



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
COURT-VI, NEW DELHI**

**COMPANY PETITION IB (IBC)/70 (ND)/2024**

*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:**

**M/s UNIFIED CREDIT SOLUTIONS PRIVATE LIMITED**

7<sup>th</sup> FLOOR, 715, DLF STAR TOWER,

SECTOR- 30, NH-8, GURUGRAM,

HARYANA -122001

Through its Authorised Representative

**Mr. Samir Sethi**

R/o Apartment 003, Tower 7,

Orchid Petals, Sector 49,

Gurugram, Haryana – 122018.

***...Operational Creditor***

***Versus***

**M/S D S HOME CONSTRUCTION Pvt. LTD.**

Regd. Add: A- 67, South Extension – II,

New Delhi- 110049, India

***...Corporate Debtor***

**Order Delivered on: 09.05.2025**

**CORAM:**

**SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)**

**ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**



**Appearances (through Video Conferencing/physical hearing)**

***For the Applicant*** :

***For the Respondent*** : None Present

**O R D E R**

**PER – BENCH**

1. This is a Company Petition filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (***‘the Code’***) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by **M/s Unified Credit Solutions Private Limited (*‘Operational Creditor’*) through Mr. Samir Sethi**, duly authorized for initiation of Corporate Insolvency Resolution Process (***‘CIRP’***) against **M/s DS Home Construction Private Limited (*‘Corporate Debtor’*)**.
2. **Mr. Samir Sethi of M/s Unified Credit Solutions Private Limited** (Operational Creditor) having office at 7<sup>th</sup> Floor, 715, DLF Star Tower, Sector- 30, NH-8, Gurugram, Haryana 122001. **M/s DS HOME CONSTRUCTION Pvt. LTD.** (Corporate Debtor) is a Company registered under the Companies Act, 1956 [CIN- U70102DL2012PTC241467], having its office at A-67, South Extension-II, South Delhi, NEW DELHI, Delhi, India, 110049. The Corporate Debtor has Authorized Share Capital of Rs 1,00,000/- (One Lakh Only) and Paid Up Share Capital of Rs 1,00,000/- (One Lakh Only).
3. The present Petition was filed on 22.12.2023 before this Adjudicating Authority for the initiation of CIRP Proceedings by **Mr. Samir Sethi of M/s Unified Credit Solutions Private Limited** (Operational Creditor) against the **M/s DS HOME CONSTRUCTION Pvt. LTD.** (Corporate Debtor) under Section 9 of the IB Code. The total amount claimed in



default is Rupees 1,84,47,567/- (Rupees One Crore Eighty-Four Lakhs Forty-Seven Thousand) including interest @ 10% p.a. from the date of default till the date of realization. The ***date of default*** is stated to be on 01.11.2019.

**4. Facts of the case as submitted by the Ld. Counsel appearing on behalf of the Operational Creditor.**

- a) The Corporate Debtor approached Operational Creditor in the year 2020 for lease of the said Premises for its office use by the Corporate Debtor and its related entities.
- b) The Operational Creditor and the Corporate Debtor entered into Lease Agreement dated 01st October 2020 (hereinafter referred to as the "said Agreement") registered with sub registrar Gurugram vide Registration no. 2608 in Book No. 1 Volume No. 1898 on pages 64 to 67 dated 01st October 2020 detailing out the mutually agreed terms and conditions for the lease for the said Premises (hereinafter referred to as the "said Services") for a period of 5 years with rent enhancement exclusive of applicable taxes, maintenance charges, electricity etc. that had to be paid by the Corporate Debtor in addition to the monthly lease rent.
- c) The Corporate Debtor took possession of the Premises on 01st November 2020 and has been in possession ever since. The Corporate Debtor in terms of its obligation under Section 1 clause x read with Section V of the Registered Lease Deed deposited the Security Deposit.
- d) The Corporate Debtor was in the possession of the said Premises and used the same to its complete and full satisfaction without any hinderance/objection/protest. The Corporate Debtor was



delinquent in making the payment of lease rent and delayed the payment for the month of January to June 2022.

- e) Since July 2022, the Corporate Debtor is in continuous default in payment of the monthly lease rent and is still in possession of the said premises. In order to evade the payment of monthly lease rent, the Corporate Debtor purportedly concocted a false story of attachment of its bank accounts by HRRERA and sought time to clear the admitted/acknowledge monthly lease rental due, outstanding and payable by Corporate Debtor to Operational Creditor by January 2023.
- f) Thereafter, the Corporate Debtor misrepresented and played fraud upon the Operational Creditor by concocting false and fabricated story regarding disconnection of electricity by the maintenance agency and induced Operational Creditor to file case for restoration of electricity against the maintenance agency - Raj Darbar Reality Creations Pvt. Ltd. It transpired during the course of judicial proceedings that the Corporate Debtor has concocted false story as a smokescreen to cover up its inability to make payment of maintenance charges and while the electricity was disconnected due to nonpayment of maintenance charges by the Corporate Debtor.
- g) The Corporate Debtor paid the maintenance charges in tranches and cleared the outstanding maintenance charges by end of December 2022 and the electricity was restored in the said premises.
- h) The Operational Creditor vide its communication dated 02nd February 2023 called upon the Corporate Debtor to clear the outstanding debt with interest by 9th February 2023. Despite



receipt of the termination notice the Corporate Debtor neither replied to the notice nor released any payment for outstanding lease rent. Thus, from the effective date of termination i.e. 3rd March 2023 the possession of the Corporate Debtor is that of the unauthorized person and that as such clause 3 of Section IX of the Registered Lease Deed automatically got triggered on 03rd March 2023.

- i) Despite receipt of the termination notice, the Corporate Debtor failed to vacate the said premises and thus the Operational Creditor was constrained to take legal recourse by filing eviction petition bearing CIS No. RP/21/2023 before the Ld. Rent Controller, District Court, Gurugram (rent control tribunal) which is still pending adjudication.
- j) Upon receipt of court notice for eviction suit, as an after-thought, the Corporate Debtor issued a false, frivolous and baseless Legal Notice dated 29th March 2023 stating for the first time, amongst other frivolous grounds, that the electricity was disconnected by the Maintenance Agency due to a fire in the premises on 1st October 2022 and restored it on 31st December 2022 and since office was closed during the said period, lease rent cannot be demanded for the same while factually the electricity was disconnected on account of nonpayment of maintenance charges and electricity was restored on 10th October 2022 after fire in 1st October 2022.
- k) Thereafter, the Corporate Debtor in partial discharge of its obligation and outstanding debt, made a part payment of Rs. 12,96,000/- in two tranches during the period April - May 2023. The Corporate Debtor is yet in default towards payment of the



maintenance charges to the maintenance agency and consequently the electricity of the said premises is even disconnected. Corporate Debtor has not even deposited the TDS illegally deducted for the lease rent paid from April 2022 till June 2022 amounting to Rs 1,80,000/- which is even due and recoverable by the Operational Creditor from the Corporate Debtor apart from the overdue lease rent amount/debt along with interest on the delayed payment. As on 07th November 2023, Corporate Debtor is liable to make payment of Rs. 1,84,47,567/- to the Operational Creditor towards the Outstanding debt due and payable by the Corporate Debtor to Operational Creditor.

- 1) The Operational Creditor through its Advocates issued a Demand Notice dated 30th November 2023 under Section 8 of the Code at the registered office of the Corporate Debtor and also to the address of the said premises seeking payment of Operational Debt of Rs. 1,84,47,567.00 (Rupees One Crore Eighty-Four Lakhs Forty-Seven Thousand Five Hundred Sixty-Seven Only) along with further interest@ 10% p.a. from the date of default till the date of realization.

#### **5. Declaration of Corporate Debtor set as Ex-Parte.**

The applicant was directed to issue notice on the respondent by all modes including e-mail of the respondent, vide order dated 11.03.2024. The Applicant served the notice along with Application to the Respondent via email dated 02.05.2024 and the same did not bounce back. Further, the Affidavit of service was filed by the Applicant claiming that the notices were served on the Respondent through speed post, dated 04.07.2024 and the same had returned un-served.



This Adjudicating Authority vide order dated 26.04.2024 and 05.06.2024 recorded that the petitioner have served the Respondents. Ld. Counsel submitted that the service through speed post was returned with the remark that “addressee left without any instruction”. It was further submitted that they have the sent speed post to the address as mentioned in the RoC record as well as mentioned in their lease agreement and they have also served through e-mail, which had not bounced back. None appeared on behalf of the Respondent. On the last of hearing also, i.e. 05.06.2024 none had appeared on behalf of the Respondent. **Therefore, Respondents were set ex parte vide order dated 31.07.2024.**

### ***Analysis & Findings***

6. We have heard the Learned Counsel for the Operational Creditor and perused the averments made in the petition and also in additional affidavits filed by the Operational Creditor. Since the registered office of the respondent Corporate Debtor is in Delhi, this Tribunal is having territorial jurisdiction as the Adjudicating Authority in relation to prayer for initiation of Corporate Insolvency Resolution Process (CIRP) under Section 9 of The Insolvency and Bankruptcy Code, 2016, against the Corporate Debtor.
7. It is to be noted that the ‘Operational Creditor’ had sent a demand notice dated 30.11.2023 to the ‘Corporate Debtor’ under Section 8 of The Insolvency and Bankruptcy Code, 2016 for payment of outstanding dues. As per the requirement of Section 8(2) of the IB Code, 2016, the Corporate Debtor is required to file reply to the demand notice within 10 days of the Receipt of the Demand Notice. However, in the present case, no such reply has been placed on record before us.



8. In order to determine the admissibility of petition for initiating CIRP under Section 9 of the Code, the judgment of the Hon'ble Supreme Court in **Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd. (2018) 1 SCC 353** is to be taken into consideration. The said judgment makes it clear that in order to initiate CIRP proceedings under Section 9 of the Code, the Adjudicating Authority has to determine:

- a) Whether there is an 'Operational Debt' exceeding Rs. 1 Lakh (1 Crore, in case the petition is filed after 24.03.2020) as defined under Section 4 of the IBC?
- b) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?
- c) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice if the unpaid operational debt in relation to such dispute?

9. In the first instance, to determine that whether the said amount claimed by the Operational Creditor would fall under the ambit of 'Operational Debt', it is pertinent to analyze the definition of 'Operational Debt' as mentioned under Section 5(21) of The Insolvency and Bankruptcy Code, 2016. Under said section, 'Operational Debt' is defined as:

*"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".*

While analyzing the present facts in the light of the abovementioned provision, it is pertinent to keep in mind that the said the Corporate





Debtor despite admitting and acknowledging its liability has deliberately failed and neglected to pay outstanding amount of Rs. 1,84,47,567.00 (Rupees One Crore Eighty-Four Lakhs Forty-Seven Thousand Five Hundred Sixty-Seven Only) along with further interest @ 10% p.a. from the date of default till the date of realization against the Corporate Debtor for the non-payment of outstanding lease rent since July 2022 along with TDS for rent paid for the months of April to June 2022 which the Corporate Debtor has failed to deposit with the income tax department.

**10.** The Operational Creditor has annexed true copies of the invoices in **Annexure – E** of the Petition, which justifies that there had been a transaction between the parties. Furthermore, the Ledger Account of the Corporate Debtor specifies that there is an outstanding amount of Rs. 1,84,47,567.00 (Rupees One Crore Eighty-Four Lakhs Forty-Seven Thousand Five Hundred Sixty-Seven Only) payable by the Corporate Debtor to the Operational Creditor. Therefore, the outstanding debt which is due and payable to the Operational Creditor would fall under the ambit of ‘operational Debt’ and hence, the said Creditor be termed as the ‘Operational Creditor’ within the meaning of Section 5(20) of the Code.

**11.** The details of the Invoice which are raised by the Operational Creditor against the Corporate Debtor are mentioned below -:



**PARTICULARS OF DEFAULT AMOUNT**

<b>S. No.</b>	<b>Invoice No.</b>	<b>Date</b>	<b>Amount (Rs.)</b>
1.	UCS/2223/OT H/022	01-07- 2022	7,08,000.00
2.	UCS/2223/OT H/030	01-08- 2022	7,08,000.00
3.	UCS/2223/OT H/036	01-09- 2022	7,08,000.00
4.	UCS/2223/OT H/042	03-10- 2022	7,08,000.00
5.	UCS/2223/OT H/049	01-11- 2022	7,08,000.00
6.	UCS/2223/OT H/055	01-12- 2022	7,08,000.00
7.	UCS/2223/OT H/060	02-01- 2023	7,08,000.00
8.	UCS/2223/OT H/069	01-02- 2023	7,08,000.00
9.	UCS/2223/OT H/073	02-02- 2023	3,40,813.00
10.	UCS/2223/OT H/079	04-03- 2023	13,47,484.00
11.	UCS/2223/OT H/080	04-03- 2023	49,668.00
12.	UCS/2223/OT H/084	31-03- 2023	67,219.00
13.	UCS/2324/OT H/006	01-04- 2023	14,16,000.00



14.	UCS/2324/OT H/013	01-05- 2023	14,16,000.00
15.	UCS/2324/OT H/014	01-05- 2023	72,580.00
16.	UCS/2324/OT H/021	01-06- 2023	14,16,000.00
17.	UCS/2324/OT H/022	01-06- 2023	82,400.00
18.	UCS/2324/OT H/028	01-07- 2023	14,16,000.00
19.	UCS/2324/OT H/029	01-07- 2023	92,264.00
20.	UCS/2324/OT H/038	01-08- 2023	14,16,000.00
21.	UCS/2324/OT H/039	01-08- 2023	1,09,637.00
22.	UCS/2324/OT H/045	01-09- 2023	14,16,000.00
23.	UCS/2324/OT H/046	01-09- 2023	1,23,829.00
24.	UCS/2324/OT H/055	03-10- 2023	14,16,000.00
25.	UCS/2324/OT H/056	03-10- 2023	1,33,463.00
26.	UCS/2324/OT H/064	01-11- 2023	14,16,000.00
27.	UCS/2324/OT H/065	01-11- 2023	1,52,210.00

<b>TOTAL INVOICE AMOUNT</b>	<b>1,95,63,567.00</b>
TDS FOR RENT PAID FOR MONTHS APRIL- JUNE 2022	1,80,000.00
<i>LESS AMOUNT PAID TOWARDS LEASE RENT IN APRIL &amp; MAY 2023</i>	<i>(12,96,000.00)</i>
<b>OUTSTANDING AMOUNT</b>	<b>1,84,47,567.00</b>



- 12.** Moreover, in the present case, there has been nothing is brought on record to suggest that any pre-existing dispute as raised by the Corporate Debtor, or there is any suit or arbitration proceeding regarding the present matter, pending before any forum.
- 13.** It is further observed that the Operational Creditor has justified the existence of an Operational Debt by annexing true copies of the invoices, copies of emails and statements along with a certificate under Section 65B of the Indian Evidence Act, 1872. The said invoices sufficiently justify that the Operational Creditor i.e. the non-payment of outstanding lease rent since July 2022 along with TDS for rent paid for the months of April to June 2022 by the Corporate Debtor and that the amount exceeding Rs. 1,84,47,567.00 (Rupees One Crore Eighty-Four Lakhs Forty-Seven Thousand Five Hundred Sixty-Seven Only) is due and payable by the Corporate Debtor to the Operational Creditor and the same has not been paid yet. Therefore, we are of the view that there is a *debt due and payable* and that there has been *default* on the part of the Corporate Debtor.
- 14.** In view of the above facts and circumstances, we are satisfied that the present petition filed by the Operational Creditor fulfils the criteria laid down under the provisions of the Code. The Petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code (stipulated at the relevant point of time). In the light of the above facts and circumstances, it is, hereby ordered as follows: -
- a) The application bearing CP (IB) No. 70/ND/2024 filed by, **Mr. Samir Sethi**, Authorised Representative of **M/S UNIFIED CREDIT SOLUTIONS Pvt. LTD.**, the Operational Creditor, under Section 9 of the Code read with rule 6 of the Insolvency & Bankruptcy



(Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **M/S D S HOME CONSTRUCTION Pvt. LTD.**, the Corporate Debtor, is ***admitted***.

- b) The Applicant has proposed no name of IRP in Part-III of the application. However, the Applicant filed IA- 6009/2024 where the Applicant proposed the name of the Interim Resolution Professional (IRP), Mr. Vaneet Bhatia having registration number IBBI/IPA-002/IP- N00908/2019-2020/12942, the address of the IRP is H No.19 Bharat Apartments, Sector- 13, Rohini, North West, National Capital Territory of Delhi -110085 and the e-mail id vaneetbhatia4@gmail.com for appointment, which was inadvertently omitted in the original application. A copy of FORM 2 i.e. written communication by the IRP Mr. Vaneet Bhatia dated 11th September 2024 is annexed with the present Application as Annexure A. Vide order dated 29.01.2025 the said IA 6009/2024 was disposed of with the observation that name of the proposed IRP shall be consider while considering the main case.
- c) Therefore, Vaneet Bhatia, Registration Number IBBI/IPA 002/IP- N00908/2019-2020/12942, Email: vaneetbhatia4@gmail.com, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code, subject to submission of Form AA, Disclosure and a valid Authorization for Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016.
- d) We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Vaneet Bhatia, to meet out the expense to perform the functions assigned to him in



accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount, however, be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

- e) We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

- (a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
- (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
- (c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
- (d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.”*
- (e) The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.”*



- f) It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.
- g) Therefore, the IRP shall file a valid Authorization for Assignment along with Written Consent in Form-2 and Registration Certificate within 3 days of the pronouncement of this order.
- h) In pursuance of Section 13(2) of the Code, we direct the IRP, as the case may be to make a public announcement immediately with regard to the admission of this application under Section 9 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- i) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow. There shall be no future opportunity given in this regard.



- j) The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'.
- k) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- l) In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
- m) In terms of the Code, the Registry is hereby directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and by email, at the earliest





but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of the Corporate Debtor and specific mention regarding admission of this Application must be notified.

- n) The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (“IBBI”) for their record.
- o) A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

No order as to costs.

**-SD/-**  
**(ATUL CHATURVEDI)**  
**MEMBER (TECHNICAL)**

**-SD/-**  
**(MAHENDRA KHANDELWAL)**  
**MEMBER (JUDICIAL)**