

**RJA**

**Rajput Jain & Associates**  
Chartered Accountants

# Insolvency and Bankruptcy Code, 2016 Landmark Reform



# About Us

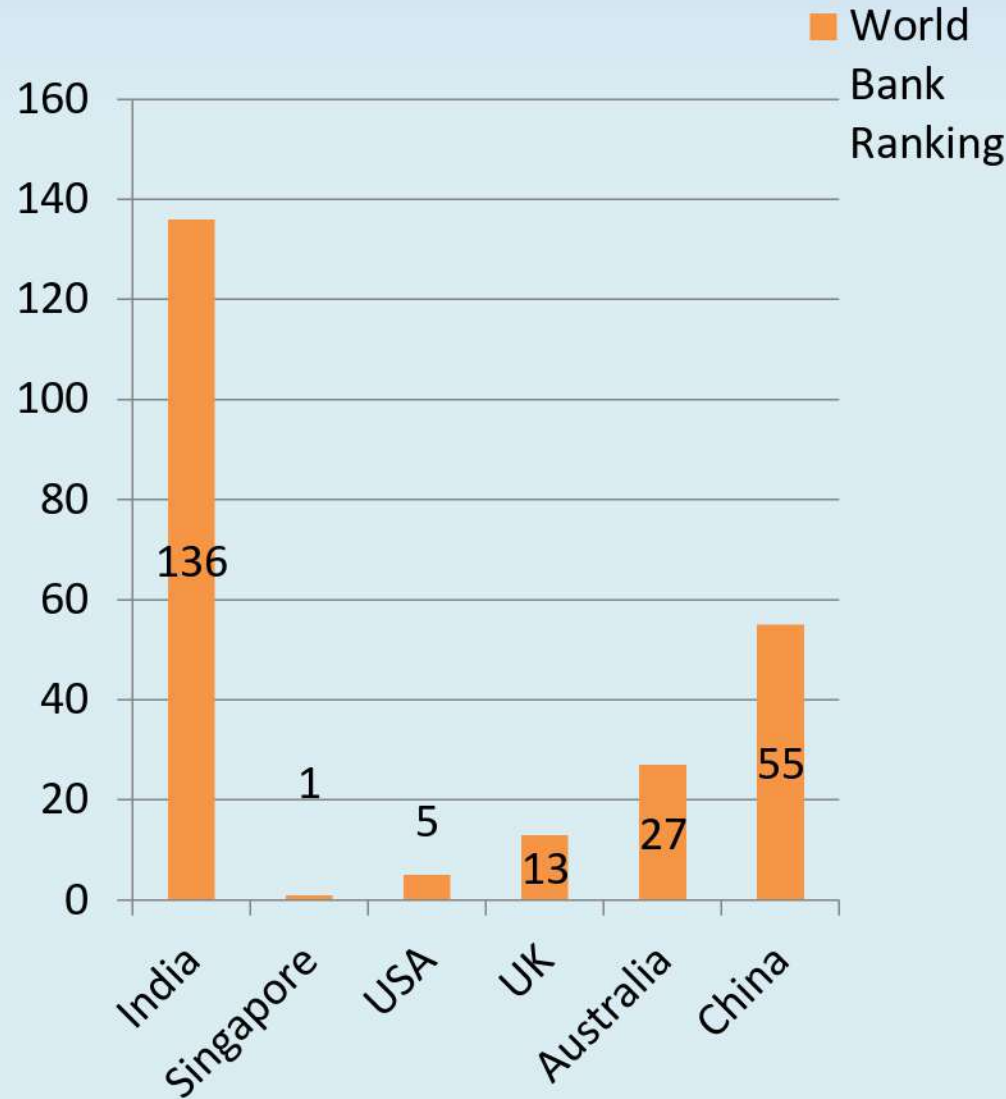
- Rajput Jain & Associates is a Chartered Accountants firm, with its headquarter situated at New Delhi (the capital of India). The firm has been set up by a group of young, enthusiastic, highly skilled and motivated professionals who have taken experience from top consulting firms and are extensively experienced in their chosen fields providing a wide array of Accounting, Auditing, Taxation, Assurance and Business advisory services to various clients and their stakeholders. focus at providing tailor made solutions to challenging problems of our clients, and perform with high quality and timely service.
- Rajput Jain & Associates, a professional firm, offers its clients a full range of services, To serve better and to bring bucket of services under one roof, the firm has merged with its various Chartered Accountancy firms pioneer in diversified fields
- Our main office is located at Delhi. Incidentally, Delhi is the Capital of India. Our other offices are in Mankapur & Moradabad (U.P.). We have associates all over India in big cities. All our offices are well equipped with latest technological support with updated reference materials. We have a large team of professionals other than our Core Team members to meet the requirements of our prospective clients including the existing ones. However, considering our commitment towards high quality services to our clients, our team keeps on growing with more and more associates having strong professional background with good exposure in the related areas of responsibility. Further to meet the growing demands of the fiercely competitive market we are constantly looking forward for team of associates comprising of highly skilled professionals to cater the needs ever increasing clientele.

# NEED (1/3)

- Existing Mechanism - Inadequate & Ineffective :
  - ✓ No single Law dealing with IB in India;
  - ✓ overlapping jurisdiction
- Painfully Slow Pace



## Insolvency Resolution

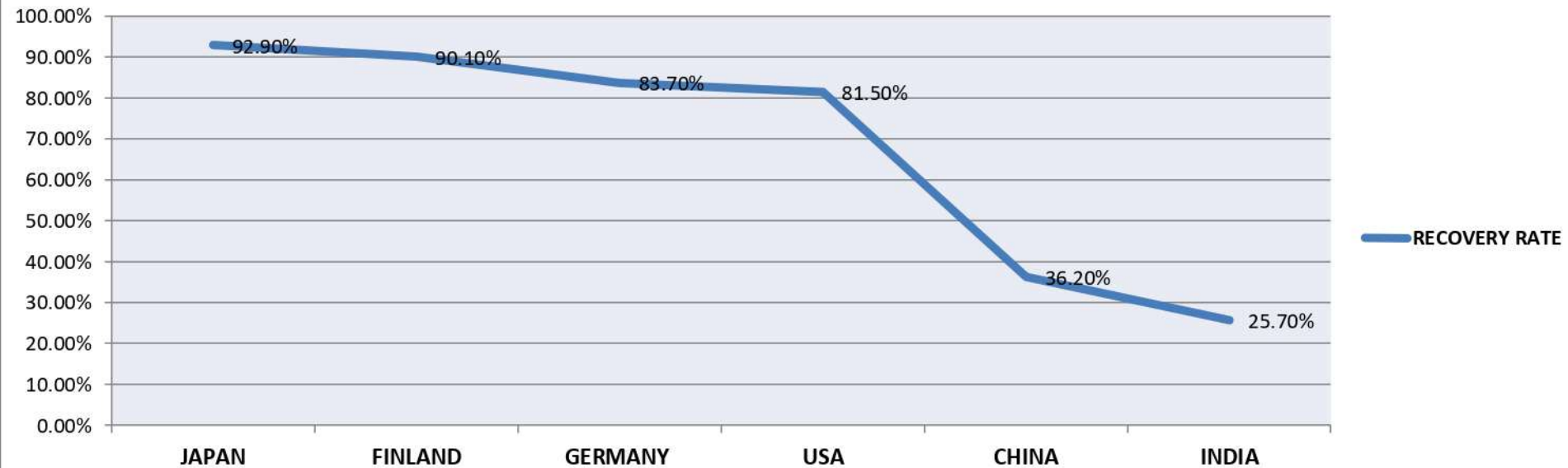


# NEED...CONTD. (2/3)

RESOLUTION TIME - Takes 4.5 years to Wind Up an Existing Co.



## RECOVERY RATE



# NEED...CONTD. (3/3)

- Indian Bank - Neck Deep in Bad
  - ✓ Gross NPA - 4 Lacs Crores & Huge amount of Restructured Loans
  - ✓ Total Stressed Assets - 11% of Total Lending
  - ✓ Bad Loans has grown from 3.49% (2013) to 8.3% (2015)
  - ✓ Corporate Bad Loans - 56% - Bad Loans of India Bank.
- Process Cost of Insolvency in India vis-a-vis- Other Countries
- Ease of Doing Business - Easy Exit-- Where India Stands

	Ranking	
	2015	2014
 Singapore	1	1
 New Zealand	2	2
 Hong Kong	3	3
 Brazil	120	123
 Russia	62	64
 India	142	140
 China	90	93
 South Africa	43	37

# OLD DISEASE - NEW PRESCRIPTION - WHY ?

- Time Bound Manner
- Promote Entrepreneurship
- Improve Credit Availability
- Balance Interest of all Stakeholders
- Minimize the Role of Adjudicating Authority
- Tackles around 12 Laws - 100 years old



# ROAD TO CODE

21.12.2015- IBC Bill of 2015 -introduced in LS

23.12.2015 - IBC Bill of 2015 - Referred to Joint Committee of both Houses of Parliament

28.04.2016- IBC Bill of 2015 -Joint Committee placed its Report to both Houses of Parliament

05.05.2016- IBC Bill of 2015 -passed by LS

11.05.2016- IBC Bill of 2015 -passed by RS

28.05.2016- IBC, 2016 -Assented by President of India & Notified



# APPLICABILITY

Any Company incorporated under the Companies Act, 2013 or under any provisions



Any other Company governed by any Special Act



Any LLP incorporated under the LLP Act, 2008



Any other body, as notified by the Central Government



Partnership Firms



Individuals





# WHO CAN INVOKE



## Financial Creditor (Sec.7)

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



## Operational Creditor (Sec.9)

- A person to whom an operational debt is owed &
- Includes any person to whom such debt legally assigned or transferred



## Corporate Debtor (Sec.10)

- A corporate person who owes a debt to any person

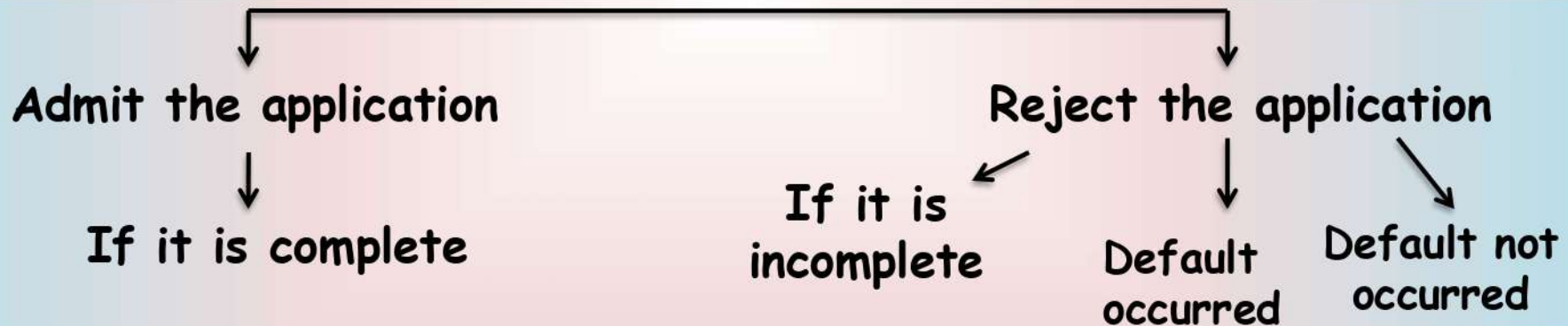
# ADJUDICATING AUTHORITY

- **NCLT**
  - Deal with insolvency matters of Co. & LLP
  - Appeal to NCLAT
- **Debt Recovery Tribunal**
  - Deal with insolvency matters of individual & Partnership firm
  - Appeal as to DRAT



## GROUNDS FOR REJECTION

Adjudicating Authority within 14 days of receipt of application, by an order -



## NOTICE OF REJECTION

Adjudicating Authority shall before rejecting application, give notice to applicant to rectify defects in application within 7 days from the date of receipt of such notice

# INVOKING PROVISIONS OF CODE



## DEFAULT

In case of Co. & LLP

Minimum amount of ` 1 lakh

In case of Partnership & Individual

Minimum amount of ` 1 thousand

Minimum amount of ` 1 lakh & ` 1 thousand can be increased upto ` 1 Cr & ` 1 lakh respectively by CG

Where any Company or LLP commits-

A default in paying its

Financial debt

Operational debt

Then a financial creditor/ operational creditor/ Company & LLP itself

May file an application, for initiating corporate insolvency resolution process with the Adjudicating Authority.

# TIME LINE



180 days



90 days  
(Maximum)



270 days

**FAST TRACK :**

90 days



45 days  
(One time)



135 days

Adjudicating Authority after admission of application shall, by an order

Declare a  
Moratorium

Cause a Public  
Announcement

Appoint Interim  
Resolution Professional

## MORATORIUM EFFECT [SEC 14(1)(A) - (D)] (1/2)

- Adjudicating Authority shall by order prohibit the following:
  - ✓ Institution/continuation/proceedings of suits including execution of any judgment, decree or order in any Court
  - ✓ Transferring, encumbering, alienating or disposing of assets/legal right/beneficial interest
  - ✓ Any action to Foreclosure, Recover or enforce any security interest created including any action under SARFAESI Act, 2002
  - ✓ Recovery of any property by owner or lessor where such property is occupied

# MORATORIUM EFFECT [SEC 14(1)(A) - (D)] (2/2)

- **Objective**

- ✓ Maximizing value of the Entity to Continue Operation
- ✓ No additional stress on Business
  - Supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted
  - Central Government in consultation with any financial regulator may specify such transactions.

## MORATORIUM PERIOD

[sec 14(1)]

- Order of Moratorium made by Adjudicating Authority;
  - Start from Date of Admission of Application;
- Cease to effect
  - Date of Approval of Resolution Plan or Liquidation Order .

# PUBLIC ANNOUNCEMENT

- Public announcement contain following information:
  - Name & address of defaulted Corp. Debtor
  - Name of Registrar with which Corp. Debtor is incorporated or registered
  - Last date for submission of Claims
  - Details of Interim Resolution Professional
    - Management of Corporate Debtors
    - Responsible for Receiving claims
  - Penalties for False or Misleading Claims
  - Date on which the Insolvency Resolution Process close (i.e. 180 days from the date of admission of application)
- Public Announcement shall be made in such manner as may be specified



# INTERIM RESOLUTION PROFESSIONALS

## APPOINTMENT:

Appointment by Adjudicating Authority within 14 days from Admission of Application

## TENURE:

shall not exceed 30 days from date of Appointment

## Once IRP is appointed :

Management of affairs of Corp. Debtor shall vest with IRP

Powers of BOD/ Partners (LLP) shall stand suspended & will be exercised by IRP

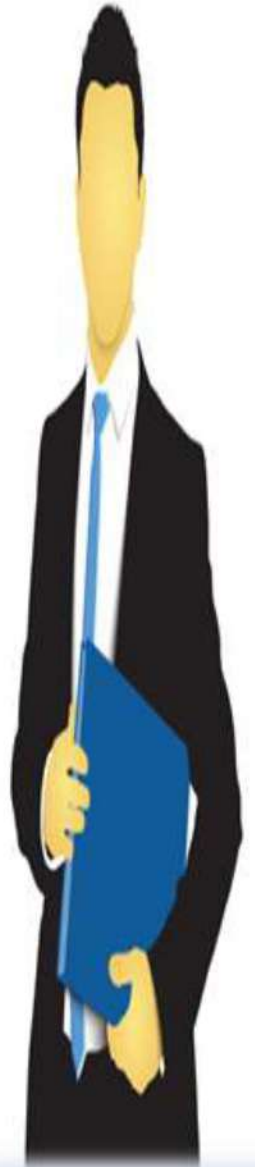
Officers & Managers of Corp. Debtor shall report to IRP

FI maintaining accounts of Corp. Debtor shall follow instructions of IRP



# RESOLUTION PROFESSIONAL

- Appointment by Committee of Creditors may in their first meeting
  - ✓ within 7 (Seven) days of Constitution of Committee
  - ✓ Resolve to appoint the Interim Resolution Professional as a Resolution Professional (OR)
  - ✓ Replace the Interim Resolution Professional by another Resolution Professional.
- Resolution Professional shall conduct the entire Insolvency Resolution Process and manage the operations of the company during the corporate Insolvency Resolution Process Period.
- Resolution Professional shall exercise all such powers and duties as are vested on the Interim Resolution Professional.
- All Meetings of the Committee of Creditors shall be conducted by the Resolution Professional



# DUTIES OF RESOLUTION PROFESSIONAL

## MEETING OF THE COMMITTEE OF CREDITORS

- Convene & attend all meetings
- Present all resolution plans at the meetings

## DOCUMENTS

- Maintain an updated list of claims
- Prepare the information memorandum

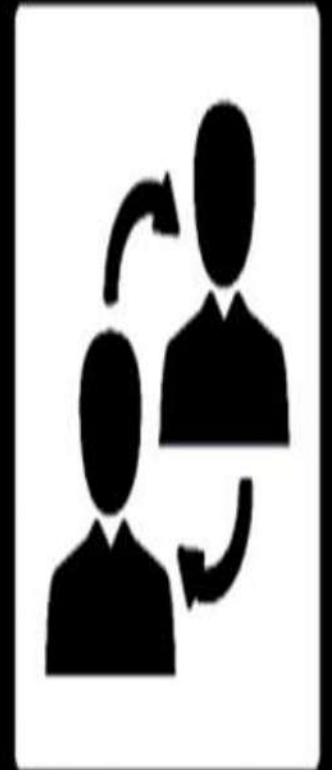


## RIGHTS

- Take immediate custody and control of all the assets including business records of the company/LLP
- Represent and act on behalf of the company/LLP with third parties

# REPLACEMENT OF RESOLUTION PROFESSIONAL

- CoC to replace the Resolution Professional any time during the pendency of IRP.
- CoC may forward name of another Insolvency Professional to the Adjudicating Authority
- The Adjudicating Authority shall forward name of proposed Resolution Professional to the Board for confirmation
- On confirmation being received from the Board, appoint him as Resolution Professional



# COMMITTEE OF CREDITORS (1/2)



The Interim Resolution Professional shall -

Collate all claims

AND

Determine of financial position

Constitute a Committee of Creditors- comprising of all Financial Creditors

All decisions of Committee taken by vote of not less than 75%

- Related Party:
- If no Financial Creditor, CoC shall exercise with functions.
- Shall not have any Right of Representation, Participation or voting
- Position of Financial Creditor- Consortium Agreement :
  - Each Financial Creditor shall be the part of Committee.
  - Voting shares shall be on the basis of Financial Debts.

# COMMITTEE OF CREDITORS (2/2)

- Position of Financial Creditor when he is an Operational Creditor:
  - ✓ shall be considered Financial Creditor to the extent of Financial Debts;
  - ✓ Voting Shares to the extent of Financial Debts;
  - ✓ Operational Creditor to the extent of Operational Debt;
- Assignment of Operational Debt
  - ✓ If an Operational Creditor has assigned or legally transferred any Operational Debt to a Financial Creditor, the Assignee of Transferee shall be considered as an Operational Creditor to the extent of such assignment or legal transfer.
- Determination of Voting Share by Financial Creditor
  - ✓ IBC Board may specify the manner of determining of voting share.



# RESOLUTION PLAN

- Preparation of Information Memorandum for formulating a Resolution Plan
- Providing to Resolution Applicant access to all relevant information
- Resolution Applicant will submit a Resolution Plan to the Resolution Professional prepared as per Information Memorandum
- Examination of Resolution Plan
- Presentation of RP to CoC for Approval
- Submitting Resolution Plan to Adjudicating Authority
- Adjudicating Authority may by order approve the Resolution Plan;
- Moratorium Period ends
- R P will be binding on the Corp. Debtor, its Employees, Members, Creditors, Guarantors & other Stakeholders
- If Resolution Plan not approved or
  - Not ready within 180 days or
  - Adjudicating Authority rejects the Resolution Plan
- It will pass a Liquidation Order.
- R P will act as a Liquidator and all the powers of the Board of Directors will vest with the Liquidator



# NEW INSTITUTIONS

INSOLVENCY &  
BANKRUPTCY  
BOARD OF INDIA



INSOLVENCY  
PROFESSIONAL  
AGENCY



INFORMATION  
UTILITY



# PRIORITY

The following debts will be paid in PRIORITY given below:

Insolvency Resolution Cost & Liquidation Cost;

Debts to Secured Creditor (who have relinquished their security interest) & Workmens' dues (for 24 months before commencement);

Wages & Unpaid Dues to employees (other than workmen) (for 12 months before commencement);

Financial Debts to Unsecured Creditors;

Workmen's Dues for earlier period;

Crown Debts and Debts to Secured Creditor following Enforcement of Security Interest;

Remaining Debts;

Preference Shareholders;

Equity Shareholders or partners.



# KEY BENEFITS

Time bound settlement of  
Insolvency.

Banks & Asset reconstruction  
companies immediate gainers

Comprehensive coverage-  
Companies, LLP, Individuals &  
more can be added

Database of Serial Defaulters

Protect workers



# CHALLENGE

Not a Magic wand - Benefits will follow after 3-5 years from now.

- To create Large pool of Insolvency Professionals.
- Draft Procedural Rules for
  - Insolvency Professionals
  - Information Utilities
- Establishment of several new institutional mechanisms.
- High value of Performance Bond
- Order of priority to Distribute Assets
  - Secured Creditors - why not upto Collateral Value?
  - Unsecured creditors have priority over Trade Creditors?
  - Government Dues - after unsecured creditors ?
- Formation of Multiple Information Utilities - Information about a Company may not be available through a Single IUs
  - Insolvency & Bankruptcy Fund- manner of usage of the Fund ?



# OPPORTUNITY FOR PCS

- Interim Resolution Professional
- Resolution Professional
- To prepare Resolution plan
- To Represent
  - Financial Creditor;
  - Operational Creditor;
  - Corporate Debtorbefore NCLT- DRT & NCLAT- DRAT
- To represent the Winding Up cases before the Tribunal
- To prepare scheme & seek approval from Tribunal for Revival & Rehabilitation of Sick Cos.



# CHALLENGE FOR PCS

Compete with  
Best  
**BRAIN**

Learn Art of  
DRAFTING;  
ADVOCACY;  
PLEADING

Prove  
our  
COMPETENCIES

Expectation  
of  
CLIENTS



# Contact Us

- Rajput Jain & Associates Address: P-6/90, Connaught Circus Connaught Place New Delhi- 110001
- Mobile No: 9811322785, 9555555480
- Telephone: +91 011 -23343333
- Email : [info@carajput.com](mailto:info@carajput.com), [singh.swatantra@gmail.com](mailto:singh.swatantra@gmail.com)
- Website : [www.carajput.com](http://www.carajput.com)

## Corporate & Head Office

- Address: 1598, Level-1, Sector 22-B, Chandigarh
- Mobile No: 9555555480, 9811322784, 9871857333
- Email : [rajputjainandassociates@gmail.com](mailto:rajputjainandassociates@gmail.com)

- Address: Building No. 53/160 R5, Bhakti Nagar, Pandeypur Varanasi 221002 (U.P) India

- Address: D 301 Omex Royal Apartment Sector 44 Noida, India

- Address: Building No 65 Ward No.10 Lakhe Chaur Marg, Kathmandu Metropolitan Kathmandu, Nepal.

## Branch Offices

Follow us on

