

# Demystifying Insolvency and Bankruptcy Code - Become A Domain Expert

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ASHISH MAKHIJA, ADVOCATE  
B.COM (HONS.), LLB, LLM (USA),  
LLM (INDIA), FCA, FCMA  
MANAGING ATTORNEY  
AMC LAW FIRM

# Insolvency & Bankruptcy Code, 2016- An Overview



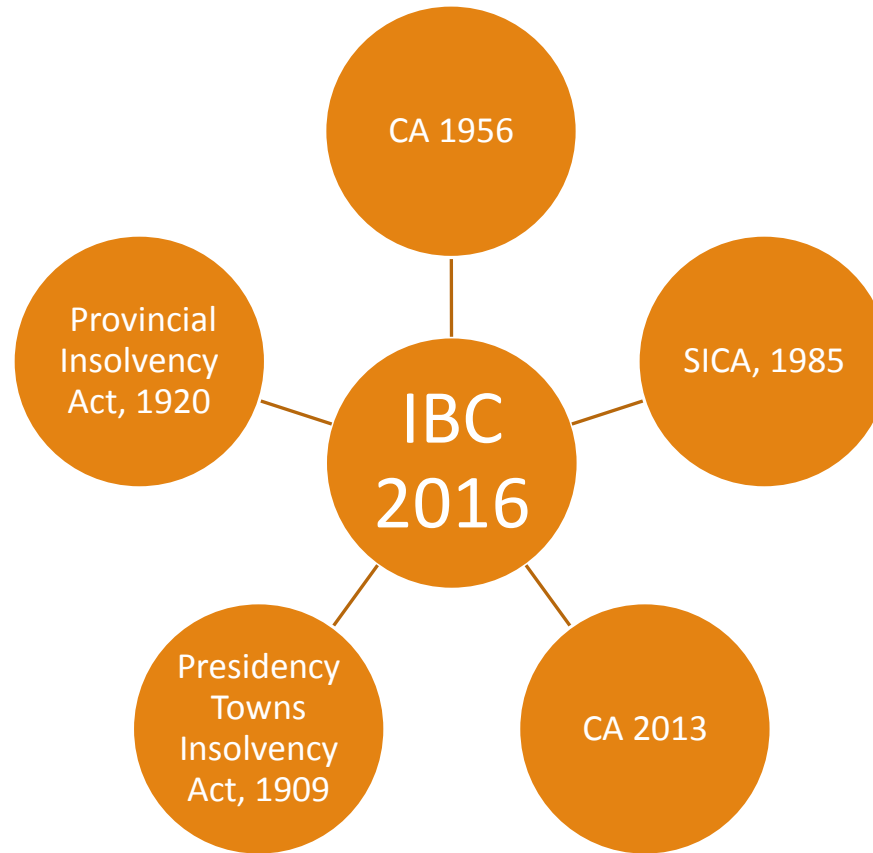
# Corporate Insolvency In India

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- ❖ **1956** – Companies Act, 1956
- ❖ **1985** – Sick Industrial Companies (Special Provisions) Act – SICA
- ❖ **1993** – Recovery of Debts Due to Bank and Financial Institutions Act – RDDB
- ❖ **2002** – Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act – SARFAESI
- ❖ **2013** – Companies Act – Chapter XIX & XX
- ❖ **2016** – The Insolvency and Bankruptcy Code – IBC

# Single Law for Insolvency and Bankruptcy

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# Background

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| Date        | Event  |
|-------------|--|
| 5 May 2016  | Passed by Lok Sabha                                      |
| 11 May 2016 | Passed by Rajya Sabha                                    |
| 28 May 2016 | Assent by President                                      |
| 6 June 2016 | Constitution of NCLT                                     |
| 5 Aug 2016  | Provisions relating to establishment of IBBI notified    |
| 1 Oct 2016  | IBBI established   |
| 15 Nov 2016 | Provisions relating to Insolvency Professionals notified |

# Background

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| Date                        | Event   |
|-----------------------------|---|
| 23 Nov 2016                 | IBBI (Insolvency Professionals) Regulations, 2016 notified w.e.f 29 Nov 2016                    |
| 11 May 2016                 | Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 w.e.f. 1 Dec 2016 |
| 1 Dec 2016                  | Provisions relating to corporate insolvency resolution notified                                 |
| 1 <sup>st</sup> April, 2017 | Provisions relating to liquidation notified   |
|                             |   |
|                             |   |

# Understanding IBC

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## Corporate Person

- Insolvency Resolution
- Liquidation

## Individuals & Partnership

- Fresh Start
- Insolvency Resolution
- Bankruptcy

## Authorities

- Adjudicating Authorities
- IBBI
- Insolvency Professionals
- Information Utilities

# Liquidator Fee

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## ❖ On Realisation

| Amount Realised | First 6 Months | 6 months -1 year (75%) | 1 Year – 2 Years (50%) | Beyond 2 years (40%) |
|-----------------|----------------|------------------------|------------------------|----------------------|
| First 1 Crore   | 5.00           | 3.75                   | 2.50                   | 1.88                 |
| 1 -10 Crores    | 3.75           | 2.80                   | 1.88                   | 1.41                 |
| 10 – 50 Crores  | 2.50           | 1.88                   | 1.25                   | 0.94                 |
| 50 – 100 Crores | 1.25           | 0.94                   | 0.68                   | 0.51                 |
| Over 100 Crores | 0.25           | 0.19                   | 0.13                   | 0.10                 |



# Liquidator Fee

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## ❖ On Distribution

| Amount Realised | First 6 Months | 6 months -1 year | 1 Year – 2 Years | Beyond 2 years |
|-----------------|----------------|------------------|------------------|----------------|
| First 1 Crore   | 2.50           | 1.88             | 1.25             | 0.94           |
| 1 -10 Crores    | 1.88           | 1.41             | 0.94             | 0.71           |
| 10 – 50 Crores  | 1.25           | 0.94             | 0.63             | 0.47           |
| 50 – 100 Crores | 0.68           | 0.51             | 0.34             | 0.25           |
| Over 100 Crores | 0.13           | 0.10             | 0.06             | 0.05           |

# Liquidator Fee

## ❖ On Realisation – 50 Crores

| Amount Realised | First 6 Months          | 6 months -1 year (75%)    | 1 Year – 2 Years (50%) | Beyond 2 years (40%)      |
|-----------------|-------------------------|---------------------------|------------------------|---------------------------|
| First 1 Crore   | 5 lacs                  | 3.75 lacs                 | 2.50 lacs              | 1.88 lacs                 |
| 1 -10 Crores    | 33.75 lacs              | 25.20 lacs                | 16.92 lacs             | 12.69 lacs                |
| 10 – 50 Crores  | 100 lacs                | 75.20 lacs                | 62.50 lacs             | 37.60 lacs                |
| 50 – 100 Crores | 62.50 lacs              | 47 lacs                   | 34 lacs                | 25.50 lacs                |
| <b>Total</b>    | <b>201.25 lacs (2%)</b> | <b>151.15 lacs (1.5%)</b> | <b>115.92 (1.16%)</b>  | <b>77.67 lacs (0.78%)</b> |
| Over 100 Crores | 0.25                    | 0.19                      | 0.13                   | 0.10                      |

# Liquidator Fee

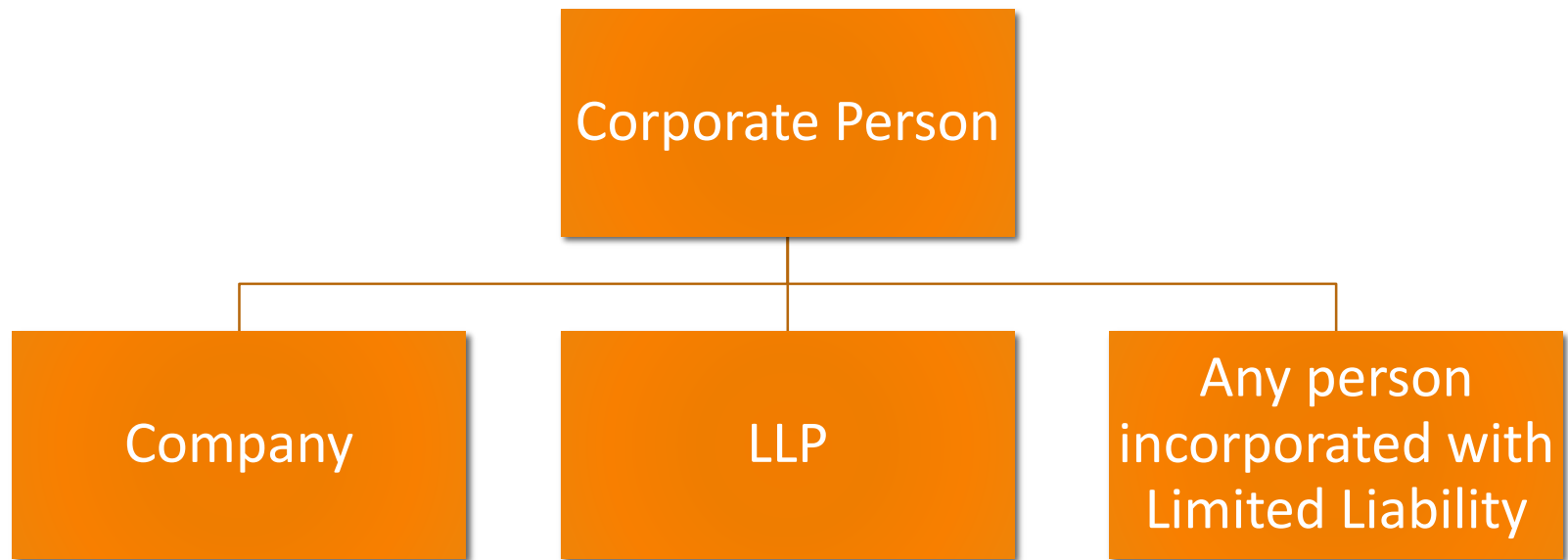
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## ❖ On Distribution

| Amount Realised | First 6 Months            | 6 months -1 year              | 1 Year – 2 Years              | Beyond 2 years                |
|-----------------|---------------------------|-------------------------------|-------------------------------|-------------------------------|
| First 1 Crore   | 2.50 lacs                 | 1.88 lacs                     | 1.25 lacs                     | 0.94 lacs                     |
| 1 -10 Crores    | 16.92 lacs                | 12.69 lacs                    | 8.46 lacs                     | 6.39 lacs                     |
| 10 – 50 Crores  | 62.50 lacs                | 37.60 lacs                    | 25.20 lacs                    | 18.80 lacs                    |
| 50 – 100 Crores | 34 lacs                   | 25.50 lacs                    | 17 lacs                       | 12.50 lacs                    |
| <b>Total</b>    | <b>115.92<br/>(1.16%)</b> | <b>77.67 lacs<br/>(0.78%)</b> | <b>51.91 lacs<br/>(0.52%)</b> | <b>38.63 lacs<br/>(0.39%)</b> |
| Over 100 Crores | 0.13                      | 0.10                          | 0.06                          | 0.05                          |

# Corporate Person

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# Understanding Layout

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- ❖ Divided in to V Parts containing **255 Sections and 11 Schedules**
- ❖ Part – I - Preliminary – Sections 1 to 3
- ❖ Part – II - Insolvency Resolution and Liquidation for Corporate Persons
  - Chapter I – Preliminary – Sections 4 & 5
  - Chapter II – Corporate Insolvency Resolution Process – Sections 6 to 32
  - Chapter III – Liquidation Process – Sections 33 to 54
  - Chapter IV – Fast Track Corporate Insolvency Resolution Process – Sections 55 to 58

# Understanding Layout

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- Chapter V – Voluntary Liquidation of Corporate Persons – Section 59
- Chapter VI – Adjudicating Authority for Corporate Persons – Sections 60 to 67
- Chapter VII – Offences and Penalties – Sections 68 to 77
- ❖ Part III - Insolvency Resolution and Bankruptcy for Individuals and Partnership Firm
  - Chapter I – Preliminary – Sections 78 & 79

# Understanding Layout

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- Chapter I – Preliminary – Sections 78 & 79
- Chapter II – Fresh Start Process – Sections 80 to 93
- Chapter III – Insolvency Resolution Process – Sections 94 to 120
- Chapter IV – Bankruptcy Order for Individuals and Partnership Firms – Sections 121 to 148
- Chapter V – Administration and Distribution of the Estate of the Bankrupt – Sections 149 to 178
- Chapter VI – Adjudicating Authority for Individuals and Partnership Firms – Sections 179 to 183
- Chapter VII – Offences and Penalties – Sections 184 to 187

# Understanding Layout

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- ❖ Part IV - Regulation of Insolvency Professionals, Agencies and Information Utilities
  - Chapter I – The Insolvency and Bankruptcy Board of India – Sections 188 to 195
  - Chapter II – Powers and Functions of the Board – Sections 196 to 198
  - Chapter III – Insolvency Professional Agencies – Sections 199 to 205
  - Chapter IV – Insolvency Professionals – Sections 206 to 208
  - Chapter V – Information Utilities – Sections 209 to 216



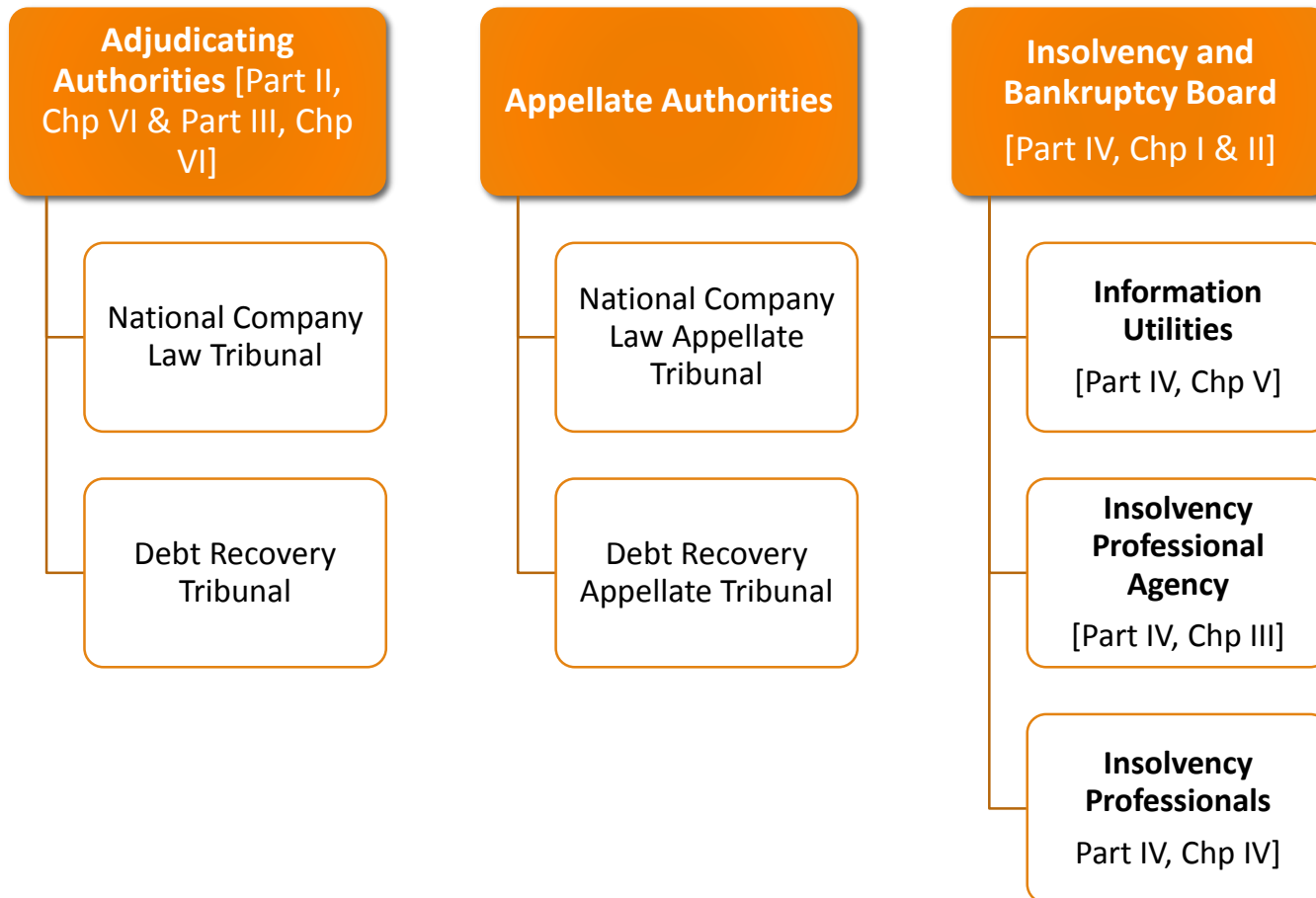
# Understanding Layout

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- Chapter VI – Inspection and Investigation – Sections 217 to 220
- Chapter VII– Finance, Accounts and Audit – Sections 221 to 223
- ❖ Part IV – Miscellaneous – Sections 224 to 255

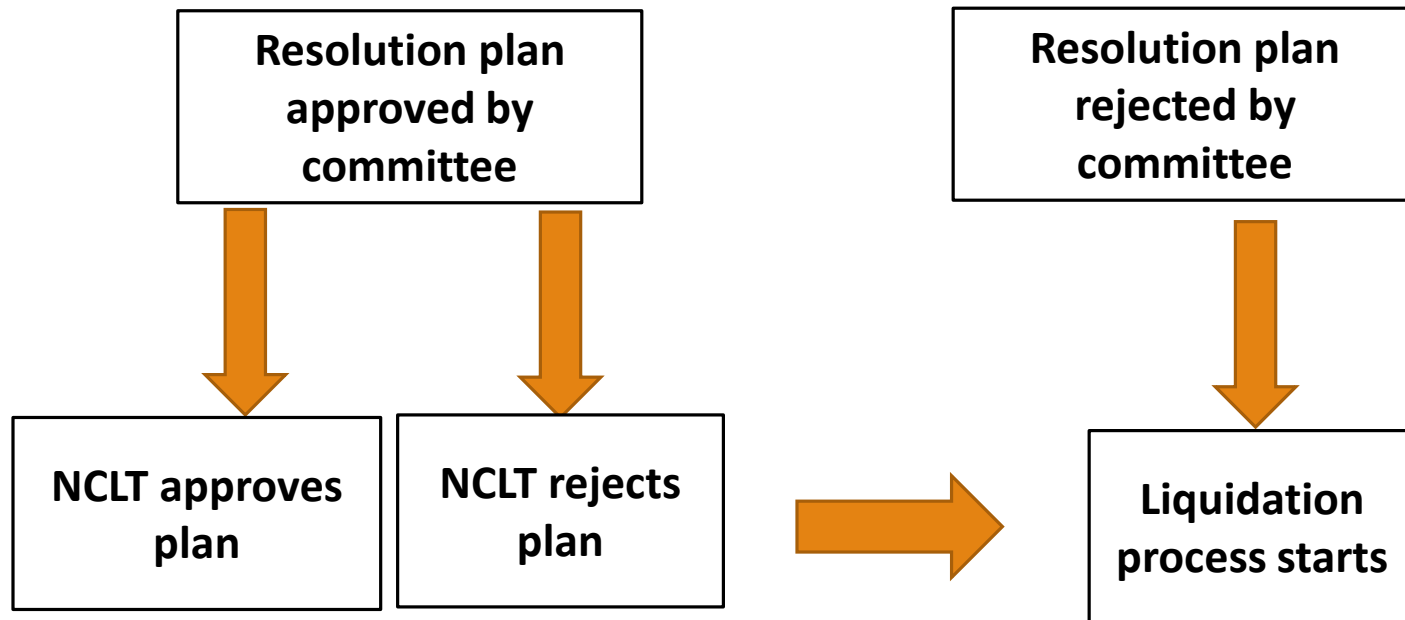
# Institutional Infrastructure

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# Corporate Insolvency Resolution Process

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# Steps in Insolvency Resolution

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Filing of Application by Financial Creditor or Operational Creditor or Corporate Debtor



Admission or Rejection by NCLT (14 days)



Appointment of Interim Insolvency Resolution Professional (10 days)



Appointment of Committee of Creditors (30 days of appointment of Interim Resolution Professional)

# Steps in Insolvency Resolution

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To hold first meeting of Committee of Creditors (within 7 days)

Committee of Creditors may replace Insolvency Resolution Professional

Preparation of Information Memorandum

Submission of Resolution Plan to Committee of Creditors by Corporate Applicant

# Steps in Insolvency Resolution

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Approval of Resolution Plan by  
Committee of Creditors (75%)



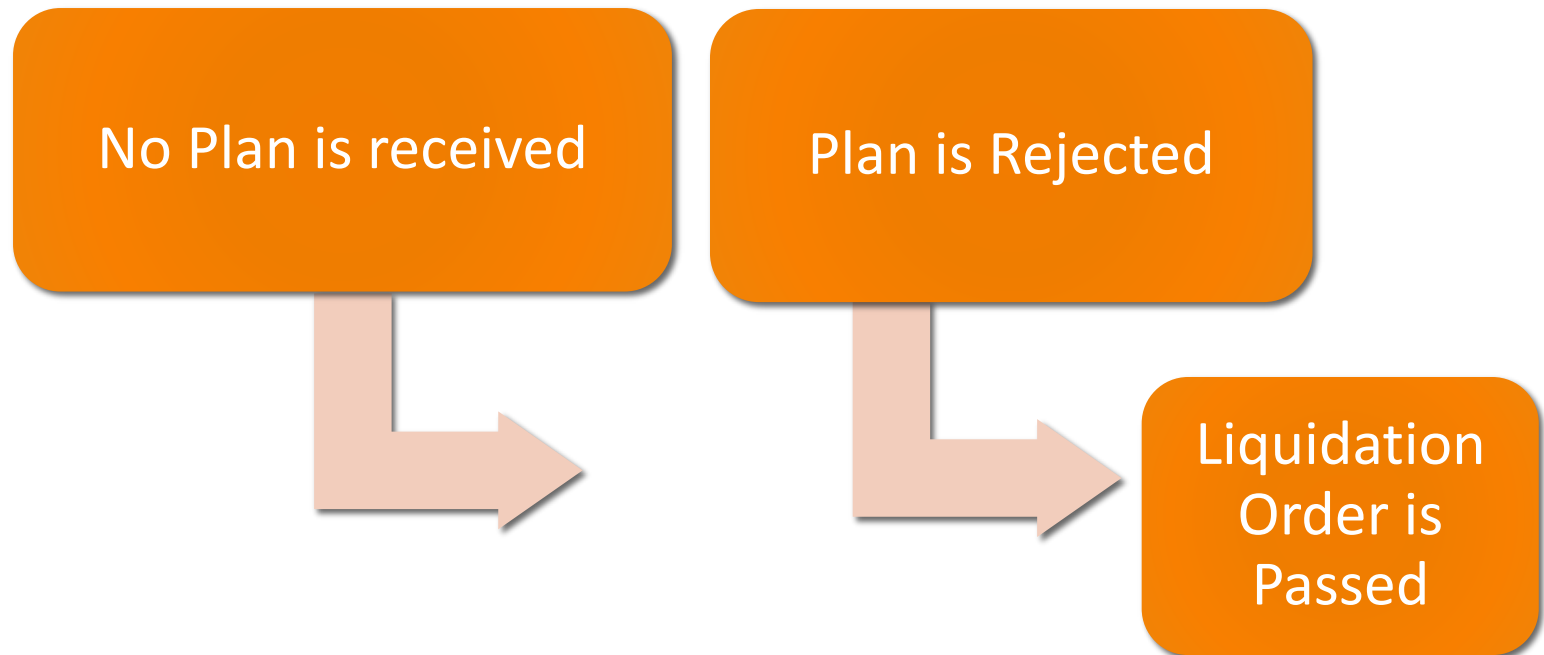
Submission of Approved Resolution  
Plan to Adjudicating Authority



Approval or Rejection of Plan by  
NCLT

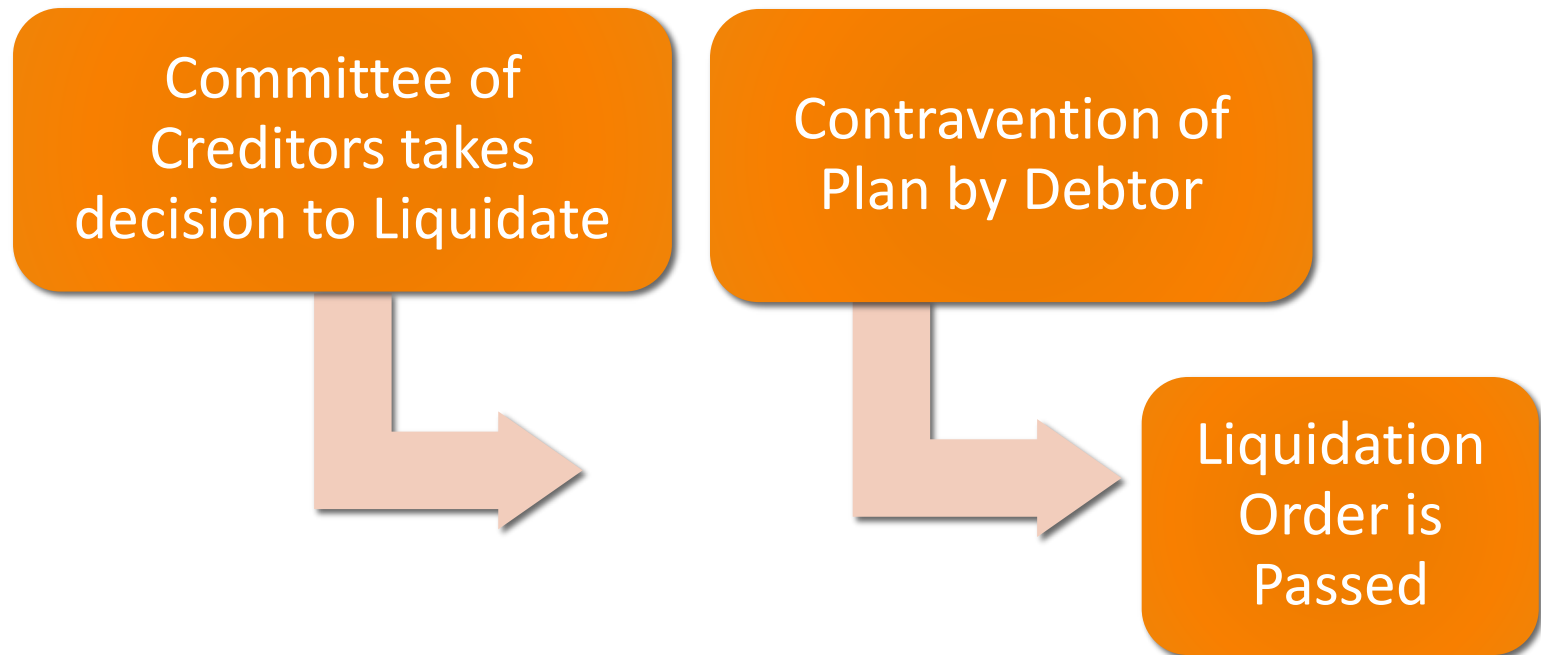
# Initiation of Liquidation

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# Initiation of Liquidation

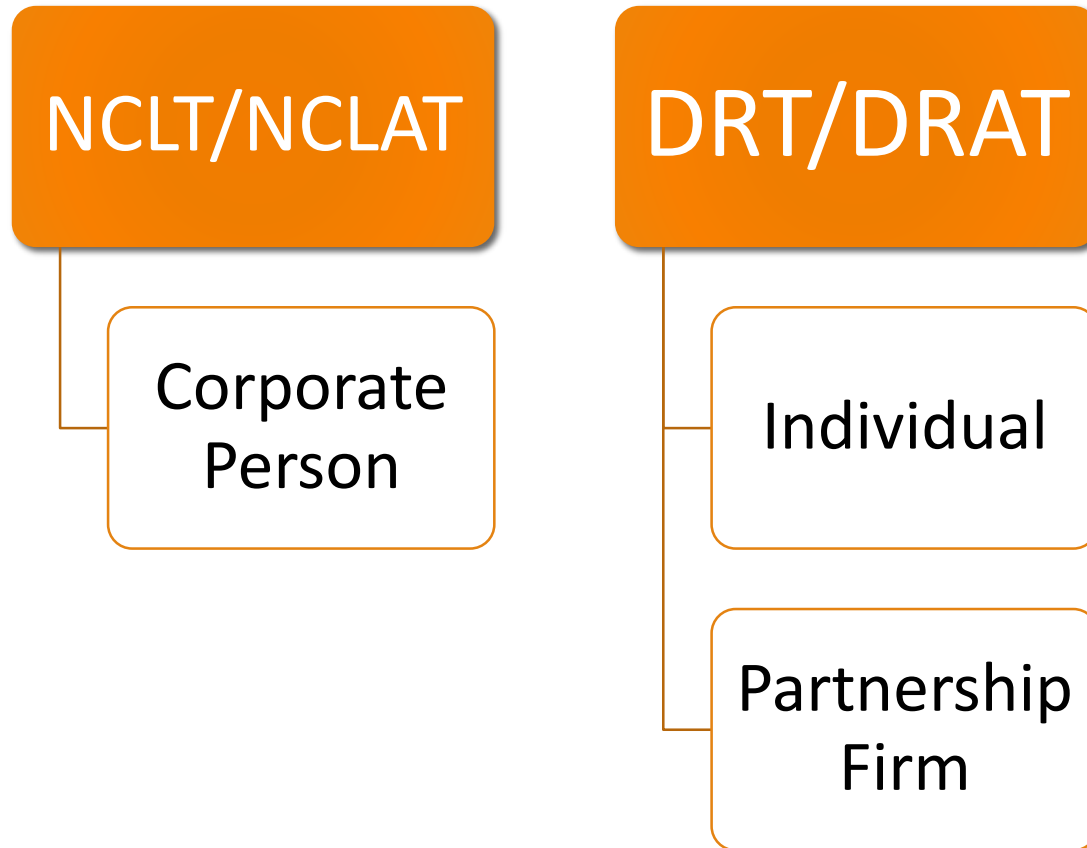
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# Adjudicating Authorities

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# Consequential Amendments

❖ IBC has amended following Acts

| Schedule | Act   | Notification Date |
|----------|---|-------------------|
| First    | Indian Partnership Act, 1932                                      | Not yet notified  |
| Second   | Central Excise Act, 1944  | 1.11.2016         |
| Third    | Income Tax Act, 1961  | 1.11.2016         |
| Fourth   | Customs Act, 1962   | 1.11.2016         |
| Fifth    | Recovery of Debts Due to Banks & Financial Institutions Act, 1993 | Not yet notified  |
| Sixth    | Finance Act, 1994   | 1.11.2016         |
| Seventh  | SARFAESI Act, 2002  | Not yet notified  |

# Consequential Amendments

❖ IBC has amended following Acts

| Schedule | Act   | Notification Date |
|----------|---|-------------------|
| Eighth   | Sick Industrial Companies (Special Provisions) Repeal Act, 2003 | 1.11.2016         |
| Ninth    | Payment & Settlement Systems Act, 2007                          | 15.11.2016        |
| Tenth    | Limited Liability Partnership Act, 2008                         | 15.11.2016        |
| Eleventh | Companies Act, 2013   | 15.11.2016        |

# Important Concepts in Corporate Insolvency

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## ❖ Financial Creditor – Section 5(7)

- Any person to whom a financial debt is owed
- Includes a person to whom such debt legally assigned or transferred

## ❖ Financial Debt – Section 5(8)

- Debt along with interest disbursed against the consideration for the time value of money

# Important Concepts in Corporate Insolvency

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## ❖ **Operational Creditor – Section 5(20)**

- Any person to whom a operational debt is owed
- Includes a person to whom such debt legally assigned or transferred

## ❖ **Operational Debt – Section 5(21)**

- Means a claim in respect of goods or services including employment

# Important Concepts in Corporate Insolvency

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## ❖ **Corporate Person – Section 3(7)**

- Company defined in 2(20) of the Companies Act, 2013
- LLP defined in 2(1)(n) of the Limited Liability Partnership Act, 2008
- Any other person incorporated with limited liability
- Does not include any financial service provider

## ❖ **Corporate Debtor – Section 3(8)**

- A corporate person who owes a debt to any person

# Corporate Insolvency

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❖ Corporate Insolvency Resolution and Liquidation is possible where default is minimum of **Rs. 1 Lakh**

## ❖ Steps

- Begin Insolvency Resolution Process
- Submit Resolution Plan
- Liquidation Process begins if plan not submitted or is rejected

# Corporate Insolvency Resolution Process (CIRP)

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- ❖ Appointment of Interim Resolution Professional
- ❖ Formation of Committee of Creditors (CoC)
- ❖ Appointment of Interim Resolution Professional confirmed by CoC



# Corporate Insolvency Resolution Process (CIRP)

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- ❖ Resolution plan proposed by creditor
  - 75% of creditors to approve the plan
  - **No** – goes into liquidation
  - **Yes** – application for NCLT approval; implement to resolution plan

# Time Limits

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| Section | Subject   | Time Period  | Mandatory/<br>Directory | Extension<br>, if any |
|---------|---|--|-------------------------|-----------------------|
| 5(14)   | Insolvency Resolution Process Period  | 180 days beginning from the insolvency commencement date | Mandatory               | 90 days               |
| 9(5)(b) | Adjudicating Authority give notice to Applicant to rectify the defect in his Application before rejecting the application | Within 14 days of receipt of application                 | Directory               |                       |

# Time Limits

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| Section         | Subject  | Time Period  | Mandatory/<br>Directory | Extension,<br>if any |
|-----------------|--|--|-------------------------|----------------------|
| Proviso to 9(5) | Applicant to rectify the defect  | Within 7 days of date of receipt of notice           | Directory               |                      |
| 16 (1)          | Appointment of Interim Resolution Professional by Adjudicating Authority | Within 14 days from the insolvency commencement date | Mandatory               |                      |

# Time Limits

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| Section | Subject  | Time Period  | Mandatory/<br>Directory | Extension,<br>if any |
|---------|--|--|-------------------------|----------------------|
| 16(4)   | Recommendation of name of an Insolvency Professional by the Board when the application for corporate insolvency resolution process is made by an Operational Creditor and no proposal for an interim resolution professional is made | Within 10 days of the receipt of a reference from the Adjudicating Authority |                         |                      |

# Time Limits

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| Section | Subject   | Time Period                       | Mandatory/<br>Directory | Extension,<br>if any |
|---------|---|-----------------------------------|-------------------------|----------------------|
| 21(9)   | Constitution of Committee of Creditors by Interim Resolution Professional after collation of all claims received against the Corporate Debtor and Determination of the financial position of the Corporate Debtor | Within 7 days of such requisition |                         |                      |

# Time Limits

| Section | Subject   | Time Period  | Mandatory/<br>Directory | Extension, if<br>any |
|---------|---|--|-------------------------|----------------------|
| 22(5)   | Confirmation of name of the Proposed Resolution Professional by the Board | Within 10 days of the receipt of the name of the proposed resolution professional        |                         |                      |
| 27(1)   | Replacement of Resolution Professional by Committee of Creditors          | At any time during the Corporate insolvency resolution by a vote of 75% of voting shares |                         |                      |

# Time Limits

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| Section | Subject   | Time Period  | Mandatory<br>/<br>Directory | Extension,<br>if any |
|---------|---|--|-----------------------------|----------------------|
| 22(5)   | Confirmation of name of the Proposed Resolution Professional by the Board | Within 10 days of the receipt of the name of the proposed resolution professional        |                             |                      |
| 27(1)   | Replacement of Resolution Professional by Committee of Creditors          | At any time during the Corporate insolvency resolution by a vote of 75% of voting shares |                             |                      |

# Time Limits

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| Section | Subject  | Time Period | Mandatory/<br>Directory | Extension, if<br>any  |
|---------|--|-------------|-------------------------|---|
| 64 (1)  | Expeditious Disposal of Applications by the President of NCLT or the Chairperson of NCLAT as the case may be, where an Application is not disposed of or an Order is not passed within the period specified in IBC, 2016 |             |                         | 10 days, after taking into account the reasons so recorded extend the period specified in the IBC, 2016 |



# Insolvency Professionals

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- ❖ Person enrolled under Section 206 of the Code with Insolvency Professional agency as its member; and
- ❖ Registered with the Board as an insolvency professional under Section 207 of the Code
- ❖ Provisions detailed in Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016

# Insolvency Professionals

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## ❖ **Insolvency Examinations**

- National Insolvency Examination – to test the knowledge and practical skills of individuals in the areas of insolvency, bankruptcy and allied subjects.
- Limited Insolvency Examination – to test the knowledge and application of individuals in the areas of insolvency, bankruptcy and allied subjects.

# Insolvency Professionals

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## ❖ **Limited Insolvency Examination Format**

Question Type: Online multiple choice objective.

Duration: 2 Hours.

No. of Questions: 90

Marks: 100

Passing Marks: 60%

Negative marks: 0.25

# Insolvency Professionals

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## ❖ Frequency of Examination

- The examination is available on all days beginning 31st December, 2016 till 30th June, 2017 and on all days beginning 1st July, 2017 from 9.30AM to 5.30PM
- Appear any number of times till cleared
- Enrollment afresh for each exam with examination fee on each enrollment

# Insolvency Professionals

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## ❖ Frequency of Examination

- Identity card for Enrollment: PAN & Aadhaar
- Exam Fee: Rs. 1000/- online on every enrollment

# Insolvency Professionals

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## Limited Insolvency Examination Syllabus

This Syllabus will hold good for examinations conducted from 1<sup>st</sup> July, 2017 to 31<sup>st</sup> December, 2017.

| S. No. | Topic Coverage  | Weight( in %) |
|--------|---|---------------|
| 1.     | The Insolvency & Bankruptcy Code, 2016  | 25            |
| 2.     | Rules & Regulations under the Bankruptcy Code (All Rules and Regulations notified under the Code till 30 <sup>th</sup> June, 2017 | 28            |

# Insolvency Professionals

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## ❖ Limited Insolvency Examination Syllabus

| S. No. | Topic Coverage   | Weight (in %) |
|--------|--|---------------|
| 3.     | (1). The Companies Act, 2013<br>(2). The Partnership Act, 1932<br>(3). The Limited Liability Partnership Act, 2008 | 10            |

# Insolvency Professionals

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## ❖ Limited Insolvency Examination Syllabus

| S. No. | Topic Coverage   | Weight( in %) |
|--------|--|---------------|
| 4.     | (1). The Indian Contracts Act, 1872<br>(2). Transfer of Property Act, 1882<br>(3). The Sale of Goods Act, 1930 | 04            |



# Insolvency Professionals

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## ❖ Limited Insolvency Examination Syllabus

| S. No. | Topic Coverage  | Weight( in %) |
|--------|---|---------------|
| 5.     | (1). The Recovery of Debts due to Banks & Financial Institutions Act, 1993<br>(2). The Securitisation & Reconstruction of Financial Assets & Enforcement of Security Interests Act, 2002<br>(3). Corporate Debt Restructuring Scheme, Strategic Debt Restructuring And Scheme for Sustainable Structuring Of Stressed Assets (S4A) (of RBI) | 05            |

# Insolvency Professionals

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## ❖ Limited Insolvency Examination Syllabus

| S. No. | Topic Coverage   | Weight( in %) |
|--------|--|---------------|
| 6.     | General Awareness (Constitution, Economy, Finance, Code of Conduct for Insolvency Professionals & Right of Workmen)  | 04            |
| 7.     | Finance & Accounts (Corporate Finance & Financial Analysis)  | 04            |
| 8.     | Case Laws (Decisions of Supreme Court, High Courts, NCLAT, NCLT on Corporate Insolvency Resolution, Corporate Liquidation and Voluntary Liquidation) There will be five questions carrying two marks each. | 10            |

# Insolvency Professionals

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## ❖ Limited Insolvency Examination Syllabus

| S. No. | Topic Coverage   | Weight( in %) |
|--------|--|---------------|
| 9.     | Case Study on Corporate Insolvency Resolution, Corporate Liquidation, Voluntary Liquidation, Fast Track Resolution, Fresh Start, Individual Insolvency Resolution and Individual Bankruptcy. There will be one comprehension narrating the case study and there will be five questions based on the case carrying two marks each | 10            |

# Insolvency Professionals

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- ❖ **Eligibility Criteria [Regulation 4 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016]**
  - Must not be a minor.
  - Resident in India.
  - Qualification & Experience as specified in Regulation 5 or 9 as the case may be.

# Insolvency Professionals

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- ❖ **Eligibility Criteria [Regulation 4 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016]**
  - Not convicted by any competent court –imprisonment not exceeding 6 months or offences involving moral turpitude ; 5 years has not elapsed
  - Not eligible if he is an undischarged insolvent or applied to be adjudicated as an insolvent

# Insolvency Professionals

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## ❖ Qualification and Experience

- Has passed National Insolvency Examination;
- Has passed Limited Insolvency Examination- 15 years of experience in management after receiving Bachelors degree from university established or recognised by law; or

# Insolvency Professionals

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## ❖ Qualification and Experience

- Passed Limited Insolvency Examination- has ten years of experience as-
  - i. Chartered Accountant
  - ii. Company Secretary
  - iii. Cost Accountant
  - iv. Advocate

# Important Case Laws

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- ❖ Insolvency Professional (IP) must not engage in "any employment", prohibition is comprehensive as the objective of clause 23 of code of conduct under IBBI (Insolvency Professional) Regulations, 2016 is total commitment for the profession. A person must not play 2 roles- professional & employment, simultaneously. However, an IP can temporarily surrender registration and thereafter engage in employment. ***[In the matter of Gaurav jain before IBBI]***



# Important Case Laws

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- ❖ No individual shall be eligible to be registered as an IP if he is not fit and proper person. Integrity, reputation & character are taken into account to determine a person fit & proper ***[In the matter of Vimal Prakash Dubey before IBBI]***

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Thank you for your patience!

**Ashish Makhija**  
**#9810128356**  
**[ashish@amclawfirm.com](mailto:ashish@amclawfirm.com)**