

**NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH, COURT-VI
COMPANY PETITION NO. (CAA)-89/230/232/ND/2024
CONNECTED WITH
COMPANY APPLICATION NO. (CAA)-61(ND)/2024**

Under Section 230-232 and other applicable provisions of the Companies Act, 2013 r/w the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016)

IN THE MATTER OF SCHEME OF AMALGAMATION:

MEMO OF PARTIES

1. M/s OMKARESHWARI EXIM LIMITED,

Registered office at: F-12, Adarshini Plaza, 91,
Adchini, Sri Aurbindo Marg,
New Delhi- 110017

**... APPLICANT COMPANY NO. 1/TRANSFEROR COMPANY
AND**

2. M/s IKSHAN ENTERPRISE LIMITED

Registered office at: F-12, Adarshini Plaza, 91,
Adchini, Sri Aurbindo Marg,
New Delhi- 110017

**... APPLICANT COMPANY NO. 2/TRANSFEROR COMPANY
AND**

3. M/s MAKAMS INDUSTRIES PRIVATE LIMITED

Registered office at: F-12, Adarshini Plaza, 91,
Adchini, Sri Aurbindo Marg,
New Delhi- 110017

... APPLICANT COMPANY NO. 3/TRANSFeree COMPANY

Order Delivered on: 21.05.2026

CORAM

JUSTICE JYOTSNA SHARMA,

HON'BLE MEMBER (JUDICIAL)

MS. ANU JAGMOHAN SINGH

HON'BLE MEMBER (TECHNICAL)

PRESENT

For the Petitioner: Mr. Sushant Sarkar, Adv. Mr. Prasant Sarkar
CS.

For the Respondents:

For the IT Dept: Mr. Gaurav Gupta, SSC, Mr. Shivendra
Singh, JSC, Mr. Yojit Pareek, JSC, Ms.
Ankita, Mr. Prasant Kumar Sharma, Adv.

ORDER

1) This is a joint application filed by the applicant companies, herein, **M/s Omkareshwari Exim Limited** (hereinafter referred to as the “Transferor Company/Applicant Company No. 1”) and **M/s Ikshan Enterprise Limited** (hereinafter referred to as the “Transferor Company /Applicant Company No. 2”) and **M/s Makams Industries Private Limited** (hereinafter referred to as the “Transferee Company/ Applicant Company No. 3”) under Section 230-232 of Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Amalgamation (hereinafter referred to as the “SCHEME”) proposed among the applicant companies.

2) Petitioner Company No.1/Transferor Company – Omkareshwari Exim Limited, was incorporated on 13.03.2015 in accordance with the provisions of the Companies Act, 2013 as a Public Limited Company by virtue of Certificate of Incorporation. The Company has its registered office at F-12, Adarshini Plaza, 91, Adchini, Sri Aurbindo Marg, New Delhi -

110017. The Authorized Share Capital, Issued, subscribed, and paid-up share capital of the Company is mentioned at Page no. 9 of the Petition.

- 3) Petitioner Company No.2/Transferor Company – Ikshan Enterprise Limited, was incorporated on 02.03.2016 in accordance with the provisions of the Companies Act, 2013 as a Public Limited Company by virtue of Certificate of Incorporation. The Company has its registered office at F-12, Adarshini Plaza, 91, Adchini, Sri Aurbindo Marg, New Delhi - 110017. The Authorized Share Capital, Issued, subscribed, and paid-up share capital of the Company is mentioned at Page no 9 of the Petition.
- 4) Petitioner Company No.3/Transferee Company – Makams Industries Private Limited, was incorporated on 27.04.2009 under the provisions of the Companies Act, 1956 as a Private Limited Company by virtue of Certificate of Incorporation. The Company has its registered office at F-12, Adarshini Plaza, 91, Adchini, Sri Aurbindo Marg, New Delhi - 110017. The Authorized Share Capital, Issued, subscribed, and paid-up share capital of the Company is mentioned at Page no. 10 of the Petition.
- 5) The Transferor companies and the Transferee Company together are called **‘Petitioner Companies’** hereinafter. The Registered offices of all the Companies being in Delhi, the territorial jurisdiction lies with this Tribunal.
- 6) The Board of Directors of the Transferor Companies and the Transferee Company in their respective meetings held on 18.09.2023, considered and unanimously approved the proposed Scheme of Amalgamation. Copies of

the said Resolutions passed in the said Board Meetings have been placed on record.

- 7)** The petitioner has further submitted that the “Appointed date” as fixed for the proposed scheme of Amalgamation is 01.04.2023.
- 8)** Vide order dated 17.09.2024, this Tribunal, in the First Motion Application (i.e., C.A. (CAA)–61/ND/2024), dispensed with the requirement of holdings meetings of equity shareholders, secured Creditors and Unsecured Creditors of the Petitioner Companies.
- 9)** This Tribunal vide order dated 08.11.2024 directed the petitioner companies to issue individual notices to the (i) Regional Director, Ministry of Corporate Affairs, (ii) RoC, (iii) Official Liquidator and (iv) concerned Assessing Officer of the Income Tax Department, notice be also issued to Sectoral Regulator, if any and also ordered Notice to be published in the newspaper, namely, “Financial Express” (English), Delhi Edition and “Jansatta” (Hindi), Delhi Edition.
- 10)** In compliance of the order dated 08.11.2024, the petitioners Companies have filed an Affidavit dated 22.01.2025, wherein it was submitted that the petitioners Companies have effected publication in “Financial Express” (English), Delhi Edition and “Jansatta” (Hindi), both dated on 19.11.2024. In addition to the public notice, notices were served on the Regional Director (Northern Region), Official Liquidator, the Income Tax Department, and Registrar of Companies, NCT of Delhi and Haryana.

11) Pursuant to the notice, the Regional Director (hereinafter referred to as 'RD') in its report dated 17.02.2025 has made certain observations with regard to the proposed Scheme. In response to the observation made by the RD, the Petitioner Companies have filed their reply on 13.08.2025 wherein the Petitioner Companies have given clarifications and undertaken to address the observations made by the 'RD'. The details of the same are summarized below:

| S. No. | Observation of the Regional Director (RD). | Reply of the Petitioner Companies |
|---------------|---|--|
| 1. | As per observation made in clause 11(e) Swap exchange ratio is left black in point no. 6.3(a) & (b) of Scheme of Amalgamation containing page no. 138 of Second Motion Application. | Due to inadvertence mistake, swap exchange ratio is left black in point no. 6.3(a) & (b) of Scheme of Amalgamation containing page no. 138 of Second Motion Application. Further, we hereby attached copy of the above said respective page as a part of the Scheme of amalgamation and extract of minutes of board meeting held on 22.01.2025 are also attached under which Mr. Mukesh Aggarwal is duly authorised to rectify the defect of the me of Amalgamation. |

- 12)** Pursuant to the aforesaid observations of the Regional Director, the Petitioner filed a rectified/revised Scheme of Amalgamation incorporating amendments in Clause 6.3(a) and 6.3(b). The amended Scheme, comprising pages 6–33 of the Second Motion Application, was filed on 13.08.2025 and placed on record. Subsequently, vide order dated 29.01.2026 passed in IA No. 489/2025, this Tribunal took the revised/corrected Scheme of Amalgamation on record and, directed service on all stakeholder. In compliance with the order dated 29.01.2026 the Petitioner filed affidavit of service on 16.02.2026.
- 13)** Ld. Counsel of the RD appeared on 07.05.2026 and submitted “*that they have gone through the revised scheme and have no objections against the scheme.*” Same has been recorded vide order dated 07.05.2026.
- 14)** Ld. Counsel of the Income Tax Department appeared on 07.05.2026 and submitted “*that they have no objection against revised scheme.*” Same has been recorded vide order dated 07.05.2026.
- 15)** The Official Liquidator has also filed its report dated 11.12.2024, wherein the Official Liquidator submitted that “*the affairs of the Transferor Company do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest in terms of the provisions of the Companies Act, 2013.*” The same was recorded vide order dated 07.05.2026.
- 16)** The Petitioner Companies submitted that no investigation proceedings have been instituted or are pending in relation to the Transferor Company/ Petitioner Company No. 1, Transferor Company/ Petitioner Company No. 2, and Transferee Company/ Petitioner Company No. 3 under Sections 235

to 251 of the Companies Act, 1956 or corresponding provisions under the Companies Act, 2013.

- 17)** Certificates of Statutory auditor of the petitioner companies, has been placed on record to the effect that Accounting Treatment proposed in the Scheme of Amalgamations is in conformity with the Accounting Standard notified by the Central Government as specified under the provisions of Section 133 of the Companies Act, 2013 read with Rule 7 of the Companies Accounts Rules, 2014 and Companies (Accounting Standards) Amendment Rules, 2016, and other generally accepted accounting principles in accordance with the Companies Act, 2013, as applicable.
- 18)** It is settled law that the share-holders of the Petitioner Companies are the best judges of their interest, being fully conversant with market trends. Therefore, this tribunal is not supposed to look into merit of their commercial decision. It is well settled that while evaluating the scheme, sanction of which is sought under section 230-232 of the Companies Act, 2013, the Tribunal ordinarily will not interfere with the corporate decision of the Petitioner Companies, as approved by their respective shareholders and creditors.
- 19)** Supreme Court in ***Miheer H. Mafatial vs Mafatial Industries Ltd JT 1996 (8) 205*** while considering the scope of the jurisdiction of the Company Court in respect of matters of sanction of the Scheme of Amalgamation as per the provisions of Section 91 read with Section 393 of the Companies Act, 1956, observed as under:
- “It is the commercial wisdom of the parties to the scheme who have taken an informed decision about the usefulness and propriety of the scheme by*

supporting it by the requisite majority vote that has to be kept in view by the Court. The Court certainly would not act as a court of appeal and sit in judgment over the informed view of the concerned parties to the compromise as the same would be in the realm of corporate and commercial wisdom of the concerned parties. The Court has neither the expertise nor the jurisdiction to delve deep into the commercial wisdom exercised by the creditors and members of the company who have ratified the Scheme by the requisite majority. Consequently, the Company Court's jurisdiction to that extent is peripheral and supervisor and not appellate.”

- 20)** In view of the law laid down by the Supreme Court, this Tribunal is not supposed to examine the merits/benefits of the commercial wisdom of the decision of the shareholders etc.
- 21)** It has also been affirmed in the Petition that the Scheme is in the interest of all the Petitioner Companies including their shareholders, creditors, employees and all concerned. In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner companies to the proposed Scheme, there appears to be no impediment in sanctioning the proposed Scheme.
- 22)** Consequently, sanction is hereby granted to the Scheme under Section 230 to 232 of the Companies Act, 2013 with the following directions: -
- (i) The Petitioners shall, however, remain bound to comply with the statutory requirements in accordance with the law.
 - (ii) Notwithstanding the above, if there is any deficiency found or, violation committed, qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way

of action being taken in accordance with the law, against the concerned persons, directors and officials of the petitioners.

- (iii) While approving the Scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges if any, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

23) This Tribunal further directs with respect to all the Transferor company and the Transferee company, that:

- (i) The proposed Scheme has 01.04.2023 as the appointed date. We approve the Appointed date as proposed by the Petitioner Companies, i.e. 01.04.2023.
- (ii) Upon the sanction becoming effective from the appointed date, i.e. 01.04.2023 as prescribed by the Tribunal, the Transferor Company shall stand dissolved without undergoing the process of winding up.
- (iii) All contracts of the Transferor Companies, which are subsisting or having effect immediately before the Effective Date, shall stand transferred to and vested in the Transferee Company and be in full force and effect in favour of the Transferee Company and may be enforced by or against it as fully and effectually as if, instead of the Transferor Company, the Transferee Company had been a party or beneficiary or obliged thereto;
- (iv) All the employees of the Transferor Companies shall be deemed to have become the employees and the staff of the Transferee Company

with effect from the Appointed Date, and shall stand transferred to the Transferee Company without any interruption of service and on the terms and conditions no less favourable than those on which they are engaged by the Transferor Companies, including in relation to the level of remuneration and contractual and statutory benefits, incentive plans, terminal benefits, gratuity plans, provident plans and any other retirement benefits;

- (v) All liabilities of the Transferor Companies, shall, pursuant to the provisions of section 232(4) and other applicable provisions of the Companies Act, 2013, to the extent they are outstanding, without any further act, instrument or deed stand transferred to and be deemed to be the debts, liabilities, contingent liabilities, duties and obligations etc. as the case may be, of the Transferee Company and shall be exercised by or against the Transferee Company, as if it had incurred such liabilities.
- (vi) All proceedings now pending by or against the Transferor Companies be continued by or against the Transferee Company.
- (vii) Any person interested or effected shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.

24) Further, the Petitioner Companies shall within thirty days of the date of the receipt of this order, cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the Transferor companies shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Companies on the file kept by him in relation to

the Transferee Company and the files relating to all the Petitioner Companies shall be consolidated accordingly.

- 25)** In compliance with the requirement of Section 232 (7) of the Act, the transferee company shall until the full implementation of the Scheme of Arrangement shall file a statement every year in the Form CAA 8 along with the required fees with the Registrar of Companies as prescribed in the Companies (Registration offices and fees) Rules 2014 within 210 days from the end of each financial year.
- 26)** The petition stands disposed of in the above terms.
- 27)** Let copy of the order be served to the parties.

Sd/-

(ANU JAGMOHAN SINGH)
MEMBER (TECHNICAL)

Sd/-

(JYOTSNA SHARMA)
MEMBER (JUDICIAL)