

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH  
COMPANY SCHEME APPLICATION NO. 119 OF 2017  
(HIGH COURT TRANSFERRED APPLICATION)**

In the matter of the Companies Act, 2013  
(18 of 2013);

And

In the matter of Sections 230 to 232 of the  
Companies Act, 2013 and other relevant  
provisions of the Companies Act, 2013  
along with the Companies Act, 1956.

And

In the matter of Sections 391 to 394 of the  
Companies Act, 1956 and other relevant  
provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Arrangement  
between EDELWEISS FINANCE &  
INVESTMENTS LTD (the Demerged  
Company) and EDELWEISS FINVEST  
PRIVATE LTD (the First Resulting  
Company) and EDEL LAND LTD (the  
Second Resulting Company)

EDELWEISS FINANCE & )  
INVESTMENTS LTD, a Company )  
incorporated under the Companies Act, )  
1956 having its Registered Office at )  
Edelweiss House, Off. C.S.T Road, Kalina, )  
Mumbai – 400 098. ) ...Applicant Company

**Called for Notice of Admission:**

Mr. Rajesh Shah with Mr. Ahmed M Chunawala i/b M/s. Rajesh Shah & Co., Advocates for the Applicant.

Coram: SH. B.S.V. Prakash Kumar Hon'ble Member (J) and SH. V .Nallasenapathy Hon'ble Member (T)

Date: 9<sup>th</sup> February, 2017

**MINUTES OF THE ORDER**

UPON the application of the Applicant Company above named by a Company High Court Transferred Application **AND UPON HEARING** Mr. Rajesh Shah with Mr. Ahmed M Chunawala i/b M/s. Rajesh Shah & Co, Advocates for the Applicant Company, **AND UPON READING** the Affidavit dated 9<sup>th</sup> day of December, 2016 of Ms. Nidhi Parekh, Company Secretary of the Applicant Company, in support of High Court Transferred Application and the Exhibits therein referred to, **IT IS ORDERED THAT:**

1. A meeting of the Equity Shareholders of the Applicant Company, be convened and held at Edelweiss House, Off C.S. T. Road, Kalina Mumbai – 400 098 on Monday, March 27, 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 EDELWEISS FINANCE & INVESTMENTS LTD (the Demerged Company) and EDELWEISS FINVEST PRIVATE LTD (the First Resulting Company) and EDEL LAND LTD (the Second Resulting Company) along with approving the adjustment of Security Premium Account for passing of Special Resolution for the purpose of considering and, if thought fit, approving, with or without modification(s), the proposed adjustment of Security Premium Account in the Scheme of Arrangement between EDELWEISS FINANCE & INVESTMENTS LTD (the Demerged Company) and EDELWEISS FINVEST PRIVATE LTD (the First Resulting Company) and EDEL LAND LTD (the Second Resulting Company).

2. At least 30 clear days before the said meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said meeting at the place, day, date and time aforesaid, together with a copy of the Scheme, a copy of the Explanatory Statement 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 Air Mail or by courier or by speed post or by hand delivery to each of the Equity Shareholders of the Applicant Company at their respective registered or last known addresses or by e-mail to the registered e-mail address of the Equity Shareholders as per the records of the Applicant Company. The said undertaking is accepted.
3. At least 30 clear days before the Meeting of the Equity Shareholders of the Applicant Company 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 the Applicant Company as aforesaid and shall also be published once each in 'Free Press Journal' in English and 'Navshakti' in Marathi.
4. The Applicant Company undertakes to:
  - i. issue Notice convening meeting of the equity shareholders and passing of special resolution 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 undertaking is accepted.

5. Mr. S. Ranganthan, failing whom Mr. Raviprakash R. Bubna, failing whom Ms. Shabnam Panjwani, Directors of the Applicant Company is appointed as the Chairperson for the meeting of Equity Shareholders. The Scrutinizer for the meeting shall be Mr. Mukesh Siroya, Practicing Company Secretary failing whom Mr. Sadanand Yadav, Practicing Company Secretary.
6. The Chairperson appointed for the aforesaid Equity Shareholders Meeting to issue the notices of the Meeting referred to above. The said Chairperson 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).
7. The quorum for the aforesaid meeting of the Equity Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
8. 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 Applicant Company at its Registered Office at Edelweiss House, Off C.S. T. Road, Kalina Mumbai – 400 098, not later than, 48 hours before the aforesaid Equity Shareholders meeting as required under Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
9. The value and number of the shares of each member shall be in accordance with the books/ register of the Applicant Company or depository records and where the entries in the books / register / depository records are disputed, the Chairperson of the Meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.

10. The Chairperson to file an affidavit not less than seven days before the date fixed for the holding of the meeting and do report this Tribunal that the direction regarding the issue of notices and advertisement have been duly complied with as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
11. The Chairperson to report to this Tribunal, the result of the aforesaid meeting within three days of the conclusion of the meeting, and the said report shall be verified by his Affidavit as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
12. A meeting of the Preference Shareholders of the Applicant Company, be convened and held at Edelweiss House, Off C.S. T. Road, Kalina Mumbai – 400 098, on Monday, March 27, 2017 at 12 noon for the purpose of considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Arrangement between EDELWEISS FINANCE & INVESTMENTS LTD (the Demerged Company) and EDELWEISS FINVEST PRIVATE LTD (the First Resulting Company) and EDEL LAND LTD (the Second Resulting Company).
13. At least 30 clear days before the said meeting of the Preference Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said meeting at the place, day, date and time aforesaid, together with a copy of the Scheme, a copy of the Explanatory Statement 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 Air Mail or by courier or by speed post or by hand delivery to each of the Equity Shareholders of the Applicant Company at their respective registered or last known addresses or by e-mail to the registered e-mail address of the Preference Shareholders as per the records of the Applicant Company. The said undertaking is accepted.
14. At least 30 clear days before the Meeting of the Preference Shareholders of the Applicant Company 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 the Applicant Company as aforesaid and shall also be published once each in 'Free Press Journal' in English and 'Navshakti' in Marathi.

15. The Applicant Company undertakes to:

- i. issue Notice convening meeting of the Preference Shareholders 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 undertaking is accepted.

16. Mr. S. Ranganthan, failing whom Mr. Raviprakash R. Bubna, failing whom Ms. Shabnam Panjwani, Directors of the Applicant Company is appointed as the Chairperson for the meeting of Preference Shareholders. The Scrutinizer for the Preference Shareholders meeting shall be Mr. Mukesh Siroya, Practicing Company Secretary, failing whom Mr. Sadanand Yadav, Practicing Company Secretary.

17. The Chairperson appointed for the aforesaid Preference Shareholders Meeting to issue the notices of the Meeting referred to above. The said Chairperson 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).

18. The quorum for the aforesaid meeting of the Preference Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
19. 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 Applicant Company at its Registered Office at Edelweiss House, Off C.S. T. Road, Kalina, Mumbai – 400 098, not later than, 48 hours before the aforesaid meeting as required under Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
20. The value and number of the shares of each member shall be in accordance with the books/ register of the Applicant Company or depository records and where the entries in the books / register / depository records are disputed, the Chairperson of the Preference Shareholders Meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.
21. The Chairperson to file an affidavit not less than seven days before the date fixed for the holding of the meeting and do report this Tribunal that the direction regarding the issue of notices and advertisement have been duly complied with as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
22. The Chairperson to report to this Tribunal, the result of the aforesaid meeting within three days of the conclusion of the meeting, and the said report shall be verified by his Affidavit as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016
23. That Counsel for the Applicant submits that since the scheme is an arrangement between the Applicant Company and their respective shareholders only a meeting of the Equity Shareholders is proposed to be held in accordance with the provisions of Section 230 (1) (b) of the

Companies Act, 2013. This bench hereby directs the Applicant Company to issue notice to its secured creditors as required under section 230 (3) of the Companies Act , 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company.

24. That Counsel for the Applicant submits that since the scheme is an arrangement between the Applicant Company and their respective shareholders only a meeting of the Equity Shareholders is proposed to be held in accordance with the provisions of Section 230 (1) (b) of the Companies Act, 2013. This bench hereby directs the Applicant Company to issue notice to its Unsecured Creditors as required under section 230 (3) of the Companies Act , 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company.

25. Pursuant to the Clause 10.2 and Clause 21.2 of the Scheme of Arrangement, the adjustment, if any, to the Securities Premium of the Demerged Company (including securities premium pursuant to Scheme of Arrangement) shall be effected as an integral part of the Scheme itself in accordance with the provisions of Sections 100, 102 and 103 of the Companies Act, 1956 and section 66 of the Companies Act, 2013 and Section 52 of the Companies Act, 2013 of the Applicant Company, the reduction of the Securities Premium does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholder of paid-up share capital, the provisions of Section 101 of the Companies Act, 1956 are not applicable. The Applicant Company undertakes to pass a Special Resolution for the proposed adjustment for Security Premium Account and annex a copy of special resolution to the Company Scheme Petition and in view of above procedure prescribed under Sections 52 and 66 and other applicable provisions of the Companies Act, 2013 confirming adjustment of Securities Premium Account is not required be dispensed with.



26. 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.
27. 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 and Amalgamations) Rules, 2016.
28. The Applicant to serve the notice on the concerned Income Tax Authority within whose jurisdiction the Applicant Company's assessment are made, 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 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 Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

29. The Applicant to file an affidavit of service of the directions given by the Tribunal not less than seven days before the date fixed for the holding of the meetings and do report to this Tribunal that the direction regarding the issue of notices have been duly complied with.

Sd/-

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

Sd/-

V. Nallasenapathy Member (T)