

The background of the slide features a silhouette of several business professionals sitting around a table in a meeting room. The scene is backlit by a bright light source, likely a window, creating a strong glow and casting long shadows. The silhouettes are reflected on the floor. A large, bright yellow rectangular box is overlaid on the left side of the image, containing the title text.

Insolvency and Bankruptcy Code 2016 And Regulations

Objective of the Code

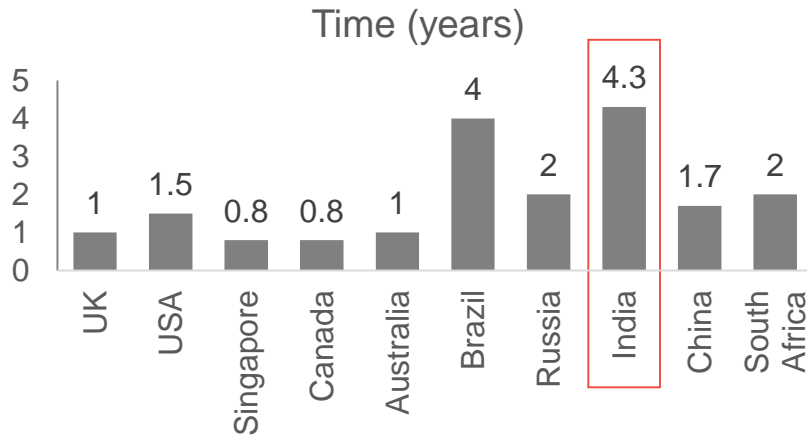
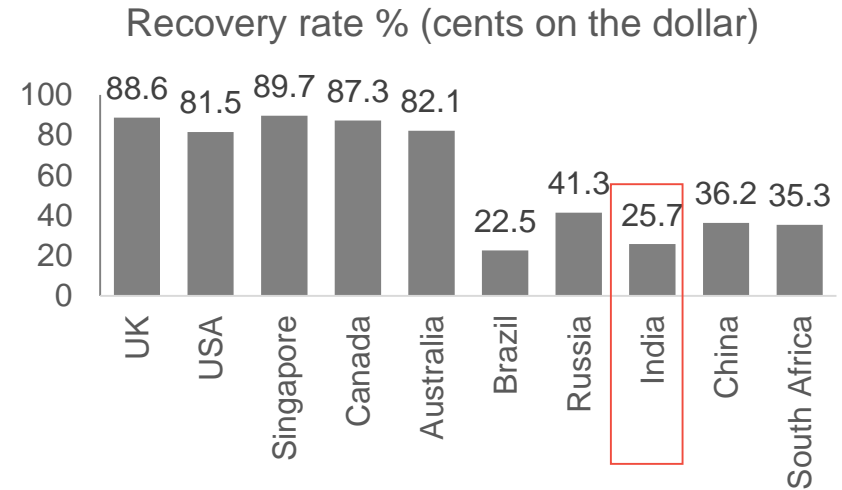
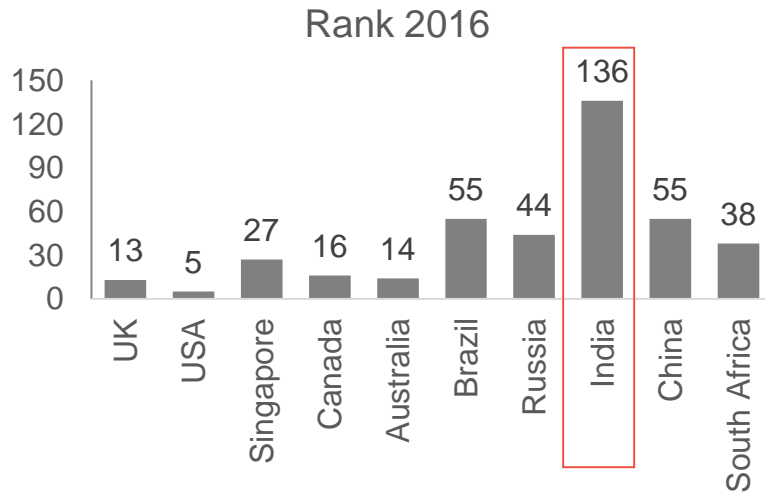
The objective of this Code as stated in the preamble to the Code

“is to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto”

Why is the Code an imperative today?

1. Improve 'Ease of Doing Business' ranking for India.
2. The stressed assets in the Indian banking system have peaked at US\$ 150 billion or over Rs. 10 lakh crores (15% of gross advances)
3. Heightened focus on the resolution of the problem by the Reserve Bank of India (RBI) and the Supreme Court. The previous RBI Governor had stated that "Our intent is to have clean and fully-provisioned bank balance sheets by March 2017".
4. There is a dire need of capital today – not just for stressed companies but for growth in general.
5. Long time for resolution and recovery; Doing away with a fragmented framework.
6. The average life of cases recommended for restructuring in 2002 was 7 years and the average life of cases recommended for winding up to the court was 6.5 years.
7. Improve the confidence of the International investor in the debt market.

'Ease of Doing Business' ranking as per World bank



- As per the Doing business index 2016 released by World Bank, India continues to fare the worst amongst the BRICS nation.
- With 136th rank, India is far behind the developed economies such as UK, US, and others.
- Among several requisites of an effective insolvency regime, recovery is one of the most important parameters.
- At 25.7 cents per dollar, India is ahead only of Brazil amongst BRICS nation.

Premise the code

1. Insolvency test moved from 'erosion of net worth' to 'payment default'
2. Single insolvency and bankruptcy framework. Replaces Sick Industrial Companies (Special Provisions) Repeal Act, 2003 and modifies / amends some provisions of other legislations like Companies Act, 2013, SARFAESI Act, 2002 etc.
3. Time bound resolution process
4. Clear and unambiguous process to be followed by all stakeholders. Shift of control from shareholders and promoters to creditors
5. Provide confidence to lenders of their rights and their enforcement.
6. Better symmetry of information flow between creditors and debtors
7. Shift of jurisdiction to NCLT and DRT
8. Government dues would rank below to those of secured creditors and unsecured financial creditors
9. In case of fraudulent diversion of assets, personal contribution can be sought; imprisonment possible
10. Insolvency Professional (IP) to take over the management and operations of the borrower during the CIRP

Journey of the Code thus far

The Insolvency and Bankruptcy Code, 2016 (IBC) was passed by the Parliament on 11th May 2016, received Presidential assent on 28th May 2016 and came into effect from 28th November 2016.

Events	Date/Month
Bankruptcy Law Reform Committee (BLRC) formed	August 2014
Final report and draft bill submitted by BLRC	November 2015
First draft presented in Parliament and then referred to Joint committee	December 2015
Report of Joint committee presented to Lok Sabha	April 2016
Code passed by Parliament	May 2016
Responsibility for implementation given to MCA	June 2016
Sections pertaining to IBBI, powers to make regulation etc. notified	August 2016
IBB members appointed	October 2016
Six draft rules and regulations issued for public comments by: <ul style="list-style-type: none">• registration of IPs• Registration of IPAs• model Bye- laws• Resolution process• Liquidation process• Application rules	31 st October 2016

Structure of the Code

Distinct Parts to administer various constituents

- ▶ Part 1 – Preliminary and Definitions
- ▶ Part 2 – Corporate Debtors
- ▶ Part 3 – Individuals and Partnerships
- ▶ Part 4 – Board, Professionals, Agencies and Utilities
- ▶ Part 5 – Miscellaneous Provisions

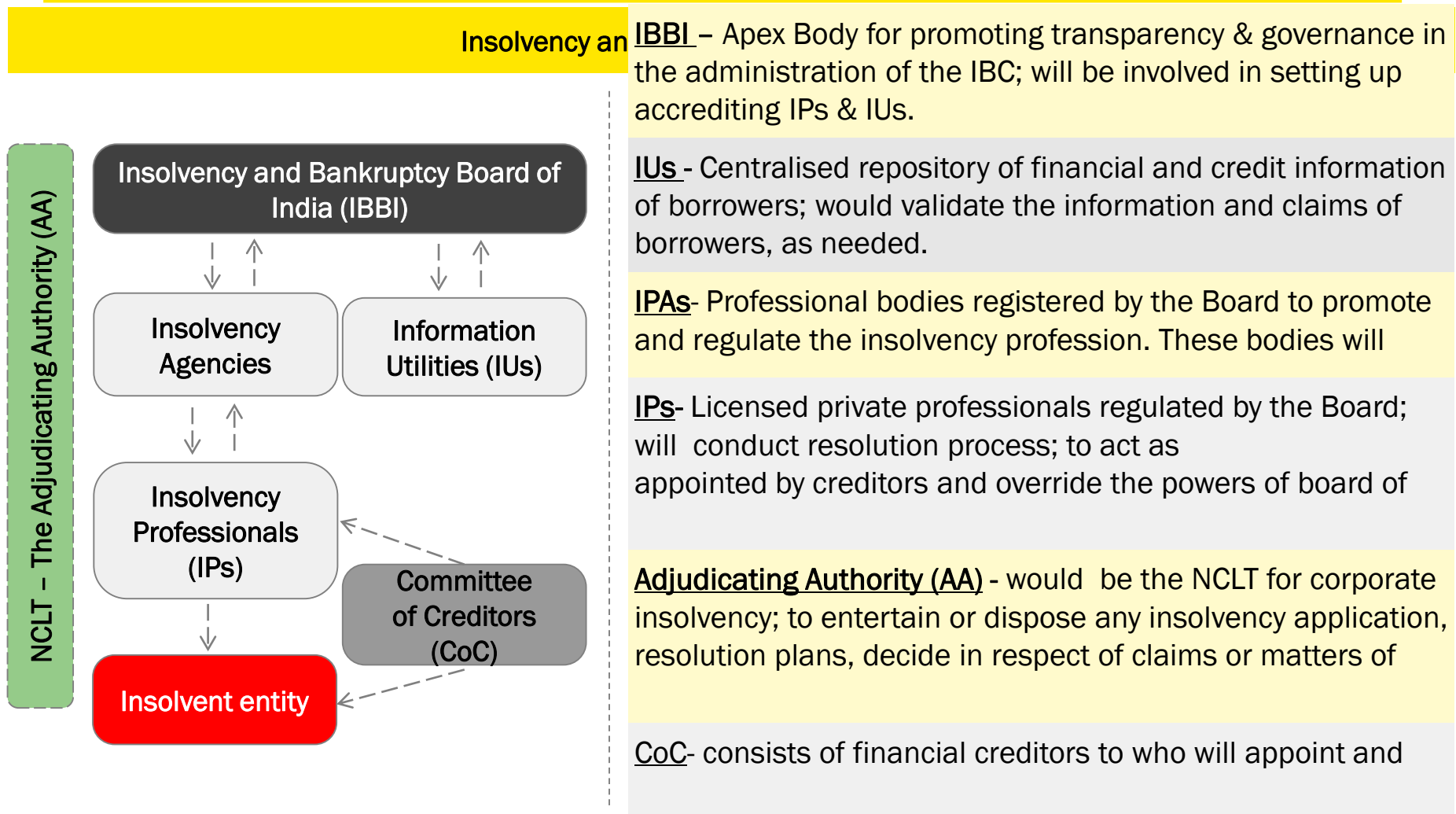
Section 244 – Transitional Provisions with Schedules

Structure of the Code

Rules and Regulation as Notified

Rules/Regulations	Notified on
Application to Adjudicating Authority Rules	December 1, 2016
Insolvency Professional Regulations	November 29, 2016
IBBI Model Bye Laws	November 21, 2016
IPA Regulations	November 21, 2016
IR Process for Corporate Persons	November 30, 2016
Liquidation Process Rules	December 15, 2016

Insolvency and Bankruptcy Code ecosystem



Corporate Insolvency Resolution Process (CIRP) under the Code

Default

min INR 1 lakh; even a single day

Who can file the application?

- Financial & Operational creditors (including Government & employees/workmen), and Corporate debtor

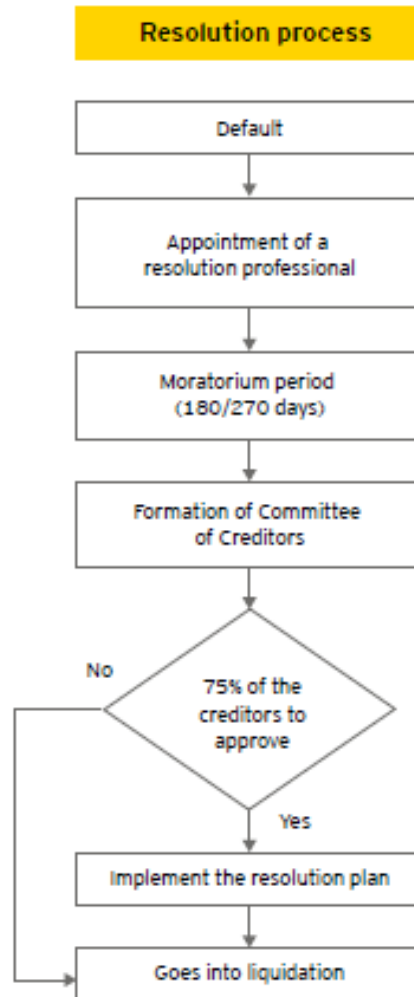
Resolution Professional (IRP/ RP)

- Financial creditor and/ or corporate applicant shall propose the name of an IRP in the application
- All powers of the board and management shall vest with the IRP/ RP

Moratorium

Moratorium shall prohibit:

- Institution of suits
- Transfer of assets
- Foreclosure, recovery or enforcement under SARFAESI
- Recovery of assets



Committee of creditors (CoC)

- Consists of financial creditors only, excluding related parties
- To approve several actions of RP

Resolution plan

The resolution plan must provide for:

- payment of insolvency resolution process costs
- repayment of the debts of operational creditors
- management of the affairs of the borrower after the plan is approved
- implementation and supervision of the approved plan

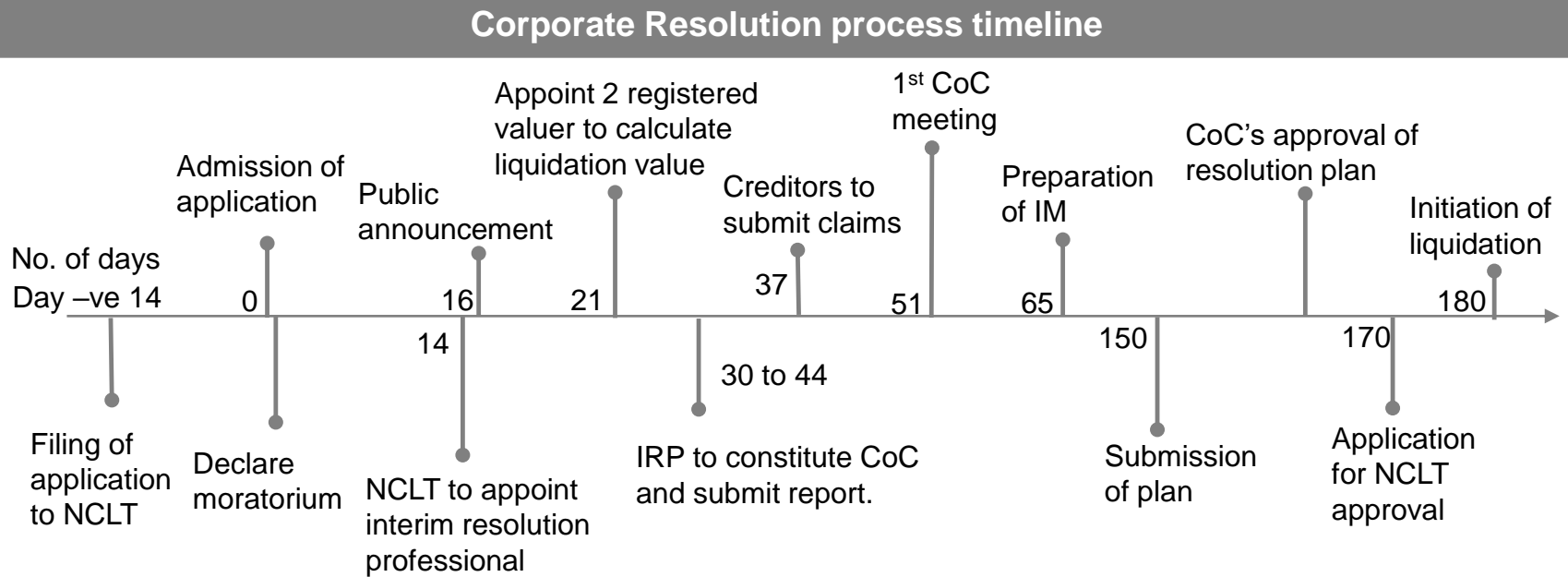
Voting power

- Only financial creditors have voting power in the committee in the ratio of debt owed
- All decision of the committee shall be approved by 75% of financial creditors

Fast track insolvency

For debtors as may be notified by the central government (completed in 90 days)

Corporate Resolution process timeline



Key points to focus for the financial creditors:

- Approval or replacement of IRP
- Approve certain actions of IRP/RP
- Submit resolution plan based on information memorandum prepared by the RP
- It is the duty of resolution applicant and not of RP to prepare the Resolution plan; therefore creditors may have to take independent consultant's help.
- It is advisable that banks constitute a panel of industry experts whose help can be sought during the insolvency resolution process

Liquidation process under the Code

Liquidation order

Liquidation order will be passed if:

- CIRP ends
- Plan not submitted to NCLT
- Plan not approved
- Decided by CoC
- Plan not properly implemented

Liquidation steps

- Appointment of liquidator
- Formation of liquidation estate
- No legal proceeding by or against the debtor
- Consolidation of claims
- Distribution of assets
- Dissolution of debtors (to be completed within 2 years)

Liquidator

Liquidator shall:

- Form liquidation estate
- take custody & control of all assets
- consolidate, verify, admit and determine value of creditors claims
- Carry on the business for its beneficial liquidation

Priority Waterfall of claims

Insolvency resolution process and liquidation costs

Secured creditor & workmen dues (upto 24 months)

Other employee dues (upto 12 months)

Financial debts of unsecured creditors

Government dues (upto 2 years) and unpaid secured creditors

Any remaining debts and dues

Preference shareholders, if any

Equity shareholders or partners, as the case may be

Reporting

- Preliminary report – within 30 days from the date of the order;
- Progress report – within 15 days after end of every period of 3 months from the date of order

Insolvency and liquidation cost

- Insolvency cost include interim funding, cost of running the debtor as going concern (eg rent or salary of employees), cost of IP etc
- Liquidation cost include any cost incurred by liquidator during liquidation period

Secured creditor in liquidation

Secured creditor has the option to:

- enforce and realise the security outside the Code, or
- relinquish its security interest and receive proceeds as defined in the priority of claim
- Distinction between rights of different class of secured creditors (first vs second charge, fixed vs floating charge) not clarified

What makes a good Insolvency Professionals?

Practical working knowledge of :

Company law

Banking/ Finance

**Cash flow
management**

Insolvency law

**Stake holder
management**

Negotiation skills

Taxation

**Valuation /
Sale of assets**

**Commercial and
business**

Key Powers, Roles & Responsibilities as envisaged under the Code

1. The appointed resolution professional IP shall exercise all the powers of the Board of Directors of the corporate debtor.

- The powers of the board of directors of the corporate debtor, shall stand suspended and be exercised by the IRP / IP
- The officers and managers of the corporate debtor shall report to the IRP / RP and provide access to such documents and records of the corporate debtor as may be required
- The IRP / IP shall act and execute in the name and on behalf of the corporate debtor all deeds, receipts, and other documents

2. Key powers and duties of Resolution professional

- form Committee of creditors
- Conduct meeting of Committee of creditors
- prepare the information memorandum (IM) and invite resolution plans
- ensure the financial affairs of the company

3. Key powers and duties of Liquidator

- receive, verify and value claims of all the creditors, and settle such claims
- take into his custody or control all the assets, and sell the assets
- carry on the business of the corporate debtor for its beneficial liquidation
- form an estate of the assets which will be called the liquidation estate
- apply to the Adjudicating Authority for avoidance of transactions

Regulations on Insolvency Professionals

The IBBI had notified “Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016” on 23 rd Nov 2016. Salient features of the regulations are:	
Insolvency Professionals Examination	<ul style="list-style-type: none"> The Board shall conduct a ‘National Insolvency Examination’ and ‘Limited Insolvency Examination’. The syllabus, format and frequency of the ‘Limited Insolvency Examination’, including qualifying marks, has been notified by the IBBI and registration for the examination has been started from 15th December 2016. The examination has been started from 31st December 2016.
Eligibility and Qualification for registration of insolvency professionals (Reg 5)	<ul style="list-style-type: none"> Any person resident of India who: <ul style="list-style-type: none"> has passed National insolvency examination; or has passed the Limited Insolvency Examination, and has 15 years of experience in management, after graduation or has passed the Limited Insolvency Examination and has ten 10 years of experience as a member of ICAI; ICSI; ICAI (Cost); and Bar council
Application for registration	<ul style="list-style-type: none"> An individual enrolled with an Insolvency Professional Agency may make application in to Board in Form A with application fee of Rs 10,000 to IBBI
Registration for a limited period (Reg 9)	<ul style="list-style-type: none"> An individual who has been “in practice” for 15 years and enrolled as a CA, CS, CA (Cost), and Advocate Valid for a period of 6 months This is notwithstanding Regulation 5 (i.e without exams) Registration was upto 31st December 2016
Recognition of IP Entities (Reg 12)	<ul style="list-style-type: none"> LLP, partnership firm, or a company if: <ul style="list-style-type: none"> a majority of the partners of the LLP or partnership firm or a majority of whole time directors of the company are registered as insolvency professionals.

Incorporation of the Company Indian Institute of Insolvency Professionals of ICAI (IIPI) by the Institute of Chartered Accountants of India (ICAI)

- ▶ The Indian Institute of Insolvency Professionals of ICAI (IIPI) was incorporated as a section 8 Company on November 25th, 2016 to enroll and regulate Insolvency Professionals as its members in accordance with the Insolvency and Bankruptcy Code, 2016.
- ▶ IIPI was awarded the Certificate as a First Insolvency Professional Agency (IPA) of India by the Hon'ble Union Finance Minister Shri Arun Jaitley on November 28th, 2016.
- ▶ IIPI now became authorised to enroll the individuals/professionals as Insolvency Professionals.

Directors of IIPPI nominated by ICAI

- ▶ CA. Devaraja Reddy M.
- ▶ CA. Nilesh Shivji Vikamsey
- ▶ CA. Dhinal Ashvin Shah

Independent Directors of IIPI

- ▶ Hon'ble Mr. Justice Anil R. Dave (Retd.)
- ▶ Sh. M. Damodaran
- ▶ Sh. M.D. Mallya
- ▶ Sh. I.Y.R. Krishna Rao
- ▶ Sh. Biswamohan Mahapatra

Enrolment of Insolvency Professionals (IPs) by IIIPI

- ▶ From November 29th, 2016 the company started enrolling IPs for Limited Period registration under Regulation 9 of the IBBI (Insolvency Professionals) Regulations, 2016.
- ▶ To enroll as IP for Limited Period registration was upto December 31st, 2016.
- ▶ To facilitate the company has developed and started functioning the Website of IIIPI (www.iiipicai.in) w.e.f November 28th, 2016.
- ▶ The company charged a nominal fee of Rs. 2000/- from the applicants for registration as Limited Period IP.
- ▶ The company had received more than 1200 applications (through online & hard copy) from the professionals which includes CA, CS, CA (cost) & Advocates to enroll themselves as the Insolvency Professional with IIIPI.
- ▶ Out of these applications the company has enrolled 716 members out of 977 in total registered as Limited Period IPs with the Insolvency and Bankruptcy Board of India.
- ▶ Now the company is enrolling the permanent Insolvency Professionals who have passed the Limited Insolvency Examination conducted by the IBBI.

Fees to be charged to the Insolvency Professionals of IIIPI

As per clause 11 of the Bye-Laws of IIIPI, the professional members are required to pay a fixed sum of money as its annual membership fee. Accordingly, it has been decided by the Governing Board to charge a non-refundable fee from the members in the following manner:

- ▶ Fees of Rs. 10,000/- (Ten Thousand only) for each financial year (which needs to be paid before 30th April of every year)
- ▶ Fees would be charged half for enrolment with IIIPI after October of each financial year, i.e. Rs. 5000/- (Five Thousand Only)

If the fee cheque(s) submitted by the applicant is returned by the bank the application will liable to be rejected.

Liquidation remuneration table

The Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 specifies that remuneration of liquidator shall be determined by the Committee of creditors. However where the committee does not determine the remuneration, the liquidator shall be entitled to a fee as a percentage of the amount realised net of other liquidation costs, and of the amount distributed, as under:

Amount of Realisation / Distribution (In rupees)	Percentage of fee on the amount realized distributed			
	In the first six months	In the next six months	In the next one year	Thereafter
Amount of Realisation (exclusive of liquidation costs)				
On the first 1 Crore	5.00	3.75	2.50	1.88
On the first 9 Crore	3.75	2.80	1.88	1.41
On the next 40 Crore	2.50	1.88	1.25	0.94
On the next 50 Crore	1.25	0.94	0.68	0.51
On further sums realized	0.25	0.19	0.13	0.10
Amount Distributed to Stakeholders				
On the first 1 Crore	2.50	1.88	1.25	0.94
On the first 9 Crore	1.88	1.40	0.94	0.71
On the next 40 Crore	1.25	0.94	0.63	0.47
On the next 50 Crore	0.63	0.48	0.34	0.25
On further sums realized	0.13	0.10	0.06	0.05

Thank You