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How to File Under Sections 94 and 95 of the Insolvency and Bankruptcy Code, 2016: Procedure, Limitation and Key Rulings

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Abstract

The Insolvency and Bankruptcy Code (IBC) of 2016 transformed India's insolvency framework by establishing a consolidated, time-bound process for addressing the insolvency of both corporate entities and individuals. While Part II deals with corporate insolvency, Part III of the Code extends its provisions to individuals and partnership firms, particularly personal guarantors to corporate debtors. This paper examines the procedural and legal aspects of Sections 94 and 95, which empower debtors and creditors respectively to initiate insolvency resolution before the National Company Law Tribunal (NCLT). The discussion focuses on the applicability of the Limitation Act, 1963—especially Article 137—acknowledgment of liability under Section 18, and judicial pronouncements shaping the interpretation of these provisions. Drawing on landmark rulings including Lalit Kumar Jain v. Union of India, B.K. Educational Services v. Parag Gupta & Associates, and Dena Bank v. C. Shivakumar Reddy, the paper analyses limitation issues, procedural steps, and practical challenges in implementation. The study also evaluates the effectiveness of the personal guarantor insolvency framework, highlighting procedural bottlenecks and suggesting reforms to enhance efficiency, judicial consistency, and creditor confidence within the insolvency ecosystem.

Keywords: Insolvency and Bankruptcy Code, Section 94, Section 95, Limitation Act 1963, Personal Guarantor, NCLT, Resolution Professional

INTRODUCTION

Part III of the Insolvency and Bankruptcy Code, 2016 (IBC) focuses on the insolvency resolution process for individuals, partnership firms, and personal guarantors of corporate debtors. The trigger provisions under this framework are Section 94 (application by debtor) and Section 95 (application by creditor).

The Central Government, by its notification dated 15 November 2019, brought into force the provisions applicable to personal guarantors. The Supreme Court upheld this decision in Lalit Kumar Jain v. Union of India [(2021) 9 SCC 321], affirming that applications involving personal guarantors must be filed before the National Company Law Tribunal (NCLT), rather than the Debt Recovery Tribunal (DRT). These applications follow a structured process involving a resolution professional (RP), examination by the NCLT, and potential approval of a repayment plan. However, a foundational legal question often arises: What is the applicable limitation period for filing such applications?

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LIMITATION ANALYSIS: SECTIONS 94 AND 95

Applicability of Limitation Law

The Limitation Act, 1963 applies to IBC proceedings by virtue of Section 238A. In B.K. Educational Services v. Parag Gupta & Associates [(2019) 11 SCC 633], the Supreme Court held that limitation applies from the inception to proceedings under both Part II and Part III of the Code.

Limitation Period: Article 137

Applications under Sections 94 and 95 fall under Article 137 of the Limitation Act — the residuary provision for applications not specifically covered elsewhere.

Prescribed period: 3 years Commencement: From the date when the right to apply accrues

When Does the Right Accrue?

Creditor's application under Section 95: Date of default by the debtor or guarantor. Debtor's application under Section 94: When the debtor forms the opinion that they are unable to pay debts — effectively, also the default date.

Extension of Limitation: Section 18 of the Limitation Act

An acknowledgment of liability in writing — such as a balance sheet entry, a written communication, or a proposal for one-time settlement — can restart the limitation clock under Section 18. This position has been reinforced in:- *Dena Bank v. C. Shivakumar Reddy [(2021) 10 SCC 330]- Amit Katyal v. Meera Ahuja [2022 SCC OnLine NCLAT 417]*

Condonation of Delay

Under Section 5 of the Limitation Act, delay in filing can be condoned if sufficient cause is shown. The NCLT, as a judicial authority under IBC, has jurisdiction to consider such applications.

PROCEDURAL ROADMAP: SECTIONS 94–117

The insolvency process under Sections 94 and 95 is not standalone — it forms part of a sequenced statutory scheme, beginning with the application and culminating either in a repayment plan or, failing that, bankruptcy proceedings.

- Filing the Application: Section 94 (debtor) / Section 95 (creditor) – NCLT has jurisdiction.
- Appointment of RP: NCLT refers to IBBI for RP recommendation within 7 days.
- Report by RP: Submitted within 10 days (Section 99).
- Admission or Rejection by NCLT: Within 14 days of RP's report (Section 100).
- Interim Moratorium: Starts from filing (Section 96).
- -Repayment Plan: Proposed by debtor and voted on by creditors (Sections 106–112).
- Final Orders: NCLT approval or rejection (Sections 114–117) [1].

RECENT JUDICIAL DEVELOPMENTS

- *SBI v. Mahendra Kumar Jajodia – Company Appeal (AT) (Insolvency) No. 5 of 2022, NCLAT* Upheld the maintainability of Section 95 application during ongoing CIRP. Reaffirmed 3-year limitation from date of default.
- *Amit Katyal v. Meera Ahuja – 2022 SCC OnLine NCLAT 417* Acknowledgment of debt under Section 18 extends limitation period.
- Dena Bank v. C. Shivakumar Reddy – (2021) 10 SCC 330 - *Balance sheet entries can serve as acknowledgment under Section 18.*

READY-RECKONER: INSOLVENCY PROCEEDINGS AGAINST PERSONAL GUARANTORS (SECTIONS 94 & 95, IBC)

The practical implications of Sections 94 and 95 extend far beyond their procedural prescriptions. One of the primary challenges faced by tribunals and practitioners alike is the interpretation of the default date, particularly when guarantees are invoked after prolonged financial distress. Courts have repeatedly clarified that the limitation period starts running from the date of default, but it can be reset if there is a written acknowledgment under Section 18 of the Limitation Act. However, procedural complexity arises when debtors dispute such acknowledgments or question the jurisdiction of the NCLT vis-à-vis DRT. Post the Supreme Court's decision in Lalit Kumar Jain, clarity has been achieved—applications concerning personal guarantors are to be filed before the NCLT that has jurisdiction over the corporate debtor. Nevertheless, practical hurdles persist, such as delays in RP appointment, non-standardized formats for Section 99 reports, and overlapping moratoriums (Table 1).

Table 1. Procedural Workflow for Individual/Creditor Insolvency Application under Sections 94–95 of the IBC.

S.N.	Stage / Step	Who	Section / Rule	Timeline	Key Docs / Notes
1	Identify Applicant Type – Debtor (94) or Creditor (95)	Applicant / Counsel	S.94 / 95	Pre-filing	Confirm jurisdiction (NCLT of corporate debtor)
2	Check Limitation & Acknowledgments	Counsel	S.238A / Art.137 / S.18 LA	Pre-filing	Compute 3-year period; attach Sec.18 letters or part-payments
3	Collate Documents & Proofs	Applicant	S.94 / 95	Pre-filing	KYC, PAN, bank stmts, default proof, OTS/acknowledgment
4	File Application (Serve copy to other side)	Applicant / Counsel	S.94 / 95	Day 0	Affidavit, index, Vakalatnama, proof of service
5	Interim Moratorium starts	Statutory	S.96	Day 0	Automatic – pause on recovery actions
6	NCLT seeks RP from IBBI	NCLT / IBBI	S.97–98	Within 7 days	Follow up registry / IBBI nomination
7	RP verifies & submits report	RP	S.99	10 days post-appointment	Admit / reject recommendation
8	NCLT Admission / Rejection Order	NCLT	S.100	Within 14 days of RP report	Admission order starts formal resolution
9	Repayment Plan Draft & Creditors' Meeting	Debtor + RP	S.106–112	As directed	Plan, SoA, minutes, RP report
10	Final Order – Plan Approved / Rejected	NCLT	S.114–117	As per Code	Order binding all creditors; else bankruptcy follows

The practical implications of Sections 94 and 95 extend far beyond their procedural prescriptions. One of the primary challenges faced by tribunals and practitioners alike is the interpretation of the default date, particularly when guarantees are invoked after prolonged financial distress. The judiciary has consistently held that the limitation clock begins from the date of default and may be revived by written acknowledgment under Section 18 of the Limitation Act. However, procedural complexity arises when debtors dispute such acknowledgments or question the jurisdiction of the NCLT vis-à-vis DRT. Post the Supreme Court's decision in Lalit Kumar Jain, clarity has been achieved—applications concerning personal guarantors are to be filed before the NCLT that has jurisdiction over the corporate debtor. Nevertheless, practical hurdles persist, such as delays in RP appointment, non-standardized formats for Section 99 reports, and overlapping moratoriums [2–8].

CONCLUSION

The insolvency resolution mechanism under Sections 94 and 95 of the Insolvency and Bankruptcy Code, 2016, represents a significant evolution in India's treatment of personal insolvency, particularly in relation to personal guarantors of corporate debtors. These provisions establish a comprehensive and time-bound framework that allows for judicially supervised resolution, commencing with the filing of an application and culminating in either the approval of a repayment plan or the initiation of bankruptcy proceedings.

The application of the Limitation Act, 1963—particularly Article 137—has been firmly settled through judicial pronouncements, with courts reiterating that limitation principles apply uniformly across proceedings under both Parts II and III of the Code. Notably, the scope of Section 18 of the Limitation Act in extending limitation periods has been clarified through consistent jurisprudence, providing important guidance to litigants and adjudicating authorities alike. That said, while the statutory framework is robust, its effectiveness is contingent on institutional capacity and procedural adherence. The growing volume of cases before the NCLT and the resource-intensive nature of individual insolvency proceedings pose practical challenges to meeting the strict timelines envisaged under the Code.

To ensure that the personal insolvency regime under the IBC functions as intended, it is imperative that adjudicating authorities are adequately equipped, procedural efficiencies are continually enhanced, and jurisprudential clarity is maintained. A consistent and timely application of these provisions will go a long way in strengthening creditor confidence and advancing the Code's overarching objective of equitable and efficient insolvency resolution.

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4. Amit Katyal v. Meera Ahuja, 2022 SCC OnLine NCLAT 417.
5. SBI v. Mahendra Kumar Jajodia, Company Appeal (AT) (Insolvency) No. 5 of 2022.
6. Sections 94 to 117 of the Insolvency and Bankruptcy Code, 2016.
7. Section 18 and Article 137 of the Limitation Act, 1963.
8. Section 238A of the Insolvency and Bankruptcy Code, 2016.