

The background of the slide features a silhouette of several people sitting around a table in a meeting room. They are positioned in front of large windows that let in bright, warm light, creating a strong backlighting effect. The silhouettes are dark against the bright light from the windows. The overall scene suggests a professional meeting or conference.

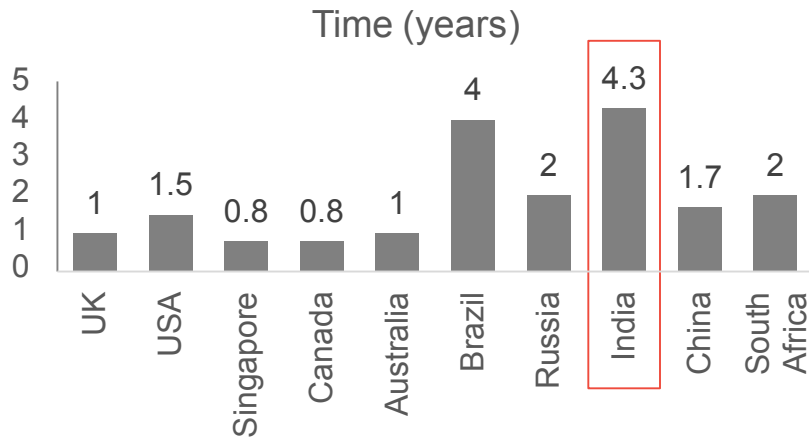
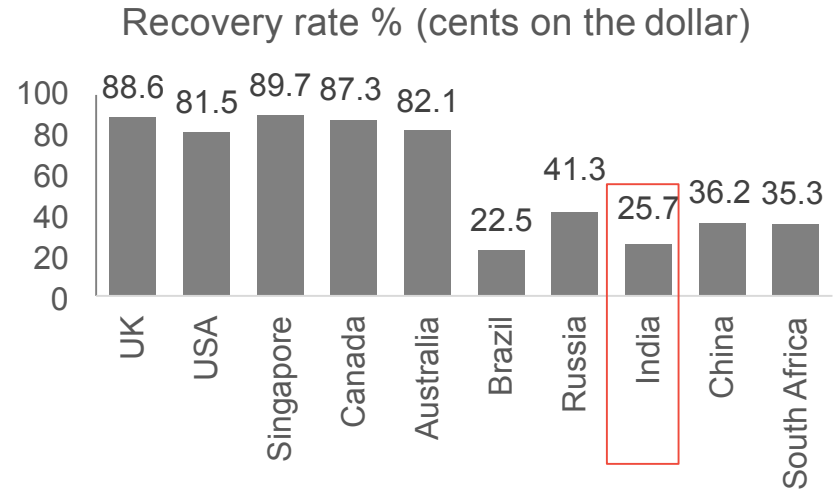
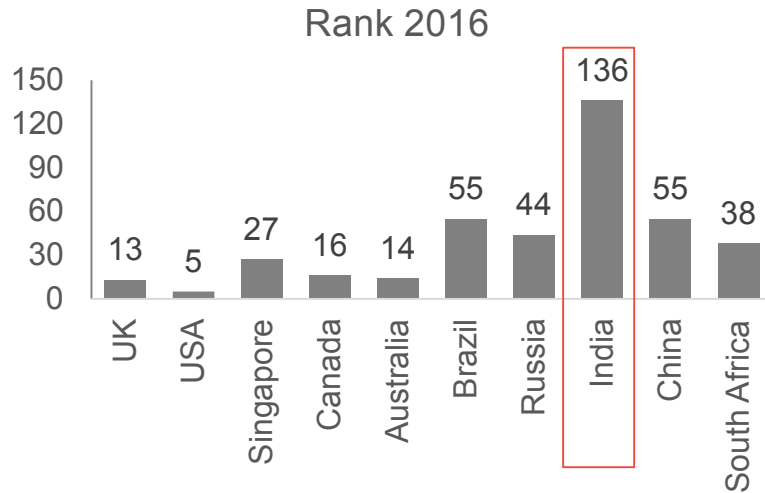
Insolvency and Bankruptcy Code 2016 And Regulations

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”

'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.

Insolvency -

- **Mentioned in Ancient Greece, Islamic Teaching.**
- **Different Countries have different Approach to deal with.**
- **Bankrupts (England) Act, 1825-**

Allowed Debtors to Start Insolvency Proceeding

- **In UK Bankruptcy Act 1869 passed**

- It talk about Creditor led approach
- Modern Indian Law is based on that

- **2013- European Union**

France

Germany

Spain

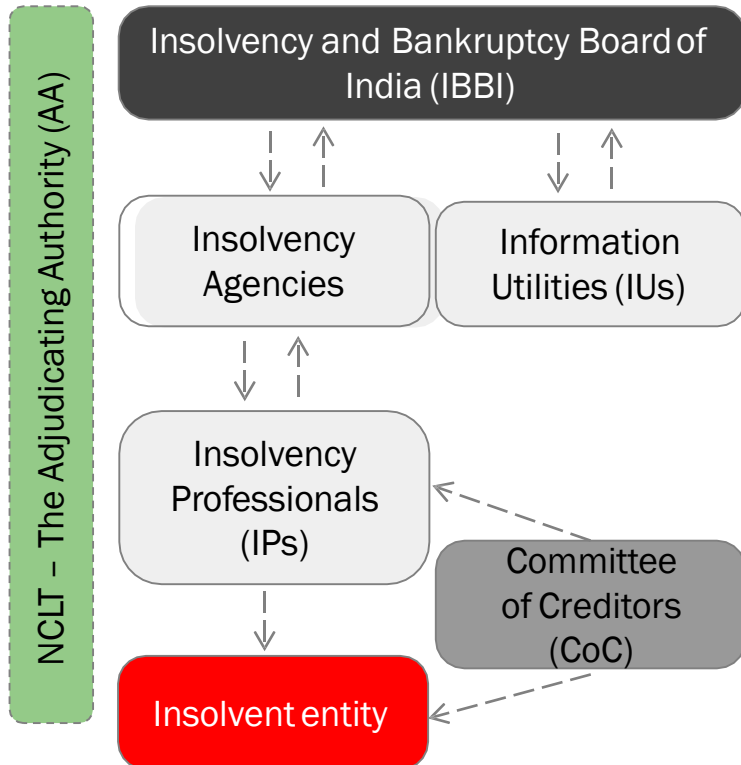
Italy

- Changed laws in 2013
- Based on US Bankruptcy Code-based on Debtor led Approach
- Restructure and not to Kill

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

Insolvency and Bankruptcy Code ecosystem



IBBI – Apex Body for promoting transparency & governance in the administration of the IBC; will be involved in setting up accrediting IPs & IUs.

IUs - Centralised repository of financial and credit information of borrowers; would validate the information and claims of borrowers, as needed.

IPAs- Professional bodies registered by the Board to promote and regulate the insolvency profession.

IPs- Licensed private professionals regulated by the Board; will conduct resolution process; to act as **Liquidator/ bankruptcy trustee**; appointed by creditors and override the powers of board of directors.

Adjudicating Authority (AA) - would be the NCLT for corporate insolvency; to entertain or dispose any insolvency application, resolution plans, decide in respect of claims or matters of **law/facts thereof**.

CoC- consists of financial creditors of the corporate debtor but exclude related party creditors. Each creditor shall vote in accordance to voting share assigned if 75% of creditor approve the resolution plan same needs to be implemented.

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

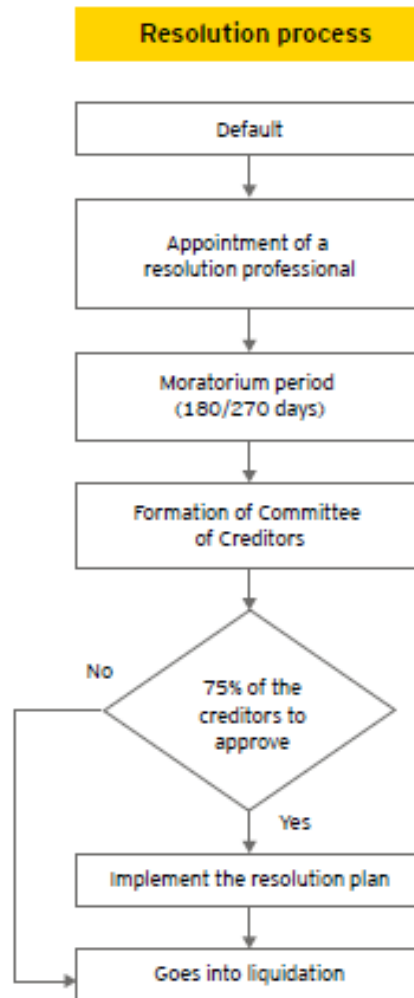
Resolution Professional (IRP/ RP)

- 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

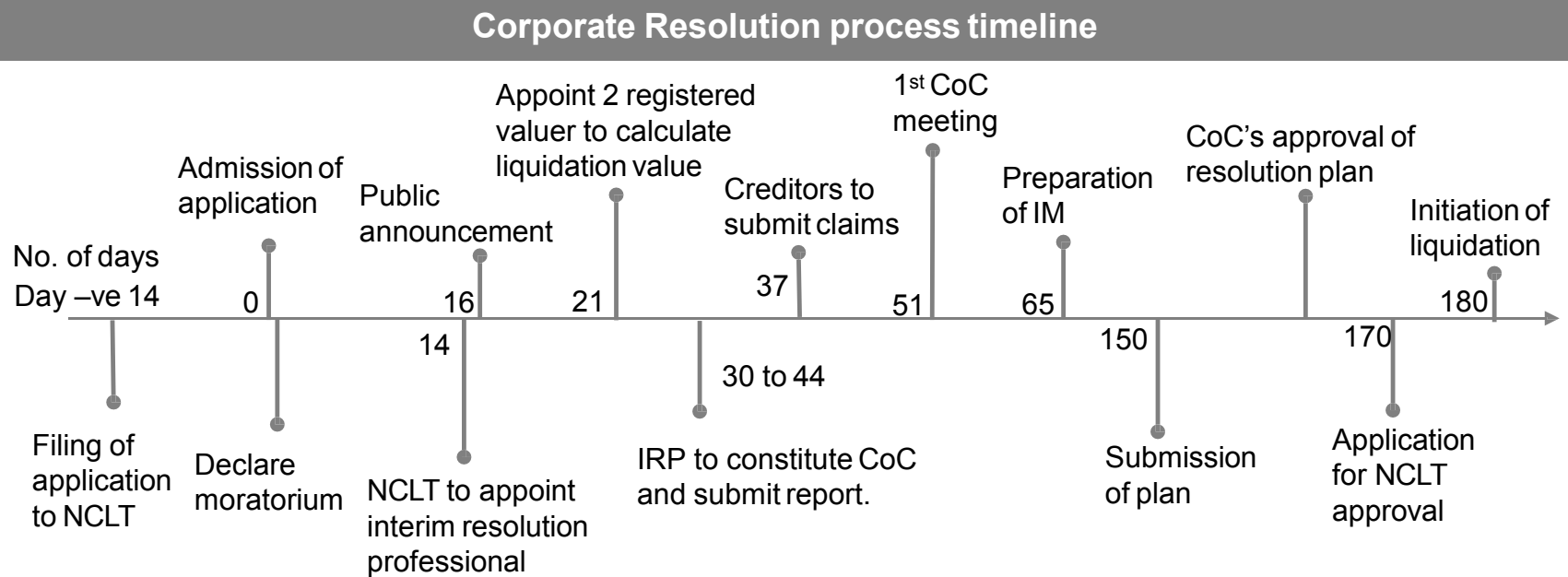
Voting power

- 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**

Regulations on Insolvency Professionals

The IBBI had notified “Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016” on 23rd 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 . (FEE STRUCTURE-SLIDE NO. 16)
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.

Syllabus For Examination- This syllabus will hold good for examinations conducted from 1st July, 2017 to 31st December, 2017.

S L N O	Coverage	Weig ht(%)
1.	The Insolvency and Bankruptcy Code, 2016 (Entire Code)	26
2.	Rules and Regulations under the Bankruptcy Code (All Rules and Regulations notified under the Code till 30th June, 2017)	28
3.	(i) The Companies Act, 2013 Chapter III Prospectus and Allotment of Securities Chapter IV Share Capital and Debentures Chapter V Acceptance of Deposits by Companies Chapter VI Registration of Charges Chapter VII Management and Administration Chapter IX Accounts of Companies Chapter XV Compromises, Arrangements and Amalgamations Chapter XVII Registered Valuers Chapter XVIII Removal of names of the companies from the register of companies Chapter XX Winding-up of the companies Chapter XXVII NCLT and NCLAT	10

Syllabus And Format – to be contd..

S L N O	Coverage	Weigh t(%)
	(ii) The Partnership Act, 1932, and (iii) The Limited Liability Partnership Act, 2008 (Nature of LLP; Partners and their Relations; Limitation of Liability; Financial Disclosures)	
4.	(i) The Indian Contracts Act, 1872 (Voidable Contracts and Void Agreements Contingent Contracts; Performance of Contract ; Novation, Rescission and Alteration of Contracts; Agency; Consequences of breach of Contract; Indemnity and Guarantee, Surety, Bailment and Pledge; Set off) (ii) The Sale of Goods Act, 1930 (Sale, Condition and Warranty, Seller's Lien and Damages). (iii) Transfer of Property Act, 1882;	04
5.	(i) The Recovery of Debts due to Banks and Financial Institutions Act, 1993; (ii) The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interests Act, 2002; and (iii) Corporate Debt Restructuring Scheme, Strategic Debt Restructuring, and Scheme for Sustainable Structuring of Stressed Assets (S4A) (of RBI)	04
6.	▪ General Awareness (Constitution, Economy, Financial Markets and Rights of Workmen)	04
7.	▪ Finance and Accounts (Corporate Finance, and Financial Analysis)	04
8.	▪ Case Laws-Decisions of Supreme Court, High Courts, NCLAT and NCLT relating to Corporate Insolvency Resolution, Corporate Liquidation, Voluntary Liquidation and Fast Track Resolution Process. There will be five questions carrying two marks each.	10

Syllabus And Format – to be contd..

S L N O	Coverage	Weigh t(%)
9.	Case -Study on Corporate Insolvency Resolution, Corporate Liquidation, Voluntary Liquidation, Fast Track Resolution, Fresh Start, Individual Insolvency Resolution and Individual Bankruptcy. There will one comprehension narrating the case study and there will be five questions based on the case carrying two marks each.	▪ 10

Format of Examination

The format of examination is as under:

- The examination will be conducted online (computer-based in a proctored environment); with objective multiple choice questions;
- The duration of the examination will be two hours;
- A candidate will be required to answer 90 questions in two hours for a total of 100 marks;
- There will be negative marking of 25% of the marks assigned for the question;
- Passing mark for the examination is 60%;
- Passing candidates will be awarded a certificate by the Board;
- A candidate will be issued a temporary mark sheet on submission of examination paper;
- No workbook or study material will be provided.

Frequency of Examination

The frequency of Examination is as under:

- The examination centers will be available from 100 + locations in the country;
- The examination will be available from 1st July, 2017.
- A candidate needs to enroll for examination at www.nism.ac.in. He needs to select IBBI-Limited Insolvency Examination and enroll himself for the examination by choosing the time, the day and the examination centre for his examination;
- A candidate needs to provide PAN and Aadhaar to enroll for the examination;
- A candidate needs to pay examination fee of Rs.1000 (Rupees one thousand only) online on every enrollment.

REGULATIONS that have been notified after 30.11.2016 till 25.05.2017

- **IBBI (Liquidation Process) Regulations, 2016 – Notified on 15.12.2016**
- **IBBI (Engagement of Research Associates and Consultants) Regulations 2017-
Notified on 31.01.2017**
- **IBBI (Procedure for Governing Boards Meetings) Regulations 2017- Notified on
31.01.2017**
- **IBBI (Advisory Committee) Regulations 2017- Notified on 31.01.2017.**
- **IBBI (Voluntary Liquidation Process) Regulations 2017- Notified on 31.03.2017**
- **IBBI (Information Utilities) Regulations 2017-Notified on 31.03.2017**

Note: The rules/regulations which may be announced after 25.05.2017 till 30.06.2017 will also be included in revised syllabus.

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.

Fees to be charged to the Insolvency Professionals

• **Fees of IBBI**-Rs 10,000/- (Ten Thousand Only)

• **Fees 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)

• Examination fee of Rs.1,000 (Rupees one thousand only) online on every enrollment as mentioned earlier.

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