

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH

CSA No. 963 OF 2017

In the matter of the Companies Act, 2013;

AND

In the matter of Scheme of Arrangement ('Scheme') between the Company viz. Everstone  
Capital Advisors Private Limited and its shareholders

AND

In the matter of Sections 230 to 232 of the Companies Act, 2013

Everstone Capital Advisors Private Limited, a Company }  
Incorporated under the provisions of Companies }  
Act 1956 having its registered office at One Indiabulls Center, }  
16th Floor, Tower 2A Senapati Bapat Marg, Elphinstone Road, }  
Mumbai – 400013, Maharashtra, India }

..... Applicant Company

Judgement/Order delivered on 16<sup>th</sup> November, 2017

**Coram:**

Hon'ble **B.S.V. Prakash Kumar, Member (Judicial)**

Hon'ble **V. Nallasenapthy, Member (Technical)**

For the Applicant(s): Mr. Hemant Sethi i/b Hemant Sethi & Co.

**Per: B.S.V. Prakash Kumar, Member (J)**

Order delivered on 16<sup>th</sup> November, 2017

**ORDER**

1. The Counsel for the Applicants states that the Scheme of Arrangement provides for the extinguishment/reduction of liability in respect of uncalled Share Premium of Rs.990/- per

Class A Equity share and Rs.2,900/- per Class B Equity share, issued by the Company, pursuant to the relevant provisions of the Act.

2. The Counsel for the Applicant further submits that the Applicant Company is currently engaged in the business of providing investment advisory services, financial advisory services as well as management and facilitation services.
3. The Board of Directors is of the view that the Company's financial statement are in sound position and in the near future the Company does not require further funds for future expansion and operation purposes. Accordingly, the Board of Directors at its meeting held on 5th October 2017, has approved extinguishment / reduction of liability in respect of uncalled Share Premium. The Scheme of Arrangement will achieve optimum capital structure by extinguishing/reducing the liability to the extent of the entire uncalled Share Premium across all classes of equity shares, i.e. on both the Class A and Class B equity shares. Further, it will reflect true financial position.
4. A separate meeting of the Class A Equity Shareholders and Class B Equity Shareholders of the Applicant Company, be convened and held at its Registered office at One Indiabulls Center, 16<sup>th</sup> Floor, Tower 2A Senapati Bapat Marg, Elphinstone Road, Mumbai – 400013 on 20<sup>th</sup> day of December 2017 at 10:00 a.m. and 20<sup>th</sup> day of December 2017 at 10:30 a.m. respectively for the purpose of considering and if thought fit, approving, with or without modification(s), the proposed Scheme of Arrangement between the Company viz. Everstone Capital Advisors Private Limited and its shareholders ('**Scheme**').
5. A meeting of the Preference Shareholders of the Applicant Company, be convened and held at its Registered office at One Indiabulls Center, 16<sup>th</sup> Floor, Tower 2A Senapati Bapat Marg, Elphinstone Road, Mumbai – 400013 on 20<sup>th</sup> day of December 2017 at 11:00 a.m. for the purpose of considering and if thought fit, approving, with or without modification(s), the proposed Scheme of Arrangement between the Company viz. Everstone Capital Advisors Private Limited and its shareholders ('**Scheme**').
6. That at least one month before the said Meeting of the shareholders of the Applicant Company to be held as aforesaid, together with a copy of the Scheme, a copy of statement disclosing all material facts as required under Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule 2016 notified on 14<sup>th</sup> December 2016 and the prescribed Form of Proxy, shall be sent by Courier / Registered Post, Speed Post, Hand Delivery or through Email (to those equity and preference shareholders whose email addresses are duly registered with the Applicant Company for the purpose of receiving such notices by email), addressed to each of the

Shareholders of the Company, at their last known address or email addresses as per the records of the Applicant Company.

7. That at least one month before the meeting of the Shareholders of the Applicant Company to be held as aforesaid, notices convening the said Meeting, indicating the place, date and time of meeting as aforesaid be published and stating that the copies of the Scheme and the statement required to be furnished pursuant to Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 and the Form of Proxy shall be obtained free of charge at the Registered Office of the Applicant Company as aforesaid.
8. That Mr. Dhanpal Jhaveri, Whole-time Director of the Applicant Company and failing him, Mr. Ashutosh Lavakare, Whole-time Director of the Applicant Company shall be the Chairman of the aforesaid meeting of the Equity Shareholders to be held at its Registered office at One Indiabulls Center, 16<sup>th</sup> Floor, Tower 2A Senapati Bapat Marg, Elphinstone Road, Mumbai – 400013 on 20<sup>th</sup> day of December 2017 at 10:00 a.m. and at 10.30 a.m. respectively for Class A and Class B Equity Shareholders or any adjournments thereof.
9. That Mr. Dhanpal Jhaveri, Whole-time Director of the Applicant Company and failing him, Mr. Ashutosh Lavakare, Whole-time Director of the Applicant Company shall be the Chairman of the aforesaid meeting of the Preference Shareholders to be held at its Registered office at One Indiabulls Center, 16<sup>th</sup> Floor, Tower 2A Senapati Bapat Marg, Elphinstone Road, Mumbai – 400013 on 20<sup>th</sup> day of December 2017 at 11:00 a.m. or any adjournments thereof.
10. That Ms. Bindu Darshan Shah, Proprietor, M/s. K Bindu and Associates, Practising Company Secretary is hereby appointed as Scrutinizer of the meeting of Equity Shareholders of the Applicant Company to be held at its Registered office at One Indiabulls Center, 16<sup>th</sup> Floor, Tower 2A Senapati Bapat Marg, Elphinstone Road, Mumbai – 400013 on 20<sup>th</sup> day of December 2017 at 10:00 a.m. and at 10.30 a.m. respectively for Class A and Class B Equity Shareholders or any adjournments thereof.
11. That Ms. Bindu Darshan Shah, Proprietor, M/s. K Bindu and Associates, Practising Company Secretary is hereby appointed as Scrutinizer of the meeting of Preference Shareholders of the Applicant Company to be held at its Registered office at One Indiabulls Center, 16<sup>th</sup> Floor, Tower 2A Senapati Bapat Marg, Elphinstone Road, Mumbai – 400013 on 20<sup>th</sup> day of December 2017 at 11:00 a.m. or any adjournments thereof.
12. That the Notices of the aforesaid Meetings of the Class A Equity Shareholders, Class B Equity Shareholders and the Preference Shareholders shall be advertised in two local

newspapers viz. "Free Press Journal" in English and "Navshakti" in Marathi, both circulated in Mumbai not less than thirty (30) days before the date fixed for the meeting.

13. That the Chairman appointed for the aforesaid Meetings or any other authorized representative to issue the advertisements and send out the notices of the Meetings referred to above. The said Chairman shall have all the powers as per the Articles of Association and also under the Companies Act, 2013 in relation to the conduct of the meetings, including for deciding procedural questions that may arise or at any adjournment thereof.
14. The quorum for the aforesaid meetings of the Class A Equity Shareholders, Class B Equity Shareholders and the Preference Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
15. The value and number of the Equity shares of each member shall be in accordance with the books/ register of the Applicant Company and where the entries in the books/ register are disputed, the Chairman of the Meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.
16. The value and number of the Preference shares of each member shall be in accordance with the books/ register of the Applicant Company and where the entries in the books/ register are disputed, the Chairman of the Meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.
17. That voting by proxy or authorized 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 Applicant Company at its Registered Office at One Indiabulls Center, 16<sup>th</sup> Floor, Tower 2A Senapati Bapat Marg, Elphinstone Road, Mumbai – 400013 not later than 48 hours before the aforesaid meetings.
18. That the Chairman of the meeting or any other authorized representative to file an affidavit not less than seven (7) days before the date fixed for the holding of the respective Meeting and do report to this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.
19. That the Chairman of the Meeting to report to this Tribunal, the results of the aforesaid meetings within thirty (30) days of the conclusion of the respective Meeting.
20. The Counsel for the Applicant Company submits that there are no Secured and Unsecured Creditors in the Applicant Company, therefore the question of sending notices to the Creditors does not arise.

21. That the Applicant Company is directed to serve notices along with copy of Scheme upon:-  
(i) concerned Income Tax Authority within whose jurisdiction the Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai, (iii) the Registrar of Companies, Mumbai with the direction that they may submit their representations, if any, within a period of thirty (30) days from the date of the receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.
22. Applicant Company to file affidavit of service in the Registry proving dispatch of notices upon Shareholders, notices to Regulatory authorities as stated in Clause 21 above and publication of notice in newspapers.

Sd/-

V. Nallasenapthy, Member (T)

Sd/-

B.S.V. Prakash Kumar, Member (J)