

## INSOLVENCY RESOLUTION OF PERSONAL GUARANTORS OF CORPORATE DEBTORS



The Insolvency and Bankruptcy Code, 2016 (**Code**) has undergone several amendments since its inception in 2016. One of the amendments introduced the category of 'personal guarantors' of corporate debtors which has also been recognised by the insolvency courts.

This primer deals with the fundamental principles of the insolvency process of a personal guarantor, its related procedure and relevant law in India.

Please click [here](#) for FAQs on the Code.

1. **Who is a 'personal guarantor'?**

A 'personal guarantor' means a debtor who is a guarantor of a corporate debtor in a personal capacity and in respect of whom guarantee has been invoked by the creditor.

2. **What is the law governing insolvency resolution of personal guarantors of corporate debtors (PGIRP)?**

The Insolvency and Bankruptcy Code, 2016 (**Code**) along with the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 (**PG Insolvency Resolution Rules**) and Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 (**PG Insolvency Resolution Regulations**) govern the personal guarantors' insolvency resolution process. If such insolvency resolution process is not successful, then the personal guarantor or the creditor may initiate the bankruptcy process.

3. **Who can initiate PGIRP?**

PGIRP can be initiated by (a) the personal guarantor who commits a default or (b) the creditor individually or jointly with other creditors. The personal guarantor or the creditor may initiate the process through a resolution professional as well.

4. **Are there any restrictions on who can initiate PGIRP?**

A personal guarantor who has undergone a PGIRP during the preceding 12 months is not eligible to initiate PGIRP.

5. **When can a creditor initiate PGIRP?**

A creditor is required to issue a demand notice to the personal guarantor for payment of the debt. On failure by the personal guarantor to repay the debt within 14 days of the demand notice, the creditor may initiate a PGIRP.

6. **Can the PGIRP be initiated during the pendency of a corporate insolvency resolution process (CIRP) against the principal debtor?**

A creditor can initiate PGIRP before, during, or after the completion of the CIRP against the corporate debtor. The initiation of PGIRP after the completion of the CIRP is subject to the terms of the resolution plan.

7. **If a resolution plan with respect to the corporate debtor is approved, can PGIRP be initiated?**

The approval of a resolution plan with respect to the corporate debtor does not discharge the liability of a personal guarantor. Creditors may initiate PGIRP subject to the resolution plan not extinguishing such personal guarantors' liability.

8. **Can the PGIRP be initiated in relation to all debts?**

Currently, PGIRP can be initiated against all debts except the following: (a) fine imposed by a court or tribunal; (b) damages for negligence, nuisance or breach of a legal obligation; (c) maintenance to any person under law; and (d) student loan. The aforementioned exceptions are referred as 'excluded debts'.





9. **Who is a resolution professional (RP)?**

An RP is an insolvency professional appointed for conducting the insolvency resolution process for the personal guarantors.

10. **What is the role of an RP during the PGIRP?**

The RP is responsible to facilitate the PGIRP amongst the stakeholders which includes examination of the application submitted by the personal guarantor or creditor to initiate PGIRP, submission of report based on such examination, preparation of list of creditors and preparation of report on repayment plan.

11. **What is the forum to initiate PGIRP?**

The PGIRP can be initiated before the National Company Law Tribunal (**NCLT**). PGIRP can be initiated before the NCLT irrespective of the initiation of insolvency or liquidation process against the corporate debtor. The insolvency courts have held that the PGIRP must be conducted in the same NCLT in which the corporate debtor is undergoing a CIRP.

12. **What is interim moratorium?**

Once an application is filed for initiation of PGIRP, an interim moratorium will commence. During this period, (a) all legal actions pending in respect of any debt by the personal guarantor will be stayed, and (b) creditors will not be able to take any actions against the personal guarantor with respect to any debt.

13. **What is a moratorium?**

Once the PGIRP is admitted by the NCLT, a moratorium commences and ceases to have effect at the end of 180 days or on NCLT's order on the repayment plan, whichever is earlier. In addition to the consequences of an interim moratorium as mentioned in question 12 above, the personal guarantor is restricted from disposing off her assets and the related rights.

14. **What is a repayment plan?**

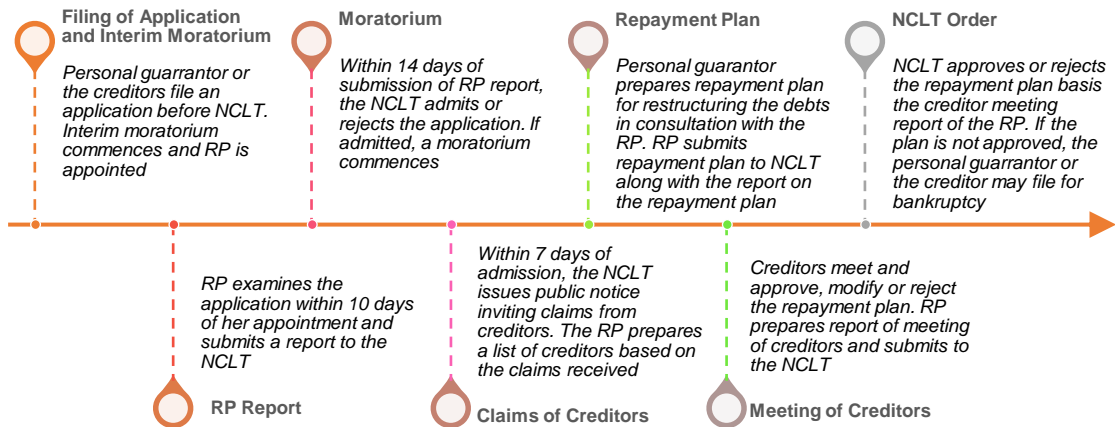
A repayment plan is a plan prepared by the personal guarantor in consultation with the RP containing a proposal to the creditors for restructuring of the debts.

15. **What is the timeline for completion of PGIRP?**

There is no fixed timeline provided for the completion of the PGIRP. However, it may be relevant to note that the moratorium ceases to have effect at end of 180 days or approval of repayment plan, whichever is earlier. Further, the RP is required to submit its report relating to the repayment plan before the completion of 120 days from the admission of initiation of PGIRP by the NCLT.

16. **What is the process of PGIRP?**

PGIRP is the process for insolvency resolution of a personal guarantor of a corporate debtor. Once an application to initiate PGIRP is filed, interim moratorium commences. If the NCLT admits the initiation of PGIRP, then a moratorium commences with respect to such personal guarantor. The RP along with the personal guarantor and the creditors work towards a repayment plan to settle the outstanding debts of the personal guarantor. Brief outline of the PGIRP is provided below:







**17. Who can participate in the meeting of creditors?**

The list of creditors prepared by the RP are entitled to participate in the meeting of creditors. Such creditor meetings are convened by the resolution professional or at the request of the creditors having at least 33% of voting share of creditors. The voting share of each creditor shall be in proportion to the debt owed to such creditor.

**18. What is the quorum of the meeting?**

The quorum of the meeting of the creditors must be creditors representing at least 33% of voting share to be present.

**19. What are the rights of a secured creditor during the PGIRP?**

A secured creditor may choose to participate and vote in the meeting of the creditors. Such secured creditor must forfeit its right to enforce the security during the period of the repayment plan. If the secured creditor does not forfeit its security interest, then the voting right exercised is limited to the unsecured part of her debt. Further, if the repayment plan affects the right of a secured creditor to enforce security which does not participate in the voting, its consent must be obtained.

**20. How is the repayment plan approved by the creditors?**

The repayment plan must be approved by the creditors by a majority of more than 75% of the value of the creditors present and voting.

**21. What must a repayment plan contain?**

The repayment plan must include (a) terms of the repayment plan and its implementation schedule; (b) the source of funds that will be used to pay resolution process costs; and (c) financing required for implementation of the repayment plan. Further, the repayment plan may also provide for satisfaction or modification of any security interest; haircuts to creditor payments; and any other matter that is required by the creditors.

22. **What happens if the repayment plan is not implemented?**

If a repayment plan has not been fully implemented, then it is deemed to have ended prematurely. In such a situation, the RP is required to submit a report to the NCLT providing the details of payments made, reasons for premature end of the repayment plan and details of creditors to whom payments were not made. The NCLT will then pass an order regarding the premature end of the repayment plan. The creditors whose debts have not been cleared will be entitled to initiate bankruptcy process.

23. **What happens in case of breach of repayment plan by the personal guarantor?**

In case the RP is of the view that the personal guarantor has failed to implement the repayment plan, the RP may issue a notice to the personal guarantor to address or explain such failure within 15 days. If the RP is satisfied with the reply of the personal guarantor, the RP will report such explanation of the failure to the creditors within 7 days. In case the RP is not satisfied with the reply, the RP may approach the NCLT for appropriate directions.

24. **Can the PGIRP be withdrawn?**

The PGIRP may be permitted to be withdrawn by the NCLT in two circumstances: (a) before the admission on a request made by the personal guarantor or the creditor (as the case may be) and (b) after admission into PGIRP on a request made by the personal guarantor or the creditor (as the case may be) subject to 90% creditors approval.



***Disclaimer: The information contained in this document is not legal advice or legal opinion. The contents recorded in the said document are for informational purposes only and should not be used for commercial purposes. Acuity Law LLP disclaims all liability to any person for any loss or damages caused by errors or omissions, whether arising from negligence, accident, or any other cause.***