on the premise that it would. This is a coherent and defensible position, but it is worth naming for what it is: a policy choice to subordinate general suretyship protections to insolvency-specific creditor-recovery objectives, rather than a necessary logical consequence of what a guarantee, as a species of contract, must mean. Comparative law does not show that Indian courts have "got suretyship wrong"; it shows that Indian courts have prioritised a different value — aggregate creditor recovery across a defined statutory process — over the more individualised fairness concerns that English suretyship doctrine has historically emphasised.

This framing also clarifies the limits of the fairness critique addressed in Part V. It is not that Indian doctrine is unusually harsh by the standards of suretyship law generally; English law, too, permits guarantors to be held to unqualified guarantees notwithstanding a compromise of the principal debt, provided the compromise does not amount to a release. The distinctively Indian feature is the procedural apparatus built around this substantive rule — the unified NCLT forum, the summary personal guarantor insolvency process, and the "dual safety net" that lets creditors pursue both obligors through parallel statutory insolvency proceedings rather than through ordinary civil suits. It is this procedural intensification, more than the underlying substantive rule of co-extensive liability, that has made Indian personal guarantors' post-resolution exposure a matter of practical urgency rather than theoretical interest — and it is this procedural apparatus, rather than the substantive discharge question, that future reform efforts and future litigation are most likely to target.

United States law offers a further, briefer point of contrast. American suretyship doctrine, as reflected in the Restatement (Third) of Suretyship and Guaranty, similarly treats a guarantee as an independent contract capable of surviving a compromise of the principal obligation, particularly where the guarantee expressly recites that it remains enforceable notwithstanding any bankruptcy, reorganisation, or composition affecting the principal debtor — a recital American loan documentation has long included as standard practice precisely because it forecloses the kind of discharge-by-variance argument that section 133 of the Indian Contract Act might otherwise invite. Indian bank guarantee documentation has moved in a similar direction since Lalit

ISSN: 2178-7727

Kumar Jain, with post-2021 facility agreements increasingly including express survival clauses of this kind, suggesting that Indian drafting practice is converging, through private ordering, on a position American courts reached through contract interpretation decades earlier. This convergence is a further reason to doubt that further judicial intervention on the discharge question is either likely or necessary: the market appears to be supplying, through updated drafting, the certainty that older, unqualified guarantee instruments left the courts to construct case by case.

CONCLUSION

The doctrine examined in this paper answers its central question with more consistency than commentary sometimes credits it for. From Ramakrishnan's holding that the corporate debtor's moratorium does not shelter guarantors, through Lalit Kumar Jain's holding that plan approval does not discharge them, to Jiwrajika's and BRS Ventures's confirmation that a dual safety net operates for whatever shortfall the resolution plan leaves outstanding, Indian courts have been unwavering: a personal guarantee is a distinct contract, governed by section 128 of the Indian Contract Act, whose survival does not depend on the fate of the corporate debtor's own liability under an approved resolution plan. This is not a doctrinal accident but the product of a deliberate legislative architecture — the unified NCLT forum under section 60, and the 2019 notification extending Part III specifically to personal guarantors to corporate debtors — designed from the outset to let creditors pursue guarantors as a second, statutorily sanctioned avenue of recovery once the corporate debtor's own resolution has run its course.

What this paper has sought to establish is that the genuinely unsettled ground lies elsewhere: in the quantum a guarantor owes once the principal debt has been compromised, and in the subrogation and double-recovery questions that arise once a resolution applicant, rather than the original creditor, is the one who has actually paid. Neither problem is well served by further litigation of the discharge question itself, which Lalit Kumar Jain and its successors have answered clearly enough. Both are better addressed at the point resolution plans are drafted and approved: requiring resolution plans, as a matter of IBBI regulation or NCLT practice, to state explicitly what the plan does to any personal guarantees connected with the corporate debtor's debt — whether the guarantee is assigned to the resolution applicant, released, or left outstanding in the original creditor's favour, and if outstanding, at what quantum net of amounts recovered under the plan — would resolve the Electrosteel and BRS Ventures line of disputes at their source rather than leaving guarantors, resolution applicants, and creditors to litigate quantum and subrogation years after the corporate debtor's CIRP has closed. The discharge question, in short, is settled; the accounting question is not, and it is here that both future scholarship and future regulatory attention would be best directed.

Three concrete implications follow for the actors this paper has discussed throughout. For lenders and their counsel, the safest course is to draft guarantee instruments and resolution plans that speak directly to survival, quantum, and assignment, rather than relying on the default position this paper has shown Indian courts will supply in their absence. For personal guarantors — frequently promoter-directors with limited bargaining leverage at the time a guarantee is executed — the practical lesson is less comforting but no less real: absent express contractual protection, section 128's default rule will be enforced against them at full force notwithstanding a corporate resolution that, from every other vantage point, treats the underlying debt as resolved. For the IBBI and the NCLAT, the cases discussed in Parts IV and VI supply a clear invitation to close the gap through subordinate legislation — a targeted amendment to the resolution plan regulations under section 30 of the Code requiring express treatment of connected personal guarantees — before the next generation of disputes over quantum and subrogation reaches the appellate courts by default.

DOI: 10.22178/acta.27.3.12

ACTA SCIENTIAE

ISSN: 2178-7727

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