

SC gives confidence boost to creditors in landmark verdict

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In a recent decision in *Dilip B Jivrajka vs Union of India*, a three-judge bench of the Supreme Court decided a batch of petitions challenging the constitutional validity of provisions under the Insolvency and Bankruptcy Code, 2016 (IBC) when it comes to the insolvency resolution of personal guarantors. The decision of the SC comes as a sequel to its earlier landmark judgment in *Lalit Kumar Jain vs Union of India*, which held that the liability of a guarantor is not discharged merely on the discharge of the corporate debtor — thus paving the way for creditors to target personal

guarantors.

It was argued that the proceedings under the IBC were invasive and highly prejudicial in nature. The petitioners argued that under the IBC, a resolution professional is appointed even before the guarantor(s) could be heard, who then seeks information from the guarantors; And, in some cases, even third parties. This power to seek information was argued to be an unfettered exercise of power.

The petitioners also drew a parallel to the provisions of the IBC, which governed the corporate debtors (entities whose debts were secured by the guarantees furnished by the guarantors). It was argued that when an insolvency petition is filed, the corporate debtors were confronted with the same and provided with an oppor-



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tunity to defend themselves before further steps were taken, which was not the case for guarantors.

After hearing from both the sides, the SC observed that the threshold limit for individuals (including personal guarantors) stood at a meagre sum of ₹1,000 or any sum specified in future by the

Central government not exceeding ₹1 lakh. It opined that the adjudicating authority would be inundated with matters if amounts of alleged defaults as low as ₹1,000 were to be judicially determined.

Even otherwise, the SC observed that the petitioners' concerns were unfounded since the resolution professional did not perform any adjudicatory functions. The resolution professional was only vested with the responsibility of collating requisite information and preparing a recommendatory report based on which the adjudicating authority was to take a final call on whether to allow or deny the admission of the insolvency petition. The apex court clarified that, at the time of deciding, the the adjudicating authority was entrusted with the duty to

hear the guarantor. Additionally, the guarantors had the opportunity to furnish such information to the resolution professional which demonstrated its stance or that the alleged debt stood repaid. Thus, SC opined that the insolvency resolution process was not undertaken in complete exclusion of the guarantor(s), but enough opportunities were provided to the guarantors to present their case.

Regarding the resolution professional's powers to collect information, it was held that they could only seek information which are necessary for examining the insolvency petition and preparing a report.

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