IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

COURT-IV

C.P. (IB) 465 (ND) OF 2025

IN THE MATTER OF:

Heritage Max Condominium Association,

Heritage Max, Group Housing Complex,

Sector- 102, Kherki Majra,

Gurugram, Haryana-122505

through its Authorized Representative Naval Kishor Rustagi.

...Operational Creditor/Applicant

Versus

Dreamhome Infrastructure Pvt. Ltd. (Developer)

...Corporate Debtor/Respondent

CORAM:

SHRI MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)
SHRI ATUL CHATURVEDI,
HON'BLE MEMBER (TECHNICAL)

Order Delivered on: 09.12.2025

PRESENT:

For the Applicant : Mr. Shekhar Verma,
Mr. Yashvir Balhara Advs.

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. This instant application was filed by Heritage Max Condominium Association, Registered Welfare Association of the Home Buyers of a Group Housing Colony namely, 'Heritage Max', (hereinafter referred as 'Applicant'/ 'Operational Creditor') duly registered under the Haryana Registration and Regulation of Societies Act, 2012 and bearing registration number HR/018/2018/03368 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') with a prayer to initiate Corporate Insolvency Resolution Process in respect of Dreamhome Infrastructure Pvt. Ltd (hereinafter referred as 'Respondent' or 'Corporate Debtor') for defaulting the payment of total amounting to INR 16,23,74,249.00 (Rupees Sixteen Crore Twenty Three Lacs Seventy Four Thousand Two Hundred Forty Nine only) calculated up to 15.09.2024 comprising of principal amount of INR 10,81,86,326.00 (Rupees Ten Crore Eighty One Lacs Eighty Six Thousand Three Hundred Twenty Six Only) along with interest INR 5,41,87,923.00 (Rupees Five Crore Forty one Lacs Eighty Seven Thousand Nine Hundred Twenty-Three Only)

2. The Respondent Company Dreamhome Infrastructure Pvt. Ltd having CIN: U70100DL2011PTC21570, incorporated on 03.03.2011 under the provisions of the Companies Act, 1956, is having its registered office situated at K-1, Green Park Main, South Delhi, New Delhi 110016 . Since the registered office of the respondent/corporate debtor is in New Delhi, this Tribunal having jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

3. **Briefly stated the facts of the present case as averred by the Applicant/ Operational Creditor are: -**

a. The Operational Creditor is the Registered Welfare Association of the homebuyers of the Group Housing Colony "Heritage Max", Sector-102, Gurugram, developed pursuant to Licence No. 04 of 2011 dated 11.12.2011 obtained by the Corporate Debtor, Dreamhome Infrastructure Pvt. Ltd. The Association is duly registered under the Haryana Registration and Regulation of Societies Act, 2012, bearing Registration No. HR/018/2018/03368, and comprises the apartment owners/allottees of the said project.

b. Pursuant to a resolution passed by its members, the Association has been authorised to pursue the present proceedings jointly on their behalf. The dispute pertains to the Interest Free Maintenance Security **(hereinafter referred as 'IFMS')** amounting to ₹10,81,86,326/- collected by the Corporate Debtor. The IFMS, being a security corpus, was intended to be utilized only in emergent circumstances for maintenance of services and common utilities, for which monthly maintenance charges were otherwise payable by the allottees. The Corporate Debtor could have drawn from the IFMS corpus only upon issuance of proper notice and subject to replenishment.

c. The Applicant has submitted that the IFMS corpus of ₹10,81,86,326/- was required to be handed over to the Residents Welfare Association upon transfer of possession of the common areas for maintenance and related purposes. However, the grievance of the Operational Creditor is that the aforesaid IFMS corpus has been siphoned off by the Corporate Debtor without any lawful justification. Consequently, the said amount is recoverable along with interest @18% per annum, quantified at ₹5,41,87,923/- up to 15.09.2024.

d. The Applicant submitted that the Competent Authority, i.e., the Director General, Town and Country Planning, Haryana, issued the Occupation Certificate for Towers A and B of the Group Housing Project on 03.04.2017, followed by a registered Deed of Declaration dated 07.07.2017. Similarly, the Occupation Certificate for Towers C, D and E was issued on 23.11.2017, followed by a registered Deed of Declaration dated 20.02.2018 and the Occupation Certificate for Tower F was issued on 05.01.2019, followed by a registered Deed of Declaration dated 07.03.2019.

e. It is submitted by the Applicant that the Corporate Debtor failed to hand over possession of the common areas to the Operational Creditor and unjustifiably delayed the transfer from 2017 until 31.03.2024. Only upon this date did the Operational Creditor become entitled to the records pertaining to maintenance work, details of the service agency, and the transfer of the IFMS corpus. However, against the total IFMS amount of ₹10,81,86,326/-, only a negligible sum was transferred by the erstwhile maintenance agency to the Operational Creditor. It is further a matter of record that even the remaining amount has not been remitted till date.

f. Ideally, upon issuance of the Occupation Certificate and registration of the Deed of Declaration, and in accordance with Clause 22(a) of the

Buyer's Agreement, Tripartite Agreements were executed in 2018 between the respective apartment owners/allottees, the Corporate Debtor (Developer), Dreamhome Infrastructure Pvt. Ltd., and its appointed maintenance agency, Dreamhome Propcon Pvt. Ltd. Given the large number of allottees, the dates of execution of the Maintenance and Services Agreements, as well as the corresponding contributions to the IFMS corpus, varied depending on the size of the individual apartments.

g. The relevant standard clauses in the respective Buyers Agreement and Maintenance Agreement as stated by the Applicant in the present application are reproduced as under: -

BUYER'S AGREEMENT

22(c) In addition to the payment of the Maintenance Charges to be paid by the Allottee(S), the Allottee(s) agrees and undertakes to pay in advance Interest Free Maintenance Security (IFMS) as applicable. The IMS shall also be utilized for replacement, refurbishing, external façade of the building, major repairs of plants, machinery, etc. installed in the said complex or towards defrayment of expenses necessitated by any unforeseen occurrence involving expenditure in relation to the complex or any capital expenditure to be incurred in the complex.

22(d) The Allottee(s) further undertakes to abide by the terms and conditions of the Maintenance Agreement and to pay promptly all such demands, bills and charges as may be raised by the Maintenance Agency from time to time.

22(g) The Allottee(s) undertakes to pay the maintenance bills as raised by the Company or its nominated Maintenance Agency from the date of notice for possession on pro-rata basis irrespective of whether the Allottee(s) is/are in actual possession of the said Apartment or not. In order to secure due performance by the Allottee(s) in payment of the maintenance bills and other charges raised by the

Maintenance Agency, the Allottee(s) agrees to deposit, as per the Schedule of Payments given in Annexure V of this Agreement and to always keep deposited with the Company an Interest Free Maintenance Security, as applicable. In the event Allottee(s) fails and/or neglects to pay the maintenance bill, other charges on or before the due date, the Allottee(s), then in such an event shall not be entitled to receive the services being rendered by the Maintenance Agency and in addition thereto the Company shall also have the right to adjust unpaid amount against maintenance bills out of the security deposit. The Company shall handover the corpus so collected, after settlement of accounts/expenses as mentioned in clause 22(c) and adjustment of outstanding amounts, if any, to the society as and when the same is formed.

<u>MAINTENANCE AND SERVICES AGREEMENT</u>

8. INTEREST FREE MAINTENANCE SECURITY (IFMS) –

That along with the execution of this Agreement, the Owner shall also pay an amount of Rs. 214900)/- Two Lakh Fourteen Thousand Nine Hundred interest free maintenance security (hereinafter referred to as "IFMS") which IFMS shall be retained by the Developer/ Service Provider. It is further agreed that the deposits at no point of time shall be given to the Owner of the said Unit. In case of increase of maintenance charges at any point of time, additional monies in proportion to such increase in maintenance charges shall be deposited even towards IFMS.

The decision to use the IFMS shall be that of Developer/ the Service Provider. The Developer/ Service Provider shall also be entitled to adjust any costs, expenses, arrears, charges, any additional expenses incurred towards up gradation of infrastructure relating to fire and electricity etc., and losses under the maintenance etc. from IFMS, which are payable by the Owner under this Agreement at its discretion, upon which adjustment the Developer/ Service Provider shall call upon the Owner to replenish the deficit amount of the IFMS which the Owner shall do so within 7 (seven days of receipt of such intimation/demand. Any failure to do so shall render the Owner liable to pay interest @ 18% per annum to the Developer/Service Provider till such time the deficit is paid.

Upon the formation of the Association and handing over of maintenance services to the Association by the Developer/Service Provider, the Developer/ Service Provider shall duly handover the corpus of IFMS (as available) of all Owners/Users, subject to deductions as mentioned above which shall include deductions on account of non-payment of maintenance charges, electricity charges, any additional expenses incurred towards up gradation of infrastructure relating to fire and electricity etc., and losses under the maintenance, etc. under this Agreement.

h. The Applicant submitted that the IFMS corpus was required to be transferred to the Residents Welfare Association immediately upon execution of the Deed of Declaration. However, the Corporate Debtor delayed the handover of the common areas, and the same was completed only on 01.04.2024. At that stage, the Maintenance Agency appointed by the Corporate Debtor offered to transfer merely ₹1,43,60,848/- towards the IFMS corpus, which amount has not been remitted till date.

i. Aggrieved thereby, the Residents Welfare Association issued a demand letter dated 16.04.2024 seeking transfer of the IFMS corpus, followed by a subsequent reminder dated 20.05.2024 reiterating the demand. Thereafter, in response to the invoice dated 15.09.2024, the Corporate Debtor furnished its reply on 30.09.2024. It is the contention of the Applicant that The IFMS corpus has been unlawfully diverted by the Corporate Debtor, Dreamhome Infrastructure Pvt. Ltd., in contravention of the mandate of Clause 8 of the Tripartite Maintenance and Services Agreement.

j. The IFMS corpus has been unlawfully siphoned off by the Corporate Debtor in breach of Clause 8 of the Tripartite Maintenance and Services Agreement. On being questioned, the Corporate Debtor vaguely asserted that the amount had been utilized for maintenance works; however, no invoices, proof of payment, or documentary evidence of such alleged works have ever been furnished to the Operational Creditor.

k. Consequently, the Operational Creditor was constrained to issue a statutory demand notice dated 04.11.2024 under Section 8 of the Insolvency and Bankruptcy Code, 2016. The Corporate Debtor, vide its reply dated 19.11.2024, denied the liability asserted by the Applicant. Aggrieved by the untenable stand taken in the said reply and in view of the persistent default in transferring the IFMS corpus, the Applicant has preferred the present application under Section 9 of the Code before this Adjudicating Authority.

ANALYSIS AND FINDINGS

4. The matter was first listed on 25.08.2025; however, none appeared on behalf of the Applicant. Accordingly, in the interest of justice, the matter was adjourned and re-listed for 11.09.2025.

5. On 11.09.2025, upon perusal of the record, this Adjudicating Authority noted that no agreement had been executed between the Applicant/Operational Creditor and the Corporate Debtor. Learned Counsel appearing for the Applicant submitted that the individual homebuyers have executed separate agreements with the Corporate Debtor for availing certain services, and that the Heritage Max Condominium Association, being the collective body of such homeowners, has instituted the present proceedings with the consent of its members. Accordingly, the Applicant was directed to file an affidavit to this effect within 10 days. Subsequently, the Applicant has filed an affidavit, which was placed on record before this Adjudicating Authority dated 26.09.2025.

6. On perusal of the Case file, it is observed that the Operational Creditor has sent the demand notice dated 04.11.2024 under Section 8 of the Insolvency and

Bankruptcy Code, 2016 demanding payment of outstanding operational debt worth INR 16,23,74,249.00 (Rupees Sixteen Crore Twenty Three Lacs Seventy Four Thousand Two Hundred Forty Nine only) comprising of principal amount of INR 10,81,86,326.00 (Rupees Ten Crore Eighty One Lacs Eighty Six Thousand Three Hundred Twenty Six Only) along with interest INR 5,41,87,923.00 (Rupees Five Crore Forty one Lacs Eighty Seven Thousand Nine Hundred Twenty-Three Only)

7. On a perusal of Part-IV of Form 5 giving particulars of the operational debt claimed by the applicant in the instant, we notice that the applicant has claimed an amount totalling INR 16,23,74,249.00 (Rupees Sixteen Crore Twenty Three Lacs Seventy Four Thousand Two Hundred Forty Nine only) comprising of principal amount of INR 10,81,86,326.00 (Rupees Ten Crore Eighty One Lacs Eighty Six Thousand Three Hundred Twenty Six Only) along with interest INR 5,41,87,923.00 (Rupees Five Crore Forty one Lacs Eighty Seven Thousand Nine Hundred Twenty-Three Only)

8. For admission of the Section 9 application, one of the principal requirements is that there should not be any pre-existing dispute between the Operational Creditor and the Corporate Debtor before issue of the Section 8(1) notice.

9. In compliance with the Order dated 11.09.2025, the Applicant have submitted vide affidavit that since the Petitioner-Association has taken over possession and the maintenance of the common areas of the Project/Group Housing Colony, it is statutorily entitled to receive all records pertaining to such common areas, including the Interest Free Maintenance Security (IFMS) deposited by the members of the Petitioner-Association. It is further submitted that in the Annual General Meeting of the Petitioner-Association, comprising all allottees of the

Project/Group Housing Colony, it was unanimously resolved to institute and pursue the present petition collectively through the Petitioner-Association. The resolution passed by the Executive Committee of the Petitioner-Association in this regard is already on record. That the Applicant in the said affidavit have submitted that all members of the Petitioner-Association have executed the standard form of the respective Builder Buyer Agreements and Maintenance Agreements, and the factual matrix in this regard is undisputed. The total strength of the Petitioner-Association presently stands at 188 members/homebuyers.

10. On this preliminary issue, this Adjudicating Authority had directed the Applicant to file an affidavit on maintainability, which has since been filed. Upon perusal of the case record, we note that the present application has been instituted by a Residents' Welfare Association, namely, Heritage Max Condominium Association.

11. We are inclined to refer to the decision of **Hon'ble NCLAT in the case of Mr. Suresh Narayan Singh Vs. Tayo Rolls Limited, Company Appeal (AT) Ins. No. 112 of 2018**, to contend that issue involved in the present case has been answered in manner that "only if in an individual claim of 'Operational Creditor' the amount of debt is less than one lakh rupees, it can be rejected being not maintainable". It is further submitted that in that case, all the employees/workmen had the claim of Rs. 1 lakh which was the threshold amount at that time therefore the application was held to be maintainable.

12. Upon consideration of the submissions and the material placed on record, we observe that the present application has been instituted by a Residents' Welfare Association and not by an individual allottees represented through an authorised representative. It is further noted that the individual Applicant, in their personal capacity, does not meet the minimum threshold requirement prescribed under Section 4 of the Insolvency and Bankruptcy Code, 2016, for initiation of proceedings against the Corporate Debtor. The statutory scheme of the Code mandates strict compliance with the threshold criteria, and in the absence of such compliance, the petition cannot be sustained.

13. In the light of the above findings, we are of the considered view that the petitioner has not made out a case for initiation of CIRP under Section 9 of the Insolvency and Bankruptcy Code, 2016, therefore, present Section 9 petition is **dismissed, however without cost**

14. However, this order shall not preclude the Applicant from seeking remedies, if so advised, under other laws that may be applicable in the facts of the case. The parties are at liberty to approach the civil court or any other appropriate forum and may explore other legal remedies available as per law.

Sd/-	**Sd/-**
ATUL CHATURVEDI	**MANNI SANKARIAH SHANMUGA SUNDARAM**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**