IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 769 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 362 OF 2015

Pheroze Framroze Holding and)
Finlease Private Limited)
a Company registered under the provisions)
of the Companies Act, 1956 having its)
registered office at Kalpataru Chambers,)
6 Nanik Motwane Marg, Fort,)
Mumbai – 400 001.) … Transferor Company

And

COMPANY SCHEME PETITION NO. 770 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 363 OF 2015

Pheroze Framroze & Co. Pvt. Ltd.,)
a Company registered under the provisions)
of the Companies Act, 1956 having its)
registered office at Kalpataru Chambers,)
6 Nanik Motwane Marg, Fort,)
Mumbai – 400 001.) …Transferee Company

In the matter of the Companies Act, 1956;
AND
In the matter of Sections 391 to 394 of the Companies Act, 1956;
AND
In the matter of Scheme of Arrangement between Pheroze Framroze and Company Private Limited and its Members
AND

Pheroze Framroze Holding and Finlease Private Limited and its Members
For Amalgamation of Pheroze Framroze Holding and Finlease Private Limited
With
Pheroze Framroze and Company Private Limited

Called for Hearing

Mr. Zain A. K. Najam-es-sani i/by Mr. Reza A. K. Najam-es-sani, Advocate for the Petitioner

Mr. G.R. Dwivedi i/b the Regional Director

Coram : S.C. Gupte J.
Date : 6th May, 2016

MINUTES OF THE ORDER

1. Heard the learned counsel for the Petitioner Companies. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the petition.

2. The sanction of the Court is sought to the Scheme of Arrangement (hereinafter referred to as "**Scheme**") proposed to be made between Pheroze Framroze & Company Private Limited (hereinafter referred to as **"the Transferee Company"**) and its members and Pheroze Framroze Holdings and Finlease Private Limited (hereinafter referred to as **"the Transferor**

Company") and its members for amalgamation of Pheroze Framroze Holdings and Finlease Private Limited with Pheroze Framroze & Company Private Limited.

3. The Transferor Company is engaged inter alia in the business of providing finance for the purchase and sale of any materials goods and articles and other equipments of personal use or otherwise and commercial, residential and industrial building.

4. The Transferee Company is engaged inter alia in the business of money exchange such as Purchase & Sale of foreign currency back notes, Export of foreign currency bank notes, Sale of Travelers Cheque & Prepaid debit travel cards, Purchase of Travelers Cheque, Remittance under AD II category and Allied services – money transfer, overseas insurance etc.

5. The circumstances and/or reasons and/or grounds that have necessitated the Scheme are, inter alia, is that Greater integration and financial strength for the amalgamated entity, which would result in maximising overall shareholder value, and will improve the financial position of the amalgamated entity. Improved organizational capability and leadership, arising from the pooling of human capital that has the diverse skills, talent and vast experience to compete successfully in an increasingly

competitive industry. Simplification of group structure by eliminating multiple companies in similar business, thus enabling focus on core competencies and unlocking of value. The amalgamation would lead to greater and efficient use of infrastructure facilities and optimum utilisation of the available resources.

6. The Petitioners have approved the Scheme by passing the Board Resolutions which are annexed to their respective Company Scheme Petitions.

7. The Counsel for the Petitioners further states that the Petitioners have complied with all the directions passed in Company Summons for Directions and that the Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Directions.

8. The Counsel for the Petitioners further states that the Petitioners have complied with all requirements as per the directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956 or Companies Act 2013, as may be applicable and the rules made there under. The said undertaking is accepted.

9. The Regional Director has filed an Affidavit on 23rd March, 2016 stating therein that save and except as stated in paragraph 6 (a) to (c) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said Affidavit, the Regional Director has stated that:

The Deponent further submits that:

(a) With reference to clause 10 (I) (c) of the scheme, it is submitted that the surplus if any arising out of the scheme is due to transfer of capital assets of from transferor company to transferee company. Such reserve is not a free reserve and not forming part of the Net Worth of the company. It is, therefore, suggested that the surplus if any, arising be credited to Capital Reserve Account of Transferee Company instead of credited to the General Reserve of Transferee Company.

(b) Clause 143 of the scheme provides for adjustment for differences in Accounting Policies between Transferor Company and Transferee Company . In this regard, it is submitted that in addition to the compliance of Accounting Standard -14, the Transferee Company shall pass such accounting entries which are necessary in connection with

the scheme to comply with other applicable Accounting Standard such as AS-5 etc.

(c) *That the Deponent further submits that the Tax issue if any arising out of this scheme shall be subject to final decision of Income Tax Authority and approval of the scheme by Hon'ble High Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the petitioner company after giving effect to the amalgamation The decision of the Income Tax Authority is binding on the petitioner company.*

10. As so far as the observations in paragraph 6 (a) of the Affidavit the Regional Director is concerned, the counsel for the Petitioner submits that the Petitioner shall credit the surplus, if any, arising out of the scheme to the Capital Reserve Account of Transferee Company instead of crediting the surplus if any to the General Reserve of Transferee Company.

11. As so far as the observations in paragraph 6 (b) of the Affidavit the Regional Director is concerned, the counsel for the Petitioner submits that the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standard such as AS-5 etc.

12. As so far as the observations in paragraph 6 (c) of the Affidavit the Regional Director is concerned, the counsel for the Petitioner submits that the Petitioner Company is bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.

13. The Counsel for the Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director (Legal) in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertaking and submission given by the Petitioner Companies. The said undertaking given by the Petitioner is accepted.

14. The Official Liquidator has filed his report on 3rd May, 2016 in Company Scheme Petition No. 769 of 2015 stating therein that the affairs of the Transferor Company has been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved without winding up.

15. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. None of the parties concerned has come forward to oppose the Scheme.

16. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 769 of 2015 filed by the Petitioner Company is made absolute in terms of prayer clauses (a) to (d) of the Petition.
17. The Petitioner Companies to lodge a copy of this order and the Scheme, duly authenticated by the Company Registrar, High Court (O.S.), Bombay with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of Order.
18. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with E - Form 21 / E-Form INC 28 in addition to physical copy as per the provisions of the Companies Act 1956 / 2013, whichever is applicable.
19. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.
20. Filing and issuance of the drawn up order is dispensed with.

21. All concerned authorities to act on a copy of this order along with Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S. C. Gupte J.)

<u>C E R T I F I C A T E</u>

I certify that this Order uploaded is a true and correct copy of original signed order.

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