

# Lenders can invoke personal guarantees in IBC cases, says SC

Court dismisses plea against NCLAT order in SBI-Jajodia case

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**T**he Supreme Court has rejected a plea against a recent ruling by the National Company Law Appellate Tribunal (NCLAT), paving way for lenders to initiate insolvency proceedings against promoters, directors and chairman who have signed personal guarantees on corporate loans. This is irrespective of pendency of any proceeding against the corporate debtor under the Insolvency Bankruptcy Code (IBC).

The appellate tribunal had in late January ruled that initiation of corporate insolvency was not a pre-requisite to initiate insolvency process against the personal guarantor of the corporate.

The matter pertains to an appellate tribunal order in the State Bank of India versus Mahendra Kumar Jajodia case. The tribunal order was challenged in the apex court.

The SC verdict will ensure an optimal recovery for lenders and refrain them from taking steep haircuts, causing less losses to banks. It will also discourage defaulters from misutilisation of loan amount and transferring assets to related parties even before the recovery process is initiated.

Under the IBC norms, a corporate resolution process or liquidation proceeding against the corporate debtor is required to initiate pro-

## HOLDING ACCOUNTABLE

- ▶ SC says NCLAT judgment does not warrant interference
- ▶ NCLAT ruled corporate insolvency is not prerequisite for proceedings against personal guarantors
- ▶ IBC provision requires initiation of CIRP to proceed against personal guarantors
- ▶ SC ruling implies that proceedings against personal guarantors need not rely on principal debtor

▶ Move will ensure optimal recovery for lenders



ceedings against personal guarantor.

Observing past judgements and IBC provisions, the apex court stayed the NCLAT decision in early April. "We do not see any cogent reason to entertain the appeals. The judgement impugned does not warrant any interference," the apex court said in its May 6 order after hearing both the parties and solicitor general.

The order, made public on Tuesday, implies that proceedings against personal guarantors need not be dependent on the principal debtor (the company).

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## Lenders...

This means that even if a Corporate Insolvency Resolution Process (CIRP) has not been initiated, pending or concluded, a personal guarantor can be proceeded against under the Code. The judgement, according to experts, brings clarity on the ambiguous interpretation of the provision related to personal guarantee. "In several cases, recovery proceedings and later insolvency proceedings were initiated. In some cases, the application for resolution plan has not yet been approved and in some matters, the proceedings have been concluded, so despite being at different stages, the judgement ensures that liability would lie on personal guarantors," an IBC lawyer said.

This is the second judgement by the apex court making personal guarantor accountable for the recovery. Earlier in 2019, SC had passed a judgement in favour of the central

government. This was related to making personal guarantors pay dues in case debt was not repaid under the resolution plan. The recent order is expected to resolve the clash between the debt recovery tribunal and National Company Law Tribunal (NCLT).

"The Code was introduced in 2016 to initiate insolvency proceedings against the erred corporate debtor for possible revival and hence NCLT is the adjudicating authority (AA) for both corporate debtor and guarantors. But the lenders at their convenience continued to file the applications at DRT even after implementation of the code. Now with this judgement, it is clear that NCLT is the only judicial body to entertain personal guarantor applications not debt recovery tribunals," said Srinivasa Rao, (leader-risk advisory services), Nangia Andersen LLP.

## Jindal...

"As the acquisition is quite big, no bidder will be able to raise funds on their own and hence,