



## Supreme Court Upholds Key Provisions of IBC

**For Prelims:** Supreme Court Upholds Key Provisions of IBC, [Insolvency and Bankruptcy Code \(IBC\)](#), [Articles 21](#), Personal Guarantor.

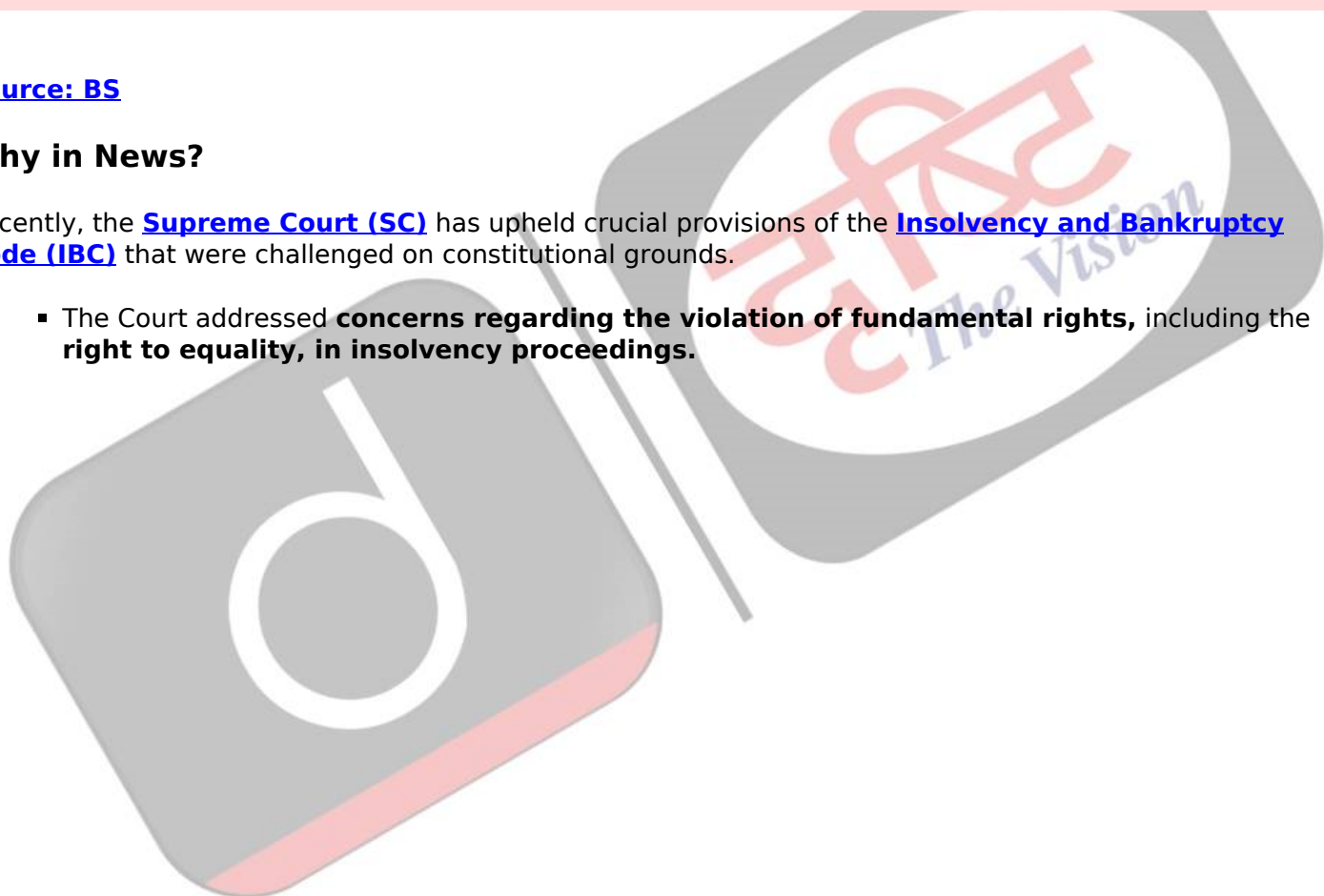
**For Mains:** Supreme Court Upholds Key Provisions of IBC, Indian Economy and issues relating to planning, mobilization of resources, growth, development and employment.

[Source: BS](#)

### Why in News?

Recently, the [Supreme Court \(SC\)](#) has upheld crucial provisions of the [Insolvency and Bankruptcy Code \(IBC\)](#) that were challenged on constitutional grounds.

- The Court addressed **concerns regarding the violation of fundamental rights**, including the **right to equality, in insolvency proceedings**.



### What's the case

- ▶ Petitioners had challenged the constitutional validity of IBC provisions
- ▶ Personal guarantors were not given an opportunity to present their case or contend the initiation of insolvency process, they said

### SC ruling

- ▶ IBC does not suffer from the vices of manifest arbitrariness
- ▶ RP not intended to perform an adjudicatory function

### Impact of judgment

- ▶ Relief for lenders
- ▶ Setback for promoters who have guaranteed debt
- ▶ Experts say IBC timelines would be met

## What are the Concerns Raised by the Petitions and SC's Observations?

### ▪ Petitioners Arguments:

- The main issue was that the **personal guarantor was not given an opportunity to present their case** or contend the initiation of the insolvency resolution process or have a say in the appointment of the **RPs (Resolution Professionals)**.
  - A personal guarantor is an individual who **provides a personal guarantee for a loan or financial obligation** undertaken by another party. When someone borrows money or obtains credit, a lender may require a personal guarantee as a form of security.
- The petitioner argued that the challenged parts of the **Insolvency and Bankruptcy Code (IBC)** didn't follow fair principles (natural justice) and affected fundamental rights like the right to livelihood, trade, and equality under the Constitution's **Articles 21, 19(1)(g), and 14**.

### ▪ Court's Observation:

- **Constitutionality and Personal Guarantors:** The Court upheld the constitutionality of key provisions of the IBC, including allowing insolvency proceedings against personal guarantors.
  - The court ruled that IBC is not retroactive and held that Sections 95 to 100 cannot be deemed unconstitutional simply because they **do not give personal guarantors a chance to be heard before creditors' insolvency petitions**.
  - It ruled against claims that these provisions lacked fairness or violated natural justice, stating that fairness should be assessed case by case.

### ▪ Role of Resolution Professionals (RPs):

The Court rejected the idea of involving **judicial intervention before appointing RPs**, stating that adding an adjudicatory role before a certain section would disrupt the IBC's set timelines.

- It clarified that RPs are facilitators who gather information and make recommendations, not decision-makers.

- **Moratorium Provisions:** The Court agreed that these provisions primarily protect **debts rather than debtors**.
  - It supported the legislature's decisions on when the moratorium should apply and highlighted the differences between **individual debtors, partnerships**, and corporate debtors in the IBC.

## What can be the Potential Impact of SC's Judgement on IBC?

- **Creditor Confidence:**
  - The affirmation of the IBC's provisions, particularly regarding personal guarantors, may boost creditor confidence.
  - Creditors will feel **more secure about initiating insolvency proceedings against guarantors**, potentially leading to a more assertive approach in recovering debts.
- **Clarity and Predictability:**
  - The clarity provided by the Court's ruling could enhance predictability within the insolvency framework. This could **encourage smoother and more efficient resolution processes**, reducing uncertainties that might have previously hindered creditor actions.
- **Promoter Caution:**
  - The ruling might instill caution among promoters and **individuals providing personal guarantees for corporate debts**.
  - Promoters, even of solvent companies, may become **more circumspect about extending personal guarantees** due to the potential risks highlighted by this judgement.

## What is Insolvency & Bankruptcy Code, 2016?

- The Government implemented the **IBC, 2016** to consolidate all laws related to insolvency and bankruptcy and to **tackle Non-Performing Assets (NPA)**, a problem that has been pulling the Indian economy down for years.
  - Insolvency is a situation where **individuals or companies are unable to repay their outstanding debt**.
  - Bankruptcy, on the other hand, is a **situation whereby a court of competent jurisdiction has declared a person or other entity insolvent**, having passed appropriate orders to resolve it and protect the rights of the creditors. It is a legal declaration of one's inability to pay off debts.
- The IBC Covers all individuals, companies, **Limited Liability Partnerships (LLPs) and partnership firms**.
  - **Adjudicating authority:**
    - National Company Law Tribunal (NCLT) for companies and LLPs.
    - Debt Recovery Tribunal (DRT) for individuals and partnership firms.

### Legal Insights:

Read comprehensively about [Important Institutions:](#)

- [Debt Recovery Tribunal](#)
- [National Company Law Tribunal](#)

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## UPSC Civil Services Examination, Previous Year Question (PYQ)

**Q.** Which of the following statements best describes the term 'Scheme for Sustainable Structuring of Stressed Assets (S4A)', recently seen in the news? **(2017)**

**(a)** It is a procedure for considering ecological costs of developmental schemes formulated by the Government.

- (b)** It is a scheme of RBI for reworking the financial structure of big corporate entities facing genuine difficulties.
- (c)** It is a disinvestment plan of the Government regarding Central Public Sector Undertakings.
- (d)** It is an important provision in 'The Insolvency and Bankruptcy Code' recently implemented by the Government.

**Ans: (b)**

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