IN THE NATIONAL COMPANY LAW TRIBUNAL

BENCH – VI, NEW DELHI

Company Petition in CP IB-206/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. GROYYO PRIVATE LIMITED
A Wing, Unit No. 701,
Bonaza Sahar Plaza Andheri Kurla Road,
Mumbai Maharashtra 400059
Through its Authorised Signatory
Mr. Aman Chaudhary

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

M/s. HIMAYA APPARELS PVT LTD
Having its registered office at:
F-77A, UGF, Vishwakarma Colony,
South Delhi, Delhi, 110044

... RESPONDENT /CORPORATE DEBTOR

Order Delivered on: 03.07.2026

CORAM:

JUSTICE JYOTSNA SHARMA	**MS. ANU JAGMOHAN SINGH**
HON'BLE MEMBER (JUDICIAL)	**HON'BLE MEMBER (TECHNICAL)**

APPEARANCES:

For the Petitioner: Mr. Amitesh Giroti, Adv

For the Respondent:

ORDER

1. The instant application is filed by M/s Groyyo Private Limited, (hereinafter referred as 'Applicant'/ 'Operational Creditor') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the CODE/IBC') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to initiate Corporate Insolvency Resolution Process ("CIRP") against M/s. Himaya Apparels Private Limited (hereinafter referred as 'Respondent/Corporate Debtor') for failing to make the payment of Operational Debtor amount of **Rs. 2,62,02,257/- (Two Crores Sixty Two Lakhs Two Thousand Two Hundred Fifty Seven Only)** .

2. The Respondent Company M/s. Himaya Apparels Private Limited, having its registered office situated at F-77A, UGF, Vishwakarma Colony, South Delhi, Delhi, 110044. Since the registered office of the Respondent/Corporate Debtor is in New Delhi, this Tribunal having territorial 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.

3. **<u>Averments of the Applicant:</u>**

   i. That the Corporate Debtor is in the business of manufacturing and trading of unstitched suits and cotton sarees. The Operational Creditor and the Corporate Debtor entered into a Master Supply Agreement dated 02.08.2022, pursuant to which the Operational Creditor was required to supply fabrics and garments to the Corporate Debtor. In terms of the said Agreement, the Operational Creditor supplied the goods and raised invoices from time to time in respect thereof.

   ii. That the unpaid invoices of the Operational Creditor amounted to Rs. 2,62,02,257/- (Rupees Two Crores Sixty-Two Lakhs Two Thousand Two Hundred Fifty Seven Only).

iii. That the Corporate Debtor duly received the goods supplied pursuant to the purchase orders placed by it and has never disputed the receipt thereof.

iv. That the Corporate Debtor has also acknowledged the debt liability and promised to make payment of aforesaid amount.

v. That the Corporate Debtor was making payments on a running account basis. However, several cheques issued by the Corporate Debtor towards part-payment of the outstanding dues came to be dishonoured upon presentation.

vi. That the Operational Creditor issued the Demand Notice in Form 3 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, along with the unpaid invoices, and sent it by speed post, courier and e-mail. The said Demand Notice was duly delivered to the Corporate Debtor on 11.02.2024. Despite service of the Demand Notice, the Corporate Debtor failed to furnish any reply thereto. It is further submitted that the Corporate Debtor has failed to place on record any conclusive material to demonstrate that the Demand Notice was not received by it.

vii. That no pre-existing dispute existed between the parties prior to the issuance of the Demand Notice. The Respondent has allegedly relied upon a letter purporting to complain of defective goods; however, no proof of dispatch or delivery of the said letter has been placed on record. It is further submitted that the issue regarding alleged defective goods was raised only after issuance of the Demand Notice by the Operational Creditor. The purported complaint letters dated 18.01.2023 and 08.02.2023 are stated to be a mere afterthought, and there is no conclusive evidence to establish that the same were ever served upon or received by Groyyo Pvt. Ltd., no proof of service having been annexed to the record.

viii. That the Operational Creditor duly supplied goods to the Corporate Debtor, for which an amount of Rs. 2,62,02,257/- (Rupees Two Crores Sixty-Two Lakhs Two Thousand Two Hundred Fifty-Seven Only) continues to remain due and payable by the Corporate Debtor. Accordingly, the present application has been filed by the Operational Creditor seeking initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor in accordance with the provisions of the Insolvency and Bankruptcy Code, 2016.

4. **Submission of the Corporate Debtor:**

i. That the Petitioner used to raise invoices in respect of the goods supplied to the Respondent, and the Respondent, in turn, regularly made payments against the deliveries duly received by it. The said fact stands admitted by the Petitioner in the present Company Petition and is further evident from the Ledger Account of the Respondent as maintained by the Petitioner, which has been placed on record as Annexure-5 to the Petition.

ii. In continuation of the existing business relationship and with a view to fostering the same, the Respondent had issued several post-dated cheques towards advance payments for future deliveries proposed to be made by the Petitioner. However, it subsequently transpired that certain consignments supplied by the Petitioner were not in conformity with the agreed specifications and were of inferior or sub-standard quality. As a result thereof, the Respondent allegedly suffered substantial monetary losses as well as reputational harm in the market.

iii. That the invoices raised by the Petitioner in respect of such defective deliveries were under scrutiny and were disputed by the Respondent on the ground that the fabric supplied by the Operational Creditor/Petitioner was not in accordance with the terms and conditions of the Supply Agreement. Consequently, the Respondent repeatedly requested the officials of the Operational Creditor through various telephonic communications to rectify and replace the defective goods or, in the alternative, adjust the value of the disputed invoices against the payments already made by the Respondent. The Respondent further addressed letters dated 18.01.2023 and 08.02.2023 to the Petitioner, specifically raising concerns regarding defective deliveries and the supply of inferior-quality goods. It is submitted that despite such communications and repeated requests, the Petitioner deliberately ignored the grievances raised by the Respondent, and the dispute remained unresolved.

iv. That instead of addressing the issue relating to the alleged defective goods, the Petitioner sought to encash the aforesaid post-dated cheques, which had been issued by the Respondent as advance payments against future supplies. The said cheques were dishonoured with the remark "Exceeds Arrangement". Thereafter, the Petitioner instituted Complaint Case No. NACT/93556/2023 before the Court of the Learned JMFC, Gurugram, and the said proceedings are presently stated to be sub judice.

v. That despite being in breach of the terms of the Supply Agreement and despite having raised what are alleged to be frivolous invoices, the officials of the Petitioner began pressurizing and threatening the Directors of the Respondent Company to make payments against the disputed invoices. The Respondent further alleges that the officials of the Petitioner sent certain persons, described as henchmen/bouncers, to the office premises of the Respondent, who allegedly abused and manhandled the Directors of the Respondent Company and, under threats of bodily harm, coerced them into issuing a cheque bearing No. 449241 dated 29.08.2023 for an amount of Rs. 10,00,000/- and effecting an NEFT transfer of Rs. 26,000/- in favour of the Petitioner. Aggrieved by the said incident, the Directors of the Respondent Company lodged Criminal Complaint No. 1657-CAS dated 28.08.2023 before the SHO, Police Station Sector-10, Gurugram.

vi. That thereafter, acting vindictively and with malafide intent, the officials of the Petitioner lodged a complaint before the Economic Offences Wing, Gurugram, bearing Complaint No. 21414/CP/23/BYH dated 20.10.2023 (5899-Z/DCP/East/25.10.2023 and 666-EOW-II dated 26.10.2023). It is submitted that pursuant to the inquiry conducted by the Economic Offences Wing and upon consideration of the reply dated 02.01.2024 submitted by the Director of the Respondent Company, the said complaint came to be dismissed vide Inquiry Report dated 03.01.2024 issued by EOW-II, Gurugram.

vii. That despite the existence of an arbitration clause under Clause 11.2 of the Supply Agreement, the Petitioner failed to invoke the agreed dispute resolution mechanism, thereby demonstrating its alleged intention to avoid adjudication of the dispute and to pursue unlawful gains to the detriment of the Respondent.

viii. That the Petitioner failed to duly serve the Demand Notice upon the Corporate Debtor. According to the Respondent, the said fact is evident from the postal tracking reports annexed by the Petitioner itself as Annexure-10 to the Petition. It is further submitted that the e-mail dated 11.02.2024, placed on record at Page 314 of the Petition, is alleged to be tampered with and forged, as neither the Respondent nor any of its officials ever received such communication. The Petitioner is therefore put to strict proof thereof. It is further contended that although the Petitioner has annexed the Demand Notice dated 09.02.2024 as Annexure-9, the same has not been referred to in Paragraph 8 of Part V of the Petition, thereby rendering its authenticity doubtful.

ix. That the Petition fails to disclose the date of default. According to the Respondent, the omission to specify the date on which the alleged default occurred constitutes non-compliance with the mandatory requirements governing an application under Section 9 of the Insolvency and Bankruptcy Code, 2016.

x. That the document described as a Bank Statement in Paragraph 7 of Part V of the Petition appears to be forged, manipulated, and unauthenticated. The Respondent contends that the document placed on record at Pages 36 to 40 (Annexure-2) appears to be a photocopy of previously printed pages and does not disclose the name of the concerned bank, the same having allegedly been handwritten thereon. It is further submitted that the document bears neither the stamp of the bank nor any other authenticating mark and appears to have been prepared unilaterally by the Petitioner. Accordingly, the Petitioner is put to strict proof regarding the authenticity and admissibility of the said document.

xi. In view of the aforesaid facts and circumstances, it is submitted that the present Petition is not maintainable in law in light of the existence of a pre-existing dispute between the parties and the alleged non-compliance with the mandatory requirements of Section 8 of the Insolvency and Bankruptcy Code, 2016.

Analysis and Findings

5. We have heard Ld. Counsels for the applicant as well as the Ld. Counsel for the Respondent and perused the averments made in the application and reply. The relevant documents annexed with the submissions have also been examined.

6. The Corporate Debtor has contended that the demand notice was not served upon it. Upon perusal of the record, it is observed that the Operational Creditor had issued the demand notice in Form-3 dated 09.02.2024 along with the unpaid invoices and dispatched the same through speed post and private courier to the registered address and working office of the Corporate Debtor. Thereafter, the demand notice was also sent through electronic mode on the registered email address of the Corporate Debtor as reflected on the MCA

portal. Although the Corporate Debtor has denied receipt of the demand notice through post as well as email, but it is a settled position of law that service of a demand notice under Section 8 of the IBC at the registered address or registered email address of the Corporate Debtor constitutes valid service. Accordingly, this Adjudicating Authority is of the view that the statutory requirement of service stands duly complied with.

7. The Corporate Debtor has contended that the present application is defective on account of the non-mentioning of the date of default in the Demand Notice as well as in Part IV of the application. We find that the Applicant has furnished the particulars when the payments fell due in respect of each individual invoice. The Applicant has placed on record all the invoices raised during the period from 29.07.2022 to 15.02.2023, thereby setting out the details of the debt and the occurrence of default. The dates of default on the basis of each and every invoice ranging from 29.07.2022 to 15.02.2023 have been detailed in Part IV of the Application. Therefore, there is no force in the submission that the date of default is not mentioned in the application.

8. The Corporate Debtor has tried to raise a defence of pre-existing dispute on the basis of letters dated 18.01.2023 and 08.02.2023 purportedly sent to the Operational Creditor as regard defective nature of the goods supplied to them. However, there is no proof of service of those letters on the Operational Creditor. Mere production of office copies of letters, without demonstrating their communication to the Operational Creditor, cannot establish the existence of a pre-existing dispute. Hence, we are unable to accept this contention of the Corporate Debtor.

9. Further, Corporate Debtor has tried to take defence on account of dishonour of cheques and police complaints. This contention is devoid of merit. The **Hon'ble NCLAT in Sudhi Sachdev Vs. APPL Industries Ltd. [CA (AT) (Ins.) No. 623 of 2018]** has categorically held that pendency of proceedings under Sections 138 and 141 of the Negotiable Instruments Act, 1881, even if treated as recovery proceedings, cannot be construed as a dispute pending before a court of law for the purposes of the Code. Rather, such proceedings signify

acknowledgment of liability and cannot be treated as evidence of pre existing dispute. For analogous reasons, even a police complaint cannot be treated as any evidence of a pre-existing dispute in the matter before us.

10. In view of the foregoing discussion, this Adjudicating Authority is of the considered opinion that an operational debt is due and payable to the Operational Creditor, in respect of which the Corporate Debtor has committed default, and that there exists no pre-existing dispute between the parties. The dictum laid down by the Hon'ble Supreme Court in **Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353,** lends support to the case of the Applicant, wherein it has been held that where a debt exceeding the prescribed threshold remains due and unpaid, thereby resulting in default, and there is no genuine pre-existing dispute between the parties, an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 is liable to be admitted. Accordingly, the present application merits admission.

11. 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 Section 9(5) of the Insolvency and Bankruptcy 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. 206/ND/2024** filed by, **M/s Groyyo Private Limited,** 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 Himaya Apparels Private Limited,** the Corporate Debtor, stands **admitted**.

b) The Applicant has not proposed any name for the Interim Resolution Professional ("IRP") and requested this Adjudicating Authority to appoint an IRP. Therefore, from the Panel of Insolvency Professional received from Insolvency and Bankruptcy Board of India, we appoint Mr. Amar Nath having

IBBI Registration No. IBBI/IPA-001/IP-P-01639/2019-2020/12530 and email id- insolvencyprofessional2019@gmail.com as the Interim Resolution Professional ("IRP")**. The IRP is directed to file a valid Authorization for Assignment (AFA) along with Written Consent in Form-2 and disclosure about non-initiation of any disciplinary proceedings against him, within 7 days from the date of this order.**

c) We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Amar Nath, to meet the expenses 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.

d) We also declare a 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."

e) 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.

f) 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'.

g) 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.

h) A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Let copy of the order be served to the parties.

Sd/-	**Sd/-**
(ANU JAGMOHAN SINGH)	**(JYOTSNA SHARMA)**
MEMBER (Technical)	**MEMBER (Judicial)**