LEGAL REGULATION OF MERGERS AND ACQUISITIONS IN INDIA

Megha Saxena, GD Goenka University

ABSTRACT

In India, mergers and acquisitions are regulated by a multi-layered structure as opposed to a single legislation. The Companies Act of 2013 establishes the framework for compromises, agreements, mergers, amalgamations, fast-track mergers, cross-border mergers, and squeeze- outs for unlisted and court-approved restructurings. The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 impose price protections, open-offer responsibilities, and transparency duties on listed firms in order to protect public shareholders in the event of a change in control. The Competition Commission of India (CCI), which currently operates under a post-2023 regime that includes a deal-value threshold, quicker review timelines, and a green-channel route for non-problematic cases, is responsible for ex ante review of qualifying combinations at the market-structure level under the Competition Act, 2002. When taken as a whole, these regimes demonstrate that Indian law views M&A as a transaction with distributive and systemic implications rather than as a strictly private agreement. This essay contends that although the current framework generally succeeds in fostering transactional efficiency while offering significant safeguards for investors and competition, the balance is still off. High thresholds for minority shareholder complaints, uncertainty around "control" under takeover legislation, regulatory friction in cross-border transactions, and court deference to majority approval under scheme jurisprudence are the biggest drawbacks.

Keywords: Companies Act of 2013, SEBI Takeover Regulations, Competition Act of 2002, Competition Commission of India (CCI), corporate restructuring, investor protection, market competition, shareholder protection, minority shareholder rights, and mergers and acquisitions (M&A).

Introduction

Three separate but related problems form the basis of M&A regulation in India. The first is the effectiveness of corporate reorganization: companies require legal frameworks for company mergers, asset and liability transfers, and shareholding restructuring. The second is investor protection: unless the law guarantees information, fair pricing, and procedural involvement, a merger or acquisition may reallocate ownership, change valuation, weaken governance rights, and pressure minority shareholders. The third is market protection: merger control is necessary to safeguard the competitive process since certain combinations lead to concentration or remove barriers to competition. Indian law distributes jurisdiction among the National Company Law Tribunal (NCLT), SEBI, stock exchanges, the CCI, and, in cross-border situations, the Reserve Bank of India (RBI) [1]

Whether this structure successfully controls M&A while preserving market competition and safeguarding shareholder interests is the major question. In a nutshell, the framework is institutionally unequal but substantively solid. It is robust because it incorporates disclosure obligations, valuation controls, takeover exit rights, court-supervised schemes, and competitio n review. It is uneven since each regulator concentrates on a different risk. As a result, the transaction may become efficient in appearance but under-protective in reality, particularly in situations where the process is dominated by majority shareholders or when the notion of "control" is debatable. Therefore, it is better to think of the Indian model as a multi- gatekeeper regime[2] whose success depends on coordination, valuation integrity, and significant minorit y voice rather than as a completely harmonized code.

I. The Companies Act of 2013: Indian M&A Law's Fundamental Framework

The primary law governing mergers and amalgamations is the Companies Act of 2013. Sections 230 (compromises and arrangements), 231 (tribunal supervision), 232 (merger and amalgamation), 233 (fast-track merger), 234 (cross-border merger), 235 (acquisition of shares of dissenting shareholders), and 236 (purchase of minority shareholding) comprise Chapter XV. Section 230's design is significant yet procedural. In addition to requiring notification to creditors, members, debenture holders, and, in the case of listed firms, SEBI and the stock

[1] Companies Act 2013, ch XV, ss 230-236; SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 2011; Competition Act 2002, ss 5-6; Foreign Exchange Management (Cross Border Merger) Regulations 2018.
[2] Companies Act 2013, ss 230-236, 241-245.

exchanges, it also requires disclosure of important facts, the company's most recent financ ia l status, current investigations, and a valuation report by a registered valuer. Approval is contingent upon Tribunal sanction and a majority of votes equal to three-fourths of the relevant class. Simultaneously, the Act allows for the dispensation of creditor meetings when creditors with at least 90% of the value concur by affidavit, and restricts objections to those who own at least 10% of the shares or 5% of the existing debt.[3]

These clauses demonstrate the fundamental tenet of the Act, which is to encourage restructuring through a class-based, disclosure-heavy approval procedure. This is reinforced by Section 231, which grants the Tribunal ongoing authority to oversee implementation and alter the agreement as needed. The legal ramifications of merger orders are further outlined in Section 232. These include the transfer of undertakings and liabilities, the continuation of legal proceedings, dissolution without winding up, protection for dissenters, employee transfer, and—most importantly—an opt-out safeguard in cases where a listed transferor merges into an unlisted transferee[4]. In these listed-to-unlisted schemes, shareholders who decide not to stay in the unlisted vehicle must be paid according to a predetermined formula or value; the sum cannot be less than what SEBI laws would permit. This is one of the most obvious instances of a statutory attempt to strike a compromise between investor justice and restructuring efficie ncy.

For small businesses and mergers between a holding company and its fully owned subsidiary, Section 233 establishes a fast-track merger path. If the plan obtains 90% shareholder support, a statement of solvency, and approval from creditors representing nine-tenths of its value, it substitutes full Tribunal- led review with a Central Government[5] confirmation procedure. By cutting down on time and litigation expenses for low-risk transactions, this approach promotes commercial efficiency. Its limited breadth, however, demonstrates legislative caution: India will only simplify in situations where ownership arrangements are already strongly aligned and distributive disagreement is unlikely. Therefore, section 233 is risk-calibrated simplification rather than deregulation.

[3] Companies Act 2013, s 230.
[4] Companies Act 2013, ss 231-232, especially s 232(3)(h).
[5] Companies Act 2013, s 233.

Additionally, there are particular regulations on minority departure and forcible acquisition under the Companies Act. Section 235 permits the transferee to compel the purchase of dissident shareholders' shares, subject to an application to the Tribunal, if a transfer plan has been authorized by holders of at least nine-tenths of the relevant[6] shares' value. More specifically, Section 236 deals with minority shareholding purchases: an acquirer or individuals acting in concert must notify the company and make an offer to purchase the remaining shares at a price set by a registered valuer when they become registered holders of 90% or more of the issued equity share capital.

The Act's protections for minorities extend beyond merger clauses. Sections 241 to 245 protect more expansive remedial options through class lawsuits and petitions alleging oppression and mismanagement. Section 244 permits members to approach the Tribunal under section 241 if they fulfil certain requirements, such as 100 members, one-tenth of all members, or holders of one-tenth of issued share capital. A qualifying class of members or depositors may request decisions under Section 245 that prohibit ultra vires behavior, invalidate resolutions gained via deception or suppression, and prohibit actions that violate the Act or other laws.[7] Tribunal orders are binding on the corporation and related experts. These clauses are important because governance abuse may not always be sufficiently exposed in scheme actions under sections 230–232. However, in the absence of collective organization, extremely tiny investors may find it difficult to activate these solutions due to the threshold-based design.

II. SEBI Takeover Regulations: Safeguarding Investors in Purchases of Listed Companies

The SEBI Takeover Regulations enhance the Companies Act framework when the target is listed, and they frequently take precedence in practical significance. The basis for policy is clear. An effective takeover market is a crucial component of corporate governance, according to the Takeover Regulations Advisory Committee, which also stressed that public shareholders

[6] SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 2011, reg 8; Securities and Exchange Board of India, 'Discussion paper on Brightline Tests for Acquisition of Control under SEBI Takeover Regulations' (14 March 2016); Securities and Exchange Board of India, 'Acquisition of "control" under the SEBI Takeover Regulations' PR No 56/2017 (8 September 2017).

[7] Companies Act 2013, ss 241, 244-245.

should have a sufficient exit opportunity in the event that control shifts. The open-offer approach is also described in SEBI's own papers as a way to guarantee that shareholders can leave on terms that are comparable to those on which significant shareholders leave. This policy approach explains why India's takeover regulations are both redistributive and disclosure - based.

Although well-known, the trigger rules have important structural implications. When an acquirer and individuals working together surpass 25% of voting rights, Regulation 3(1) mandates an open offer. When a holder who is already over 25% but below the maximum allowable non-public ownership acquires more than 5% in a fiscal year, Regulation 3(2) imposes an additional open-offer duty. Regulation 4 is applicable regardless of shareholding: an open offer is initiated by the acquisition of "control," whether direct or indirect. According to Regulation 7, the open offer must be for a minimum of 26% of the target company's total shares. Regulations 29 and 30 introduce disclosure requirements, such as disclosure when 5% is exceeded and yearly disclosure by promoters and those owning 25% or more. Because they combine transparency with a forced exit mechanism, these measures are the main weapons for protecting investors in listed-company acquisitions.

Offer price is just as significant. According to Regulation 8, the offer price must not be less than the highest of a number of benchmarks, such as the highest negotiated price under the triggering agreement, specific historical acquisition prices, and market-price-based measures; in situations where shares are not traded frequently, valuation parameters like book value and comparable multiples become pertinent. The traditional danger in control transactions—t hat the acquirer could pay a control premium in private while public shareholders receive a lower exit price—is directly addressed by this pricing structure. The laws aim to avoid unfair treatment by linking price to historical and agreed standards. However, disagreements over "control," indirect purchases, and creeping acquisitions can also make compliance more difficult. The idea of control is still quite fact-sensitive; SEBI's own policy history demonstrates opposition to strict bright-line tests and ongoing case-by-case evaluat io n. Although this flexibility makes it easier to catch evasive structures, it also makes deal preparation more difficult.[8]

[8] Fortis Healthcare Ltd, 'Public Announcement under Regulations 3(1) and 4 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 2011' (13 July 2018); Fortis Healthcare Ltd, 'Letter of Offer' (4 December 2018).

One helpful example is the deal with Fortis Healthcare. According to SEBI materials, a public announcement under Regulations 3(1) and 4 for a direct acquisition through preferential allotment was made. At the same time, the acquirer made a mandatory open offer for 26% of the target's expanded voting share capital and proposed to purchase 31.1% of the expanded voting share capital. The offer price was set in compliance with Regulation 8(2), according to the public statement. Fortis serves as an example of the reasoning behind Indian takeover law: public shareholders are entitled to a controlled exit option if a listed-company transaction surpasses the ownership or control barrier, and the transaction is made public through standardized disclosure papers. One of the most obvious advantages of the Indian structure is this.

III. The Competition Act of 2002 and the CCI's Function

Instead of focusing on shareholder fairness, the Competition Act introduces a different lens: market power. Combinations that cause or are likely to produce an appreciable adverse impact on competition (AAEC) in the relevant Indian market are prohibited under the Act, which also governs mergers, amalgamations, and acquisitions that beyond statutory criteria. AAEC is the regulating standard for merger control, as stated in CCI publications and the Act's own structure. Following the Competition (Amendment) Act, 2023 and the 2024 combinations regime, the jurisdictional architecture underwent significant changes.[9] These included the introduction of a deal-value threshold for transactions exceeding ₹2,000 crore in cases where the target has significant business operations in India, a reduction in the review timeline from 210 to 150 days, and the preservation of the green-channel route, which allows some non-overlap transactions to be deemed approved upon filing. There is no denying that these changes make conducting business easier.

The greatest way to understand the significance of CCI is via solutions. The Commission approved Sun Pharma/Ranbaxy's merger subject to divestiture remedies; the underlying order explicitly mentioned divestiture obligations regarding products marketed under the Tamlet[10] brand, and CCI material records show that the order required divestiture of products in

[9] Securities and Exchange Board of India, 'Report of the Takeover Regulations Advisory Committee' (19 July 2010).

[10] Competition Commission of India, *Sun Pharmaceuticals Industries Ltd/Ranbaxy Laboratories Ltd* order material (17 March 2015); Press Information Bureau, 'CCI approves the proposed merger between Sun Pharma and Ranbaxy' (8 December 2014).

overlapping markets. Hold-separate commitments and a specified divestiture plan were employed by the Commission in Holcim/Lafarge to maintain competition while overlapping cement assets were being sold.[11] Indian merger control is more than just a reporting requirement, as these instances demonstrate. The CCI has employed structural remedies to maintain competition where horizontal overlaps endanger market structure. Because it goes beyond the agreement between businesses, the competition regime thus serves a balancing role that company law cannot.

However, there is also conflict brought about by the competitive regime. Sequencing between CCI, NCLT, SEBI, sector regulators, and the RBI may be necessary. The green channel and quicker timescales lessen part of the load, but they don't completely remove regulatory overlap. Competition review also doesn't address investor protection issues; CCI can accept a merger that is competition-neutral but still raises issues with minority control or value. Therefore, the Indian system relies on functional complementarity: the CCI safeguards market competitio n, the Companies Act organizes consent and legal transfer, and SEBI protects exit and disclosure. When these roles perform well together, the framework is strongest; when a transaction falls between them, it is weakest.

IV. Analysis of Case Law and the Boundaries of Judicial Protection

[12]Miheer H. Mafatlal v. Mafatlal Industries Ltd. and Hindustan Lever Employees' Union v. Hindustan Lever Ltd. are still the two seminal Supreme Court rulings on amalgama t ion programs. The Court outlined the "broad contours" of judicial review in Miheer: provided legislative compliance, fair class representation, bona fides, and general reasonableness are met, the court has no appellate jurisdiction over the majority's business acumen. The ruling states unequivocally that the court plays a supporting, supervisory function and lacks the knowledge and authority to dig extensively into business acumen. Similar to this, the Court in [13]Hindustan Lever declined to recalculate valuation with "mathematical accuracy," determined that the business court lacks appeal authority, and accepted the exchange ratio since it was backed by expert valuers and an overwhelming majority. Because they continue to influence the court's perspective on scheme challenges—procedure and fairness are important, but

[11] Competition Commission of India, *Holcim Limited; Lafarge SA* order (30 March 2015).
[12] *Miheer H Mafatlal v Mafatlal Industries Ltd* (1997) 1 SCC 579.
[13] Hindustan Lever Employees' Union v Hindustan Lever Ltd 1995 Supp (1) SCC 499.

business merits are mostly left to the majority—these cases continue to be fundamental.

There are two effects of this jurisprudence. It encourages transactional certainty, on the one hand. If courts often examined exchange ratios, business synergy, or strategic reasoning, mergers would become prohibitively disputed.

However, in situations where the majority is in conflict or where valuation material is technically correct but subject to substantive dispute, the same deference undermines minority protection. When this judicial deference is combined with the 10% shareholder or 5% debt barrier for complaints under section 230, the outcome may be a formally participatory procedure that is realistically unavailable to scattered minorities. Therefore, Indian law protects minority shareholders less successfully in closely held or scheme-based restructurings, where the key safety remains value plus limited Tribunal review, and more effectively in listed - company acquisitions, where SEBI's obligatory exit architecture is strong.

V. Opportunity and Friction in Cross-Border M&A

Cross-border mergers demonstrate Indian M&A law's aspirations as well as its shortcomings. Subject to prior RBI permission, Section 234 of the firms Act facilitates mergers and amalgamations between Indian firms and foreign corporations formed in notified countries. Consideration may be paid in cash, depository receipts, or a combination of both. This framework is operationalized by Rule 25A, and exchange-control requirements are added by the RBI's Cross Border Merger Regulations. According to RBI materials, for instance, if the resultant company [14]is unable to lawfully hold an overseas asset or liability, it must either dispose of the asset or extinguish the liability within two years of the NCLT sanction; the regulations also permit a foreign currency bank account[15] to be used in the overseas jurisdiction for incidental transactions for a period of two years. Legislative readiness to support international reorganizations is demonstrated by this framework[16], but only inside a strictly regulated FEMA architecture.

[14] Companies Act 2013, s 234; Companies (Compromises, Arrangements and Amalgamations) Rules 2016, 25A; Foreign Exchange Management (Cross Border Merger) Regulations 2018, regs 4-5.
[15] Companies Act 2013, ss 235-236.
[16] Companies Act 2013, s 234; Companies (Compromises, Arrangements and Amalgamations) Rules 2016, r 25A; Foreign Exchange Management (Cross Border Merger) Regulations 2018, regs 4 -5.

The challenges are both theoretical and pragmatic. Company law, exchange control, tax, sectoral caps, accounting treatment, competition review, and, in the case of listed shares, takeover and disclosure law must all be reconciled in cross-border transactions. Because the deal may entail various minority-protection baselines, different marketplaces for comparable firms, and different accounting procedures, valuation becomes particularly delicate. Additionally, an acquirer could require concurrent comfort from the NCLT, RBI, CCI, and SEBI, each of which has a distinct normative criterion. For this reason, cross-border M&A is still permissible but complicated administratively in India. The approach increases execution complexity in order to safeguard investors and the domestic economy.

VI. Assessment and Conclusion

It is fair to characterise the Indian M&A legislative structure as conditionally protective yet somewhat pro-efficiency. Because it acknowledges merger mechanics, allows binding scheme processes, permits fast-track mergers, facilitates cross-border combinations, and now offers quicker merger-control assessment, it is pro-efficiency. Squeeze-outs require a registered valuer and a deposit of consideration; listed-company acquisitions must carry an open offer; offer prices are regulated; disclosure obligations are ongoing; scheme orders require disclosure, valuation, and class approval; and the CCI has the authority to block or restructure anti-competitive transactions. This is not a weak system in comparison. Its primary safeguards are genuine.

However, the balance isn't quite right. First, because power structures are concentrated, minority may be under protected by the plan jurisprudence of Miheer and Hindustan Lever, which favours majority commercial judgement. Second, the objection level under section 230 is too high to provide small investors with a significant individual voice. Third, the open-textured notion of "control," which leaves potential for dispute structuring and strategic ambiguity[17], continues to be a problem for takeover law. Fourth, multi-regulator sequencing continues to tax cross-border transactions excessively. Because of these factors, the response to the main study question is qualified: Indian law does effectively regulate M&A, but it does

[17] SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 2011, reg 8; Securities and Exchange Board of India, 'Discussion paper on Brightline Tests for Acquisition of Control under SEBI Takeover Regulations' (14 March 2016); Securities and Exchange Board of India, 'Acquisition of "control" under the SEBI Takeover Regulations' PR No 56/2017 (8 September 2017).

so more successfully in terms of protecting shareholder interests and competition than it does in terms of protecting minority investors' participatory equality.

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