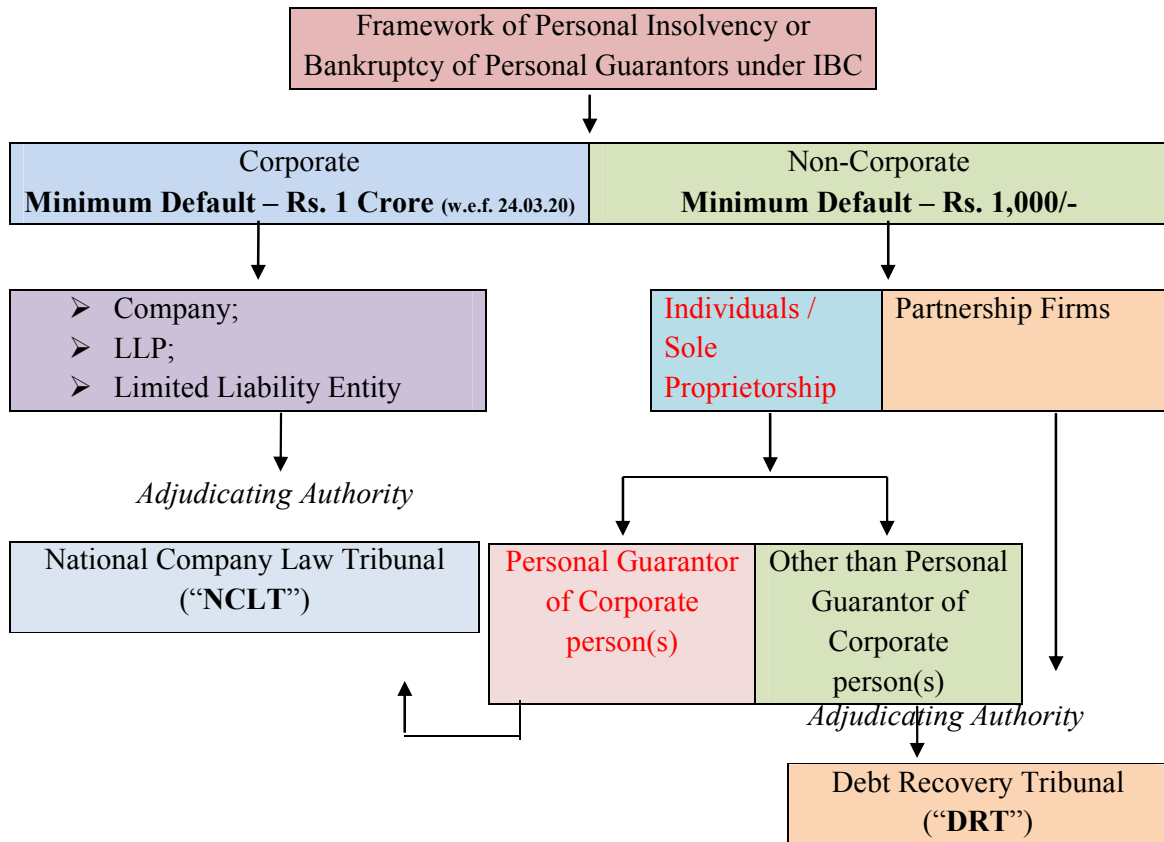
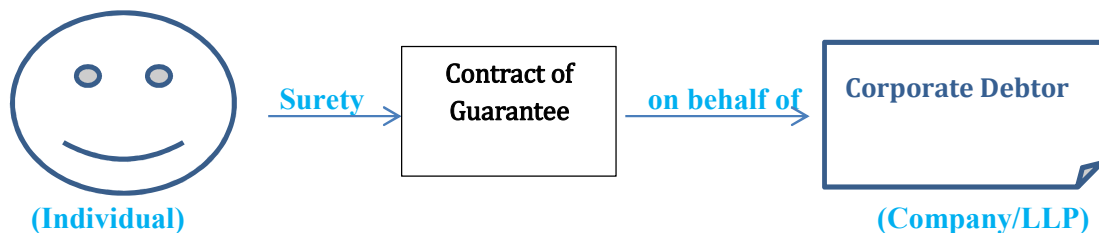


Personal Guarantors under Insolvency and Bankruptcy Code, 2016 (“IBC”)



WHO IS A PERSONAL GUARANTOR?

A personal guarantee is a promise made by a person or an organization to accept responsibility for some other party's debt .

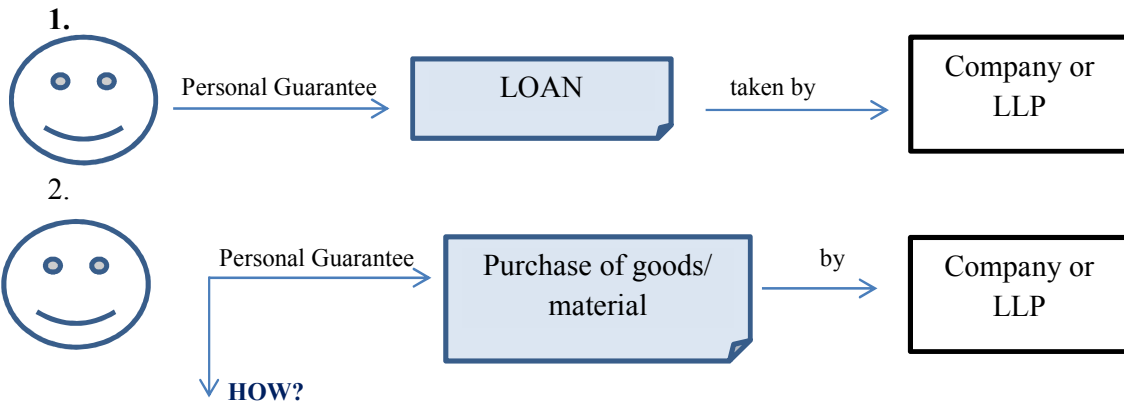


Such Guarantee given by the Individual remains unpaid either in part or in full.

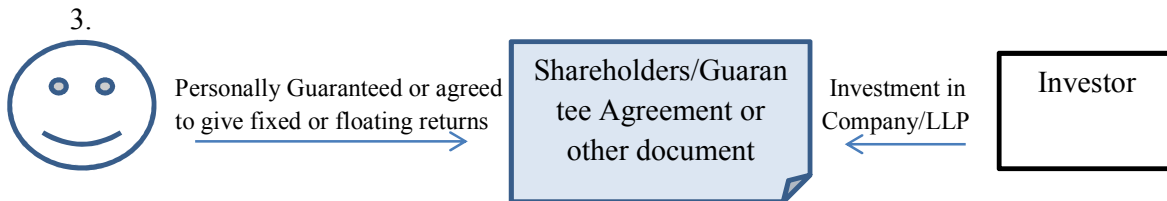
CAN PROCEEDINGS AGAINST PERSONAL GUARANTOR OF THE COMPANY BE INITIATED UNDER IBC?

YES, the provisions have been notified and now the PERSONAL INSOVENCY OR BANKRUPTCY of the GUARANTOR CAN BE INITIATED.

Situations where Personal Guarantors Insolvency or Bankruptcy could be Triggered?



YOU COULD HAVE ISSUED PERSONAL CHEQUE OR LETTER AS PAYMENT GUARANTEE.



When this Can be Triggered?

The moment other person invokes your personal guarantee and there is a payment default.

READ FOLLOWING FAQs TO KNOW FURTHER

1.	DATE OF COMMENCEMENT
	01 st December, 2019
2.	APPLICABILITY
	Insolvency Resolution Process for Personal Guarantors to Corporate Debtors
3.	WHO IS A GUARANTOR?
	A debtor who is a Personal Guarantor to a Corporate Debtor and in respect of whom <i>guarantee</i> has been invoked by the creditor and remains unpaid in full or in part”
4.	ANY ASSETS OWNED BY THE PERSONAL GUARANTOR(S) ARE SAFE DURING INSOLVENCY OR BANKRUPTCY PROCESS?
	Yes. Below listed: ➤ Unencumbered tools, books, vehicles and other equipment necessary for

	<p>personal use of debtor or for the purpose of his employment, business or vocation;</p> <ul style="list-style-type: none"> ➤ unencumbered furniture, household equipment necessary for domestic needs; ➤ Unencumbered personal ornaments upto Rs. 1 Lac which cannot be parted with, in accordance with religious usage; ➤ Unencumbered life insurance policy or pension plan; ➤ Unencumbered single dwelling unit of upto Rs. 20,00,000 in urban area and Rs. 10,00,000/- in rural areas
5.	WHAT CANNOT BE CONSIDERED AS DEBT (“EXCLUDED DEBT”)? AS SUCH, CANNOT TRIGGER INSOLVENCY OR BANKRUPTCY
	<ul style="list-style-type: none"> ➤ Fine imposed by court or tribunal; ➤ Damages for negligence, nuisance or other legal obligation; ➤ Student loan; ➤ Maintenance to any person
6.	WHAT IS CALLED AS A CONTRACT OF GUARANTEE?
	As per section 126 of Contract Act, " <i>Contract to perform the promise, or discharge the liability, of a third person in case of his default.</i> "
7.	WHO CAN MAKE APPLICATION TO INITIATE PERSONAL INSOLVENCY RESOLUTION PROCESS OF PERSONAL GUARANTORS?
	<p>a. A debtor:-</p> <ul style="list-style-type: none"> - who commits default of debt not being excluded debt; - either personally or through resolution professional. <p>b. A creditor (any person to whom debt is owed)</p> <ul style="list-style-type: none"> - Himself or jointly with other creditors; - Directly or through resolution professional; - If debtor fails to make payment within 14 days of service of notice.
8.	WHAT’S MORATORIUM? IS IT AVAILABLE TO PERSONAL GUARANTORS?
	<p>Yes. It is available:</p> <p><u>Interim Moratorium;</u> The Insolvency Process for Guarantors provides for an "<i>interim moratorium</i>" from date of <i>application</i> till its admission. It shall immediately prevent the enforcement of any debts of the Guarantor and staying any ongoing legal proceedings in relation thereto;</p> <p><u>Final Moratorium</u> The Insolvency Process for Guarantors provides for "<i>final moratorium</i>" from admission of application till 180 days or approval of Repayment Plan, whichever is earlier;</p>
9.	WHAT IS ROLE OF RESOLUTION PROFESSIONAL (“RP”)?
	The RP has to:-

	<ul style="list-style-type: none">- <i>examine the application</i>;- submit a <i>Report ("Report")</i> to the Adjudicating Authority ("AA");- recommending that the insolvency application be either <i>admitted</i> or <i>rejected</i>;- shall prepare a <i>Repayment Plan ("Plan")</i>;- on finalization of the Plan, the RP shall within 21 days of receipt of the last claim of any creditor, submit the Plan to the AA.
10.	CAN INSOLVENCY OF A PERSONAL GUARANTOR GO ON INDEPENDENTLY (WITHOUT THE CORPORATE DEBTOR) OR SIMULTANEOUSLY ALONG WITH THE CORPORATE DEBTOR?
	Yes. It is a parallel remedy available.

Please feel free to reach out to us to know more.

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Thanks and Regards
Team ~ K. Bagla & Associates
Your Compliance Partner

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