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M&A IN INDIA: A CRITICAL ANALYSIS OF THE REGULATORY AND LEGAL FRAMEWORK

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Abstract

Mergers and acquisitions (M&A) have become an important part of corporate growth in India. They allow companies to enter new markets, enhance technology, increase the customer base, restructure businesses and, in some cases, survive both financial or competitive pressure. At the same time, an M&A transaction is not governed by a single law. The legal boundary in India is spread across company law, competition law, securities regulation, foreign exchange law and sector-specific rules. This paper examines these frameworks from the perspective of the Companies Act, 2013, the Competition Act, 2002, FEMA, SEBI regulations and cross-border merger rules. It considers the practical problems created by overlapping approvals, valuation, protection of minority shareholders and regulatory coordination. The paper argues that India's M&A framework is strong but institutionally dispersed. The introduction of the deal value threshold under competition law has also widened the scrutiny of high-value transactions, particularly in transactions where traditional asset and turnover thresholds may not capture the competitive importance of the target. The paper concludes that the next stage of reform should focus not only on faster approvals but also on clearer coordination, predictable timelines and stronger protection of stakeholders.

Keywords: Merger and Acquisitions, Corporate Law, Companies Act 2013, Competition Law, SEBI, Corporate Governance, Legal Framework, Regulatory Framework

I. Introduction

India has developed as a major market for corporate restructuring and M&A activity. A company may choose to merge with another business for many reasons which involves expansion, access to technology, entry into a new geographical market, reduction of duplicated costs, acquisition of intellectual property, or consolidation of a dispersed industry. For foreign investors, acquisitions is also a practical way of entering the Indian market. However, the commercial objective of a transaction does not make transactions legally valid. The parties must satisfy several legal and regulatory requirements before the transaction can be completed.

The Indian framework is therefore understandable as a multi-layered system. The Companies Act, 2013 provides the basic corporate mechanism for schemes of compromise, arrangement, merger and amalgamation. The Competition Act, 2002 examines whether a combination may cause an appreciable adverse effect on competition. Listed-company transactions may additionally come within the securities law framework administered by SEBI, including takeover rules and disclosure requirements¹. FEMA becomes important where the transaction involves foreign investment, overseas assets, foreign securities or a cross-border merger. Depending on the sector², additional approvals may be required from regulators such as the RBI, IRDAI, PFRDA or other competent authorities.

The central question of this paper is whether this framework can balance two objectives that can sometimes pull in different directions: facilitating legitimate corporate transactions and protecting the public interest, competition, investors and other stakeholders. The answer is broadly positive, but the system still has practical gaps. Different regulators examine different parts of the same transaction, and a legally compliant transaction can still become commercially difficult when approvals are sequential, valuation is disputed, or the meaning of control and substantial business operations becomes uncertain.

Research Objectives

- To explain the principal legal mechanisms used for M&A transactions in India.

¹ Securities & Exchange Board of India (Substantial Acquisition of Shares & Takeovers) Regulations, 2011.

² Foreign Exchange Management Act, 1999, No. 42, Acts of Parliament, 1999 (India), § 6.

- To examine the role of the Companies Act, 2013 in mergers and amalgamations.
- To analyse the role of the Competition Commission of India and the deal value threshold.
- To understand the relevance of FEMA and cross-border merger regulation.
- To examine the role of SEBI in acquisitions involving listed companies.
- To identify practical weaknesses in the present regulatory structure and suggest areas for improvement.

Research Methodology

This paper follows a doctrinal legal research approach. The analysis is based primarily on statutes, regulations, official regulatory material and selected judicial decisions. The Companies Act, 2013, Competition Act, 2002, SEBI takeover framework, FEMA-related rules and RBI's cross-border merger framework form the main legal sources. Judicial decisions are used to understand how courts have approached merger schemes, valuation, stakeholder interests and the effective date of amalgamation. The discussion is also informed by the author's interpretation of how the different regulatory layers operate together.

II. Conceptual and Definitional Framework

A. Mergers and Amalgamations

A merger generally means the combination of two or more businesses in such a way that the businesses are brought under a common corporate structure. In a merger by absorption, one company survives and the other company is absorbed into it. In an amalgamation by formation of a new company, the existing companies transfer their undertaking to a newly created entity. The Companies Act expressly recognises both forms in the context of section 232.

The legal effect of an amalgamation is more than a simple transfer of selected assets. Subject to the terms of the sanctioned scheme, the undertaking, property, rights, liabilities and obligations of the transferor company may vest in the transferee company. The transferor may then be dissolved without winding up. This is why a scheme of merger is treated as a legal restructuring of the corporate personality rather than merely a commercial contract.

B. Acquisitions: Share Purchase and Asset Purchase

An acquisition is different from a statutory merger. In a share purchase, the purchaser acquires shares from the existing shareholders of the target. The target company normally continues to

exist as a separate legal person, but ownership or control changes. This distinction is important because the buyer generally acquires the economic exposure of the target's existing business, including liabilities that may not have been obvious during initial negotiations. This makes legal, financial and tax due diligence particularly important.

In an asset purchase, the buyer acquires specified assets and, depending on the agreement, selected liabilities. The parties have greater scope to decide what is transferred and what remains with the seller. An asset purchase may therefore be useful where the purchaser wants a particular business undertaking without taking the entire corporate history of the seller.

III. The Companies Act, 2013 Framework

A. Schemes of Arrangement under Sections 230–232

Chapter XV of the Companies Act, 2013 provides the principal statutory route for compromises, arrangements, mergers and amalgamations. Section 230 deals with compromise or arrangement happening between the company and its creditors or members. The provision is important because it creates the procedural foundation for a scheme and requires appropriate disclosure and participation of affected stakeholders.

Section 231 gives the Tribunal power to supervise the implementation of a compromise or arrangement. This is significant because approval of a scheme is not merely a private agreement between companies. The Tribunal has a supervisory role and can issue directions where necessary for effective implementation.

Section 232 deals specifically with merger and amalgamation. A scheme may provide for the transfer of the undertaking, property and liabilities of one or more companies to another company or to a new company. The scheme must disclose material information to members and creditors and must comply with the statutory approval process. The Tribunal may provide for transfer of assets and liabilities, continuation of legal proceedings, transfer of employees and dissolution of the transferor company without winding up.

The importance of disclosure and valuation becomes clear in this process. Shareholders are not expected to approve a scheme without knowing its financial consequences. In practice, valuation reports, fairness opinions and an explanatory statement help stakeholders understand the exchange ratio and the commercial logic of the transaction.

B. Judicial Approach to Merger Schemes

The Supreme Court's decision in *Miheer H. Mafatlal v. Mafatlal Industries Ltd.* is an important authority on the judicial approach to schemes of arrangement. The Court identified that the role of the company court is not to substitute its commercial judgment for that of the shareholders, but the court must still ensure that statutory requirements are followed and that the scheme is not unfair, illegal or contrary to public interest. This approach is relevant under the present Companies Act framework because it explains why courts and tribunals generally respect commercial decisions while retaining a duty to protect the integrity of the process.³

In *Hindustan Lever Employees' Union v. Hindustan Lever Ltd.*, the Supreme Court considered objections relating to valuation, shareholders, employees and public interest in the HLL–TOMCO merger. The Court did not treat a difference between possible valuation methods as sufficient reason to reject the scheme where the valuation process was not shown to be fraudulent or unfair. This case illustrates a practical point: valuation is necessarily an exercise involving professional judgment, but the process must remain transparent, rational and free from manipulation.⁴

Marshall Sons & Co. (India) Ltd. v. ITO is also relevant because it explains the importance of the appointed or transfer date in an amalgamation scheme. The Supreme Court held that where the court sanctions the scheme without substituting another date, the date specified in the scheme can operate as the transfer date. This has consequences for accounting, taxation and the point from which the business is treated as transferred.⁵

C. Fast-Track Mergers

Section 233 provides a simplified route for specified classes of companies, including small companies and a holding company with its wholly-owned subsidiary, subject to the statutory conditions. The objective is understandable: a straightforward intra-group or small-company merger should not always have to undergo the same level of procedure as a large and complex public-company merger. The fast-track mechanism therefore attempts to reduce procedural burden while retaining creditor and regulatory safeguards.

³ *Miheer H. Mafatlal v. Mafatlal Industries Ltd.*, (1997) 1 SCC 579.

⁴ *Hindustan Lever Emps.' Union v. Hindustan Lever Ltd.*, (1995) Supp. 1 SCC 499.

⁵ *Marshall Sons & Co. (India) Ltd. v. Income Tax Officer*, (1997) 2 SCC 302.

D. Cross-Border Mergers under Section 234

Section 234 recognises cross-border mergers between Indian companies and foreign companies, subject to the Companies Act, rules and foreign exchange requirements. An inbound merger consist of merger in which the resultant company is an Indian company whereas An outbound merger results in a foreign company. Cross-border transactions are more complicated because the companies have to satisfy both Indian corporate law and rules concerning foreign exchange, foreign securities, valuation and overseas assets.

IV. FEMA and Cross-Border Capital Regulation

A. Inbound Investment

FEMA becomes relevant when a transaction brings foreign capital into India or involves the issue or transfer of Indian securities to persons resident outside India. The present framework is built around the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 and RBI directions on foreign investment. The legal analysis normally requires checking the sector, entry route, foreign investment limits, pricing requirements and reporting obligations.

In a merger, the foreign shareholder position may also change because shares of the transferor company can be replaced by shares in the transferee or resulting company. The transaction therefore has to be structured so that the resulting foreign holding remains within applicable sectoral and other conditions.

B. Outbound Investment

Outbound transactions involve an Indian resident investing in or acquiring a foreign business. The Overseas Investment Rules, Regulations and Directions, 2022 are relevant to this area. From a legal perspective, the important questions include whether the proposed overseas investment is permitted, whether the Indian entity has to obtain approval or follow the automatic route, how funding will be arranged and what reporting obligations will apply.

The regulatory objective is not simply to restrict money leaving India. The present framework also recognises that overseas investment can help Indian businesses access technology, foreign markets and international business opportunities. The challenge is to permit genuine business expansion while preventing misuse of overseas structures for unlawful capital transfers.

C. RBI Cross-Border Merger Regulations

The Foreign Exchange Management (Cross Border Merger) Regulations, 2018 provide a specific foreign-exchange framework for mergers between Indian and foreign companies. The regulations distinguish between inbound and outbound mergers and deal with the treatment of securities, assets, liabilities and offices arising from the merger. They also create a degree of regulatory certainty by treating compliant transactions within the prescribed conditions as permissible under the FEMA framework.

The practical lesson is that a cross-border merger cannot be analysed only under section 234 of the Companies Act. The transaction has to be examined as a combined corporate-law and foreign-exchange transaction. This is one of the clearest examples of the fragmented nature of Indian M&A regulation.

V. Competition Law and the Deal Value Threshold

The Competition Act, 2002 covers M&A transactions from a different perspective. Its concern is not whether the companies have followed the corporate procedure, but whether a combination is likely to cause an appreciable adverse effect on competition. Therefore, a transaction can be valid under company law and still require scrutiny under competition law.

Under section 5, combinations may be identified through asset and turnover thresholds at the enterprise and group levels. The framework also considers the geographical connection of the businesses to India. The Competition Commission of India explains that only one applicable threshold needs to be satisfied for an M&A to qualify as a combination requiring notification, subject to the exemptions and statutory framework.

An important recent development is the deal value threshold introduced through the Competition (Amendment) Act, 2023. Where the value of a transaction exceeds ₹2,000 crore and the target has substantial business operations in India, the transaction may qualify as a combination even if traditional asset and turnover thresholds are not met. This is particularly relevant to high-value acquisitions in sectors such as digital services, technology and platform-based businesses, where the target may have relatively limited physical assets but considerable competitive significance.

The CCI's current guidance also explains that transaction value can include direct and indirect consideration, deferred or immediate payments and certain connected or contingent

components. The substantial-business-operations test provides an Indian nexus so that the deal value threshold is not applied without a meaningful connection to the Indian market.

From a policy perspective, the deal value threshold is a useful development. Traditional thresholds based on assets and turnover can underestimate the importance of a fast-growing technology company whose value lies mainly in users, data, intellectual property or future potential. At the same time, the broader test increases the importance of careful transaction analysis before signing and closing.

VI. SEBI and Sector-Specific Regulatory Approvals

A. Listed Companies and Takeover Regulation

Where an acquisition concerns a listed company, the Securities and Exchange Board of India becomes a major regulatory authority. The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, commonly called the Takeover Regulations, regulate substantial acquisition of shares and voting rights and acquisition of control. The basic policy is that public shareholders should not be deprived of a meaningful exit opportunity merely because control of the listed company changes hands.

The takeover framework works alongside disclosure and listing obligations. An acquirer must therefore examine not only the purchase agreement but also the public announcement, open-offer requirements, pricing rules, disclosures and the timing of regulatory filings. A transaction involving a listed target can consequently have a significantly longer regulatory path than a purely private acquisition.

B. Sector-Specific Approvals

Some industries have additional restrictions because a change in ownership can affect public interest beyond ordinary corporate considerations. Banking, insurance, financial services, telecommunications, defence, aviation and other regulated sectors may require approval from the relevant sectoral regulator or government authority. These requirements may relate to ownership caps, fit-and-proper criteria, management control, security concerns or licensing conditions.

This creates a practical problem for transaction planning. Parties may have agreed on the commercial terms of a deal, but completion can still depend on multiple independent approvals. Good transaction planning therefore requires a regulatory map at the beginning of negotiations rather than after the definitive agreement has been signed.

VII. Critical Discussion

The Indian M&A framework has several strengths. First, the Companies Act provides a structured mechanism for schemes and gives the NCLT a central role. Second, competition law prevents corporate consolidation from being viewed only as a private matter between shareholders. Third, SEBI regulation provides protection to public investors in listed-company transactions. Fourth, FEMA and RBI rules provide a legal route for cross-border transactions instead of leaving foreign exchange issues to uncertain case-by-case decisions.

However, the same framework is fragmented. The same transaction may require interaction with the NCLT, CCI, SEBI, RBI, MCA and a sector regulator. Each authority has a legitimate function, but the absence of perfect coordination can increase transaction costs. A delay at one stage can affect valuation, financing arrangements, employee plans and the commercial logic of the deal.

A second concern is valuation. The law recognises the importance of valuation and fairness, but valuation is not an exact science. Different methods can produce different outcomes. The judicial approach in Hindustan Lever indicates that courts are reluctant to interfere merely because another valuation method could have produced another number. This is reasonable because judges are not normally expected to replace professional valuation judgment. Nevertheless, minority shareholders need meaningful information about assumptions, comparable companies and the rationale behind the exchange ratio.

A third issue is minority shareholder protection. Majority shareholders generally have greater influence over the commercial terms of a transaction. The legal framework therefore needs to ensure that minority investors receive adequate disclosure, an opportunity to object and, where applicable, an exit mechanism. Formal compliance is not enough if stakeholders cannot realistically understand the economic effect of the transaction.

A fourth issue is the meaning of control. In M&A transactions, control may arise from shareholding, voting rights, board rights or contractual arrangements. The practical question is often not simply who owns the largest percentage of shares, but who has the ability to influence strategic decisions. This makes careful drafting of shareholders' agreements and transaction documents extremely important.

The introduction of the deal value threshold under competition law is another example of the law adapting to new forms of business. It is a positive development, but it also means that transaction counsel must look beyond traditional financial metrics. A high-value acquisition of

a company with relatively small Indian assets can now attract competition scrutiny if the statutory Indian-nexus requirements are satisfied.

In my view, the objective of future reform should not be to remove regulatory scrutiny. Instead, the focus should be on coordination and predictability. A common regulatory timeline, better information sharing among authorities and clearer guidance on valuation, control and cross-border transactions would make the system easier to navigate without weakening stakeholder protection.

VIII. Conclusion

M&A transactions in India operate within a broad legal structure rather than under a single statute. The Companies Act, 2013 provides the corporate foundation for mergers and schemes of arrangement. The Competition Act examines the effect of large transactions on competition. SEBI protects investors and market integrity in listed-company acquisitions, while FEMA and RBI rules govern the foreign-exchange aspects of cross-border transactions. Sectoral regulators add another layer where the nature of the business requires it.

The framework is therefore strong in substance but complex in operation. The law recognises the need for corporate freedom and restructuring, but it also recognises that mergers and acquisitions can affect employees, creditors, minority shareholders, competitors and the wider economy. The challenge is to maintain this balance without making genuine business transactions unnecessarily slow or uncertain.

The present framework has already evolved significantly, especially with the introduction of fast-track mergers, the modern cross-border merger regime and the deal value threshold in competition law. Going forward, greater regulatory coordination, transparent valuation practices, predictable approval timelines and accessible guidance for stakeholders would strengthen the system further. The most effective M&A regime is not the one with the fewest regulations; it is the one in which the rules are clear, proportionate and capable of protecting stakeholders while still allowing businesses to grow and reorganise.

References

- [1] Companies Act, 2013, Chapter XV, sections 230–236, Ministry of Corporate Affairs, Government of India.
- [2] Competition Act, 2002, as amended; Competition Commission of India, FAQs and guidance on combinations and deal value threshold.

- [3] SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.
- [4] Foreign Exchange Management Act, 1999.
- [5] Foreign Exchange Management (Non-Debt Instruments) Rules, 2019.
- [6] Foreign Exchange Management (Overseas Investment) Rules, 2022 and Regulations, 2022.
- [7] Foreign Exchange Management (Cross Border Merger) Regulations, 2018.
- [8] Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, including Rule 25A on cross-border mergers.
- [9] Miheer H. Mafatlal v. Mafatlal Industries Ltd., Supreme Court of India, 1996.
- [10] Hindustan Lever Employees' Union v. Hindustan Lever Ltd., Supreme Court of India, 1994.
- [11] Marshall Sons & Co. (India) Ltd. v. Income Tax Officer, Supreme Court of India, 1996.
- [12] Competition Commission of India, Fair Competition / FAQ material on Section 5 thresholds and Deal Value Threshold.

Selected Online Legal Sources

<https://e-book.icsi.edu/default.aspx>

<https://www.cci.gov.in/faqs>

<https://cci.gov.in/public/index.php/advocacy/publications/advocacy-booklets>

https://www.cci.gov.in/images/publications_booklet/en/competition-advocacy-booklet-2026-english1779277830.pdf

SEBI – Takeover Regulations: <https://www.sebi.gov.in/>

RBI – Cross Border Merger Regulations: <https://www.rbi.org.in/>

RBI – Overseas Investment Regulations:
https://www.rbi.org.in/Scripts/BS_ViewMasDirections.aspx?id=12380