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# GUARANTEES AND INEQUALITY: RETHINKING GUARANTOR LIABILITY UNDER THE INSOLVENCY AND BANKRUPTCY CODE

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## Abstract

The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the “**IBC**” or the “**Code**”) introduced a creditor-in-control framework aimed at maximising value and ensuring time-bound resolution of insolvency. Within this framework, guarantor liability occupies a significant yet underexamined position. While the IBC does not independently create guarantor liability, it incorporates pre-existing contractual obligations, particularly those under the *Indian Contract Act, 1872*; into the insolvency process. Conceptually, guarantor liability is co-extensive with that of the principal debtor and operates as an independent and enforceable obligation. However, its application within the IBC reveals a more complex and uneven reality.

This paper examines the legal framework, judicial interpretation and practical functioning of guarantor liability under the IBC, with a particular focus on enforcement asymmetry. Through an analysis of key statutory provisions and judicial precedents, including decisions affirming the independent and concurrent liability of guarantors and the inapplicability of moratorium protections to them, the paper demonstrates how guarantees operate as parallel enforcement mechanisms alongside the corporate insolvency resolution process. While this framework enhances creditor recovery and promotes credit discipline, it does not function uniformly across creditor classes.

The study examines how financial creditors, owing to structured lending practices and access to formal guarantees, are often better positioned to utilise guarantor liability as part of their recovery strategies. In contrast, operational creditors tend to face practical and evidentiary limitations in accessing similar enforcement mechanisms. This differential access suggests that guarantor liability, while formally neutral, may operate unevenly across creditor classes within the insolvency framework.

The paper situates this within the broader objectives of the IBC, which seek to balance efficiency with equitable treatment of stakeholders. While the framework of guarantor liability aligns with principles of contractual risk allocation and credit discipline, its application raises questions regarding access, participation and the distribution of enforcement advantages. The

analysis therefore engages with whether the current structure adequately accommodates these competing considerations within the insolvency process.

Keywords: guarantee, creditor hierarchy, IBC, insolvency, enforcement asymmetry.

## **Introduction and Conceptual Framework**

The enactment of the *Insolvency and Bankruptcy Code, 2016* (hereinafter referred to as the “**IBC**” or the “**Code**”) marked a significant shift in India’s insolvency regime, replacing a fragmented and inefficient framework with a consolidated, creditor-driven system. The Code aims to ensure time-bound resolution, maximise value of assets and balance the interests of stakeholders. Central to this framework is the transition from a debtor-in-possession model to a creditor-in-control regime, where decision-making authority is vested primarily in financial creditors through the Committee of Creditors (hereinafter referred to as the “**CoC**”). This structural transformation has had far-reaching implications not only for creditor hierarchy but also for the mechanisms available for debt recovery.

Within this broader framework, guarantor liability occupies a critical yet relatively underexplored position. Guarantees have long served as an essential tool in commercial lending, enabling creditors to mitigate risk by extending liability beyond the principal debtor. The legal foundation of such liability is rooted in the *Indian Contract Act, 1872*, which defines a contract of guarantee and establishes the principle that the liability of the surety is co-extensive with that of the principal debtor unless otherwise provided by contract.<sup>1</sup> This principle ensures that the creditor may proceed against the guarantor without first exhausting remedies against the principal debtor<sup>2</sup>

The incorporation of guarantor liability into the insolvency framework under the IBC does not create a new form of obligation but rather extends the operation of existing contractual principles into a collective insolvency process. However, this transition significantly alters the functional role of guarantees. Under the IBC, guarantor liability operates not merely as a supplementary contractual remedy but as an independent and parallel enforcement mechanism. Creditors may initiate or continue proceedings against guarantors even during the pendency of the corporate insolvency resolution process (hereinafter referred to as the “**CIRP**”), thereby expanding the scope of recovery beyond the assets of the corporate debtor.

Judicial interpretation has played a crucial role in shaping this framework. The Supreme Court has clarified that the moratorium imposed under *Section 14* of the IBC does not extend

<sup>1</sup> Indian Contract Act, 1872, § 128 (India).

<sup>2</sup> Bank of Bihar v. Damodar Prasad, AIR 1969 (SC 297).

to personal guarantors, thereby allowing creditors to pursue enforcement actions concurrently.<sup>3</sup> Furthermore, it has been affirmed that the approval of a resolution plan does not discharge the liability of a guarantor, as the guarantor's obligation arises from an independent contract.<sup>4</sup> These principles collectively reinforce the position that guarantor liability under the IBC is both independent and continuing in nature.

Despite its conceptual neutrality, the practical operation of guarantor liability raises important concerns regarding equality and access. The IBC is premised on the idea of collective resolution and equitable treatment of similarly situated creditors. However, the availability and effectiveness of guarantor enforcement mechanisms are not uniformly distributed. Financial creditors, by virtue of structured lending arrangements and formal security documentation, are more likely to benefit from enforceable guarantees. In contrast, operational creditors, whose claims typically arise from the provision of goods or services; often lack access to comparable contractual safeguards.

This divergence creates an asymmetrical enforcement landscape in which certain creditors are able to utilise guarantor liability as an additional recovery tool, while others remain largely confined to the insolvency process against the principal debtor. Such asymmetry is not explicitly mandated by the statutory framework but emerges from the interaction between contractual practices, evidentiary requirements and institutional design. As a result, guarantor liability, though formally neutral, may contribute to the reinforcement of creditor hierarchy within the IBC.

The central inquiry of this paper is therefore whether guarantor liability under the IBC operates as an equitable mechanism available to all creditors, or whether it functions in a manner that disproportionately advantages certain classes of creditors. It is argued that while the recognition of guarantor liability is justified on grounds of commercial efficiency and risk allocation, its uneven accessibility undermines the broader objective of balanced stakeholder treatment. The issue, thus, lies not in the existence of guarantor liability itself, but in the structural conditions that govern its utilisation.

This section has outlined the conceptual foundation of guarantor liability and situated it within the broader framework of the IBC. The subsequent sections will examine the statutory provisions, judicial developments and practical implications of guarantor enforcement in

<sup>3</sup> State Bank of India v. V. Ramakrishnan, 17 SCC 394 (SC 2018).

<sup>4</sup> Lalit Kumar Jain v. Union of India, 9 SCC 321 (SC 2021).

greater detail, with a particular focus on the emergence of enforcement asymmetry across creditor classes.

## **Statutory Framework of Guarantor Liability under the IBC**

The IBC does not independently create the concept of guarantor liability; rather, it incorporates and operationalises pre-existing contractual obligations within the insolvency process. Guarantees continue to derive their legal validity from the *Indian Contract Act, 1872* and the IBC merely provides a procedural framework through which such liability may be enforced alongside or independent of proceedings against the principal debtor.<sup>5</sup> This structural approach reflects the legislative intent to integrate individual enforcement rights into a collective resolution mechanism without displacing foundational principles of contract law.

A key feature of the IBC is its classification of guarantors, particularly distinguishing between personal guarantors to corporate debtors and corporate guarantors. This classification is not merely descriptive but has significant procedural implications. Personal guarantors are governed under Part III of the Code, whereas corporate guarantors fall within the scope of Part II, which deals with corporate insolvency resolution.<sup>6</sup> The distinction assumes importance in determining jurisdiction, consolidation of proceedings and the manner in which insolvency processes are initiated and conducted.

*Section 60* of the IBC plays a central role in shaping the statutory framework governing guarantor liability<sup>7</sup>. *Section 60(2)* provides that where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before the National Company Law Tribunal (NCLT), an application relating to the insolvency resolution or bankruptcy of a personal guarantor shall also be filed before the same forum.<sup>8</sup> *Section 60(3)* further clarifies that any pending proceedings against a personal guarantor in other forums shall stand transferred to the NCLT.<sup>9</sup> These provisions are aimed at ensuring procedural consolidation and avoiding conflicting decisions across different adjudicatory bodies.

<sup>5</sup> Indian Contract Act, 1872, §§ 126–128 (India).

<sup>6</sup> Insolvency and Bankruptcy Code, 2016, pts. II & III (India).

<sup>7</sup> Insolvency and Bankruptcy Code, 2016, § 60 (India).

<sup>8</sup> Insolvency and Bankruptcy Code, 2016, § 60(2) (India).

<sup>9</sup> Insolvency and Bankruptcy Code, 2016, § 60(3) (India).

The legislative rationale underlying such consolidation is to facilitate a coordinated resolution process, recognising the intrinsic connection between the liabilities of the corporate debtor and its guarantors. By bringing proceedings against personal guarantors within the jurisdiction of the NCLT, the IBC seeks to create a unified forum capable of addressing interconnected financial relationships. This approach enhances efficiency and reduces the risk of fragmented adjudication.

However, the statutory framework does not extend identical treatment to corporate guarantors. Proceedings against corporate guarantors are conducted under the general provisions applicable to corporate persons, which may or may not be consolidated with the insolvency process of the principal debtor. This creates a degree of procedural divergence, as the Code does not mandate the same level of consolidation for corporate guarantors as it does for personal guarantors. The result is a framework that appears unified in principle but operates differently in practice.

Another important aspect of the statutory framework is the absence of any provision within the IBC that extinguishes guarantor liability upon the initiation or completion of insolvency proceedings against the principal debtor. The Code does not provide for automatic discharge of guarantors, thereby preserving the creditor's right to proceed independently against them. This aligns with the contractual principle that the liability of a guarantor is not contingent upon the exhaustion of remedies against the principal debtor.<sup>10</sup>

At the same time, the IBC introduces certain procedural mechanisms that indirectly affect the enforcement of guarantees. For instance, while *Section 14* imposes a moratorium on proceedings against the corporate debtor during the corporate insolvency resolution process (CIRP), the provision does not explicitly extend such protection to guarantors.<sup>11</sup> This statutory silence has been interpreted by courts to mean that guarantors remain outside the protective scope of the moratorium, thereby allowing creditors to initiate or continue proceedings against them concurrently.

The statutory design of the IBC thus reflects a careful balancing of competing considerations. On the one hand, it seeks to preserve the integrity of contractual obligations by recognising the independent liability of guarantors. On the other hand, it attempts to integrate such liability into a collective insolvency framework through mechanisms such as

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<sup>10</sup> Bank of Bihar v. Damodar Prasad, AIR 1969 (SC 297)..

<sup>11</sup> Insolvency and Bankruptcy Code, 2016, § 14 (India).

jurisdictional consolidation. However, the differential treatment of personal and corporate guarantors, coupled with the absence of uniform procedural safeguards, introduces elements of inconsistency within the framework.

This inconsistency becomes more apparent when viewed in light of creditor access to enforcement mechanisms. While the statutory provisions are formally neutral and do not differentiate between creditor classes in their application to guarantors, the practical ability to invoke these provisions varies significantly. The Code provides the legal infrastructure for enforcement, but it does not address the underlying disparities in contractual arrangements that determine whether such enforcement is available in the first place.

In this sense, the statutory framework of guarantor liability under the IBC is both enabling and limited. It enables creditors to pursue guarantors as part of a broader insolvency strategy, but it does not ensure equal accessibility to this mechanism. The framework is therefore best understood as one that formalises guarantor liability within insolvency law while leaving its practical implications to be shaped by judicial interpretation and market practices.

This section has examined the statutory foundations of guarantor liability under the IBC, highlighting both its structural coherence and its inherent limitations. The next section will analyse how judicial decisions have interpreted these provisions and further defined the scope and nature of guarantor enforcement within the insolvency regime.

### **Judicial Development and Enforcement Principles**

The evolution of guarantor liability under the IBC is not merely a product of statutory design but is significantly shaped by judicial interpretation. While the Code provides a procedural framework for insolvency resolution, courts have played a decisive role in defining the substantive contours of guarantor liability, particularly its independence, continuity and enforceability. These judicial developments have transformed guarantees from a supplementary contractual safeguard into a central enforcement mechanism within the insolvency regime.

At the core of this jurisprudence lies the reaffirmation of the principle that the liability of a guarantor is co-extensive with that of the principal debtor, unless otherwise provided by

contract.<sup>12</sup> This principle, rooted in contract law, has been consistently upheld by the Supreme Court. In *Bank of Bihar v. Damodar Prasad*, the Court held that a creditor is not bound to exhaust remedies against the principal debtor before proceeding against the guarantor.<sup>13</sup> The judgment firmly established that the liability of the guarantor is immediate and enforceable upon default, thereby granting creditors significant autonomy in choosing their mode of recovery.

This contractual foundation has been carried forward and strengthened within the insolvency framework. In *State Bank of India v. V. Ramakrishnan*, the Supreme Court addressed the scope of the moratorium under *Section 14* of the IBC and clarified that it does not extend to personal guarantors.<sup>14</sup> The Court observed that extending such protection would be contrary to the legislative intent and would dilute the rights of creditors. This interpretation effectively enables creditors to initiate or continue proceedings against guarantors even during the pendency of the corporate insolvency resolution process (CIRP), thereby establishing the principle of parallel enforcement.

The significance of this development lies in its structural impact. By allowing simultaneous proceedings, the Court has ensured that guarantor liability operates independently of the insolvency process against the corporate debtor. This creates a dual enforcement framework in which creditors are not confined to the collective insolvency mechanism but may pursue additional recovery avenues concurrently.

The independence of guarantor liability was further reinforced in *Lalit Kumar Jain v. Union of India*, where the Supreme Court upheld the validity of provisions bringing personal guarantors within the ambit of the IBC.<sup>15</sup> The Court held that the approval of a resolution plan does not discharge the liability of the guarantor, as such liability arises from an independent contract. In doing so, the Court relied on established principles of guarantee law and emphasised that a discharge of the principal debtor by operation of law does not absolve the guarantor of responsibility.

This position aligns with broader insolvency theory, which recognises that guarantees serve as an additional layer of credit protection rather than a contingent liability dependent on

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<sup>12</sup> Indian Contract Act, 1872, § 128 (India).

<sup>13</sup> *Bank of Bihar v. Damodar Prasad*, AIR 1969 (SC 297).

<sup>14</sup> *State Bank of India v. V. Ramakrishnan*, 17 SCC 394 (SC 2018).

<sup>15</sup> *Lalit Kumar Jain v. Union of India*, 9 SCC 321 (SC 2021).

the fate of the principal debtor. As noted by Vanessa Finch, “the existence of guarantees reflects a negotiated allocation of risk that insolvency law should not lightly disturb.”<sup>16</sup> By preserving guarantor liability despite resolution, the Court ensures continuity in this risk allocation framework.

Further, in *Committee of Creditors of Essar Steel India Ltd v. Satish Kumar Gupta*, while the primary issue concerned distribution, the Supreme Court reiterated the importance of preserving creditor rights in line with commercial realities.<sup>17</sup> Although not directly addressing guarantors, the judgment reinforces the broader judicial approach of prioritising economic efficiency and creditor autonomy over strict notions of parity.

These judicial pronouncements, when read together, establish three key principles governing guarantor liability under the IBC. First, guarantor liability is independent and survives the insolvency of the principal debtor. Second, the moratorium applicable to the corporate debtor does not extend to guarantors, thereby permitting parallel enforcement. Third, creditors are not required to exhaust remedies against the principal debtor before proceeding against the guarantor. These principles collectively elevate guarantor liability from a secondary remedy to a primary enforcement tool within the insolvency ecosystem.

However, while this framework enhances creditor recovery and aligns with the objective of value maximisation, it also introduces significant structural implications. The strengthened enforceability of guarantees provides certain creditors - particularly financial creditor, with an expanded set of recovery options. This is consistent with the observations of the Bankruptcy Law Reforms Committee, which emphasised that a creditor-driven model requires robust enforcement mechanisms to maintain credit discipline.<sup>18</sup>

At the same time, academic commentary has highlighted the potential risks associated with such an approach. Goode notes that while insolvency law must respect pre-insolvency entitlements, excessive emphasis on creditor autonomy may “produce outcomes that are efficient in aggregate but inequitable in distribution.”<sup>19</sup> This concern is particularly relevant in

<sup>16</sup> Vanessa Finch, *Corporate Insolvency Law: Perspectives and Principles* 322 (3d Ed. 2017).

<sup>17</sup> Comm. of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 8 SCC 531.

<sup>18</sup> Bankruptcy Law Reforms Comm., *The Report of The Bankruptcy Law Reforms Committee* Vol. I, At 73–80 (2015).

<sup>19</sup> Roy Goode, *Principles of Corporate Insolvency Law* 441 (5th Ed. 2018).

the context of guarantor liability, where the ability to invoke guarantees is not evenly distributed across creditor classes.

Thus, judicial interpretation has both clarified and expanded the scope of guarantor liability under the IBC. By affirming its independence and enforceability, the courts have strengthened the position of creditors and enhanced the efficiency of the insolvency process. However, these developments also lay the groundwork for an asymmetrical enforcement landscape, where the benefits of guarantor liability are not equally accessible to all stakeholders. This tension between efficiency and equity forms the basis for the analysis undertaken in the subsequent section.

### **Structural Asymmetry in Access and Enforcement**

While the statutory and judicial framework governing guarantor liability under the IBC appears formally neutral, its practical operation reveals a pronounced asymmetry in access and enforcement across different classes of creditors. The principles established by courts - independent liability, parallel enforcement and creditor autonomy; apply uniformly in theory. However, their benefits are unevenly distributed in practice, owing to structural differences in creditor positioning, contractual arrangements and procedural design.

A primary source of this asymmetry lies in the distinction between personal and corporate guarantors. The IBC creates a differentiated framework wherein personal guarantors to corporate debtors are brought within the jurisdiction of the National Company Law Tribunal (NCLT) through *Section 60*, enabling consolidation of proceedings.<sup>20</sup> This consolidation ensures that issues relating to the corporate debtor and its personal guarantors are adjudicated within a unified forum, promoting procedural efficiency and coordinated resolution. In contrast, corporate guarantors are treated as separate corporate persons under Part II of the Code and their insolvency proceedings are not subject to mandatory consolidation.<sup>21</sup>

This divergence results in a fragmented procedural landscape. Creditors seeking to enforce guarantees against corporate guarantors may be required to initiate independent

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<sup>20</sup> Insolvency and Bankruptcy Code, 2016, § 60(2)–(3) (India).

<sup>21</sup> Insolvency and Bankruptcy Code, 2016, pt. II (India).

proceedings, potentially before different adjudicatory forums, thereby increasing complexity and cost. By contrast, enforcement against personal guarantors benefits from procedural integration, making it more accessible and efficient. The statutory framework, therefore, does not merely classify guarantors; it creates differentiated pathways of enforcement that affect creditor strategy and outcomes.

The asymmetry becomes more pronounced when examined in the context of creditor classification. Financial creditors, by virtue of their structured lending practices, are significantly more likely to possess enforceable guarantee agreements. Such agreements are typically formalised, documented and supported by adequate security structures. As a result, financial creditors are well-positioned to invoke guarantor liability as an additional recovery mechanism alongside the corporate insolvency resolution process (CIRP).

Operational creditors, on the other hand, occupy a markedly different position. Their claims usually arise from the provision of goods, services, or employment and are seldom accompanied by formal guarantees. Even where assurances are provided, they often take the form of informal arrangements; such as letters of comfort or business assurances- which may not meet the legal requirements of an enforceable guarantee.<sup>22</sup> Consequently, operational creditors are effectively excluded from accessing guarantor liability as a viable enforcement tool.

This disparity is not explicitly mandated by the IBC but arises from the interaction between statutory design and commercial practice. The Code provides a mechanism for enforcement, but it does not ensure that all creditors are equally equipped to utilise it. In this sense, guarantor liability operates as a structurally contingent remedy- available in principle to all creditors, but in practice accessible primarily to those with the requisite contractual infrastructure.

Judicial interpretation, while expanding the scope of guarantor enforcement, has not addressed this imbalance. The Supreme Court's decisions in *State Bank of India v. V. Ramakrishnan* and *Lalit Kumar Jain v. Union of India* have strengthened creditor rights by affirming the independence and continuity of guarantor liability.<sup>23</sup> However, these rulings are framed in general terms and do not account for the differing capacities of creditor classes to

<sup>22</sup> V. Niranjan, *Enforceability of Letters of Comfort*, 22 J. Int'l Banking L. & Reg. 452 (2007).

<sup>23</sup> *State Bank of India v. V. Ramakrishnan*, (2018) 17 SCC 394; *Lalit Kumar Jain v. Union of India*, (2021) 9 SCC 321.

invoke such rights. The result is a jurisprudential framework that enhances enforcement without engaging with questions of distributive fairness.

This imbalance has significant implications for the dynamics of insolvency resolution. The ability to proceed against guarantors provides financial creditors with an additional layer of leverage, both in terms of recovery and negotiation. Creditors may use the threat or initiation of proceedings against guarantors to influence the terms of resolution plans, extract better settlements, or mitigate potential losses. This aligns with the broader creditor-in-control philosophy of the IBC but also reinforces the dominance of financial creditors within the insolvency process.

From a theoretical perspective, such asymmetry raises concerns regarding the balance between efficiency and fairness. Insolvency law traditionally aspires to ensure equitable treatment of similarly situated creditors, often reflected in the principle of *pari passu* distribution.<sup>24</sup> However, modern insolvency regimes, including the IBC, have increasingly prioritised economic efficiency and credit market stability over strict distributive equality.<sup>25</sup> As Finch observes, while departures from equality may be justified, they must remain proportionate and not undermine the legitimacy of the insolvency framework.<sup>26</sup>

In the context of guarantor liability, the concern is not merely the existence of differential outcomes, but the absence of mechanisms to mitigate structural disadvantage. Operational creditors are not only excluded from decision-making processes within the Committee of Creditors (CoC), but are also deprived of access to parallel enforcement mechanisms such as guarantees. This dual exclusion amplifies their vulnerability and limits their ability to protect their interests within the insolvency process.

Moreover, evidentiary barriers further exacerbate this asymmetry. The enforcement of a guarantee requires the existence of a legally valid and enforceable contract, supported by clear terms and conditions. Courts have consistently distinguished between binding guarantees and non-binding assurances, thereby excluding a range of informal commercial practices from the scope of enforceability.<sup>27</sup> While this approach is doctrinally sound, it disproportionately

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<sup>24</sup>Vanessa Finch, *Corporate Insolvency Law: Perspectives and Principles* 322 (3d Ed. 2017).

<sup>25</sup> Andrew Keay, *Insolvency Law: Corporate and Personal* 102 (4th Ed. 2018).

<sup>26</sup> Vanessa Finch, *Corporate Insolvency Law: Perspectives and Principles* 340 (3d Ed. 2017).

<sup>27</sup> *Kleinwort Benson Ltd. v. Malaysia Mining Corp. Bhd.*, [1989] 1 W.L.R. 379 (CA).

affects creditors who rely on relational or informal arrangements, thereby reinforcing existing inequalities.

The cumulative effect of these factors is the emergence of an asymmetrical enforcement landscape. Guarantor liability, though conceptually neutral and universally available, operates in practice as a selective advantage. It enhances the recovery prospects of certain creditors while offering little to others. This challenges the underlying premise of the IBC as a balanced and inclusive insolvency framework.

It is important to note, however, that this asymmetry is not entirely unjustified. The preferential position of financial creditors can be defended on grounds of commercial logic, risk allocation and the need to incentivise credit markets. As Goode argues, insolvency law must respect pre-insolvency entitlements and the contractual distribution of risk.<sup>28</sup> Guarantees, as negotiated instruments of risk mitigation, are a legitimate component of this framework.

The issue, therefore, is not the recognition or enforcement of guarantor liability per se, but the absence of safeguards to address its uneven impact. A more balanced approach might involve enhancing transparency in enforcement practices, strengthening protections for non-guaranteed creditors, or exploring mechanisms to broaden access to security arrangements. Such measures would not undermine the efficiency of the insolvency process but could contribute to a more equitable distribution of its benefits.

In conclusion, guarantor liability under the IBC operates at the intersection of contract law and insolvency policy. While it serves as a powerful tool for creditor recovery and supports the objective of value maximisation, its practical application reveals significant structural asymmetries. These asymmetries reflect deeper tensions within the insolvency framework—between efficiency and fairness, autonomy and inclusiveness; and underscore the need for a more nuanced approach to creditor rights and enforcement mechanisms.

## **Critical Analysis and Conclusion**

The analysis undertaken in the preceding sections demonstrates that guarantor liability under the IBC occupies a complex position at the intersection of contract law and insolvency

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<sup>28</sup> Roy Goode, *Principles of Corporate Insolvency Law* 441 (5th ed. 2018).

policy. While its conceptual foundation lies in the co-extensive and independent liability of guarantors under the *Indian Contract Act, 1872*, its operational role within the IBC extends far beyond traditional contractual enforcement. Judicial interpretation has elevated guarantor liability into a parallel and potent recovery mechanism, capable of functioning alongside and at times independently of, the corporate insolvency resolution process (CIRP). However, this transformation has also exposed structural tensions within the insolvency framework, particularly in relation to creditor equality and access to enforcement mechanisms.

From a normative perspective, the recognition and enforcement of guarantor liability are both justified and necessary. Guarantees play a critical role in credit markets by enabling risk allocation and enhancing lender confidence. As the Bankruptcy Law Reforms Committee (BLRC) observed, a creditor-driven insolvency framework depends on the availability of effective enforcement mechanisms to maintain credit discipline and ensure timely recovery.<sup>29</sup> The ability to proceed against guarantors independently of the principal debtor aligns with this objective by expanding the avenues of recovery and reducing reliance on the uncertain outcomes of insolvency proceedings.

Judicial developments have reinforced this position. The Supreme Court's decisions in *State Bank of India v. V. Ramakrishnan* and *Lalit Kumar Jain v. Union of India* confirm that guarantor liability is neither extinguished by the insolvency of the principal debtor nor suspended by the moratorium imposed under *Section 14* of the IBC.<sup>30</sup> These rulings preserve the integrity of guarantees as independent contractual obligations and prevent the erosion of creditor rights during insolvency. In doing so, they reflect a broader judicial preference for economic efficiency and the protection of commercial expectations.

However, while these justifications are compelling, they do not fully address the structural implications of guarantor liability within the IBC. As demonstrated in the previous section, the practical accessibility of guarantor enforcement is not uniform across creditor classes. Financial creditors, who operate within formal lending structures, are significantly more likely to benefit from enforceable guarantees. Operational creditors, by contrast, often

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<sup>29</sup> Bankruptcy Law Reforms Comm., *The Report of The Bankruptcy Law Reforms Committee* Vol. I, At 73–80 (2015).

<sup>30</sup> *State Bank of India v. V. Ramakrishnan*, (2018) 17 SCC 394; *Lalit Kumar Jain v. Union of India*, (2021) 9 SCC 321.

lack access to such mechanisms due to the nature of their transactions and the absence of formal security arrangements.

This disparity raises important concerns regarding fairness and inclusiveness within the insolvency framework. Insolvency law has traditionally been grounded in the principle of equitable treatment of similarly situated creditors, often expressed through the doctrine of *pari passu* distribution.<sup>31</sup> While modern regimes have moved away from strict adherence to this principle in favour of efficiency and commercial pragmatism, the legitimacy of such departures depends on their proportionality and justification.<sup>32</sup> Where certain creditors are systematically excluded from accessing key enforcement mechanisms, the balance between efficiency and fairness may be called into question.

Academic commentary supports this concern. Finch argues that while insolvency law may justifiably depart from formal equality, such departures must not undermine the overall legitimacy of the system.<sup>33</sup> Similarly, Goode cautions that excessive prioritisation of creditor autonomy can lead to outcomes that are efficient in aggregate but inequitable in distribution.<sup>34</sup> In the context of guarantor liability, these observations highlight the risk that a formally neutral mechanism may, in practice, reinforce existing hierarchies within the creditor body.

The issue is further compounded by the interaction between guarantor liability and other structural features of the IBC. Financial creditors not only have greater access to guarantees but also dominate the decision-making process through the Committee of Creditors (CoC). This dual advantage- control over both governance and enforcement; creates a concentration of power that may influence both the process and outcomes of insolvency resolution. Operational creditors, on the other hand, remain largely dependent on the decisions of the CoC and are confined to limited statutory protections.

It is important to emphasise that this analysis does not suggest that guarantor liability should be curtailed or weakened. On the contrary, its role in promoting credit discipline and facilitating recovery is essential to the functioning of the insolvency regime. The concern lies in the absence of mechanisms to address its uneven application. The current framework

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<sup>31</sup> Vanessa Finch, *Corporate Insolvency Law: Perspectives and Principles* 322 (3d Ed. 2017).

<sup>32</sup> Andrew Keay, *Insolvency Law: Corporate and Personal* 102 (4th Ed. 2018).

<sup>33</sup> Vanessa Finch, *Corporate Insolvency Law: Perspectives and Principles* 340 (3d Ed. 2017).

<sup>34</sup> Roy Goode, *Principles of Corporate Insolvency Law* 441 (5th Ed. 2018).

assumes that all creditors have equal access to contractual protections, an assumption that does not hold true in practice.

A more balanced approach would require the introduction of safeguards that enhance procedural fairness without undermining efficiency. This could include greater transparency in the invocation and enforcement of guarantees, clearer guidelines on the treatment of non-guaranteed creditors and limited judicial oversight in cases where enforcement leads to manifestly disproportionate outcomes. Such measures would not disrupt the core architecture of the IBC but could mitigate the risks associated with structural asymmetry.

Additionally, there may be scope for encouraging more inclusive contracting practices, particularly in commercial transactions involving operational creditors. While it may not be feasible to mandate guarantees in all cases, regulatory or policy interventions could promote the use of more formalised credit arrangements, thereby expanding access to enforcement mechanisms. This would align with the broader objective of strengthening creditor rights while maintaining a level playing field.

In conclusion, guarantor liability under the IBC represents both a strength and a challenge. It strengthens the insolvency framework by providing creditors with an additional and effective means of recovery, thereby supporting the goals of value maximisation and credit discipline. At the same time, its uneven accessibility highlights underlying structural imbalances within the system. The central argument of this paper is that the issue does not lie in the existence of guarantor liability itself, but in the conditions that govern its utilisation.

The IBC, in seeking to balance efficiency and fairness, has created a framework that is functionally robust but not entirely equitable. Guarantor liability exemplifies this tension. Addressing this imbalance does not require a fundamental restructuring of the Code, but rather a more nuanced approach that recognises the diversity of creditor interests and seeks to ensure that the benefits of insolvency law are more evenly distributed. Such an approach would not only enhance the legitimacy of the insolvency framework but also contribute to its long-term stability and effectiveness.