

# Banks rue non-inclusion of guarantor norms under IBC

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It may seem odd why not all banks are invoking personal guarantees of defaulting promoters. The reason lies in the absence of a notification on bankruptcy law provisions related to individuals, partnerships and guarantors of corporate debtors. This has become a worry for banks looking to invoke personal guarantees of promoters, bankers and legal experts told FE.

“This is a serious hindrance to the effective implementation of the Insolvency & Bankruptcy Code. The IBC provides for cases related to individual guarantors of a corporate to be heard at the NCLT, but since that section is not notified, only cases against the corporates are being heard at the NCLT,” said KP Sreejith, managing partner, IndiaLaw LLP.

“If banks want to invoke personal guarantees of promoters of defaulting companies, they will have to do so under the general laws, which is time consuming and ineffective. These cases will be dealt with in the Debt Recovery Tribunal, or in the civil courts, and it could take anywhere between 2-5 years. This is a major disadvantage for the banks, and it is a disincentive for them to invoke personal guarantees,” Sreejith added.

Bankers said conducting the insolvency resolution process against a corporate debtor before the NCLT and against the guarantors under the old recovery law is a big challenge.

“This is definitely in our wish list and we want it to happen. However, before it can be implemented, the judicial framework needs to be strengthened,” a senior official at a large state-run bank said.

Recently, the lenders to the loss-making Essar Steel had independently decided to invoke the guarantees of the promoters of Essar Steel.

A resolution professional, who is in charge of one of the 12 top accounts admitted by the NCLT, said the Insolvency & Bankruptcy Board of India is aware of the issue and they might address the problem in the near future.

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