

IBBI and Courts Settle the Issue of Applicability of Interim Moratorium for a Personal Guarantor of a Corporate Debtor

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The Insolvency and Bankruptcy Code (Amendment) Act, 2026 introduced sub-section (4) into Section 96 of the Insolvency and Bankruptcy Code, 2016 (IBC), excluding personal guarantors to corporate debtors from the protection of the interim moratorium that automatically arises on the filing of an application to initiate insolvency resolution proceedings under Section 94 or Section 95. The amendment, which came into force on 26 May 2026, does not contain any express statement as to whether it applies to pending applications or applications filed after the introduction of Section 96(4).

This issue was considered by three different benches of the Bombay High Court and Delhi High Court: (a) a Single Judge Bench of the Hon'ble High Court of Bombay (Bombay High Court) in the matter of *Tata Capital Financial Services Ltd v Neel Motors LLP and Others*, 2026 SCC OnLine Bom 11090 (Tata Capital Financial Services); (b) a Single Judge Bench of the Hon'ble High Court of Delhi (Delhi High Court) in the matter of *IDBI Trusteeship Services Ltd v Manish Jain and Others*, 2026 SCC OnLine Del 6288; and (c) a Division Bench of the Bombay High Court in a batch of writ petitions led by *Indian Bank v Shabbir Abbas Patel and Others*, 2026 SCC OnLine Bom 12662. The three Benches held that Section 96(4) operates "retroactively" and therefore extinguishes the interim moratorium even in respect of insolvency resolution proceedings that were pending as on 26 May 2026.

The Statutory Scheme

Section 96 of the IBC falls in Part III of the Code, dealing with insolvency resolution and bankruptcy of individuals and partnership firms. It provides that once proceedings are initiated by a debtor or a creditor for insolvency resolution, an "interim - moratorium" commences automatically, staying all pending legal proceedings in respect of the debtor's debts and barring creditors from initiating fresh action. This interim moratorium continues until the Adjudicating Authority admits or rejects the application following the resolution professional's report.

The newly inserted Section 96(4) provides: "The provisions of this section shall not apply where an application is filed for initiating an insolvency resolution process in respect of a personal guarantor to a corporate debtor." A corresponding amendment was made to Section 124 by way of introduction of Section 124 (4) which deals with the effect of a bankruptcy application for individuals and partnership firms.

Judicial Precedents on Date of Applicability of Interim Moratorium

1.1 *Tata Capital Financial Services Ltd v Neel Motors LLP*

The first decision on the issue arose in the context of pre-arbitration proceedings for interim reliefs under the Arbitration and Conciliation Act, 1996 initiated by Tata Capital Financial Services Limited against guarantors of a borrower-LLP. The application for interim reliefs remained pending since 2021 because lender itself had, after filing the petition, initiated both corporate insolvency resolution process against the principal borrower and the individual guarantors, thereby triggering an interim moratorium against its own application.

Relying on the newly inserted Section 96(4), the lender argued that the moratorium had ceased to operate even in respect of existing insolvency resolution proceedings (Section 95 Applications). The guarantors resisted, contending that the phrase “*where an application is filed*” should be read prospectively, so as to apply only to Section 95 Applications or insolvency resolution proceedings filed after 26 May 2026.

A Learned Single Judge Bench of the Bombay High Court accepted the lender’s contention. Drawing on the Supreme Court’s articulation of “retroactive” operation in *Vineeta Sharma v Rakesh Sharma*, (2020) 9 SCC 1 and *Securities and Exchange Board of India v Rajkumar Nagpal*, (2023) 8 SCC 274, the Court held that a retroactive statute is distinct from a retrospective one: while a retrospective statute reaches back to undo a completed transaction or impair a vested right, a retroactive statute operates only *in futuro*, but its operation is triggered by or linked to a state of affairs or transaction that arose earlier and remains “underway” or incomplete. The Court held that the phrase “is filed” was wide enough to include applications already filed and still pending adjudication, and that reading it so did not amount to giving the amendment retrospective effect. It simply meant that, with effect from 26 May 2026, the moratorium ceased to operate prospectively in respect of such pending applications or proceedings.

The Court was conscious that the IBC proceedings in that case had themselves been initiated by the creditor and that there was no “*perverse incentive*” at play on the part of the guarantors, but held that Section 96(4), as amended, was agnostic to whether the insolvency resolution proceedings were initiated by a creditor or a debtor.

1.2 ***IDBI Trusteeship Services Ltd v Manish Jain***

The second decision arose in a civil suit filed by a debenture trustee against the personal guarantors of a corporate debtor facing CIRP. One of the guarantors (defendant no. 2) applied for dismissal of the suit / rejection of the plaint at the initial stage of the proceedings on the grounds that the suit proceedings were barred by the interim moratorium under Section 96 as the insolvency resolution proceedings were initiated in 2024, well before the 2026 amendment, and that the amendment, being silent on retrospectivity, could not divest him of a vested right conferred by the unamended provision.

A Single Judge Bench of the Delhi High Court rejected this argument, following the reasoning in *Tata Capital Financial Services*. The Court undertook a detailed examination of the legislative history, extracting substantial portions of the Select Committee Report on the Insolvency and Bankruptcy Code (Amendment) Bill, 2025. The Report recorded that the Adjudicating Authority had repeatedly flagged misuse of the interim moratorium by personal guarantors who would rush to file an application before the NCLT the moment recovery proceedings commenced against them, and that the Chairperson of the IBBI had described this as “*the number one mechanism through which thousands of crores are being siphoned off.*” The Committee concluded that “*removing this unnecessary pre-admission shield is essential,*” and recommended the amendment precisely to address this mischief.

The Delhi High Court held that this legislative material confirmed that the amendment was intended to apply to the “mischief” wherever it existed, including in pending applications or pending proceedings, and that reading Section 96(4) as applying retroactively gave full effect to that legislative intent without rendering the provision impermissibly retrospective. The Court also rejected the argument that treating the amendment as applicable to pending applications would render Section 96 “*otiose*” for personal guarantors (as opposed to personal guarantors of corporate debtors), noting that Part III of the IBC has historically been brought into force in a staggered manner for different categories of persons, and there was no bar to Section 96 being made applicable to personal guarantors generally at a future date. Consequently, the Court dismissed the application under Order VII Rule 11, holding that the interim moratorium that had earlier protected the guarantor stood vacated by the retroactive operation of Section 96(4), and the suit was not barred.

1.3 ***Indian Bank v Shabbir Abbas Patel (Division Bench)***

The most elaborate treatment of the issue came from a Division Bench of the Bombay High Court, which decided seven writ petitions on the common issues involving several banks, NBFCs, borrowers and guarantors. The Division Bench framed the question as one of general importance and devoted a substantial part of its judgment exclusively to deciding it, before applying the ruling to the facts of each petition.

The Division Bench agreed with the views expressed by the Single Judge Benches in *Tata Capital Financial Services* and *IDBI Trusteeship Services*, holding that Section 96(4) is retroactive and applies to pending applications under Sections 94 and 95. In addition to the retroactive/retrospective distinction and the Select Committee Report (both already examined by the Single Judge Benches), the Division Bench also undertook the following course to outline its position:

- (a) *First*, it examined in detail the statutory architecture between Sections 94 and 101 of the IBC, holding that the entire process up to the Adjudicating Authority's order under Section 100 is purely procedural, with no judicial determination of rights occurring until that stage. Relying on the Supreme Court's characterisation of the interim moratorium as "protective" in nature in *Dilip B. Jiwrajka v Union of India*, (2024) 5 SCC 435, and on the distinction between a "vested right" and a mere procedural protection drawn in *J.S. Yadav v State of Uttar Pradesh*, (2011) 6 SCC 570 and *Howrah Municipal Corporation v Ganges Rope Co. Ltd.*, (2004) 1 SCC 663, the Division Bench held that personal guarantors enjoying interim moratorium in a pending application had no vested right capable of resisting the retroactive operation of the amendment.
- (b) *Second*, the Division Bench invoked the Mischief Rule (Heydon's Rule), as approved in *Bengal Immunity Co. Ltd. v State of Bihar*, (1955) 1 SCC 763, and took judicial notice of a tendency on the part of guarantors to initiate insolvency resolution proceedings to trigger interim moratorium at critical junctures, such as immediately before scheduled possession of secured assets. In the facts of the individual writ petitions, the Division Bench found clear instances of such strategic and even collusive filings, and set aside restraining orders that had been passed by Debts Recovery Tribunals on the strength of the now-extinguished moratorium.

IBBI Circular

Subsequent to these judgments, the IBBI issued a circular dated 21 September 2026, referring to both the Bombay High Court's decision in *Tata Capital Financial Services Limited* and the Delhi High Court's ruling in *IDBI Trusteeship Services Limited*, and confirmed that the interim moratorium under Sections 96 and 124 of the IBC, in respect of personal guarantors to corporate debtors, ceased to operate with effect from 26 May 2026, including in respect of applications pending before the Adjudicating Authority as on that date.

Observations

The three Benches which examined the effect of the 2026 amendments to Section 96 and Section 124 expressed consistent views that Section 96(4) of the IBC, though silent on its temporal operation, applies retroactively and extinguishes the interim moratorium with effect from 26 May 2026 even in respect of insolvency resolution proceedings that were pending as on that date. This position has since been formalised by the Insolvency and Bankruptcy Board of India through a circular dated 21 September 2026, confirming that the interim moratorium under Sections 96 and 124 ceased to operate from 26 May 2026 in respect of personal guarantors, including in pending matters.

The consistency in the views expressed by the Bombay High Court and the Delhi High Court lends considerable authority to this interpretation, and creditors, whether proceeding under the Arbitration and Conciliation Act, 1996, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, or through civil suits, can now rely on this settled position to resist arguments by a personal guarantor to invoke a previously-triggered interim moratorium as a bar to pending proceedings.

- Kumar Saurabh Singh (Partner) and Ashwiji Ramaiah (Counsel)



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