

PERSONAL INSOLVENCY IN PRACTICE

CHALLENGES AND LEARNINGS



UNDERSTANDING PERSONAL INSOLVENCY

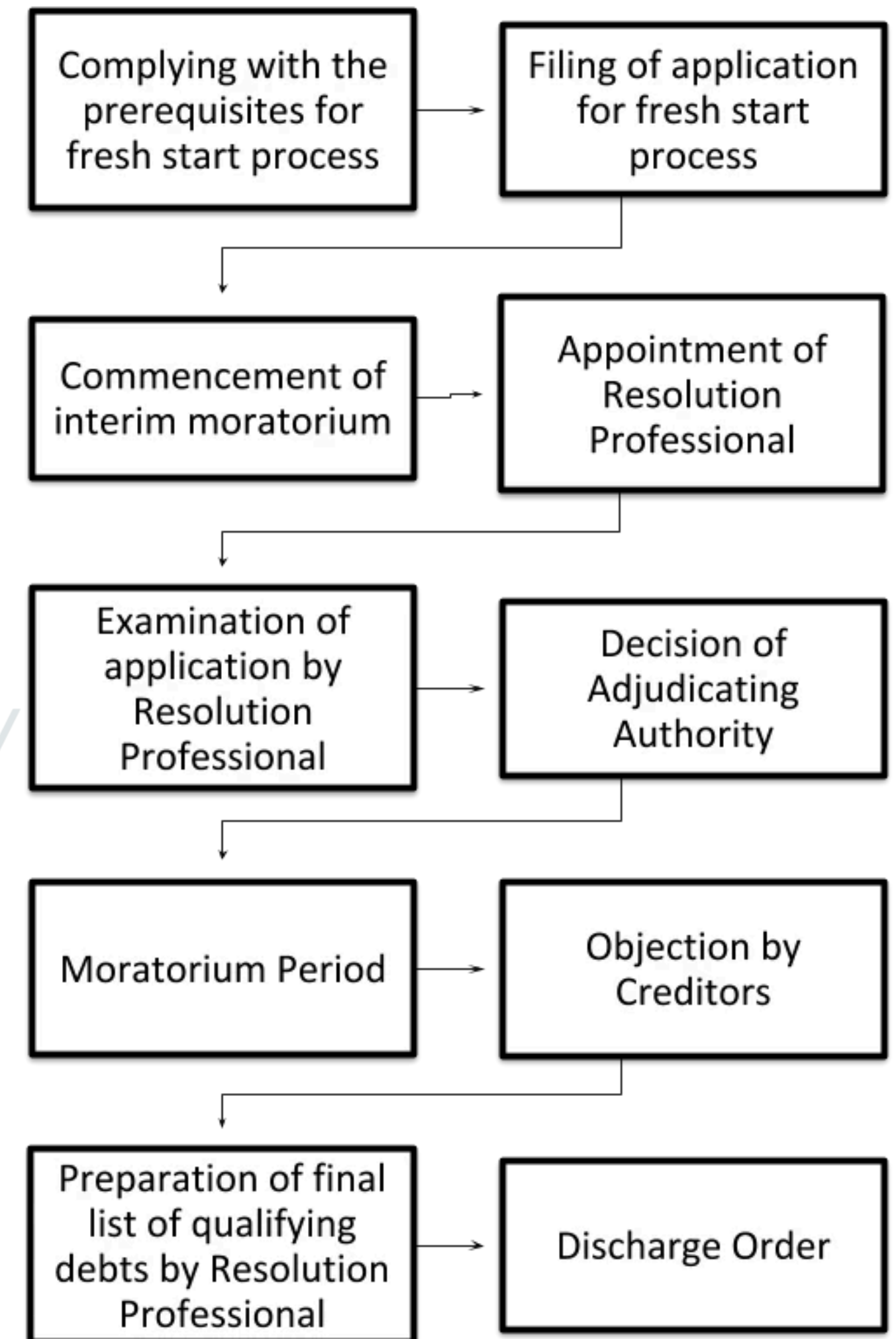
PRACTICE IN INDIA



- Applies to individuals & guarantors unable to repay debts.
- Provides structured legal process for debt relief & rehabilitation.
- Part III covers individuals, sole proprietors & partnership firms.
- Ensures parity with corporate insolvency framework.
- IBC 2016 unified corporate & personal insolvency laws.
- Replaced outdated statutes with a modern mechanism.
- Partnerships/sole proprietors → insolvency applies to individuals.
- Introduced clear procedures for initiating personal insolvency.
- Strengthens legal certainty, efficiency & fairness in handling distress.

PERSONAL INSOLVENCY UNDER THE CODE

- Consolidate and amend laws on restructuring and insolvency of companies, firms, and individuals.
- The Code is divided into VI Parts.
- Part I & II → Effective from 01.12.2016 (Corporate Insolvency & Liquidation).
- Part III → Relating to individuals & partnership firms (default \geq Rs 1,000).
- 01.12.2019 → Enforced for :
 1. Personal Guarantors to the Corporate Debtors
 2. Partnership Firms.
 3. Other Individuals
- 4. Processes for Personal Insolvency:
 - Insolvency Resolution Process – structured resolution & repayment mechanism.



INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR PERSONAL GUARANTORS TO CORPORATE DEBTORS) REGULATIONS, 2019

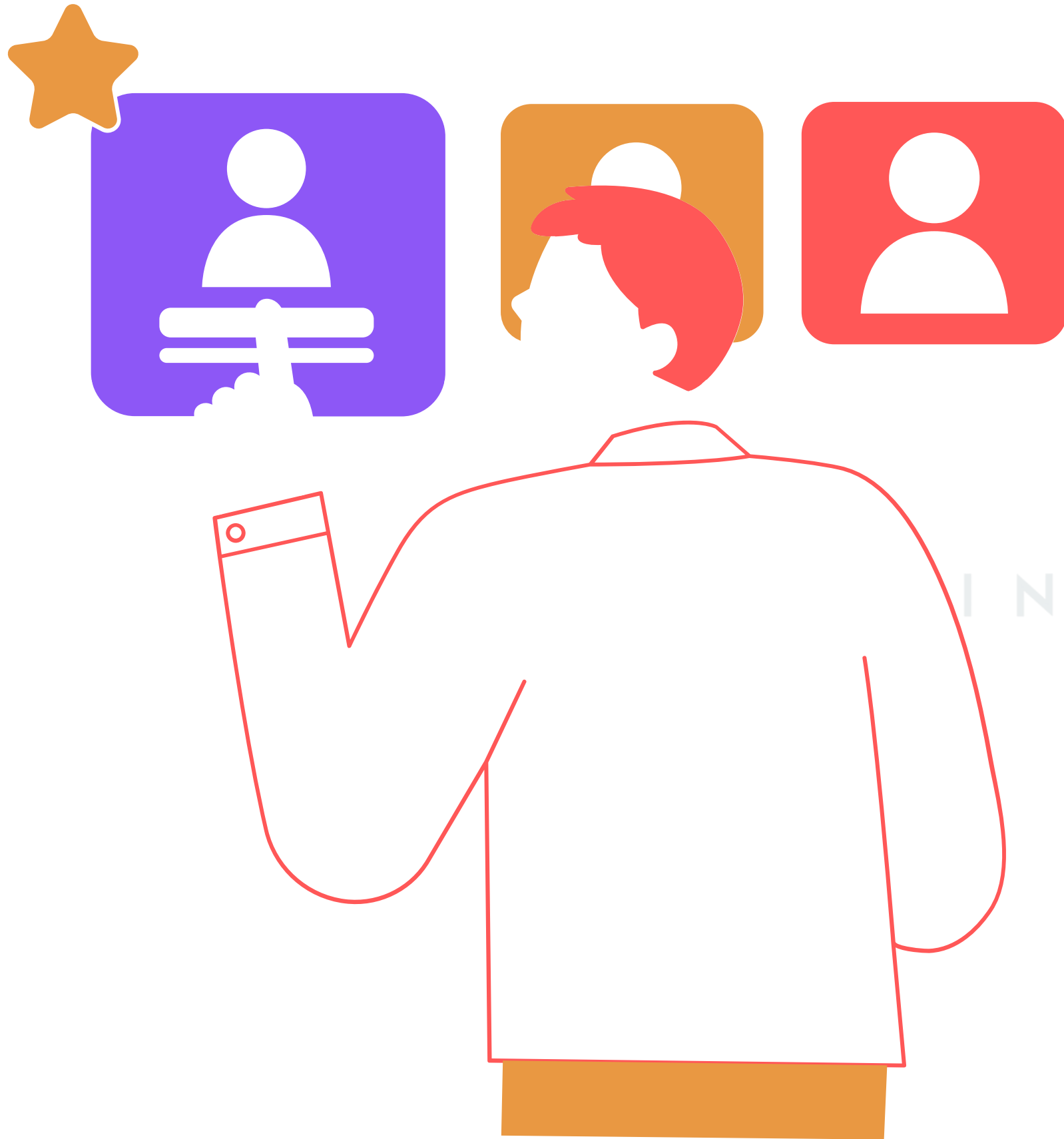


The MCA introduced a total of 22 regulations that was effective from 1st December 2019 with a broad scope to ensure the application of insolvency resolution for personal guarantors to corporate debtors:

- **Effective:** 1st Dec 2019, total 22 regulations
- **Scope:** Insolvency resolution for personal guarantors to corporate debtors
- **Key Provisions:**
 - Regs 1–3: Applicability & definitions
 - Reg 4: Eligibility & independence of Resolution Professionals
 - Reg 5: Record preservation
 - Reg 6: Debt counselling
 - Regs 7–9: Claims submission, verification & creditor list
 - Reg 10: Statement of affairs of guarantor
 - Regs 11–16: Creditors' meetings (notice, quorum, voting, proxies)
 - Reg 17: Repayment plan – terms, budget, supervision, asset sale
 - Regs 17A & 17B: Plan placement/non-submission
 - Reg 18: Restrictions on asset purchase by connected persons
 - Reg 19: Filing approved plan with Adjudicating Authority (120 days)
 - Reg 20: Breach of repayment plan
 - Reg 21: Discharge order
 - Reg 22: Non-cooperation by guarantor

Ensures structured, transparent & balanced framework under IBC

THE MULTIFACETED ROLE OF A PERSONAL GUARANTOR CAN BE :



- 1. Director of Private or Public Listed Company**
- 2. Partner in a Partnership Firm**
- 3. Karta in HUF**
- 4. Trustee in a Trust**
- 5. Proprietor in a Proprietorship Firm**

DIRECTOR DISQUALIFICATION DURING PERSONAL INSOLVENCY PROCESS

Section 164 of Companies Act, 2013 (India) states that:

(1) A person shall not be eligible for appointment of director of a company

(a) He is of unsound mind and stands so declared by a competent court

(b) He is an undischarged insolvent

(c) He has applied to be adjudicated as an insolvent and an application is pending.



EXCLUDED ASSET UNDER SECTION 79(14) OF IBC,2016

01

**Personal Asset :
Books, vehicle any
other equipment not
related to the
employment of PG**

02

**Domestic Needs:
Furniture,Household,
any equipment
necessary for basic
domestic needs**

03

**Insurance:
Unencumbered Life
Insurance Policy or
pension plan**

04

**Ornaments:
Any personal ornaments
of such value as many be
prescribed and
exemption is upto 1
Lakh for ornaments**



EXCLUDED ASSET

Unencumbered Single Dwelling Unit:

- **10 Lakhs Rural**
- **20 Lakhs Urban**

Issues arising in Personal Insolvency is:

- **Joint Property with spouse, family members**
- **Disputed family property**
- **Divorced/Separated Wife**

EXCLUDED ASSET

STREEDHAN



SOURCE:

- FATHER
- ANCESTRAL
- HUSBAND



MARITAL STATUS:

- MARRIED
- UNMARRIED
- SEPERATED
- DIVORCED



SCHOOL OF THOUGHT:

- MITAKSHARA
- DAYABHAGA



WHAT IS EXCLUDED DEBT UNDER CODE, 2016?



INDIALAW

1. **Liability to pay fine imposed by court**
2. **Liability to pay damages-nuisance, breach of statutory contractual legal obligation**
3. **Liability to pay Maintenance under any Law**
4. **Liability in relation to Student Loan**

FORM



NO FORM -H AS UNDER THE CIRP PROCESS

- **No prescribed format while submitting the repayment plan**
- **No compliance certificate to be given to the tribunal as compared to the resolution plan.**

ISSUE

1. Corporate Debtor Recovery

- Resolution
- Liquidation

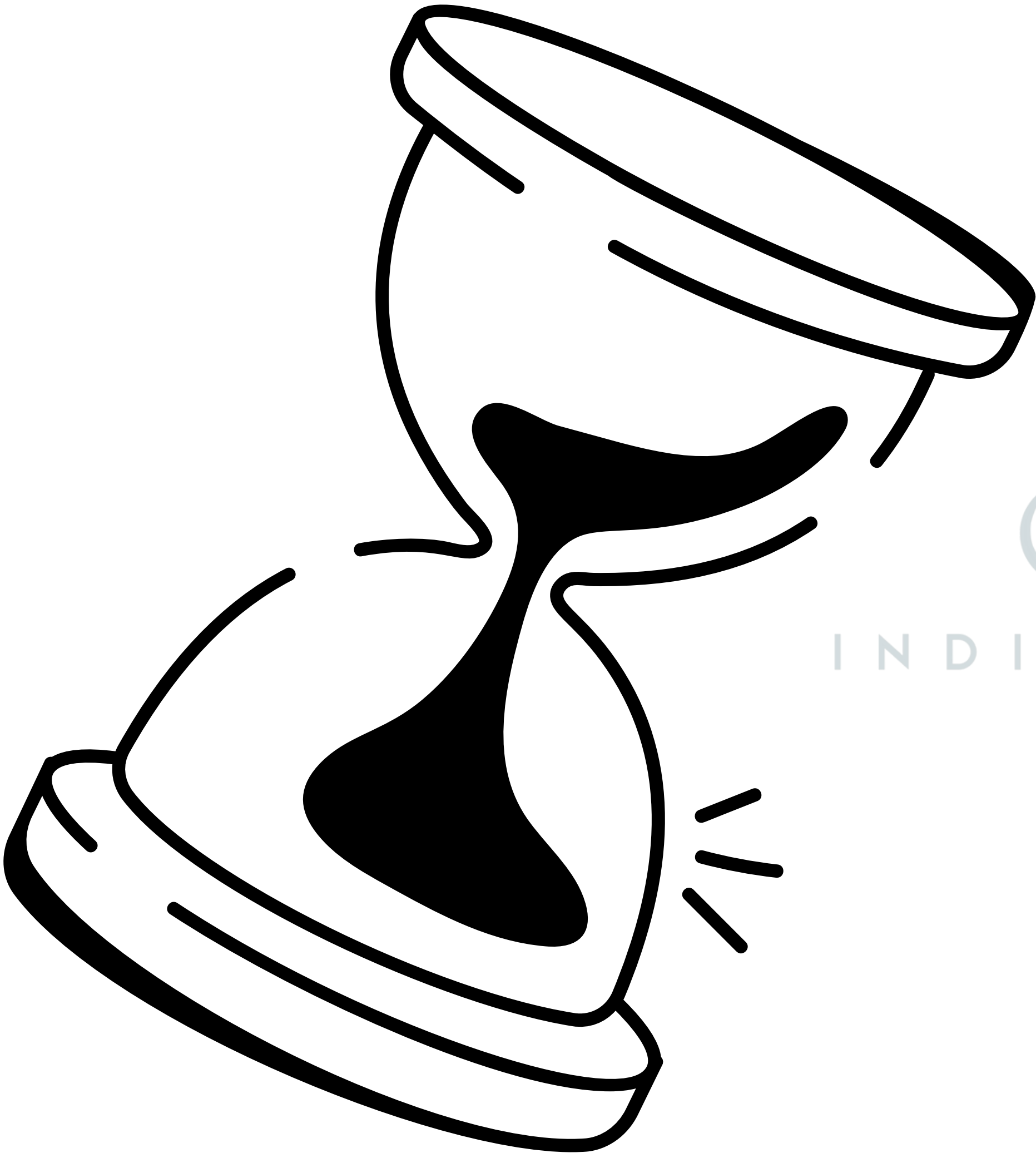
2. MSME: Promoters buying the Corporate Debtor

3. Passport Deposition/cancelling/impounding

4. Cheque Bounce cases(Quasi-Criminal)

5. Pufe of PG under the Code,2016





Limitation Act

- **Section 13(2) of SARFAESI notice**
- **Acknowledgement of PG in CD balance-sheet-Deemed?**
- **Recovery Certificate by DRT**



INDIANLAW

CHALLENGES AND CRITICISMS:



While the IBC has streamlined the insolvency process, it is not without challenges, especially in the case of personal insolvency. In Personal Insolvency the following challenges are faced by the litigants across India

- There is a general lack of awareness about the personal insolvency provisions among individuals.
- Access to professional advice and resolution professionals is limited in rural areas.
- The procedural requirements and the involvement of multiple stakeholders often lead to delays and complexities especially in the cases of Constructive Fraud.
- The DRTs and NCLTs are burdened with a significant caseload, affecting the timely resolution of personal insolvency cases.

Judicial Capacity: The DRTs and NCLTs



Debt Recovery Tribunal (DRT): Primary Authority

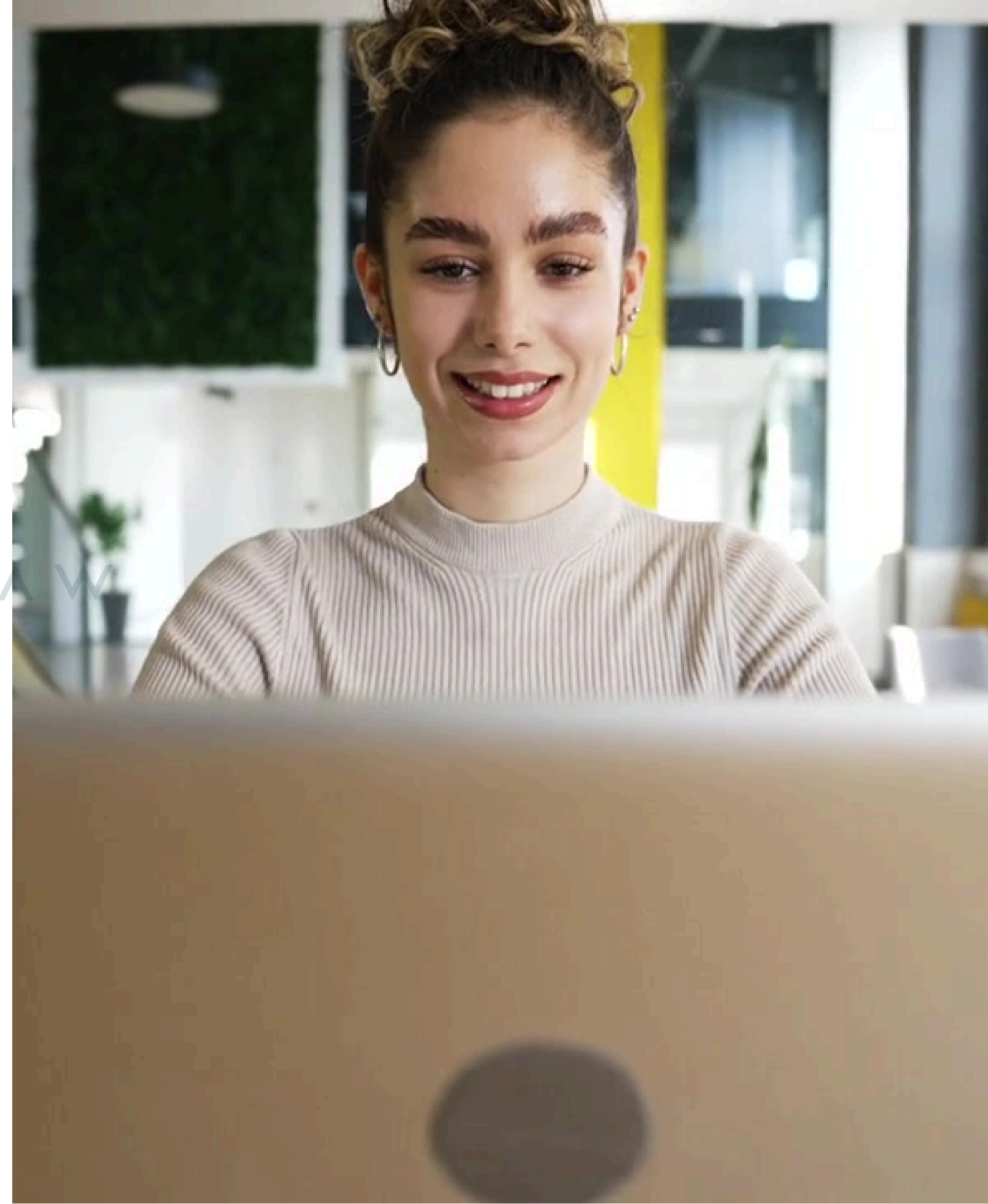
- **Default forum for insolvency & bankruptcy of individuals and partnership firms**
- **Key challenge: Overburdened with debt recovery cases**
- **Limited infrastructure & expertise for personal insolvency**

National Company Law Tribunal (NCLT): Specialised Authority

- **Jurisdiction over personal guarantors of corporate debtors**
- **Ensures single forum handles interconnected insolvencies**
- **Prevents conflicting orders & provides holistic view of debt situation**

THE WAY FORWARD AND KEY LEARNINGS FROM THE PERSONAL INSOLVENCY PRACTICE IN INDIA

- **Balance debtor relief with creditor recovery for sustainable credit markets**
- **Update Fresh Start limits (assets & income) – index to inflation/GDP**
- **Clearly define exempt assets, tools of trade & basic income protections**
- **Standardise repayment priority; align IRP with bankruptcy provisions**
- **Introduce simplified, non-judicial repayment plans**
- **Use Fresh Start as a structured tool for targeted loan waivers**
- **Link discharge records to credit bureaus to ensure transparency**
- **Improve regulatory clarity, reduce stigma, expand rural accessibility**



THANK YOU



INDIALAW

TANNYA BARANWAL,
ADV
ASSOCIATE PARTNER
INDIALAW LLP