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Legal Aspects of Mergers and Acquisitions in India

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Abstract

Mergers and acquisitions (M&A) have become an important part of corporate growth in India, allowing businesses to expand, enter new markets, and improve their competitive position. This paper examines the legal framework governing M&A transactions in India, with a focus on the Companies Act, 2013, the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, the Competition Act, 2002, and the Foreign Exchange Management Act, 1999. It discusses the different transaction structures recognised under Indian law, the regulatory approval process, tax considerations, legal due diligence, and the legal issues involved in cross-border transactions. The paper also analyses significant developments through landmark cases, including the Vodafone International Holdings, Sun Pharma–Ranbaxy, and Jet Airways matters, to highlight how judicial and regulatory decisions have influenced M&A practice in India. It further considers the practical challenges that continue to affect M&A transactions, such as regulatory delays and evolving legal interpretations. The paper concludes that while India's M&A framework has developed considerably over the years, successful transactions continue to depend on careful planning, regulatory compliance, and a sound understanding of the various legal regimes involved.

I. Introduction

Mergers and acquisitions are an important part of how businesses grow and compete in modern economies. They help companies enter new markets, build new capabilities, and strengthen their position in the market more quickly than organic growth usually allows. In India, M&A activity has grown significantly over the past two decades, driven by economic liberalisation, the gradual opening of sectors to foreign investment, and the development of a stronger legal framework governing corporate combinations. India has emerged as one of the leading M&A markets in Asia, with strong deal activity in sectors such as technology, pharmaceuticals, financial services, infrastructure, and consumer goods.

M&A in India is not governed by any single statute. Instead, it is regulated by a set of laws, including the Companies Act, 2013,[1] the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011,[2] the Competition Act, 2002,[3] and the Foreign Exchange Management Act, 1999,[4] among other legislation. Each of these statutes imposes different obligations relating to transaction structure, regulatory approvals, disclosure requirements, and pricing, all of which must be complied with during the course of a transaction. As a result, M&A transactions often require parties to navigate multiple regulatory requirements at the same time. Understanding how these requirements interact is an essential part of advising on M&A transactions in India. This article examines the key legal dimensions of M&A transactions in India, including transaction structures, the regulatory approval framework, tax considerations, due diligence, cross-border transactions, and the landmark judicial and regulatory decisions that have shaped this area of law.

II. Statutory and Regulatory Framework

The Companies Act, 2013 is the main law governing domestic M&A in India. Sections 230 to 240 deal with mergers, amalgamations, demergers, and other arrangements between companies, and they require the National Company Law Tribunal (NCLT) approval in cases involving shareholders and creditors.[5] By shifting merger and restructuring matters from the High Courts to the NCLT, the approval process has become more streamlined. These matters are now handled by a specialised forum that is better equipped to deal with complex commercial disputes.

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[1]Companies Act, 2013, No. 18, Acts of Parliament, 2013 (India).
[2]Securities and Exchange Board of India Regulations, 2011, SEBI/LAD-NRO/GN/2011-12/06 (India).
[3]Competition Act, 2002, No. 12, Acts of Parliament, 2002 (India).
[4]Foreign Exchange Management Act, 1999, No. 42, Acts of Parliament, 1999 (India).
[5]Companies Act, 2013 §§ 230–240, No. 18, Acts of Parliament, 2013 (India).

For listed companies, the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, commonly called the Takeover Code, are the main rules governing acquisitions of shares and control in listed companies. The Competition Act, 2002 also requires pre-merger notification to the Competition Commission of India (CCI) when the prescribed asset and turnover thresholds are crossed. In practice, these SEBI and CCI requirements often run together, so transaction lawyers have to manage multiple approval timelines and closing conditions at the same time.

III. Transaction Structures Under Indian Law

Indian law recognises several different M&A transaction structures, and each has its own legal, tax, and regulatory consequences. In a statutory merger or amalgamation under the Companies Act, two or more companies are combined, and once the NCLT sanctions the scheme, the assets, liabilities, and contracts of the transferor company vest in the transferee by operation of law.[6] This structure is often preferred because it allows the transfer of the business as a whole. It is especially useful where continuity of licences, regulatory approvals, and contracts matters, which is often the case in pharmaceutical, telecom, and banking transactions.

A share acquisition involves the purchase of shares in the target company, while its legal identity remains unchanged. This structure is often preferred in cross-border M&A transactions because the target continues to hold its existing contracts, regulatory approvals, and business relationships. However, the acquirer also assumes the target's existing liabilities, including liabilities that may not be immediately apparent. For this reason, thorough legal, financial, and tax due diligence plays a crucial role in assessing risk and determining the value of the transaction.

A slump sale, as defined under the Income Tax Act, 1961, refers to the transfer of one or more undertakings for a lump sum consideration, without separately valuing the individual assets and liabilities.[7] It is often used when the parties want to transfer a specific business division rather

[6]Companies Act, 2013 § 232, No. 18, Acts of Parliament, 2013 (India).
[7]Income Tax Act, 1961 § 2(42C), No. 43, Acts of Parliament, 1961 (India).

than the entire company. This structure offers flexibility and, in many cases, more favourable tax treatment than a piecemeal sale of assets.

The Companies Act also provides a fast-track merger process under Section 233 for certain categories of mergers, including those between a holding company and its wholly-owned subsidiary and between two small companies. One of the main advantages of this process is that it does not require NCLT sanction and instead follows a simpler approval process before the Regional Director.[8] Section 234 of the Companies Act also allows cross-border mergers, meaning foreign companies can merge with Indian companies and Indian companies can merge with foreign companies, subject to RBI approval and the requirements set out in the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.[9]

IV. SEBI Takeover Code: Open Offer Obligations and Control Acquisitions

The SEBI (SAST) Regulations, 2011 play a central role in regulating acquisitions involving listed companies. Under Regulation 3(1), an acquirer, either alone or together with persons acting in concert, must make an open offer if its shareholding or voting rights in the target company reach twenty-five percent or more.[10] The rationale behind this threshold is that a shareholder holding this level of voting rights is likely to have significant influence over the affairs of the company. In such cases, the law seeks to protect minority shareholders by giving them an opportunity to exit through an open offer.

Once an open offer obligation arises, the acquirer must offer to purchase at least twenty-six percent of the target company's shares from public shareholders.[11] The minimum offer price is calculated on the basis of factors prescribed under the Regulations, including the highest price paid by the acquirer in the previous fifty-two weeks, the volume-weighted average market price of the target’s shares, and in certain cases, the book value of the shares. The acquirer is required

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[8] Companies Act, 2013 § 233, No. 18, Acts of Parliament, 2013 (India).
[9] Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, Rule 25A (India).
[10] SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, Reg. 3(1), SEBI/LAD-NRO/GN/2011-12/06 (India).
[11] SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, Reg. 7, SEBI/LAD-NRO/GN/2011-12/06 (India) (mandating an open offer for at least twenty-six percent of total shares from public shareholders).

to offer whichever of these values is the highest.[12] This pricing mechanism helps ensure that minority shareholders receive a fair exit opportunity and are not disadvantaged when control of the company changes hands.

Regulation 4 extends the open offer requirement to acquisitions of control, regardless of the number of shares or voting rights acquired.[13] This means that an open offer may be required even where the acquirer does not cross the twenty-five percent shareholding threshold. Transactions involving preferential allotments, conversion of warrants or debentures, shareholder agreements granting veto or board nomination rights, and certain transfers among promoters can all amount to an acquisition of control. As a result, these transactions must be structured carefully, particularly in the case of private equity investments and joint venture arrangements involving listed companies.

V. Competition Commission of India: Combination Approvals

The Competition Act, 2002 seeks to ensure that mergers, amalgamations, and acquisitions do not harm competition in India. Accordingly, it prohibits combinations that have, or are likely to have, an appreciable adverse effect on competition.[14] Where a proposed transaction crosses the prescribed asset and turnover thresholds, the parties must notify the CCI within thirty days of signing the agreement. The transaction cannot be completed until the CCI grants its approval.[15] If the parties complete a notifiable transaction without prior CCI approval, they may be liable to pay a penalty of up to one percent of their combined global turnover or assets. Given the size of many M&A transactions, this can be a substantial amount.

Although the CCI has up to 210 working days to review a combination, most transactions are approved much earlier. In many cases, approval is granted within the first thirty working days,

[12]SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, Reg. 8, SEBI/LAD-NRO/GN/2011-12/06 (India) (prescribing the minimum offer price computation methodology).
[13]SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, Reg. 4, SEBI/LAD-NRO/GN/2011-12/06 (India).
[14]Competition Act, 2002, No. 12, Acts of Parliament, 2002 (India).
[15]Competition Act, 2002 § 6(2), No. 12, Acts of Parliament, 2003 (India) (requiring notification to the CCI within thirty days of signing the agreement and prohibiting completion of the transaction before approval).

particularly where the transaction does not raise significant competition concerns.[16] Where the CCI finds prima facie competition concerns, it may undertake a more detailed review of the transaction, during which the parties can propose remedies to address those concerns. Following its review, the CCI may approve the transaction, approve it subject to certain modifications, or prohibit it altogether. The introduction of the Green Channel mechanism in 2019 has also been a key development. It allows certain transactions to receive automatic approval upon filing where there are no horizontal, vertical, or complementary overlaps. This has helped reduce approval timelines and the compliance burden for straightforward transactions.[17]

VI. Tax Dimensions of M&A Transactions

Tax considerations are a major part of M&A transactions and often influence how a deal is structured. The Income Tax Act, 1961 contains specific provisions governing the tax treatment of mergers and acquisitions, and different transaction structures can lead to significantly different tax consequences for the parties involved.

In a statutory amalgamation that meets the conditions laid down under the Income Tax Act, the transfer of capital assets from the amalgamating company to the amalgamated company is exempt from capital gains tax.[18] Additionally, Section 72A allows the amalgamated company to carry forward and set off the accumulated business losses and unabsorbed depreciation of the amalgamating company against its future profits. This can make companies with substantial accumulated losses attractive acquisition targets, as the acquiring company may be able to benefit from those tax losses in the future.[19]

Stamp duty is an important cost that parties must consider in M&A transactions in India. Transfers of shares, immovable property, and business assets are subject to stamp duty, and the

[16]Competition Act, 2002 § 31, No. 12, Acts of Parliament, 2003 (India) (prescribing the 210-working-day outer limit for CCI review).
[17]Competition Commission of India, SOP for Green Channel, CCI/CD/2019/01 (2019) (enabling automatic approval upon filing for combinations with no horizontal, vertical, or complementary overlaps).
[18]Income Tax Act, 1961 § 47(vi), No. 43, Acts of Parliament, 1961 (India) (exempting transfer of capital assets in a qualifying amalgamation from capital gains tax).
[19]Income Tax Act, 1961 § 72A, No. 43, Acts of Parliament, 1961 (India).

applicable rates vary across states.[20] In transactions involving substantial real estate or business assets, stamp duty can add significantly to the overall cost of the deal and must be taken into account when the transaction is being structured. Similarly, the tax treatment of slump sales, demergers, and share buybacks differs under the Income Tax Act. As a result, tax advice at an early stage of the transaction is often important in identifying potential tax liabilities and structuring the deal effectively.

VII. Due Diligence and Transaction Documentation

Legal due diligence is one of the most important stages of an M&A transaction. Its purpose is to identify legal risks associated with the target business before the transaction is completed. These risks may include ongoing litigation, regulatory non-compliance, defects in title to assets, issues relating to intellectual property ownership, labour law violations, contractual restrictions, and environmental liabilities. Identifying such issues at an early stage helps the parties assess risk, determine the value of the transaction, and decide whether the deal should proceed. In Indian M&A transactions, due diligence often reveals issues relating to regulatory compliance. These may include non-compliance with the Companies Act, pending tax disputes, and gaps in statutory filings. Although many of these issues can be rectified, they often need to be addressed before the transaction is completed or made a condition of closing.

The key transaction documents in an Indian M&A deal usually include a term sheet or letter of intent, which sets out the broad commercial terms of the transaction. Depending on the structure of the deal, the parties may then enter into a share purchase agreement or a business transfer agreement. Where the transaction does not result in a complete acquisition of the target company, a shareholders' agreement is commonly used to govern the relationship between the parties after the transaction is completed. A share purchase agreement generally contains representations and warranties by the seller regarding the condition of the business, indemnity clauses dealing with liability for pre-closing breaches, and conditions that must be satisfied before the transaction can be completed, including regulatory approvals. It may also include mechanisms for adjusting the purchase price after closing based on factors such as working capital and net debt.

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[20]Indian Stamp Act, 1899, No. 2, Acts of Parliament, 1899 (India); *see also* Finance Act, 2019, No. 7, Acts of Parliament, 2019 (India) (amending stamp duty provisions on transfer of securities).

Although representations and warranties insurance is still relatively new in India, it is becoming more common in larger M&A transactions, particularly those involving private equity investors. This insurance allows a buyer to recover losses from an insurer for breaches of the seller's representations and warranties, instead of relying solely on claims against the seller. As a result, it can reduce the risks associated with indemnity claims and make it easier for sellers, especially private equity investors, to exit the transaction after closing.

VIII. Landmark Cases in Indian M&A

The Sun Pharma-Ranbaxy merger (2014–15) is one of the most significant examples of a large M&A transaction in India involving multiple regulators. The CCI approved the merger subject to the divestiture of seven overlapping product portfolios in the Indian market, reflecting concerns about competition in those segments. At the same time, SEBI examined the open offer requirements, the related-party aspects of the transaction, and the adequacy of disclosures made to Ranbaxy's minority shareholders. The transaction highlighted how large M&A deals in India often require parties to comply with the requirements of multiple regulators simultaneously, with decisions taken by one regulator having an impact on the timing and structure of the transaction.[21]

The *Vodafone International Holdings* case before the Supreme Court remains one of the most important decisions in Indian M&A law, particularly in the area of taxation. The Court held that Vodafone's acquisition of a Cayman Islands holding company, which indirectly held a sixty-seven percent stake in an Indian telecom operator, was not taxable in India. According to the Court, the transaction involved the transfer of shares in a foreign company and did not amount to a direct transfer of a capital asset situated in India.[22] The Government responded by amending the Income Tax Act in 2012 with retrospective effect to bring such indirect transfers within the scope of Indian taxation.[23] This move attracted considerable international criticism and

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[21]Sun Pharmaceutical Industries Ltd. v. CCI, CCI Order dated December 5, 2014, Combination Registration No. C-2014/05/170 (India); *see also* SEBI, Open Offer Observation Letter in re: Sun Pharma-Ranbaxy (2015).

[22]*Vodafone Int'l Holdings B.V. v. Union of India*, (2012) 6 SCC 613 (India).

[23]Finance Act, 2012, No. 23, Acts of Parliament, 2012 (India) (inserting Explanation 5 to Section 9(1)(i) of the Income Tax Act, 1961 with retrospective effect from April 1, 1962, bringing indirect transfers of Indian assets within the Indian tax net).

eventually led to India losing an arbitration proceeding before the Permanent Court of Arbitration under the India–Netherlands Bilateral Investment Treaty. The Vodafone dispute highlighted the importance of tax structuring and treaty protection in cross-border M&A transactions. It also played an important role in India's decision to withdraw its retrospective tax demands on a prospective basis in 2021.

The Jet Airways CIRP proceedings before the NCLT illustrate the close relationship between insolvency law and M&A. The Jalan–Kalrock Consortium emerged as the successful resolution applicant through a competitive bidding process, resulting in the acquisition of control over Jet Airways as part of its insolvency resolution. In many respects, the process resembled a distressed M&A transaction, with control of the company being transferred through a court-supervised resolution process. The disputes that later arose between the consortium and secured creditors regarding the implementation of the resolution plan highlighted the legal and practical challenges that can arise when insolvency and M&A processes overlap.[24]

IX. Cross-Border M&A: Inbound and Outbound Transactions

Inbound cross-border M&A, where foreign companies or investors acquire Indian businesses, is regulated by the Foreign Exchange Management Act, 1999 (FEMA), the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019, and the RBI's Master Directions on Foreign Investment.[25] Foreign direct investment in Indian companies is permitted either through the automatic route, which does not require prior government approval, or through the approval route, which requires approval from the concerned authority. Certain sectors, including defence, insurance, media, and multi-brand retail, are subject to limits and conditions on foreign investment. These restrictions can affect transaction structuring and the level of ownership a foreign investor can acquire in an Indian company.

Outbound M&A, where Indian companies acquire businesses abroad, is also governed by a detailed regulatory framework. It is governed by the Foreign Exchange Management (Overseas

[24]In re: Jet Airways (India) Ltd., CP (IB) No. 2205/MB/2019 (NCLT, Mumbai Bench) (India).

[25]Foreign Exchange Management Act, 1999, No. 42, Acts of Parliament, 1999 (India); Foreign Exchange Management (Non-Debt Instruments) Rules, 2019, G.S.R. 885(E) (India); Reserve Bank of India, Master Direction on Foreign Investment in India (2018, as amended).

Investment) Rules, 2022 and the RBI's Master Direction on Overseas Investment.[26] Indian companies can invest overseas subject to prescribed financial limits and compliance requirements, including reporting obligations to the RBI. As Indian companies have increasingly pursued acquisitions in the technology, manufacturing, and services sectors across the world, compliance with the overseas investment framework has become an important part of cross-border M&A transactions.

X. Challenges and Recent Developments

Although India's M&A regulatory framework has developed considerably over the years, a number of challenges remain. One of the most significant is the time taken to complete transactions. Regulatory approvals from the NCLT, CCI, SEBI, RBI, and in some cases sector-specific regulators, can extend the timeline for complex deals to twelve to eighteen months. This creates uncertainty for the parties and increases the possibility of material changes occurring between signing and closing. Uncertainty regarding the scope of the CCI's jurisdiction in certain transactions, as well as the evolving interpretation of 'control' under the Takeover Code, can further complicate the transaction process.

Recent years have also seen a number of reforms in India's M&A regulatory framework. CCI combination filings rose to sixty-four in 2022–23, indicating continued deal activity, while the Commission's turnaround time for first-phase approvals has also improved.[27] The Companies (Amendment) Act, 2017 introduced cross-border schemes of arrangement,[28] allowing greater flexibility in structuring inbound and outbound M&A transactions. SEBI's ongoing review of the open offer pricing framework and its proposals for faster settlement of open offer proceeds are expected to make listed company transactions more efficient. The gradual digitalisation of NCLT processes, although still incomplete, has also helped reduce procedural delays in the approval of straightforward schemes.

[26]Foreign Exchange Management (Overseas Investment) Rules, 2022, G.S.R. 633(E) (India); Reserve Bank of India, Master Direction on Overseas Investment, RBI/2022-23/90 (2022).
[27]Competition Commission of India, *Annual Report 2022–23* (2023).
[28]Companies (Amendment) Act, 2017, No. 1, Acts of Parliament, 2018 (India).

XI. Conclusion

Mergers and acquisitions in India involve a complex mix of corporate law, securities regulation, competition law, foreign exchange regulation, and taxation. Over the years, the legal framework governing M&A transactions has evolved significantly, supported by legislative reforms, regulatory developments, and important judicial decisions. At the same time, challenges relating to regulatory approvals, evolving interpretations of key provisions, and lengthy transaction timelines continue to affect the execution of complex deals. As a result, successful M&A transactions require careful planning, regulatory compliance, and a clear understanding of the different legal regimes involved.

For law students and young practitioners, M&A law offers valuable insight into how different areas of law interact in practice. It requires an understanding of not only corporate and securities law, but also taxation, competition law, foreign exchange regulation, and contract law. As Indian businesses continue to expand both within India and internationally, M&A activity is likely to remain an important driver of corporate growth. This will continue to create opportunities for legal professionals who can effectively navigate the legal and commercial issues that arise in complex transactions.