Corporate Insolvency Resolution Process (CIRP) & Opportunities

The Institute of Chartered Accountants of India
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Presented By:

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Who are involved in entire process

- Adjudicating Authority
- Interim Resolution Professional
- Resolution Professional
- Committee of Creditors
- Registered Valuer
- Forensic/Transaction Auditor (if required to RP)

CIRP Process – Part II

- **Section 4 – Min Default Rs. 1 Crore or more**

- **Section 7 – Initiation of corporate insolvency resolution process by financial creditor.**

- A financial creditor either by **itself or jointly** with other financial creditors may file an application for initiating corporate insolvency process with **Adjudication Authority** when a **default** has occurred.

- **For default under section 7** –Adjudicating Authority shall, **within fourteen days of the receipt of the application** ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor.

CIRP Process – Part II

- The **2nd proviso** to Section 7(1) states as follows:- "Provided further that for financial creditors who are **allottees under a real estate project**, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed **jointly by not less than one hundred of such allottees** under the same real estate project **or not less than ten percent of the total number of such allottees** under the same real estate project, **whichever is less**.

[Rajesh Khanna and 82 Ors. Vs Vardhman Infradevelopers Pvt. Ltd. — ***NCLAT 30.01.25 admitted*** *Out of 929, 209 allottees applied but actually applicants were 83 hence case dismissed.] In this case, the present application is being filed by 83 Applicants holding 209 units, which surpasses both criteria.*

Under Section 9 – for proving **default GSTR-1 and 3B** (if applicable)

- When the ingredient of levy of interest on delayed payment is absent in the written contract, stipulation of **interest payment in invoices can override** the written contract **only if there is mutual consent** and mutual understanding **between the parties.**

- **Neither the NCLT nor the NCLAT** is the appropriate forum for making any determination on the liability of the Corporate Debtor to pay interest under the MSME Act or Interest Act .

[*SNJ Synthetics Ltd. Vs. PepsiCo India Holdings Pvt. Ltd. – NCLAT New Delhi — SNJ Synthetics Ltd. v. PepsiCo India Holdings Pvt. Ltd., (2025) Petition under Section 9 was only for interest. Principal was paid in full.]*

Section 9: Application for initiation of corporate insolvency resolution process by Operational creditor. (OC)

After expiry of period of **10 days from date of delivery of notice or invoice demanding payment .**

[Judicial Pronouncements: *Sabarmati Gas Ltd. Vs. Shah Alloys Ltd., (2023)*

- *Hon'ble Supreme Court held that when the limitation period for initiating CIRP under Section 9,* ***IBC is to be reckoned from the date of default****, as opposed to the date of commencement of IBC and the period prescribed therefore, is* ***three years*** *as provided by* ***Section 137 of the Limitation Act, 1963*** *and the same would commence from the date of default and is* ***extendable*** *only by application of Section 5 of the Limitation Act, 1963.*
- *It is incumbent on the Adjudicating Authority to consider the claim for condonation of the delay when once the proceeding concerned is found filed beyond the period of limitation. The Hon'ble Court held that '****Sufficient Cause****' is* ***the cause for which a party could not be blamed****.]*

- ***[Judicial Pronouncements:*** *JK Jute Mill Mazdoor Morcha Vs. Juggilal Kamlapat Jute Mills Company Ltd., [2019]* **SC**

  The NCLAT, by the impugned judgment, is not correct in refusing to go into ***whether the trade union would come within the definition of "person"***

  under Section 3(23) of the Code.

  Equally, the NCLAT is not correct in stating that a trade union would not be an operational creditor as no services are rendered by the trade union to the Corporate Debtor.

  What is clear is that ***the trade union represents its members who are workers,*** *to* ***whom dues may be owed by the employer****, which are certainly* ***debts owed*** *for services rendered by each individual workman, who are collectively represented by the trade union.*

*Equally, to state that for **each workman** there will be a **separate cause of action**, a **separate claim**, and a **separate date of default** would ignore the fact that a joint petition could be filed under Rule 6 read with Form 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, with authority from several workmen to one of them to file such petition on behalf of all.*

For all these reasons, it was allowed to the appeal and set aside the judgment of the NCLAT.]

Section 10 – Initiation of corporate insolvency resolution process by Corporate Applicant

- **GO Airlines (India)** Ltd. admitted on 10.05.2023 is the biggest example.

- CIRP application filed u/s 10 of IBC to avoid Income Tax liability is not maintainable.

  [*Judicial Pronouncements: Jayam Vyapaar Pvt. Ltd. – NCLT Kolkata Bench*]

- *Under this, the corporate applicant with a fraudulent and malicious intention filed the application under Section 10 of IBC. Hence, NCLT was of the view that it is a fit case to invoke Section 65 of IBC and imposed a penalty of Rs. One Lakh only upon the Corporate Applicant.*

Sec 12 – Time-limit for completion of insolvency resolution process.

- The process shall be completed within **180 days** from admission of application under this Code.
- This can be extended by further by **90 days** by the Adjudicating Authority if the **Committee of Creditors (CoC)** approves the extension with a **66% vote.**
- Total CIRP Period= 180 days + 90 days + 60 days i.e. maximum 330 days.
- The **time limit** for completion of Insolvency Resolution Process provided in Section 12 of IBC **is not mandatory**.
- *[Judicial Pronuncement: West Bengal Financial Corporation Vs. Bijoy Murmuria RP, (2022) (NCLAT)]*

Sec 12A - Withdrawal of application admitted under section 7, 9 or 10

- Allowed by Adjudicating Authority with **approval of 90% voting share** or COC is mandatory.

- If there are **no other creditors**, there is **no necessity to ask Financial Creditor** to file a Section 12A Application under IBC for withdrawal of CIRP on settlement.

- *BYJU Judgment also lays down that in appropriate cases inherent power can be exercised to close the proceedings* — ***Sachin Malde v. Hemant Nanji Chheda and Anr., (2025) NCLAT***

Sec 14 Moratorium –

- The Adjudicating Authority shall by order declare moratorium for **prohibiting** all of the following:

1. Institution **of suits or continuation of pending suits** or proceedings against the corporate debtor.
2. **transferring** of by the corporate debtor any of its assets
3. any **action to foreclose, recover** or enforce any **security interest** created by the corporate debtor
4. **recovery of any property** by an owner or lessor which is occupied by corporate debtor.

- Supply of **essential goods** like electricity, water, communication lines but amount for services utilized during CIRP period **will have to be paid.**

- ***Judicial Pronouncement:***

- ***Maharashtra State Electricity Distribution Company Ltd. and Anr. v. Ravi Sethia (RP), (2025) NCLAT***

- ***Electricity supply to textile industry*** *(high-voltage electricity supply to run the machinery) falls under Section 14(2), as* ***essential supplies*** *and not under Section 14(2A) of IBC.*

- *Maharashtra State Electricity Distribution Company Ltd. and Anr. Vs. Ravi Sethia RP of Morarjee Textiles Ltd. – NCLAT New Delhi :*
- ***Non-payment of electricity dues*** *during CIRP cannot be a ground to discontinue the electricity, it will form part of* ***CIRP costs*** *–*

- ***Judicial Pronouncement:***

Avil Menezes (Liquidator) v. Principal CCIT Mumbai, (2024) NCLAT

In this important judgment, Hon'ble NCLAT held that:

- (i) Section 14 prohibits both **institution and continuation** of pending suits or proceedings.
- (ii) There is **no bar in a suit or a legal proceeding continuing** along with liquidation proceedings as pending suits or legal proceeding have not been included within the scope of moratorium under Section 33(5) of IBC.
- (iii) **Set-off has** been claimed **after passing of the liquidation order** which is legally permissible under Chapter III Part II of IBC.
- (iv) **The Income Tax authority enjoys limited jurisdiction** of continuing with assessment proceedings and in determining the quantum of taxes dues but does **not enjoy the jurisdiction and power to Suo motu initiate recovery** of dues.
- (v) While applying the principle of set-off, it must be kept in mind that **no creditor** ends up getting **share disproportional** to their dues.

Section 15: Public announcement of corporate insolvency resolution process

- Insolvency Resolution Professional (**IRP**) – to make public announcement **within 3 days**, take control and custody of assets,
- BOD stands suspended (Section 17 of the Code can be interpreted as suspension of powers of the board of directors and not their duties & responsibilities)
- ***Judicial Pronouncement:*** *Wittur Elevator Components India Pvt. Ltd. Vs. Axiomata Elevators Pvt. Ltd. – NCLT Kochi Bench) The Board is fastened with the responsibility of running & managing the company's affairs –and all the powers vests with IRP and all the employees to report to him.*
- If a going concern- maintain it as **going concern** to preserve and protect the value. He can **appoint** professional's accountant, legal, other professionals.

Section 21: Committee of Creditors

- It shall compromise all Financial Creditors. If FC is also OC than classify accordingly.
- Related **FC no voting power** – **exception** is if FC is regulated by **financial service regulator** on account of conversion or substitution of debt prior to ICD.
- Where the corporate debtor has no financial debt or where all financial creditors are related parties of the corporate debtor, the committee shall be set up as under
- eighteen largest operational creditors by value and one representative elected by all workmen and one representative elected by all employees

- ***Judicial Pronouncement***: *Greenshift Initiatives Pvt. Ltd. v. Sonu Gupta (RP), (2025) NCLAT dated 14.02.2025.*

Hon'ble NCLAT held that there can be no disputed to the proposition laid down by the Hon'ble Supreme Court in Phoenix ARC Pvt. Ltd. v. Spade Financial Services Ltd. & Ors., (2021) SC that the financial creditor who in praesenti is not a related party, would not be debarred from being a member of CoC. but that proposition comes with a caveat that it should not be with intention of participating in the CoC and sabotage the CIRP by diluting the vote share of other creditors and it would be in keeping with the object and purpose of the first proviso to section 21(2), to consider said party out of CoC.

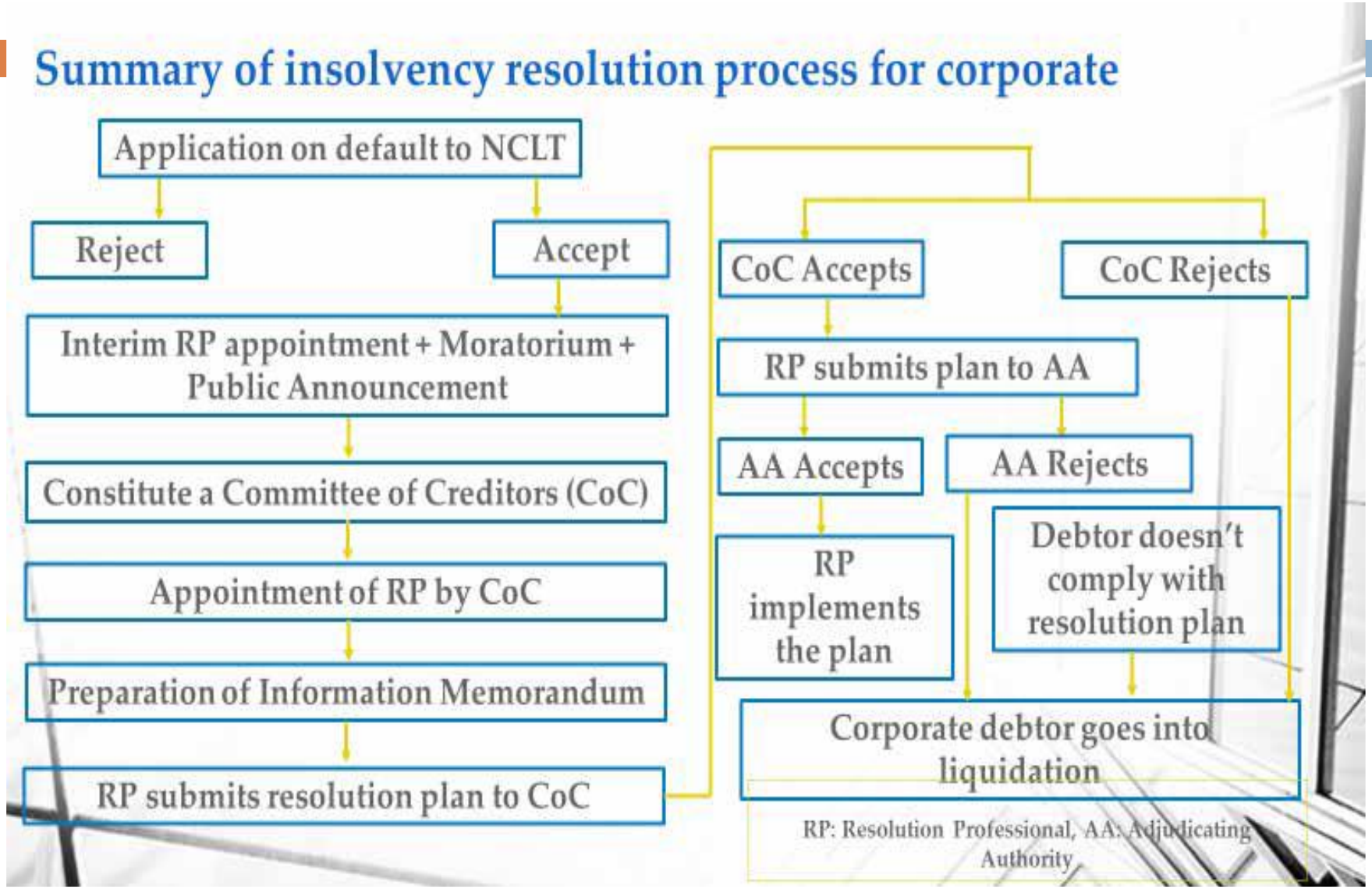
- **Section 22** – RP appointment by not less than **60% of votes.**
  - ***Sachin Naveen Sinha IRP Vs. Saraswat Co-operative Bank Ltd.,*** *(2023)*
  - *CoC neither confirms IRP and nor appoints new person as RP since it is divided in two factions, One side is secured financial creditor and other side is unsecured financial creditor. NCLT appoints new Resolution Professional from IBBI approved panel exercising its powers vested under Rule 11 of NCLT Rules, 2016 .*
- **Section 27** – RP replacement by COC – Minimum **66% voting** required
- **Section 28**– Approval of COC for certain actions. Raise finance, create security interest, undertake any related party transaction, make changes in terms of appointment of employees etc.

- **Section 29:** Preparation of information memorandum. – provide all **relevant information** in physical or electronic form like financial position, disputes etc.
- **Section 29A:** Persons not eligible to be resolution applicant –
- undischarged **insolvent**,
- **willful defaulter** at the time of submission of plan has an NPA account aging **more than 1 year** (option to repay the entire overdue is given to become eligible),
- **convicted** for any offence,
- is **disqualified** to act as director, prohibited by SEBI from trading,
- **PUFE** if order has been passed against him,
- MSME promoters are **allowed** to submit resolution plan

- **Section 30:** Submission of resolution plan. – affidavit 29A, RP to see that CIRP cost has been provided for, payment to OC (at least amt. receivable under 53).
- RP to submit legally compliant and **financially feasible plan** to COC for approval (**66% min required**).
- COC may ask for fresh publication of **Form G.**

- **Section 31:** Approval of resolution plan – **Adjudicating Authority** is satisfied that plan meets the requirements of Sec 30 it shall **approve** the plan which will be **binding on ALL.**

Flowchart of CIRP



Cost of Resolution (CIRP cost)

The insolvency resolution process cost **includes** the following:

- The amount **of interim finance** and the cost incurred in raising such finance,
- the **fees** payable to **RP**
- any **cost incurred by the RP** in **running** the **business** of the corporate debtor as a going concern
- any cost incurred at the **expense of the Government** to facilitate CIRP
- amounts **due to suppliers of essential goods and services**
- expenses incurred on or by the IRP **to the extent ratified** and fixed by the COC and
- **other costs** directly relating to the CIRP; approved by the COC.

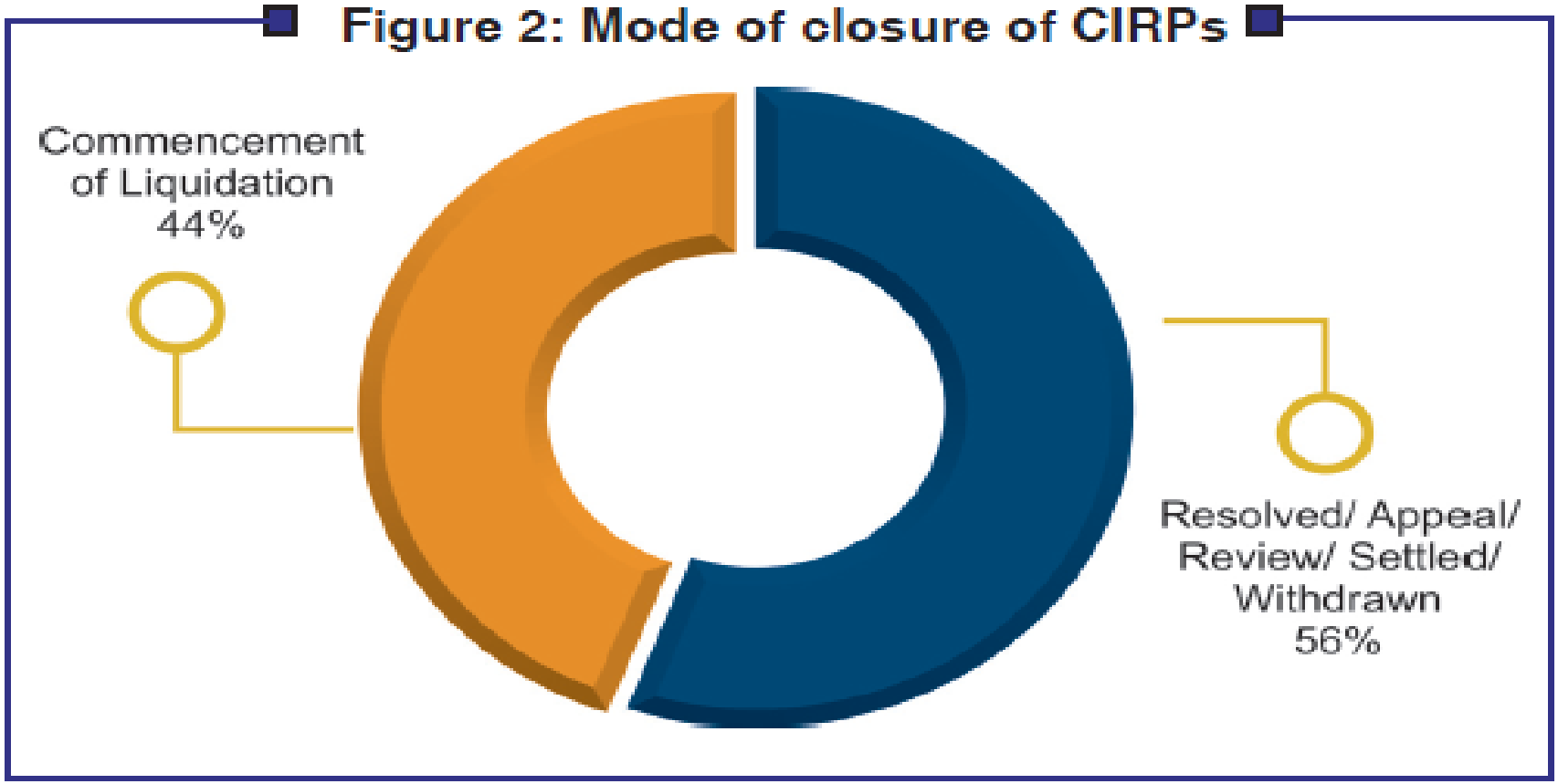
Interesting Numbers

Table 1: Details of CIRP cases as on December 31, 2024

CIRP cases	Number
Admitted	8175
Closure:	
Withdrawn under section 12A	1130
Closed on appeal or review or settled	1236
Resolution plans approved	1119
Liquidation orders passed	2707
Ongoing CIRP cases	1983

This excludes 1 CD which has moved directly from Board for Industrial and Financial Reconstruction (BIFR) to resolution.

Source: IBBI Newsletter Dec 2024



Source: IBBI Newsletter Dec 2024

Table 22: Age Profile of IPs (individual) as on December 31, 2024

Age Group (in Years)	Registered IPs				IPs having AFA#			
	IIIP ICAI	ICSI IIP	IPA of ICMAI	Total	IIIP ICAI	ICSI IIP	IPA of ICMAI	Total
≤ 30	16	7	3	26	12	5	1	18
> 30 ≤ 40	180	69	17	266	109	42	10	161
> 40 ≤ 50	949	340	54	1343	453	177	21	651
> 50 ≤ 60	837	365	112	1314	405	195	58	658
> 60 ≤ 70	704	349	209	1262	319	175	111	605
> 70 ≤ 80	85	78	41	204	2	NA	NA	NA
> 80 ≤ 90	5	6	3	14	NA	NA	NA	NA
> 90	1	1	0	2	NA	NA	NA	NA
Total	**2777**	**1215**	**439**	**4431**	**1298**	**594**	**201**	**2093**

Excluding 1320 AFAs which are expired / not renewed.

NA: Not Applicable.

Source: IBBI Newsletter Dec 2024

Table 32: Limited Insolvency Examination

Phase	Period	Number of Attempts (some candidates made more than one attempt)	Successful Attempts
First	Jan, 2017 – Jun, 2017	5329	1201
Second	Jul, 2017 – Dec, 2017	6237	1112
Third	Jan, 2018 – Oct, 2018	6344	1013
Fourth	Nov, 2018 – Jun, 2019	3025	505
Fifth	Jul, 2019 – Dec, 2020	5860	1016
Sixth	Jan, 2021 – Feb, 2022	2741	474
Seventh	Mar, 2022 – Jun, 2023	1677	198
Eighth	Jul, 2023 - Mar, 2024	380	58
	Apr, 2024 - Jun, 2024	184	27
	July, 2024 – Sept, 2024	192	35
	Oct, 2024- Dec, 2024	157	25
Total		**32126**	**5664**

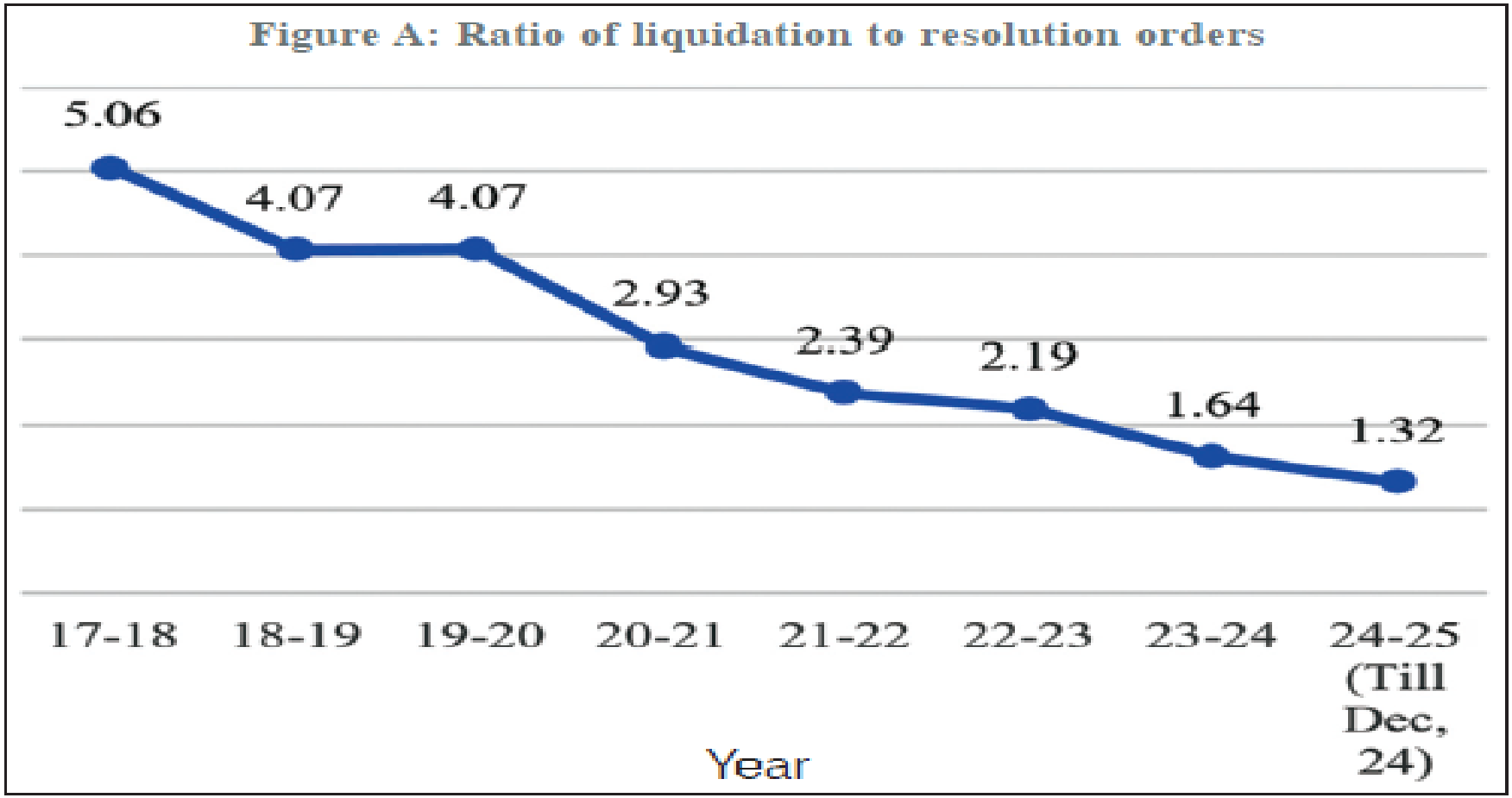
Source: IBBI Newsletter Dec 2024

Table 21: Distribution of IPs as per their Eligibility as on December 31, 2024

Eligibility	No. of IPs (Individual)		
	Male	Female	Total
Member of ICAI	2198	222	2420
Member of ICSI	599	139	738
Member of ICMAI	186	19	205
Member of Bar Council	235	35	270
Managerial Experience	716	36	752
PGIP Qualified	40	6	46
Total	**3974**	**457**	**4431**

Source: IBBI Newsletter Dec 2024

As seen in Figure, **in 2017-18** for every **1 CD** that was resolved**, 5 CDs** would go into liquidation. However, in **2024-25 (till Dec, 2024**) for every one CD that is resolved, 1.3 CDs go into liquidation. Therefore, there is a **visible trend reversal** in the number of companies going into liquidation under the Code.



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THANK YOU