

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-5
CA/29/2024**

**In
C.A. (CAA)/3/2021**

Under The Provisions of
Rule 11 of the National Company Law Tribunal
Rules, 2016 r.w. S. 230 – 232 of the Companies
Act, 2013

In the matter of
Shri Sharad Shyamlal Gupta,
Shareholder for M/s. Loyal Auto Globe Private
Limited

... Applicant

Versus

Shri. Jitender Jain, Liquidator for
M/s. Loyal Auto Globe Private Limited

... Respondent

Order Dated: 05.04.2024

Coram:

**Reeta Kohli, Hon'ble Member [Judicial]
Madhu Sinha, Hon'ble Member [Technical]**

Appearances:

For the Applicant: Mr. Avinash R. Khanolkar, Advocate a/w Ms. Surekha
Yadav, Advocate

For the Respondent: Mr. Amir Arsiwala, Advocate

ORDER

1. The Corporate Debtor, namely Loyal Auto Globe Private Limited was incorporated in the year January 28, 1998. Central Bank of India filed an application under Section 7 of Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process for the Corporate Debtor on the ground that the Corporate Debtor committed default in making payment to the extent of Rs. 30,27,66,450/- on 28.02.2009 including interest in the year 2018. The Petition filed by Central Bank of India was admitted in CIRP by the Hon'ble National Company Law Tribunal on 12.03.2019 and immediately thereafter the CoC was constituted and only one claim was received by the Resolution Professional i.e. from Central Bank of India for Rs. 33,03,33,553/-. Since CIRP period of 270 days ended on 6th December, 2019 and no resolution plan was received for the Corporate Debtor, the CoC resolved to liquidate the company. Hence, an application was filed for the liquidation of the Corporate Debtor. Under section 33(1) of the Code, a liquidation order in absence of any resolution plan, was passed by the Hon'ble NCLT dated 27.01.2020.
2. The Applicant states that the present Scheme is a Scheme of Compromise and Arrangement under Section 230 to 232 of the Companies Act, 2013 between Sharad Gupta, promoter of Loyal Auto Globe Private Limited and the Creditors and Shareholders of Loyal Auto Globe Private Limited (**Hereinafter referred to as "LAGPL"**), dated August 18, 2020. The same was forwarded to Central Bank of India, the sole Financial Creditor, on August 19, 2020.

Rationale of the Scheme

4. The Rationale or the benefits of the scheme to the Corporate Debtor, its shareholders and creditors of the Corporate Debtor and others is as follows:

Secured Creditors

- i. One time upfront payment under the Scheme, would be greater than the expected recovery under liquidation.
- ii. Certainty and timeline of repayment i.e. upfront is defined in the Scheme whereas it is totally uncertain in case of liquidation.
- iii. No additional funding from existing lenders.

Unsecured Creditors

- i. The Unsecured Creditors will be able to recover a portion of their dues in terms of the scheme as compared to the NIL recovery in the event of liquidation.
- ii. Continued contribution to the government and payment of dues in terms of scheme

Shareholders

- i. Shareholders holding equity capital to benefit in case of revival post implementation of the scheme as against Zero value in case of Liquidation. There are no statutory liabilities of the company and no loss to the exchequer.

Corporate Debtor's Operation

- i. Revival of operations on backing of industry upturn and resolution of the Company specific funding issues.
 - ii. Company to continue as going concern
 - iii. Revival of the company will increase the economy value of the asset and at the same time will generate future employment.
 - iv. The creative value potential of the assets will not be lost.
 - v. No loss to exchequer in terms of GST, Income Tax etc.
5. That LAGPL is having 3 [Three] equity shareholders, being Mr. Sharad Gupta [the present Applicant] [28.92%], Mr. Radheshyam Gupta [60.70%] and Mrs. Subhadra Radheshyam Gupta [10.36%], all of whom have provided their consents for the Scheme.
6. The Applicant further submits that LAGPL is in the business of manufacturing, processing, fabricating, buying, selling, importing, exporting, assembling, servicing, repairing, job working and repairing all kinds of scooters, mopeds, motorcycles, autorickshaws, cars and four wheelers vehicles including tractors and automobiles components spare parts and accessories necessary and required for all kinds of automobiles and vehicles.
7. The Applicant submits that LAGPL has entered into an arrangement with an investor, M/s. Rudraksh Motors Private Limited, for extending a loan to repay lenders/creditors and for the revival plan. The amount as admitted in liquidation is Rs. 3890.06 Lakhs of the Sole Financial Creditor i.e. Central Bank of India and the proposal is to pay Rs. 471.58 Lakhs as full and final settlement as per the Scheme, to the Sole Financial Creditor, out of which Rs. 455.20 Lakhs has already been paid to the Sole Financial

Creditor and balance of Rs. 16.38 Lakhs will be paid within 30 days from the date of the implementation of the present Scheme.

8. A Meeting of the Creditors of LAGPL be convened and held at Central Bank of India, Asset Recovery Branch, 346, 3rd Floor, Standard Building, D N Road, Fort, Mumbai 400023 on 22.04.2024 at 11.00 a.m., for the purpose of considering the proposed Scheme of Compromise with M/s. Rudraksh Motors Private Limited for extending a loan facility to LAGPL for compromising all outstanding debts of LAGPL.
9. At least 30 clear days before the said Meeting of the Creditors of LAGPL to be held as aforesaid, a Notice convening the said Meeting at the place, day, date and time as decided by the Chairman, together with a copy of the Scheme, a copy of the Explanatory Statement are required to be sent under Section 230 of the Companies Act, 2013 and the prescribed Form of Proxy, shall be sent by registered post or by Email or by courier or by speed post or by hand delivery to each of the Creditors of LAGPL at their respective registered or last known addresses.
10. At least 30 clear days before the Meeting of the Creditors of LAGPL to be held as aforesaid, a Notice convening the said Meeting, at the place, date and time aforesaid and stating that copies of the Scheme of Amalgamation and the statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and that the form of Proxy can be obtained free of charge at the registered office of LAGPL as aforesaid and shall also be published once each in '**Business Standard**' in English and '**Navshakti**' in Marathi having circulation in the State of Maharashtra in which the registered office of LAGPL is situated.

11. The Applicant undertakes to:
- i. Issue Notice convening Meeting of the Creditors as per Form No. CAA.2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
 - ii. Issue Statement containing all the particulars as per Section 230 of the Companies Act, 2013;
 - iii. Issue Form of Proxy as per Form No. MGT-11 (Rule 19) of the Companies (Management and Administration) Rules, 2014; and
 - iv. Advertise the Notice convening Meeting as per Form No. CAA.2 (Rule 7) the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

The undertakings are accepted.

12. Shri Jitendra Kumar Jain, Liquidator of LAGPL is appointed as the Chairperson for the Meeting of Creditors of LAGPL. The chairman shall be paid Rs. 25000/- fees for conducting and convening the aforesaid meeting. The Scrutinizer for the Meeting shall be CS Laxminarayanan, having email: Ln1957@rediffmail.com and mobile number: 09869006642.
13. The Chairperson appointed for the aforesaid Meeting of the Creditors of LAGPL to issue the Notices of the Meeting referred to above. The said Chairman shall have all powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the conduct of the Meeting(s), including for deciding procedural questions that may arise or at any adjournment thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the Meeting by any person(s).

14. The quorum for the aforesaid Meeting of the Creditors shall be as prescribed under Section 103 of the Companies Act, 2013.

In case if the Quorum as noted above is not present at the Meetings, then the Meetings shall be adjourned by half an hour, and thereafter the persons present and voting shall be deemed to constitute the quorum.

15. The voting by proxy or authorised representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorisation duly signed by the person entitled to attend and vote at the Meeting, is filed with the Company/Chairperson of LAGPL at its Registered Office, not later than, 48 hours before the aforesaid Meeting of Creditors as required under Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
16. The value and number of the percentage of voting of each Creditor shall be in accordance with the voting percentage of each Creditor in Stakeholder's Consultation Committee formulated by the Liquidator of LAGPL.
17. The Chairperson is directed to file an Affidavit, not less than seven days before the date fixed for the holding of the Meetings, and to report this Tribunal that the direction regarding the issue of Notices and advertisements have been duly complied with as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
18. The Chairman of the Meetings of LAGPL to report to this Tribunal, the result of the Meeting within 30 (Thirty) of the conclusion of the Meeting,

as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

19. That, as submitted by the Learned Counsel hereinabove, since the Shareholders of the Company have already consented for the Proposed Scheme of Arrangement, the question of holding meeting or sending notices does not arise and the said requirements are hereby dispensed with.
20. The Applicant submits that there is one Secured Creditor in LAGPL, being Central Bank of India. This Bench directs that consent affidavit of the Secured Creditor of LAGPL shall be obtained and placed before this Tribunal before the final hearing.
21. The Applicant further submits that the rights of the creditors of LAGPL shall not be affected by the proposed Scheme as LAGPL. This Bench hereby directs the Applicant company to issue notice to all its Unsecured Creditors with the instructions that they may submit their representations, if any, to the Tribunal within a period of 30 days from the date of receipt of such notice and the consent affidavit of the Unsecured Creditor of LAGPL be obtained and placed before this Tribunal before the final hearing.
22. The Applicant to serve the Notice upon the **Regional Director**, Western Region, Ministry of Corporate Affairs, Mumbai Maharashtra, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from Regional Director within 30 days of the date of receipt of the Notice it will be presumed that Regional Director and/ or Central Government has no objection to the proposed

Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

23. The Applicant to serve the Notice upon the concerned **Registrar of Companies**, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the Registrar of Companies within 30 days of the date of receipt of the Notice it will be presumed that Registrar of Companies has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016.
24. The Applicant is also directed to serve Notice of the Meeting upon the **Liquidator** for LAGPL, at least 30 clear days before the date fixed for hearing, pursuant to section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The Tribunal is appointing M/s. GMJ & Co., Chartered Accountants, to assist the Liquidator [appointed for LAGPL] to scrutinize the books of accounts of the LAGPL since incorporation and submit its representation/ report to the Tribunal. The Applicant to pay fees of Rs. 20,000/- for this purpose. If no representation/ response is received by the Tribunal from the Liquidator within a period of thirty days from the date of receipt of such Notice, it will be presumed that Liquidator has no representation/ objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
25. The Applicant Companies to serve the Notice on the concerned **Income Tax Authority** within whose jurisdiction, the Applicant is having PAN:- AEJPG9627A and that LAGPL is having its address at Garage No.04, A

wing, Narendra Apartment CHS Ltd., S.B. Patil Marg, Gazdhar Bandh Road, Khar West, Mumbai 400052 and accordingly the Applicant shall issue notice upon the Income Tax Authority at Income Tax Officer, Deputy Commissioner of Income-tax-8(3)(2), Room No. 615, 6th Floor, Aayakar Bhavan, Maharshi Karve Road, Churchgate, Mumbai, Maharashtra 400020. That LAGPL's assessments are made, pursuant to Section 230(5) of the Companies Act, 2013 as per Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the Income Tax Authority within 30 days of the date of receipt of the Notice it will be presumed that Income Tax Authority has no objection to the proposed Scheme as per Companies (Compromises, Arrangements & Amalgamations) Rules, 2016.

26. That the Chairman to file an Affidavit of Service as per Rule 12 of Company (Compromises, Arrangements and Amalgamations) Rules, 2016, not less than 7 (Seven) days before the date fixed for the holding of the Meetings and do report this Tribunal that the direction regarding issue of Notices and the advertisement have been duly complied with.
27. Appointed Date is 31.03.2020.
28. Ordered Accordingly.

Sd/-

MADHU SINHA
MEMBER [TECHNICAL]

//VLM//

Sd/-

REETA KOHLI
MEMBER [JUDICIAL]