IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-V, NEW DELHI

CP IB NO. 29/(ND)/2026

An Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

1. **Harsh Vardhan Krishnatray**
   S/O Sh. Virendra Mohan

2. **Tanuja Krishnatray**
   W/O Sh. Harsh Vardhan Krishnatray

3. **Radhika Krishnatray**
   D/O Sh. Harsh Vardhan Krishnatray

   All Residents Of:
   C-9/13A, DLF City Phase 1, Gurugram
   Haryana-122002

...Applicant/Operational Creditor

Versus

1. Vatika One On One Private Limited
   Registered Office at:
   Vatika Business Centre, Thapar House,
   3rd Floor, Eastern & Central Wing,
   Janpath Road, CP, New Delhi- 110001
   Email: secretarial@vatikagroup.com

...Respondent/Corporate Debtor

Order Delivered on: 23.07.2026

CORAM:

SHRI MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE MEMBER (JUDICIAL)
MS. REENA SINHA PURI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Ashish Mohan Sr. Adv., Mr. Vivek Singh Bishnoi, Mr. Ankur Bansal, Mr. Sadre Alam, Mr. A. Mukherjee, Advs.

For the Respondent: -

ORDER

1. The present application is filed by Harsh Vardhan Krishnatray, Tanuja Krishnatray and Radhika Krishnatray (**Applicants/Operational Creditors**) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**Code**), seeking initiation of the Corporate Insolvency Resolution Process (**CIRP**) against Vatika One On One Private Limited (**Respondent/Corporate Debtor**).

2. The Petition has been filed on the ground that the Corporate Debtor has failed to make payment of a total sum of Rs. 1,81,50,105.20. The demand notice dated 12.11.2025 under Section 8 of the Code, has been annexed to the Application[1].

3. The Corporate Debtor was incorporated[2] on 09.02.2011 under the provisions of the Companies Act, 1956 and has its registered office at Vatika Business Centre, Thapar House, 3rd Floor Eastern & Central Wing, Gate No. 1, 124 Janpath Road, CP, New Delhi-110001. Since the registered office of the Corporate Debtor is situated in New Delhi, this Adjudicating Authority has territorial jurisdiction over the present matter.

Averments of the Applicant

4. The case of the Applicants is that M/S Vatika Limited, a real estate company, and the Corporate Debtor being a group company of M/S Vatika Limited, approached the Applicants in 2014, for investment in commercial units in the project of the Corporate Debtor, each admeasuring approximately 500 sq. ft. super area.

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[1] Annexure H, Page 123-135 of Application
[2] As per Master Data of CD annexed as Annexure-A at Page 53 of Application

It is stated that the Applicants were handed over a prospectus/brochure wherein they were allegedly induced to invest in the project on the assurance of monthly assured returns at the rate of 151.65 per sq. ft. per month on the super area till completion of construction of the building. It was further represented that thereafter lease rentals at the rate of Rs. 130 per sq. ft. per month would be paid for up to three years from the date of completion of construction of the building or till the unit was put on lease, whichever was earlier.

6. Pursuant to the aforesaid assurances, the Applicants invested in three commercial units. Two units were purchased by Tanuja Krishnatray and Radhika Krishnatray by making full down payment of Rs. 42,77,955 each. Subsequently, on 16.05.2016, Harsh Vardhan Krishnatray and Tanuja Krishnatray jointly invested in another commercial unit for a total consideration of Rs. 45,84,618.

7. Accordingly, three Builder Buyer Agreements were entered into between the parties. Two Builder Buyer Agreements dated 31.05.2016 were executed in respect of Unit Nos. 436 and 437, allotted to Tanuja Krishnatray and Radhika Krishnatray respectively, on the 4th Floor of Block No. 3, admeasuring 500 sq. ft. super area, along with proportionate individual pro-rata share in the land underneath. The third Builder Buyer Agreement dated 07.06.2016 was executed between Harsh Vardhan Krishnatray and Tanuja Krishnatray, on one hand, and the Corporate Debtor and M/s Vatika Limited, on the other hand. Under the said agreement, receipt of Rs. 45,84,618 was acknowledged and Unit No. 441, situated on the 4th Floor of Block No. 3, admeasuring 500 sq. ft. super area, was allotted to them along with proportionate individual pro-rata share in the land underneath.

8. It is further stated that, as per clause 15 of the respective Builder Buyer Agreements, the Applicants were entitled to assured returns at the rate of 151.65 per sq. ft. per month, amounting to Rs. 75,825 per month per unit till the completion of construction of the building. Further, under clause 16.1 of the said agreements, the Applicants were thereafter entitled to assured leasing amount of Rs. 130 per sq. ft. per month on the super area for up to

three years from the date of completion of construction of the building or till the unit was put on lease, whichever was earlier.

9. According to the Applicants, the Corporate Debtor and M/S Vatika Limited started paying monthly assured returns of Rs. 75,825 per unit and continued to do so till September 2018. However, from October 2018, the Corporate Debtor allegedly stopped making payment of assured returns, in contravention of the Builder Buyer Agreements.

10. It is further alleged that the Corporate Debtor and M/s Vatika Limited leased out the Applicants' units to M/s Air India since September 2024, without execution of any document by the Applicants. It is also stated that no amount has been paid to the Applicants towards lease rentals and that the Sale/Conveyance Deeds in respect of the properties have not been executed in favour of the Applicants till date.

11. On account of default in payment of assured returns and lease rentals in relation to the three units, the Applicants filed three separate complaints before the Haryana Real Estate Regulatory Authority, Gurugram (HRERA). HRERA, vide order dated 02.02.2022 in relation to Unit No. 441, allotted to Harsh Vardhan Krishnatray and Tanuja Krishnatray, and vide order dated 02.12.2022 in relation to Unit Nos. 436 and 437, allotted to Tanuja Krishnatray and Radhika Krishnatray respectively, allowed the complaints and directed the Corporate Debtor to pay assured monthly returns and assured leasing in terms of the Builder Buyer Agreements.

12. It is the case of the Applicants that despite the aforesaid orders, the Corporate Debtor failed to comply with the directions of HRERA and is therefore liable to pay interest on the outstanding amounts till realisation.

13. In respect of Unit No. 441, Harsh Vardhan Krishnatray and Tanuja Krishnatray filed execution proceedings, whereupon HRERA issued a Recovery Certificate dated 15.02.2024 in their favour. It is stated that despite issuance of the Recovery Certificate, the Corporate Debtor has failed to pay assured returns and lease rentals.

14. Tanuja Krishnatray and Radhika Krishnatray also filed execution petitions in respect of the orders dated 02.12.2022 relating to Unit Nos. 436 and 437. However, according to the Applicants, the agreed assured returns and lease rentals remain unpaid.

15. The Applicants state that despite repeated requests to the Corporate Debtor and M/s Vatika Limited to clear the pending amounts and execute the conveyance deeds, no steps were taken by them. It is stated that the first month of default is October 2018 and that the default is continuing. The Applicants jointly claim that an amount of Rs. 1,81,50,105.20 remains unpaid in respect of the three allotted units. The default in making the payment is detailed hereinunder:

UNIT NO. 441/ JOINT NAME OF APPLICANT NO. 1 AND 2

Date and Default Amount Towards Assured Return	Date and Default Amount Towards Assured Return	Total Interest @ 8.65% w.e.f. October 2018 till August 2025
October 2018 till September 2021. Rs. 75,825 per month amounting to Rs. 27,29,700	October 2021 till September 2024. Rs. 65,000 per month amounting to Rs. 23,40,000	Rs. 13,47,878.68

Unit No. 436/Applicant No. 2

Date and Default Amount Towards Assured Return	Date and Default Amount Towards Assured Return	Total Interest @ 8.35% w.e.f. October 2018 till August 2025
October 2018 till September 2021. Rs. 75,825 per month amounting to Rs. 27,29,700	October 2021 till September 2024. Rs. 65,000 per month amounting to Rs. 23,40,000	Rs. 13,01,131.44

Unit No. 437/Applicant No. 3

Date and Default Amount Towards Assured Return	Date and Default Amount Towards Assured Return	Total Interest @ 8.35% w.e.f. October 2018 till August 2025
October 2018 till September 2021. Rs. 75,825 per month amounting to Rs. 27,29,700	October 2021 till September 2024. Rs. 65,000 per month amounting to Rs. 23,40,000	Rs. 13,01,131.44

16. The demand notice dated 12.11.2025 under Section 8 of the Code read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, demanding payment of Rs. 1,81,50,105.20, was served upon the Corporate Debtor through speed post on 17.11.2025 and through email on 12.11.2025. It is stated that the Corporate Debtor neither replied to the demand notice nor made payment of the amount claimed.

ANALYSIS AND FINDINGS

17. Vide Order dated 21.04.2026, this Adjudicating Authority directed the Applicants to file a short note on the issue of maintainability of the present Petition within one week. However, the said order has not been complied with. We are, therefore, proceeding to examine the issue of maintainability on the basis of the pleadings and material already available on record.

18. The present Petition has been filed under Section 9 of the Code on account of alleged operational debt arising from non-payment of assured monthly returns and lease rentals by the Corporate Debtor under the Builder Buyer Agreements executed between the parties. The Applicants have jointly claimed an outstanding operational debt of Rs. 1,81,50,105.20.

19. The Hon'ble Supreme Court in the case of ***Mobilox Innovations Private Limited***[3] has laid down the principles governing admission or rejection of an application under Section 9 of the Code. One of the requirements is that there must exist an operational debt exceeding the threshold prescribed under Section 4 of the Code.

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[3] *Mobilox Innovations Private Limited v. Kirusa Software Private Limited, (2018) 1 SCC 353*

20. Thus, for deciding the maintainability of the present Petition, the following issues arise for consideration:

i. Whether the Applicants fall within the meaning of "Operational Creditor" under the Code;
ii. Whether the debt claimed by the Applicants qualifies as "Operational Debt" under the Code; and
iii. Whether the statutory threshold a prescribed under Section 4 of the Code is satisfied in the present case.

Issue i and Issue ii

21. A bare perusal of Section 9 of the Code shows that, for maintaining an application thereunder, the applicant must establish that he is an operational creditor and that an operational debt is owed to him.

22. The terms "Operational Creditor" and "Operational Debt" are defined under Sections 5(20) and 5(21) of the Code as under:

*"**5(20) 'operational creditor'** means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred."*

***5(21) "operational debt"** means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority".*

23. Thus, only a claim in respect of provision of goods or services, including employment, or a debt in respect of dues payable to the Central Government, State Government or local authority, can fall within the meaning of "operational debt" under Section 5(21) of the Code.

24. The Hon'ble Principal Bench of this Tribunal in ***Col. Vinod Awasthy vs. AMR Infrastructures Ltd*[4]*,*** while interpreting the expression "operational debt", held as under:

[4] *Col. Vinod Awasthy vs. AMR Infrastructures Ltd., C.P No. (IB)-10(PB)/2017*

"8. It is evident from the perusal of the aforesaid definition of 'Operational Debt' that it is a claim in respect of provision of goods or services including dues on account of employment or a debt in respect of repayment of dues arising under any law for the time being in force and payable to Centre or State Government or local authority. ***It is thus clear that debt may arise out of provision of goods or services or dues arising out of employment or dues arising under any law for time being in force and payable to the Centre/State Government. The framer of the Code have also defined the expression 'Financial Debt' in section 5(8) to mean a debt which is disbursed against the consideration of time value of money. However the framer of the Code has not included in the expression 'Operation Debt' as any debt other than the 'Financial Debt'. It is thus confined to aforesaid four categories like goods, services, employment and Government dues.*** *In the present case the debt has not arisen out of the provisions of goods or services. The debt has also not arisen out of employment or the dues which are payable under the statute to the Centre/ State Government or local body. The refund sought to be recovered is necessarily associated with the delivery of the possession of immovable property which has been delayed.*

9. The next question is whether the Petitioner could be regarded as an 'Operational Creditor' within the meaning of section 5(20). ***The 'Operational Creditors' are those persons to whom the 'Corporate Debt' is owed and whose liability from the entity comes from a transaction on operations.*** *The final report of the Committee in para 5.2.1 defines 'Operational Creditor' like the wholesale vendor of spare parts whose spark plugs are kept in inventory by Car Mechanic and who gets paid only after spark plugs are sold to acquire the status of 'Operational Creditor' so and so forth.* ***The Petitioner in the present case has neither supplied any goods nor has rendered any service to acquire the status of an 'Operational Creditor'.****"* *(emphasis supplied)*

25. Applying the above principles to the facts of the present case, it is evident that the Applicants have not supplied any goods or rendered any services to the Corporate Debtor. The claim is also not in the nature of employment dues or statutory dues payable to the Government or a local authority. The claim of the Applicants arises out of non-payment of assured monthly returns and lease rentals under the Builder Buyer Agreements. Such claim does not fall within the statutory definition of "operational debt" under Section 5(21) of the Code.

26. In this regard, reference may also be made to the decision of the Hon'ble NCLAT in ***Nikhil Mehta and Sons vs. AMR Infrastructure Ltd,*** wherein monthly assured returns under a real estate arrangement were held to have the character of financial debt, and not operational debt. The Hon'ble NCLAT observed that where the amount disbursed by the allottees was against consideration for time value of money and had the commercial effect of borrowing, the claim would fall within the meaning of financial debt.

27. In view of the aforesaid, we are of the considered view that the Applicants do not fall within the meaning of "Operational Creditor" under Section 5(20) of the Code, and the debt claimed by them does not qualify as "Operational Debt" under Section 5(21) of the Code.

Issue iii

28. The next issue is whether the threshold prescribed under Section 4 of the Code is satisfied. Section 4 of the Code provides that Part II of the Code shall apply to matters relating to insolvency and liquidation of corporate debtors where the minimum amount of default is the amount specified therein. Vide Notification No. S.O. 1205(E) dated 24.03.2020, the threshold was enhanced from Rs. 1 lakh to Rs. 1 crore.

29. In the present case, the Applicants have jointly claimed a cumulative default of Rs. 1,81,50,105.20/-, inclusive of interest. However, the issue is whether such claims can be clubbed together for the purpose of satisfying the threshold under Section 4 in a Section 9 petition.

30. In **Mr. Suresh Narayan Singh v. Tayo Rolls Limited**[5], the Hon'ble NCLAT held that an application under Section 9 is not maintainable where the individual claim of the operational creditor falls below the threshold prescribed under Section 4 of the Code.

31. The Hon'ble NCLAT, in **Sadashiv Nomaya Nayak & Ors. v. Gammon Engineers & Contractors Pvt. Ltd**[6]**,** followed the decision in Suresh Narayan Singh and upheld rejection of a Section 9 application on the ground that the threshold under Section 4 was not met individually by the applicants. The said view was also upheld by the Hon'ble Supreme Court.

32. In the present case, as per the demand notice dated 12.11.2025, the amount claimed by Radhika Krishnatray in respect of Unit No. 437 is Rs. 60,38,433.60/-, inclusive of interest from October 2018. The said amount is below the statutory threshold of Rs. 1 crore.

33. After excluding the claim of Radhika Krishnatray, the remaining claimed amount comes to Rs. 1,21,11,671.60/-. Unit No. 441 is jointly held by Harsh Vardhan Krishnatray and Tanuja Krishnatray, while Unit No. 436 is held by Tanuja Krishnatray. The individual claims of these Applicants are not clearly ascertainable from the material placed on record. However, even on the basis of the available record, it is evident that their individual claims would not meet the threshold of Rs. 1 crore prescribed under Section 4 of the Code.

34. In view of the judgments referred to above, the Applicants cannot club their separate claims to meet the statutory threshold under Section 4 for maintaining a Section 9 petition. Since the threshold is not met individually, the present Petition is not maintainable on this ground as well.

35. Accordingly, we hold that the debt claimed in the present Petition is not an operational debt within the meaning of Section 5(21) of the Code. Further,

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[5] *Mr. Suresh Narayan Singh v. Tayo Rolls Limited, Company Appeal (AT) (Insolvency) No. 112 of 2018*

[6] *Sadashiv Nomaya Nayak & Ors. v. Gammon Engineers & Contractors Pvt. Ltd, Company Appeal (AT) (Insolvency) No. 218 of 2023*

the individual claims of the Applicants do not satisfy the statutory threshold of Rs. 1 crore under Section 4 of the Code.

36. In view of the aforesaid findings, the present Petition is not maintainable and is liable to be dismissed.

37. Accordingly, **CP IB No. 29/(ND)/2026** is **dismissed**.

38. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-	Sd/-
(REENA SINHA PURI) **MEMBER (TECHNICAL)**	**(MANNI SANKARIAH SHANMUGA SUNDARAM)** **MEMBER (JUDICIAL)**