

INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

(Disciplinary Committee)

No. IBBI/DC/277/2025

6th March 2025

Order

This Order disposes of the Show Cause Notice (SCN) No. IBBI/C/2023/01011/858/203 dated 02.05.2024 issued to Mr. Surender Devasani who is an Insolvency Professional (IP) registered with the Insolvency and Bankruptcy Board of India (IBBI) with Registration No. IBBI/IPA-001/IP-P00775/2017-2018/11348 and a Professional Member of the Indian Institute of Insolvency Professionals of ICAI (IIIP-ICAI).

1. Background

- 1.1. The NCLT, Bengaluru Bench (AA) *vide* order dated 17.02.2022 admitted the application under section 7 of the Insolvency and Bankruptcy Code, 2016 (Code) filed by M/s India Asset Growth Fund and M/s. Vistra (ITCL) India Limited for initiating Corporate Insolvency Resolution Process (CIRP) of the M/s. Vikram Structures Private Limited (CD) and appointed Mr. Surender Devasani as Interim Resolution Professional (IRP). He was later appointed as Resolution Professional (RP) *vide* order of the AA dated 30.05.2022. The CoC in its 9th CoC meeting dated 28.10.2022 voted in favour of the liquidation of the CD. Subsequently, the AA *vide* order dated 13.04.2023 directed liquidation of the CD and appointed Mr. Surender Devasani as liquidator.
- 1.2. The Board was in receipt of complaints against Mr. Surender Devasani in the CIRP of the CD. The IBBI, in exercise of its powers under section 218 of the Code read with regulation 7(1) and 7(2) of the IBBI (Inspection and Investigation) Regulations, 2017 (Investigation Regulations) appointed an Investigating Authority (IA) to conduct the investigation of Mr. Surender Devasani in the matter of CD. In compliance with regulation 8(1) of Investigation Regulations, the investigation notice was issued to Mr. Surender Devasani and he submitted his replies to the respective complaints. The IA sought further clarifications from the IP which were provided along with the required documents. Thereafter, IA submitted the investigation report to the Board.
- 1.3. Based on the findings in the investigation report, the Board formed the *prima facie* view that Mr. Surender Devasani contravened provisions of the Code and Regulations made thereunder and issued the SCN to Mr. Surender Devasani on 02.05.2024 alleging contravention of the provisions of the Code and its underlying regulations. Mr. Surender Devasani replied to the SCN on 15.05.2024.
- 1.4. The Board referred the SCN and response of Mr. Surender Devasani to the SCN to the Disciplinary Committee (DC) for disposal of the SCN in accordance with the Code and Regulations made thereunder. Mr. Surender Devasani availed the opportunity of personal

hearing through virtual mode before the DC. Mr. Surender Devasani also provided his additional written submissions.

- 1.5. The DC has considered the SCN, the reply to SCN and submissions of Mr. Surender Devasani, and proceeds to dispose of the SCN.

2. Alleged Contraventions, Submissions, Analysis and Findings.

The contravention alleged in the SCN and Mr. Surender Devasani's written and oral submissions thereof are summarized as follows.

2.1 Contravention: Non-admission of claims of registered sale deed holders.

2.1.1. On the perusal of minutes of 8th CoC meeting, it was observed that:

- a) Under the joint development agreement (JDA) (for VSPL Pinnacle Project), the CD was to construct commercial space for sale to the extent of 1,64,380 sq. ft. As per the agreement, the developer and CD had the right to sell 50% of the constructed area, i.e., to the extent of 82,190 sq. ft. The said project was completed to the extent of 95%. The CD received occupation certificate, however, the CD sold much more area than it was entitled to sell.
- b) Out of the 68 claims received by Mr. Surender Devasani for this Project, 36 of them had agreements to sell and 32 had registered sale deeds. Mr. Surender Devasani admitted the claims received from the 1st category of claimants, i.e., where the CD had executed agreement to sell whereas he did not admit the claims in respect of 2nd category of claimants, i.e., those who had got registered sale deeds.

2.1.2. Mr. Surender Devasani sent the letter dated 12.03.2022 to the registered sale deed holders asking them to clarify as to the basis of their claims, since they have already got the property registered in their names. Further, if they wanted to part with their title under the sale deeds and claim refund, inform so. Subsequently, *vide* letter dated 16.05.2022, he rejected the claims of the registered sale deed holders since the clarifications in respect to the letter dated 12.03.2022 were not received by him.

2.1.3. It was observed from his reply to the IA that there were serious disputes with regard to the actual entitlement of possession of buyers in the VSPL Pinnacle Project and he had mentioned that, on account of this, *"it is not within my right or my scope of duties to intervene."*

2.1.4. Mr. Surender Devasani stated in his reply to the IA that *"since the property was registered in their names through sale deeds and was not shown as an Asset in the books of CD this built-up area could not have been treated as an asset of the CD and the registered sale deed holders could not have been made part of the CoC."*

2.1.5. It has been observed that though the VSPL Pinnacle Project was excluded by him from the assets of the CD, the claims of buyers who had executed the agreements to sell were admitted

and the claims of the registered sale deed holders were rejected. Accordingly, such an act led to differential treatment among creditors forming part of the same class. It was observed that the Section 60(5)(b) of the Code explicitly provides that the AA has the jurisdiction to entertain any claim made by or against the CD. Under such circumstances, he should have approached the AA for seeking clarity regarding the claims of the registered sale deed holders, instead of outrightly rejecting the same.

2.1.6. In view of the above, the Board held *prima facie* view that by his aforesaid acts and omissions during the CIRP of the CD, Mr. Surender Devasani contravened Sections 208(2)(a) and (e) of the Code, Regulations 7(2)(a) and (h) of IBBI (Insolvency Professionals) Regulations, 2016 (IP Regulations) read with Clause 14 and 15 of the Code of Conduct specified in the First Schedule of the IP Regulations.

2.2 Submissions by Mr. Surender Devasani.

2.2.1. Mr. Surender Devasani submitted that

- a) Claims received from the holders having ‘agreement to sell’ were processed as per the extant provisions of the Code and details of the admitted claims have been communicated to them.
- b) Claims received from the registered sale deed holders were also processed as per extant provisions of the Code.

In terms of Regulation 10 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) an interim communication was sent to all such claimants seeking information/clarification/documents for substantiating their claims *vide* his emails dated 12.03.2022. Since he did not receive any clarification from the claimants, their claims were ‘provisionally not admitted’ with an advise to them to approach the AA, if they are aggrieved with the decision taken by the him *vide* emails dated 16.05.2022.

2.2.2. He submitted that he processed the claims as per extant provisions of the Code. As per the sale deeds executed, it was clear that physical possession was handed over to the claimants, as can be seen from page no.7 and para no.3 of the registered sale deed, quoted below as:

“3. The vendors have put the purchasers in actual physical vacant possession of the schedule C Property.”

The registered sale deed bears the signatures of the claimants as purchaser, hence there cannot be any dispute about entitlement of possession. Dispute, if any, on the subject has to be adjudicated by a civil court. As such, IRP/RP was not having any authority to intervene in civil disputes, if any. The claimants on receipt of the communication dated 16.05.2022 from him had every opportunity to approach the AA for redressal of their grievance if any, as remedy. After perusing the registered sale deeds and the audited financial statements of the CD, he did not have any doubt and hence there was no necessity to approach the AA seeking clarification.

2.2.3. He further submitted that, in terms of Regulation 46A of IBBI (Liquidation process) Regulations, 2016, neither the asset for which registered sale deeds are executed and possession handed over could have been taken as the part of the liquidation estate nor their claims could have been admitted. The relevant provision is quoted as below:

“46A. Exclusion of certain assets from the liquidation estate.

For the purposes of clause (e) of sub-section (4) of section 36, wherever the corporate debtor has given possession to an allottee in a real estate project, such asset shall not form a part of the liquidation estate of the corporate debtor.”

In the present case, registered sale deeds were executed and possession handed over, consequently, the title over the property was transferred from CD to registered sale deed holders. In fact, he gave an opportunity to them to indicate whether they would like to relinquish their right over the property, which they did not exercise. On the other hand, had the claimants with sale deeds relinquished their right on the property and made money claim, he would have approached the AA for directions to deal with the relinquished sale deed holders' claims, as it was not within his right or scope of duties to intervene.

2.2.4. Mr. Surender Devasani submitted that in view of the fact that the entire space in the VSPL-Pinnacle project, was sold and physical possession handed over, as was evident from the registered sale deeds, much before the commence of CIRP, the claims could not have been admitted and made the claimants as part of CoC. Consequent upon sale of the entire space in the VSPL-Pinnacle project much before the commencement of CIRP, the property was not reflected as an asset in the books of the CD and hence IRP/RP/Liquidator could not have considered the VSPL-Pinnacle project/property as an asset in the CIRP/Liquidation process. Even the IBBI registered valuers have not valued the VSPL-Pinnacle project assets, since it was not reflected in the books of accounts of the CD as an asset.

2.2.5. That in another grievance with No. GRC No.320/2023-24/85 forwarded to IIP-ICAI, the Grievance Redressal Committee (GRC) of IIP-ICAI agreed with his decision of not considering the VSPL-Pinnacle project as an asset of CD, as the entire space was sold much before the commencement of CIRP.

2.2.6. He submitted that the claimants with 'registered sale deeds' and the claimants with 'agreement to sell' are two different categories within same class of "allottees under real estate". In respect of registered sale deed holders the contract is executed and concluded, as the registered sale deed holders have got the property registered in their names and got the possession of the property (as is evident from the Registered sale deed) for consideration paid by them, whereas the claimants having 'agreement to sell' have not got any property registered in their names for the consideration paid by them and consequently the contract is not concluded and as such, they are shown as creditors in the books of CD. Hence, these are two different categories within the same class.

2.2.7. The claims of Registered sale deed holders could not have been accepted for the following reasons:

- a) With registration of the property and handing over the possession as was evident from the registered sale deed, for which consideration was received by the CD the contract was concluded much before the commencement of CIRP.
- b) If the claims of registered sale deed holders were to be accepted, the VSPL-Pinnacle project asset should also have been taken as an asset of the CD. In such a situation it would have amounted to taking third party property as the asset of the CD.
- c) The transfer of property in respect of the entire space (rather excess space) in 'VSPL pinnacle project' was effected much before the commencement of CIRP and vacant physical possession was handed over to the vendee as is evident from clause no.3 at page no.7 of the sale deed. Any disputes relating to such sale transaction was to be dealt with by an appropriate civil court only. The landlord approached civil court on the ground that the CD has oversold the property including the space over which the land lord had the rights. The registered sale deed holders would have to approach appropriate civil court and IRP/RP/Liquidator had no authority to deal with such property.
- d) As can be seen from the letter dated 12.03.2022 written by him to claimants, they were requested to clarify on whether they would like relinquish their right on the property and make a money claim. None of them gave any response. It appeared that they want to hold on to the right on the property instead of making a money claim. Had IRP/RP/Liquidator accepted their claims it would have amounted to accepting their right over the property and also accepting the money claim under CIRP/Liquidation, on the very same property over which registration was done and possession was handed over.

2.2.8. He further submitted that he was very clear about the law and the facts in this case. There was no doubt in the mind of IRP/RP that required seeking any clarification from the AA regarding the claims, in view of the following:

- a) With registration of the property and handing over the possession as was evident from the registered sale deed, for which consideration was received by the CD the contract was concluded much before the commencement of CIRP.
- b) The RP processed the claims received from various claimants based on the audited financial statements and documents submitted by the claimants, as per the extant provisions of the Code. In respect of the registered sale deed holders there was no liability shown in the audited financial statements of CD, since the property for which the consideration was received was already registered in their names, as was evident from the registered sale deed copies submitted by the respective claimants. In respect of the claimants having 'agreement to sell' the audited financial statements of CD depicted liability towards them.
- c) While there was no dispute that the AA has jurisdiction to entertain or dispose of '*any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India ...*' it is for the aggrieved party to approach the AA. Since the claims were received from registered sale deed holders, the RP did not have any doubt for not admitting such claims, as clarified above.

- d) On non-admission of any claim the aggrieved party is expected to approach the AA for seeking directions to the IRP/RP to accept their claim. Accordingly, he had verified the records of CD and the documents submitted by the claimants and found that these were not shown as creditors in the audited books of accounts of CD. As a second step he had verified the claim documents and found that these were registered sale deed holders where the property had already been transferred to them for the amount received from them and the transaction was concluded. However, as there were reported overselling of commercial space by CD, he had enquired whether they were relinquishing their right on the property and making a money claim. As no reply was received from them, he had informed them that, as IRP/RP had not received any clarifications, their claims were provisionally 'Not admitted' with further advise to them to approach the AA if they are aggrieved with the decision of IRP/RP.

In the light of the above, he submitted that the Section 60(5)(b) describes powers of AA only. This may not be assumed as a direction to the IRP/RP to approach AA for clarifications on admission of any and all claims. The aggrieved party could have approached the AA seeking for directions to IRP/RP to admit their claims, (in terms of Section 42 of the Code).

- 2.2.9. He submitted that one of the claimants (M/s Vasant Business Park LLP) whose claim was categorised under a claim from '*other than Financial and operational creditor*' by the IRP/RP had approached the AA aggrieved by the decision of the IRP/RP, for not categorising his claim as 'Financial Creditor'. The AA dismissed the petition and upheld the decision of IRP/RP. In the matter of *ICICI Bank Limited v. Anuj Jain* the NCLT, Allahabad, upheld the determination made by the resolution professional and held that, if the creditor is aggrieved by the determination made by the resolution professional, he may challenge the decision by approaching the adjudicating authority.
- 2.2.10. He submitted that he had advised the claimants with registered sale deeds to approach the AA for appropriate directions to IRP/RP. In the present case the claimants submitted their claims on the contention that they did not receive the physical possession, despite the fact that as per the registered sale deed possession has already been given to them. Here there was a disputed fact and hence IRP/RP could not have decided and hence advised them to approach the AA.
- 2.2.11. Since the property had been oversold, the dispute regarding the ownership/possession of property from various allottees under real estate had to be adjudicated only by a civil court. As already submitted that the case filed by the landlord of VSPL Pinnacle Project was already pending before the Hon. Commercial Court, Bengaluru with case no. Com. O.S/423/2020.
- 2.2.12. He further submitted that some of the sale deed holders (Ms Tahira Iqbal & others) had filed a petition with CP No. 14/BB/2022, before the AA for investigation under section 213 and 221 of the Companies Act, 2013 which was disposed of by the AA with a direction to

Central Govt. to get the affairs of the CD and those of the related parties investigated under section 213(b) of Companies Act, 2013, by appointing Inspector(s). The IRP/RP/Liquidator is fully co-operating with the investigation agency i.e., RoC, Karnataka at Bangalore. The investigation is going on. The order dated 07.12.2023 in CP No.14/BB/2022 in the matter of Tahera Iqbal & Ors. vs M/s. Vikram Structures Pvt. Ltd. & Ors. observed as follows:

“It is noticed that the main allegation is related to the Company having sold the built-up area of three times of its entitlement in accordance with the Joint Development Agreement (JDA); specifically, the total area sold as per the Sale Agreements / Deeds was 2,43,037 sq. ft. whereas the Company was entitled to only 82,216 sq. ft.”

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“It is alleged that the R-1 Company through its Directors, namely, Mr. Vikram Prabhakar, Mrs. Aishwarya G.B. and Mr. Manjunath Ravindra, the Owners of the Land and R-16: M/s. Innovent Spaces Pvt. Ltd. created a ‘Lease Agreement’ showing the first two Parties as Lessors and R-16 as the Lessee. This document was made to create a fake impression of non-existent rental assurances with respect to the Property; luring the Buyers who were guided by this fake impression created. This document has duly been attached with the Petition. It is alleged that the so-called ‘Lease Agreement’ was signed for a period of twenty years with a lock in period of five years, but it was not for a real purpose, but merely to impress the Buyers regarding the fixed income likely to accrue to them. Further, R-1 Company made the Buyers enter into another similar Lease Agreement with R 17 entity i.e. M/s. Project Craft Solutions, only to give a false hope of the Property giving a regular rental income. It is also alleged that some of the Buyers were induced into buying some Units on the basis of the Agreement with R-16 and R-17, whereas, in reality, these Units sold to these Buyers were not at all in existence or were already sold.”

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“the bogus Sale Deeds without the Property being in existence was entered into, for which, the method utilised was mentioning only the Area of the Unit and the Floor without giving any other specific details of the constructed Property. It is also alleged that because of the multiple sales they were able to collect an amount of more than Rs.200 Crores including some portion in cash, which was also collected. There is also an allegation of siphoning of funds arising from these sales by the Promoters of the R-1 Company”

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there have been specific allegations about the irregularities stated in this application u/s 213 and the RP's reply does not take care of any of these allegations which is with reference to the specific details and documents discussed above. There is no denial in the RP's reply with respect to 164 Buyers listed in Page 25 onwards of CP, comprising of sale of 2,43,037 sq. ft. in total by the R-1 Company, whereas, they were entitled to ownership of only 82,216.30 sq. ft. as per the JDA. This excessive sale, three times of their entitlement by the R-1 Company, has neither been explained nor has any denial been filed. Furthermore, there has been allegation regarding the fake Lease Agreement with R-16 and R-17 to lure the Buyers with a false promise of assured rental return which was non-existent, for which, the Petitioners have also filed the specific documents for such Lease Agreements with R-16 and R-17.

However, in the reply filed by RP on behalf of the R-1 Company, no explanation has been furnished about the same.”

- 2.2.13. He additionally submitted that the buyers of space in VSPL Pinnacle have in-turn entered into a lease agreement with an entity called M/s Project Craft Solutions letting out their property (having taken possession) which clearly proves (apart from the fact that the buyer has taken possession as per the Registered Sale Deed) that the buyer has taken possession of the space.
- 2.2.14. He further referred the minutes of 4th SCC meeting wherein the assets proposed for E-auction as part of sale of CD as a going concern was detailed. He submitted that in said document the recoverable amount from PUFEE applications filed are not included as part of asset. He further referred the petition filed before the AA for investigation where direction was issued by the AA to Central Government to get the affairs of the CD and those of the related parties investigated under Section 213(b) of the Companies Act by appointing inspector(s). He submitted that he was fully cooperating with the investigation agency and the amount that may be recovered from the fraudulent transactions as per the investigation report of RoC, Karnataka, Bangalore will be distributed as per the directions of the AA.

2.3 Analysis and Findings.

- 2.3.1. The DC notes that in the present CIRP there are allegations that the director of the suspended board has oversold the property of the CD in excess of inventory available with the CD. These allegations have been looked into by the AA. The order dated 07.12.2023 has been referred by Mr. Surender Devasani quoted in para 2.2.12. It is seen that the AA has directed the Central Government to investigate the affairs of the CD and of the related parties under Section 213(b) of the Companies Act, 2013. The investigation is ongoing and status report was filed by the RoC, Karnataka before the AA where it narrated the steps taken by them and stated that it may take further six months to complete the investigation of the CD.
- 2.3.2. The DC notes that in the CIRP of the CD, Mr. Surender Devasani has received claims from two type of claimants against the sale of rights in the Pinnacle Projects -one having registered sale deed and others having agreement to sell. He admitted claims of the claimants having agreement to sell and rejected the claims of the claimants who had got registered sale deeds. The issue before the DC is regarding non-consideration of claims by Mr. Surender Devasani of the claimants which were filed by the registered sale deed holders.
- 2.3.3. The DC notes that after receipt of claims, Mr. Surender Devasani wrote letter to the homebuyers who entered into registered sale deed first on 12.03.2022 requesting as follows: *“2...If you are claiming to be an owner of property sold to you by the Corporate Debtor, kindly clarify the basis on which you are claiming to be owed sums by the Corporate Debtor. Please provide information and documents in this regard.*

3. If it is your position that despite the registered Sale Deed, you are NOT the owner of the property mentioned in your Claim and are seeking refund of any amounts paid, please provide documents to show that you are not claiming any title over the property specified in the Claim and are only seeking refund / some other amount. Please provide documents / correspondence with the Corporate Debtor in this regard. Please also confirm that you are not raising any claims over the property specified and are only claiming money.”

2.3.4. He again wrote to the claimants having registered sale deed by letter dated 16.05.2022 requesting as follows:

“Unfortunately, I have not received clarification/substantiation on the above from you. I have also not been provided with any document where you have asked for cancellation/refund, and such a document is not available in the records of the Corporate Debtor which have been made available to me. Further, there appear to be serious disputed matters, and it is not within my powers to adjudicate such matters. In fact, one of the holders of Sale Deeds has asserted that he is the owner of certain area in the ‘VSPL Pinnacle’ property and the same should not form part of the assets of the Corporate Debtor available in CIRP. In such circumstances, I am unable to accept the claim and am hereby communicating that your claim has not been admitted.”

2.3.5. The DC notes the submission of Mr. Surender Devasani that no reply was received by him to such letters and they did not approach the AA for admission of their claims as advised by him. The DC also notes that three registered sale deed holders of the CD have sent a letter to him for not treating their properties as the assets of CD, since they hold the registered sale deeds and they are the owners of the properties. The DC further notes the submission of Mr. Surender Devasani that properties in Pinnacle Project sold through such registered sale deeds were not shown as assets of the CD in the book of accounts of the CD. The DC notes that when a property belonging to CD is sold to a person, it may be by an agreement to sell or registered sale deed. The settled legal position is that when property is being sold by registered sale deed and possession is given, the CD cannot be said to be owner of that property. Further, since the person has already been given the ownership rights of property, its claim cannot be accepted as in consideration of that payment, the property has already been given to him. Here, Mr. Surender Devasani has given an opportunity to such claimants to submit evidence to show that they have given up the ownership rights on the property and instead they want their claims to be considered. However, no claimant has responded as per submissions given by him. Now, a claimant cannot have both rights – the claim against the CD as well as the ownership rights on the property. Only those claimants who have given up the ownership rights on the property can be said to be entitled to have their claims considered. As per submissions of Mr. Surender Devasani, there is no such case. Further, no claimant has filed any application before the AA regarding this issue. Therefore, Mr. Surender Devasani cannot be faulted to have not considered the claims of parties who have already been given the ownership rights on the property as per the registered sale deed and are not submitting any evidence for giving up these rights. In fact, it is seen that IP has accepted the claims of all claimants with agreements to sell.

- 2.3.6. The submissions of Mr. Surender Devasani are consistent with books of accounts of the CD and then Information Memorandum (IM) prepared by him during CIRP. He has made disclosures in the IM regarding the customer who entered into agreement to sell and the customers who had registered sale deed.
- 2.3.7. The DC notes the submissions of Mr. Surender Devasani that there were complaints filed before the IIIP-ICAI where same issues were raised, and he has provided his reply to the same. The IIIP-ICAI considered the submissions of Mr. Surender Devasani to said complaints that the entire project, namely Pinnacle project was sold, and sale deeds have already been executed much before the commencement of CIRP and thus he has not considered the said property as an asset of the CD. The IIIP-ICAI disposed of the complaints on 11.03.2024 and 10.07.2024 respectively observing that there is no actionable material in the grievances.
- 2.3.8. The DC notes the letters sent by Mr. Surender Devasani on 12.03.2022 and 16.05.2022 to the claimants having registered slae deed regarding their claim. Hence, in the light of given facts, the DC does not hold the contravention. However, the DC notes the ongoing investigation by the RoC, Bangalore into the alleged fraud in the sale of assets. The results of such investigation may be forwarded by Mr. Surender Devasani to the Board.

3. Order.

- 3.1 In view of the forgoing discussion, SCN, reply to the SCN, oral and written submission made by Mr. Surender Devasani, the DC disposes of this SCN with direction to Mr. Surender Devasani to inform the Board regarding results of ongoing investigation by RoC Bangalore ordered by the AA vide order dated 07.12.2023 in CP No.14/BB/2022 in the matter of Tahera Iqbal & ors. vs M/s. Vikram Structures Pvt. Ltd. ors.
- 3.2 This Order shall come into force immediately.
- 3.3 A copy of this order shall be forwarded to the Indian Institute of Insolvency Professionals of ICAI where Mr. Surender Devasani is enrolled as a member.
- 3.4 A copy of this Order shall also be forwarded to the Registrar of the Principal Bench of the National Company Law Tribunal.
- 3.5 Accordingly, the show cause notice is disposed of.

-sd/-
(Sandip Garg)
Whole-time Member
Insolvency and Bankruptcy Board of India

Dated: 6th March 2025
Place: New Delhi