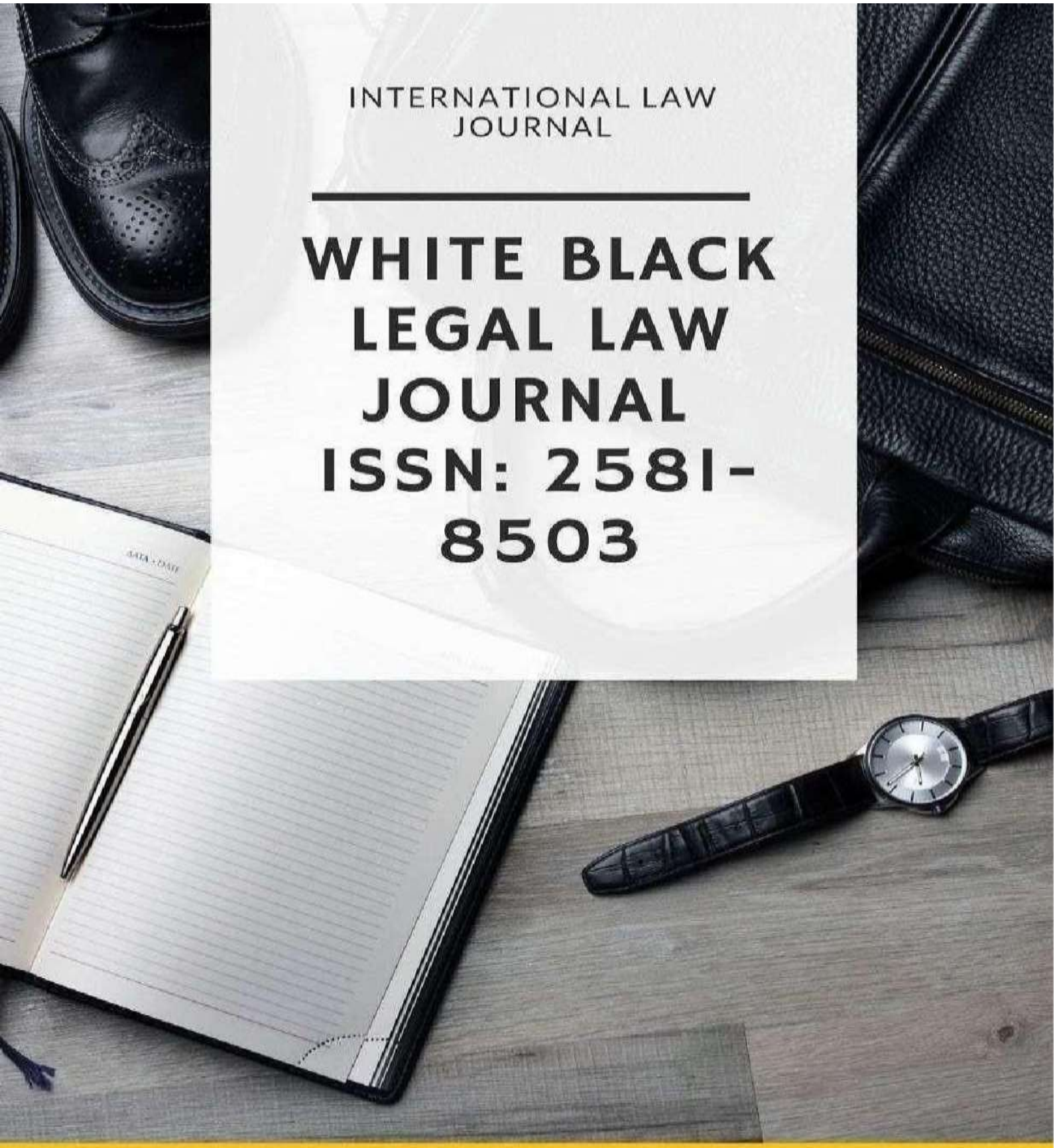

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"MERGERS AND ACQUISITIONS IN INDIA: A CRITICAL ANALYSIS OF THE LEGAL FRAMEWORK UNDER THE COMPANIES ACT 2013, SEBI REGULATIONS AND THE COMPETITION ACT 2002"

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TO WHOMSOEVER IT MAY CONCERN

This is to certify that Mr. Anirudra Mittal Enrolment No. A032134721116 Program Name BA L.L.B(G) Batch 2021-2026 of Amity Law School, Noida has completed his NTCC for the Academic Session 2025-26 under my guidance and submitted the Dissertation titled **"Mergers and Acquisitions in India: a critical analysis of the legal framework under the Companies act 2013, Sebi regulations and the Competition act 2002"** His plagiarism is 8% and AI score is 90 %.

His work has been submitted for further evaluation.

Faculty Supervisor:
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DECLARATION

I, Anirudra Mittal, hereby declare that the dissertation entitled "Mergers and Acquisitions in India: A Critical Analysis of the Legal Framework under the Companies Act 2013, SEBI Regulations and the Competition Act 2002" submitted to Amity Law School, Noida in partial fulfilment of the requirements for the degree of BA L.L.B is a record of original research work done by me during the period from 02nd March,2026 to 12th April, 2026 under the supervision of Dr. Santosh Kumar, Faculty Supervisor

I further certify that:

- I have not submitted this dissertation in full or in part for any other degree or diploma of this or any other university/institution.
- No part of this dissertation has been written for me by any other person, nor has any part been copied from any other work, except for brief quotations duly acknowledged.
- The research data, analysis, and interpretations presented here are my own and have not been plagiarized.
- This work complies with the ethical standards and guidelines for academic research, including proper citation of all sources.

I am fully aware that any violation of academic integrity will result in severe penalties, including disqualification.

Date: April 24, 2026

Signature: _____

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Enrollment No: A032134721116(2021-2026)

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My sincere thanks go to my family, especially my parents, for their endless patience, emotional support, and belief in my abilities during long hours of research and writing. Their sacrifices have been instrumental.

Finally, I acknowledge the broader academic community, including authors of secondary literature reviewed in Chapter 2, whose works on MA frameworks provided foundational insights.

This dissertation is dedicated to advancing scholarly understanding of India's evolving MA legal landscape.

Date: 24th April,2026

Signature of the Student: _____

Name of the Student: Anirudra Mittal

Enrolment No.: A032134721116

Table of cases

Case Name	Court/Tribunal	Year	Key Issue
Hindustan Lever Employees Union v. Hindustan Lever Ltd (HLL-TOMCO Merger)	Supreme Court	Pre-2013 (under 1956 Act)	Scheme fairness, valuation deference, employee protection, public interest review
Subhkam Ventures I Pvt Ltd v. SEBI	SAT	Post-2011	Definition of 'control' under SAST: positive vs. negative (veto rights)
NDTV-VCPL	SAT	Recent (post-2011)	Loans, warrants, options conferring control; negative rights insufficient for open offer
Sun Pharma-Ranbaxy	CCI	2014	Anti-competitive effects in pharma; structural remedies (divestitures)
Sony-Zee (Zee Entertainment v. Culver Max/Sony)	CCI/NCLT	Recent	Media concentration, market share in TV/advertising; remedies like channel divestitures
New Imperial Bank Ltd v. Kamani Oil Industries Ltd	(Referenced in Intro)	Historical	Example in MA discussion

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Abstract

In India, especially since liberalization, companies have increasingly used mergers and acquisitions (M&A) to grow, combine with others, and enter global markets. Because India got rid of the license system and slowly loosened rules on how much foreign money could be invested in different sectors, both Indian companies combining and international M&A deals became common. This has made India a key place for M&A in the Asia Pacific region. So, the laws around M&A have become complex, built on several layers of rules. These mainly come from three areas: the Companies Act of 2013; the rules for the stock market, managed by SEBI (like the 2011 Regulations for acquiring shares and takeovers, and the 2015 Regulations for listing and disclosures); and finally, the Competition Act of 2002 (with its updates), which gives the CCI the power to enforce merger control laws in India.

This paper looks closely at this three-part legal system, examining it from a critical, theoretical, and regulatory angle. When it comes to company law, this research will check Sections 230-234 of the Companies Act, 2013, along with the 2016 rules for compromises, arrangements, and amalgamations. It will also explore the NCLT's role in overseeing several types of company deals—like mergers, demergers, and international combinations—and consider if the current rules, voting requirements, and court reviews really protect minority shareholders and creditors without slowing down effective company restructuring. For securities law, we will look at SEBI's rules for takeovers and disclosures. We will specifically analyze what makes an 'open offer' necessary, how 'creeping acquisitions' work, and when exemptions apply. We will also dive into the often-debated idea of 'control,' drawing on important rulings from SAT and SEBI, including cases like Subhkam Ventures and NDTV – VCPL. Plus, the paper will explore how SEBI's initial review of these plans fits with the NCLT's final approval. Regarding Competition Law, the study will trace how India's merger control system has grown since it started in 2011, covering recent changes like the new deal value threshold, updated small deal exemptions, and the 'Green Channel' process. It will also critically review how the CCI has made decisions in particular industries, such as pharmaceuticals, cement, and media, looking at cases like Sun Pharma–Ranbaxy and the proposed Sony–Zee merger.

This paper takes a theoretical approach, meaning it interprets laws, analyzes court cases, and examines the M&A rules put out by SEBI and the CCI. It also draws on what academics and professionals have written about these subjects. The paper is divided into chapters covering: the basic ideas of M&A, how the Indian Companies Act Handles M&A, SEBI's regulations for M&A, merger control under the Competition Act, and how different regulators (SEBI, CCI,

and the Companies Act) sometimes overlap. Finally, it looks at M&A on an international level, focusing on the United Kingdom, the European Union, and the United States. As an example for discussion, consider the case of New Imperial Bank Ltd v Kamani Oil Industries Ltd.

This paper wraps up by suggesting specific changes that could make India's M&A laws better, such as: making the terms used in different laws consistent, aligning the timelines for M&A processes across all relevant laws, clearly defining what 'control' means, providing better ways for minority shareholders to exit, and improving the tools used to oversee mergers in the digital (internet) economy. These changes should make investors feel more confident about M&A deals in India and offer stronger protection for all involved parties and competitors.

Chapter 1 – Introduction

1.1 Background and Context

Many studies confirm that M&A happened even before India opened its economy, but M&A really took off in the Indian economy from the mid-1990s and through the 2000s. This surge came after substantial changes in government policies, especially in how industries operated, how capital markets worked, and rules for foreign investment. Looking at how many deals happened over time; experts have spotted three main phases of M&A in India. First, there was a period of companies joining forces, from 1991 to 1996. Then, from 1997 to 2002, more foreign companies bought Indian ones. After 2002, it became a time when Indian companies were doing more of the buying.

Changes to foreign direct investment (FDI) rules, especially through the Foreign Exchange Management Act of 1999 (FEMA), really helped shape how much M&A happened both into and out of India. These changes meant that for most industries, foreign investment no longer needed prior approval; it could go through an 'automatic route.' Also, limits on how much foreign money could enter certain sectors were slowly relaxed. Putting all the FDI rules into one main guideline, together with the government's push to make 'doing business easier,' has made cross-border deals clearer and more predictable, which is important. However, some areas like defense, telecoms, and financial services still have limits and checks on deals, showing there are still some restrictions when buying companies in these sensitive fields.

From a legal and administrative standpoint, setting up the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) in 2016 brought all the legal power over companies into one single place. Before this, many different bodies, like high courts, company registries, company boards, and other agencies, all managed legal matters for

companies and business activities. Now, it is all under one roof.

These two new bodies will significantly change how public M&A deals happen in the market. Meanwhile, India's main system for overseeing mergers started with the Competition Commission of India (CCI). This commission was set up in 2009 to make sure companies followed the merger rules in the Competition Act of 2002. The CCI has become quite advanced in how it oversees mergers. For example, it created a 'Green Channel' process for simple or non-problematic company mergers. It also set up a 'Deal Value Threshold' to make sure high-value deals in digital and tech sectors are reviewed.

Because of all these changes and how closely corporate restructuring is now regulated and widely used in India, the country is now an excellent place to study M&A law and analyze its policies.

1.2 Evolution of the legal framework for M&A in India

For a long time in India, there were specific laws about mergers and amalgamations, found in sections 391-394 of the Companies Act, which came out in 1956. The High Courts looked after these rules. They also worked with the Monopolies and Restrictive Trade Practices Act (MRTP Act), which was the law giving the Indian government the power to limit how big merging companies could get. If you look at records from the 1990s, like what academic studies and policy papers show, the merger process back then was mostly just following steps. It was slow because courts did not really know much about how companies restructure or the financial side of competition.

Then, the Companies Act of 2013 brought in a whole new way of handling mergers and amalgamations, changing how they happen in a big way:[1]

- The 2013 Act replaced those old sections (391-394) from the 1956 Act with new rules (Sections 230-240) about what merger plans should include.
- It also made it possible for mergers to happen across borders and to be fast-tracked (Section 230).
- Plus, the 2013 Act set up special courts, the National Company Law Tribunal (NCLT), and the National Company Law Appellate Tribunal (NCLAT), specifically for company-related issues.

Around the same time, the old MRTP Act was scrapped and a new law, the Competition Act

[1] Companies Act, 2013, No. 18, Acts of Parliament, 2013 (India). https://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf

2002, took its place. This new law stopped focusing on rules based on how big a company was. Instead, it looked at the 'effects' of company combinations to see how they truly impacted market competition. Rules for combinations, set by the Competition Commission of India, started in June 2011. They brought in a formal process that companies must follow for review. They also set clear standards, based on things like company earnings and assets, to decide when a merger needs to be reported to the Competition Commission. On top of these changes to the merger system, the merger rules themselves have been updated many times since the Competition Commission of India took over. The most recent substantial change to these merger rules happened in 2024, which tweaked the DVT and de minimis standards.

The SEBI Takeover Code changed a lot between 1997 and 2011, and it has been updated constantly. This happened because of several reasons, like India's economy opening, the capital markets growing, and arguments over open offers and shareholder rights. The 2011 SEBI Takeover Code then changed how many shares would trigger an open offer and how much that offer had to be. It brought India's takeover rules closer to what is done internationally. However, it also made things a bit trickier to understand when it came to open offers, shareholdings, indirect company purchases, and situations where you do not have to make an open offer.

So, because of all these complicated and connected laws, mergers and acquisitions in India now follow the Companies Act 2013, plus rules from SEBI, and the Competition Act 2002. Therefore, this research aims to look closely at how these linked rules apply to mergers and acquisitions in India, especially considering how global practices in this area have changed.

1.3 Importance of the Study and Problem Statement

Many studies have investigated the Indian M&A market, and they have seen that opening the economy has given Indian companies new ways to grow and stay competitive through mergers and acquisitions. The number of deals has really changed when economic rules shifted, when regulations became clearer, and as things changed worldwide. On top of that, India is making itself an attractive place for foreign money to come in (FDI) and is becoming important in international mergers and acquisitions. New rules recently put in place like making FDI easier, updating Competition Law, and setting rules for the digital economy—might affect how smoothly these deals happen.

In this paper, I will be looking at whether each law works well by itself, or if the Companies Act 2013, SEBI Regulations, and the Competition Act 2002 come together to make a clear, dependable, and fair system for M&A deals. More specifically, we need to think about the legal

situation right now:

- Does it help companies that need to merge, grow, or rearrange themselves do so quickly and smoothly?
- Does it protect everyone involved enough, especially smaller shareholders and people who own money, in a business world often run by the main founders?
- Can it keep competition strong and even help it grow in both goods and resource markets, especially in areas that are very concentrated or quickly moving online?

So, the big question for this research is whether all the complicated steps, rules that overlap, fuzzy definitions, and time pressures stop good deals from happening and allow people to find loopholes, or if they make things easier while offering less protection. Finding the right balance between making things easy and keeping people safe is an important part of what I am looking into. Several studies have investigated the Indian M&A market and found that liberalization has opened new avenues for Indian companies to use mergers and acquisitions to grow and stay competitive. The volume of deals has notably reacted to changes in economic policy, increased regulatory clarity, and shifts in the global landscape. Moreover, India is positioning itself as a prime destination for foreign direct investment (FDI) and a key player in cross-border M&A. Recent policy reforms—like FDI liberalization, amendments to Competition Law, and regulations around the digital economy—could influence how smoothly these transactions unfold.

1.4 Research Objectives

In this dissertation, I am going to look at a few main parts of Mergers and Acquisitions, or M&A:

1. **Companies Act/NCLT** - First, I will look closely at the Companies Act of 2013, focusing on Sections 230-234. These sections explain how companies manage compromises and arrangements during M&A. I will also check out what the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) do to oversee these setups, especially considering how things are valued and other key points.
2. **SEBI/Capital Markets** - Next, I will go over SEBI's SAST and LODR Regulations, which are especially important for publicly traded companies involved in M&A. I will discuss what exactly triggers an open offer, how 'creeping acquisitions' happen, what counts as 'control,' and when companies do not have to make a mandatory open offer.

We will also see what part SEBI plays in reviewing these plans. To make things clearer, I will mention some important legal cases too, like Subhkam Ventures and NDTV.

3. **Competition/CCI** - After that, I will break down the merger control rules in the Competition Act of 2002. This will involve looking at the different thresholds – like company assets, how much business they do, and DVT – that decide if the rules come into play. I will also dig into the 'de minimis' exemption, the 'Green Channel' process, and when the CCI completely stops mergers from happening. I will use big merger examples, such as Sun Pharma–Ranbaxy and Sony–Zee, to illustrate these points.
4. **Examining the Interplay Between Different Regulatory Approaches** - Then, I want to see how these different rulebooks connect or sometimes bump heads. I'll check out the overlaps and possible issues between: (a) the NCLT and SEBI when publicly traded companies arrange their deals; (b) SEBI and the Competition Commission of India (CCI) for public M&A; and (c) competition law itself, particularly when it comes to managing mergers, foreign investment (FDI), and rules for specific industries. On top of that, I will look at the costs involved with each of these regulatory systems and how much legal uncertainty can pop up when they all interact.
5. **Reform** - Finally, I will suggest some changes to improve the system. These ideas will come from looking at the core principles and how the institutions are structured. The aim is to make things more predictable, offer better protection for everyone involved, and get the three different regulatory bodies I have talked about to work together more smoothly.

1.5 Research Questions and Propositions

This research looks at four main questions:

1. How does the Companies Act 2013 and what the NCLT does affect how mergers and acquisitions are managed through these arrangement plans, making sure that both smaller shareholders and creditors are looked after, and at the same time, helping companies reorganize effectively?
2. How well does SEBI’s system for takeovers and sharing information manage to balance making control deals smoother with keeping regular shareholders protected? This has become a bit complex because the meaning of “control” itself is not always clear and is often debated.

3. How balanced and appropriate is the CCI's system for checking mergers, especially when we think about India's current market, particularly in the digital and data sectors, after the 2024 reforms?
4. What sorts of disagreements, overlaps, or missing pieces show up when these three different rule systems interact, and what impact do they have on how deals are structured, how long they take, and their overall cost?

   This paper does not evaluate specific ideas with hard data, but it does rest on two main points that I will dig into in the chapters to come:

   - India's rules for mergers and acquisitions, even if they line up with global standards, tend to be too focused on paperwork and not strong enough in key areas, like how 'control' is defined, what options smaller shareholders have, and how digital mergers are dealt with. Because of this, there is quite a bit of uncertainty that does not need to be there.
   - Getting the definitions, timelines, and the roles of different bodies straight across the Companies Act, SEBI regulations, and the Competition Act would really make deals more certain and offer better protection for everyone involved.

1.6 Methodology and sources

This study mostly uses a mix of doctrinal and analytical approaches, with a bit of comparative and policy analysis added in. Here is what we built it on:

- **Primary legal sources** - We looked at core laws, things like the Companies Act 2013, SEBI Act 1992, Competition Act 2002, FEMA 1999, and IBC 2016. We also checked various rules and regulations, including the CAA Rules 2016, SAST Regulations 2011, LODR Regulations 2015, and Combination Regulations from 2011 and 2024, plus important notices from RBI and FEMA.
- **Case law** - This means we reviewed decisions from the Supreme Court, High Courts, NCLT/NCLAT, and rulings from SEBI/SAT and CCI related to significant M&A disputes and approvals.
- **Secondary literature** - We delved into academic papers and research that talk about M&A trends, how it is regulated, and the big debates in legal theory. This included looking at M&A waves in India, analysis by sector, and ideas around control and reforms for managing mergers.

- **Practitioner commentary** - For this, we drew insights from reports by law firms and their practice guides. These reports summarize key legal and regulatory changes on the topics we just mentioned, particularly those related to DVTs, green channels, limits on foreign direct investment (FDI), and how SEBI looks at control.

The way we approached this study is more about interpretation than collecting new data. We did refer to some numbers on deal volumes and timelines from other studies to show examples, but we did not gather this data ourselves. Our main goal is to understand the logic behind legal concepts, how legal theories fit together, and why institutions are set up the way they are.

1.7 Scope and Limitations

This paper focuses on mergers and acquisitions in India, whether those deals are coming into the country, going out, or happening domestically. We look closely at three key laws: the Companies Act of 2013, the SEBI regulations, and the Competition Act of 2002. We have purposely left out some important topics, such as:

- What specific industry regulators, like the RBI for banks, IRDAI, and TRAI, affect M&A rules.
- Things like direct and indirect taxes, stamp duties, and other tax issues that can change how M&A deals are put together.
- The rules for private equity investments and contracts are too small to count as full takeovers or mergers.

This study has some limits. Mostly, that is because we had to rely on public documents. Also, there is not much hard data on how long it takes to get regulatory approvals. Plus, some of the reforms are new, like DVT, the Updated Combination Regulations (which started on September 1, 2020), and SEBI's latest advice on what 'control' means. Because of this, it is still too early to fully check and see how these new rules have really worked out.

1.8 Structure of dissertation

The dissertation is organized as follows:

- **Chapter II — Literature Review (Multiple sources):** This chapter looks at what different experts, both from universities and those working in the field, have said about Indian Mergers & Acquisitions (M&A) law. We will focus on who contributed most, what ideas keep coming up, and what we still do not know much about.

- **Chapter III — Conceptual and Theoretical Framework:** Here, we explain what mergers, acquisitions, and amalgamations mean. We also cover the various kinds of M&A deals that happen in India.
- **Chapter IV — Companies Act 2013 & NCLT:** In this section, we examine the parts of the Companies Act (specifically 230 to 234) that involve the NCLT, the National Company Law Tribunal. This includes looking at procedures for Scheme, Fast Track, and Cross Border mergers. We also review important court cases related to these and then share our assessment of the current company law set up.
- **Chapter V — SEBI Regulations and Public M&A:** This chapter explores how SEBI, the Securities and Exchange Board of India, keeps an eye on public M&A. This involves looking at their rules for "Substantial Acquisition of Shares and Takeovers" and "Listing Obligations and Disclosure Requirements." We will focus on things like what 'control' means, how open offers are done, and SEBI's part in signing off on and conducting various deal structures.
- **Chapter VI — Merger Control under the Competition Act 2002:** This chapter breaks down both the core rules and the specific steps involved in controlling mergers within India. We will look at important decisions from the CCI, the Competition Commission of India, along with the thresholds used for assessment, the Dominant Firm Threshold (DVT), 'green channel' procedures, and how foreign direct investment (FDI) and growth are assessed.
- **Chapter VII — Interplay & Regulatory Overlaps:** This section talks about how companies manage the tricky task of dealing with various regulators – like NCLT, SEBI, CCI, RBI, and others specific to their industry – during complicated M&A transactions.
- **Chapter VIII — Comparative Perspectives:** This chapter sets out to compare how M&A law works in the UK, the EU, and the US. We will use these places as a kind of yardstick for measuring Indian law, drawing on examples like the UK's scheme of arrangement, digital merger cases from the EU, the 'Revlon duties' often seen in the US, and American antitrust lawsuits.
- **Chapter IX — Findings & Reform Proposals:** This section brings together all the main points we have learned from the previous chapters. It then lays out our ideas for how to improve India's M&A system.

To put it simply, the main aim of this introductory chapter – which is a bit more detailed than

usual – is to properly set up the legal analysis that follows. It helps us understand it within a clear economic, institutional, and methodological structure.

Chapter 2 – Literature Review

2.1 Introduction

Over the last twenty years, there has been a lot more written about mergers and acquisitions (M&A) in India. This is mainly because M&A is now seen as a crucial way to do business, and because the rules around it have gotten much more complicated. India used to have a very controlled economy, but now it is more open and connected to the world. This substantial change has really made academics look closely at how well our laws keep up with the shifting business world.

When it comes to the rules, three substantial changes have really shaped what academics talk about here. First, the Companies Act of 2013 gave us a new, updated set of rules for how businesses operate. Second, the SEBI rules from 2011 (called the Substantial Acquisition of Shares and Takeovers Regulations) set out new ways to manage when one company takes control of another, and how to protect smaller shareholders in public companies. And finally, the Competition Act of 2002 got some new rules in 2011 for controlling mergers. These rules brought in an important system to check for competition issues before mergers happen, and this system is still being worked on today.

People have investigated this topic in lots of diverse ways, from just thinking about theories to doing actual research with data. But even with all that, the conversations often feel a bit scattered, and the three principal areas of study do not really connect much. So, in this chapter, we want to take a good look at what has already been written, arranging it into three big themes. We also want to find where these themes overlap and where there are still holes in what we know, which really shows why we need a new, joined-up approach.

2.2 M&A under the Companies Act 2013: Doctrinal and Critical Scholarship

2.2.1 Transition from the 1956 Act to the 2013 Framework

A big topic that often comes up in what has been written is how things changed from the Companies Act of 1956 to the one in 2013. Past studies have always described the old system, before 2013, as being extremely strict with its rules, relying a lot on court decisions, and taking a long time. They also noted that High Courts did not really have specific knowledge for complicated company restructuring cases.

The establishment of the National Company Law Tribunal (NCLT) was seen as a major shift

in how this framework was organized. Some research suggests that moving to the NCLT might help solve problems with how efficient and consistent things were. Yet, actual studies looking at how the NCLT operates show that even though it is clearly specialized in what it does, issues like a backlog of cases and maintaining consistency remain.

2.2.2 Scheme of Arrangement as a Flexible Restructuring Tool

Plenty of research highlights just how flexible these special company plans, known as "schemes of arrangement" (covered in sections 230-232 of the 2013 Act)[2], can be. Unlike simply buying shares, these plans offer an organized way to bring various parts of a company's reorganization together into one smooth process once the tribunal gives its approval. This flexibility is the main strength of a scheme of arrangement, especially for complicated group reorganizations. However, some critics point out that powerful shareholders might misuse this flexibility to avoid important rules, such as takeover laws.

2.2.3 Minority Shareholder Protection: A Persistent Concern

One of the important things people are talking about in legal writing right now is whether the Companies Act does enough to protect shareholders who do not own a controlling stake. Sure, the Act sets out rules for how many votes are needed and makes companies provide a statement explaining things. But critics say these steps are not enough, especially in companies run by promoters where the main shareholders can do whatever they want.

A big worry is that shareholders do not have a legal way to get their shares valued properly if they want to leave. This means they cannot just get out of the company and be paid a fair price for what they own. That is different from the United States, where shareholders do have that choice. Even though the National Company Law Tribunal is supposed to look over different company plans and decide if they are fair, it often just goes along with what the shareholders have already decided. That tendency only adds to the worries.

2.2.4 Valuation and Judicial Deference

We have also spent a lot of time looking at how much company valuations matter in mergers. Usually, courts are careful when they look at expert reports about a company's worth. They only step in if there's clear proof of fraud or something unfair happening. Even though this careful approach fits with standard business thinking, some people argue it makes things hard for shareholders who disagree.

Recently, studies have pointed out how important it is to have clear rules for how companies are valued. They also say we need more transparency in figuring out share exchange rates,

[2] Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

especially when the companies involved are connected.

2.2.5 Procedural Complexity and Regulatory Overlap

Even though the Companies Act lays out its ideas clearly, there are some real concerns about how things work in practice. All the different steps for approval, the vast number of notices you have to send, and having to listen to other groups like SEBI and CCI often turn the entire process into a long, difficult struggle.

So, it makes you wonder if we can really find a good balance between all these rules and getting things done fast, given how the system is set up right now.

2.3 SEBI's Takeover and Disclosure Regime: Control, Open Offers and Minority Protection

People who write about SEBI's SAST Regulations from 2011[3] usually focus on two main things. One part looks at how these new rules came to be, tracing their history from the 1997 version to the one we have now from 2011. The other part talks about what 'control' means and how that idea impacts things like open offers and setting up business deals.

Right after the 2011 rules came out, early writers explained the main points of this new system. They talked about vital details, such as when open offers are triggered (like owning 25% or buying 5% more shares each year), how open offers need to be at least 26% of a company, and when you must tell everyone about your holdings (starting at 5% and up). They also covered the rules for making things public and how payments work. These discussions highlighted that smaller shareholders were getting better protection, giving them a stronger way to sell their shares if they wanted to.

Later, people started looking closely at how 'control' is defined, which can be tricky. A lot of these articles look at what 'control' means under both the Companies Act of 2013 and the 2011 SAST Regulations. This definition often includes being able to pick most of the directors or having a say in how the company is run and what decisions it makes, whether that is directly, through owning shares, or through other agreements. They also mention big cases like Subhkam Ventures, where SEBI and SAT did not agree on whether having a lot of veto power counted as 'control.' Other big arguments came up in cases like Jet-Etihad, NDTV, and L&T-Mindtree.

For example, there is an article called "Interpretation of 'Control' under SEBI Takeover

[3] Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (India). https://www.sebi.gov.in/legal/regulations/oct-2024/sebi-substantial-acquisition-of-shares-and-takeovers-regulations-2011-last-amended-on-october-07-2024-*88181.html*

Regulations."[4] It points out a key difference between having the 'power to command' and the 'power to prevent' certain things. The 'power to command' is like positive control, where an open offer should automatically happen. The 'power to prevent' is often seen as negative control, which is usually just there to protect an investor. But this view is different from how SEBI sees control. SEBI laid out its broader ideas in a 2017 Discussion Paper on the Takeover Code and a related Press Release. These papers mention earlier reports, like the Justice Bhagwati Committee Report and the TRAC Report, both of which suggested that defining control should be more flexible and looked at case-by-case.

More recent articles, like "When Does SEBI SAST Get Triggered? Key Case Laws," sum up all these talks for lawyers who put deals together. They give examples from recent big deals, such as the L&T/Mindtree and Jet/Etihad cases, to show how certain rights written into Shareholder Agreements can make a smaller investment turn into actual control. This then forces a mandatory open offer. These articles really highlight that regulators and courts are now moving away from just counting percentages to decide control, and instead looking at all the rights involved. This change has made deal-making a bit less certain, but it might also give better protection to smaller shareholders.

When it comes to telling everyone about things, there has been a lot of talk about the LODR Regulations. Specifically, people are discussing how the definition of a "material event" – something you must disclose under Regulation 30 – has gotten broader. This now covers things like signing share purchase agreements, when boards approve mergers or demergers, and other special arrangements. SEBI has also been strict about requiring stock exchange approval for these kinds of arrangements when they involve companies listed on the market.

So, to sum it up, the writings about SEBI have changed. They started by just explaining the basic rules of the 2011 Code, but now they dive into tougher ongoing issues. These are about what 'control' means, how broad open offers should be, and how company law and securities law fit together. The general feeling is that even though smaller shareholders are better protected now, it has become a bit harder for bigger, more experienced investors to predict how things will play out.

2.4 Merger Control under Competition Act 2002: From Basic Framework to Green Channel and DVT

[4] Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, Gazette of India, Noti. No. LAD-NRO/GN/2011-12/24/19978, Sept. 23, 2011.

Early academic papers show how the rules for mergers changed, starting from a basic "threshold-based" way to a more complex system that now includes "Green Channel" and "DVT" reforms. You can find this explained in law journals, like articles that discuss "India's Regulatory Framework of Mergers and Amalgamation." These early writings pointed out that the 2002 Competition Act[5] brought in a process to check "combinations" beforehand. The goal was to stop them from causing any "appreciable adverse" effects on competition. The articles also talked about how important thresholds and the "de minimis" exemption were; these helped focus the rules on "really big" "combinations." Plus, they mentioned that the system was compulsory and put things on hold, meaning "combinations" could not be finalized until the CCI gave its approval.

More recent studies, including international practice guides and Indian law reviews, are now looking at the substantial changes to these rules that happened in 2024-2025. Publications like Chambers' Merger Control 2025—India, along with similar comments, really get into this "overhaul." It features a "three-part" test to decide if a merger falls under the rules, looking at "assets," "turnover," and "DVT." They explain the "de minimis" exemption, where "assets" should not be more than "INR 450 crore" or "turnover" should not be more than "INR 1,250 crore." The rules are still mandatory and put things on hold, with a deadline of 150 days. The "DVT" test for "INR 2,000 crore" is especially for "high value" "digital" "technology" deals that might have "lower" "turnover." Also, what counts as "substantial business operations" in India is decided by different things, like "turnover," "Gross Merchandise Value," and the "User Base."

Experts and academics have really been studying the Green Channel route. This option first appeared in 2019 and is now official in the Competition (Amendment) Act and the 2024 Combination Regulations. In papers like "Merger Control in Developing Nations: Is Green Channel Taking India Through the Correct Road?" they say the Green Channel helps make business smoother because it automatically clears deals that do not overlap. But they also point out that you must judge things yourself. The problem is that people are not using this option as much as they could. They worry it might be cancelled later or that they will get penalized if they misjudge overlaps.

Other research, such as "Acquirers Beware: Indian Merger Control Regime Revamped," gives a full picture of recent changes. It highlights not just that DVT and the Green Channel are now

[5] Competition Act, 2002, No. 12, Acts of Parliament, 2002 (India). https://www.cci.gov.in/images/antitrustorder/en/competition-act-2002.pdf

official, but also updates to what "control" means, new "safe harbors," and how overlaps are looked at. It warns companies buying others to think again about how they report their deals. This is especially true for buying smaller stakes or for international deals that involve digital stuff or user numbers in India.

Finally, many people, both those who work in the field and academics, look at important decisions the CCI has made. They check out different industries, like cement, drugs, and media, to see how the CCI uses its "AAEC" rules, what solutions it produces, and how it works with other regulators. Everyone agrees the CCI has been helpful, approving most deals in the first phase. However, how it deals with mergers involving digital and data companies is still figuring out.

2.5 Cross-Cutting and Comparative Literature

Many papers talk about how company law, SEBI rules, and competition law connect. They often describe this as the 'Regulatory Framework of Mergers and Amalgamation in India' or simply the 'M&A Legal Framework in India.' These writings really explore how these different legal areas interact when companies merge or combine.

Comparative studies often line up India's legal system next to those in the UK, EU, and US. They show that while there are similarities, like how mergers get reviewed or how takeovers are managed with open offers, there are also big differences. These include how much courts are involved, what appraisal rights people have, and how common hostile takeovers are. Some papers suggest India is getting closer to international best practices. But it still leans more on getting approval from agencies ahead of time, unlike the US where problems are often sorted out later through lawsuits and private legal actions.

Then there are also writings that dig into big mergers, like the Vodafone–Idea telecom company coming together. They use these as real-world examples to see how the rules from the Companies Act, SEBI, and CCI work when everything is combined. Most people agree that how these deals turn out depends on a mix of legal and money-related issues specific to that industry.

2.6 Identified Gaps and Justification for the Present Study

Even though more studies are coming out about this topic, we still need to look at some key things that have not been covered well:

1. **How the three principal areas work together:** Most of what has been written so far often keeps things separate. It usually focuses on either the Companies Act rules,

SEBI's rules about control and open offers, or the CCI's checks on mergers. We do not have many studies that really bring these different systems together to see how they all play out during one complete deal.

2. **Protecting smaller shareholders in diverse types of deals:** People talk a lot about 'control' under SAST rules. But surprisingly, there is not much deep analysis about what happens to minority shareholders when a deal is set up as an NCLT scheme, rather than just buying shares directly. Also, we need to look more closely at how SEBI and NCLT both work to protect these shareholders.
3. **Changes after 2024 for DVT and Green Channel:** Most of what has been written about DVT and the new Green Channel rules is aimed at people working in the field, and it mostly just describes things. Academic studies looking at how these changes affect how many deals happen, how much paperwork companies face, and what they mean for competition in India are still very new.
4. **Digital and data-focused mergers and acquisitions in different systems:** Even though some articles talk about digital mergers in competition law, we do not have much thorough work that looks at digital and platform-based M&A. This work should also consider SEBI's rules for sharing information (like in tech company listings), NCLT schemes (such as splitting off parts of a company or combining them), and the changing rules from the CCI.
5. **Real numbers on how long things take and how much they cost:** A lot of the current writing focuses on legal theories or specific cases. There is not much research using actual numbers or data to show how long approvals truly take, how often conditions are put in place, and what the transaction costs are when looking at company law, SEBI, and CCI rules together.

   This paper plans to address these missing pieces. It will do this by bringing together the legal theories and policy talks about the Companies Act 2013, SEBI rules, and the Competition Act 2002 into one clear framework. It will especially look at where these areas overlap, what order things happen in, and the overall impact of recent changes like cross-border mergers, how control is viewed legally, and the DVT/Green Channel on mergers and acquisitions in India.

2.7 Concluding Observations

India's M&A landscape is lively and always changing, thanks to new rules, market shifts, and global events. Even though the legal system has gotten a good refresh, there are still big

challenges to make sure everything is clear, predictable, and truly safeguards everyone's interests.

This review just starts to set things up for looking into it more deeply later. It puts our main point in context with what is already out there, and it flags places where we need more information, and quickly.

Chapter 3 – Conceptual and Theoretical Framework

3.1 Defining Mergers, Amalgamations and Acquisitions

No clear legal meaning for "merger" or "amalgamation" appears in the 2013 Companies Act. Still, sections 230 to 232 work like rules where some firms pass on their holdings while others take them over. Business shifts happen - along with everything tied to it - once a Tribunal signs off on the arrangement. Over time, Indian courts have seen such deals as joining separate entities into a single unit. One firm might swallow another, or something fresh pops up instead. Still, "acquisition" covers more ground - it means buying shares, gaining voting influence, investing capital, taking over assets, or grabbing part of a firm. Such moves might give the new owner light oversight or full sway. What matters under SEBI's SAST rules? Snagging equity stakes, decision-making influence, or dominance in listed firms. Meanwhile, India's 2002 Competition Act pulls mergers, takeovers, and corporate blends into one bucket called "combination," but only if asset size, income numbers, or enterprise worth cross set limits.

3.2 Types of M&A Transactions in India

When it comes to corporate finance, there are a few classification systems that help us understand the several types of mergers out there. We can group mergers into four main categories: horizontal, vertical, conglomerate, and some hybrids like market extension and product extension mergers.

- **Horizontal Merger:** This type involves two companies that are in the same industry and operate at the same level of the value chain. Think of two cement manufacturers or two media companies. These are often direct competitors looking to boost their market share, achieve greater economies of scale, and reduce competition.
- **Vertical Merger:** Here, we see firms at distinct stages of the supply chain coming together. For example, a manufacturer teaming up with a supplier or a content producer joining forces with a distributor. The goal is usually to secure a steady supply of materials, enhance coordination, or capture more value within the supply chain.
- **Conglomerate Merger:** This involves companies that operate in completely unrelated markets or businesses. Conglomerate mergers can be further divided into pure or mixed

categories, depending on whether there are any indirect complements between the merging parties.

- **Market Extension Merger:** This is when two firms that produce related products but serve different geographic areas decide to merge. On the other hand, a Product Extension Merger occurs when two companies sell assorted products that complement each other for the same customer base.

While Indian law does not specifically define these categories for merger control or sector-specific regulatory reviews, understanding them is crucial. For horizontal mergers, the Competition Commission of India (CCI) is likely to be concerned about the market power of the newly merged entity. In the case of vertical mergers, the CCI may worry about the potential for foreclosing customers or suppliers.

Table 1: Key Structuring Routes in Indian M&A

Route	Legal Basis	Typical Use Case
NCLT scheme of arrangement	Companies Act 2013 ss. 230–232	Large-scale mergers, demergers, group restructuring
Fast-track merger	s. 233 + CAA Rules	Intra-group, small companies
Cross-border merger	s. 234 + FEMA/FDI rules	Inbound/outbound group rationalization
Contractual share acquisition	Companies Act, SAST, LODR	Listed/unlisted control or minority investments
Asset/business slump sale	Companies Act, contract, stamp, CCI	Carveouts, sale of undertakings

3.3 Economic Rationale and Theories of M&A

According to research in economics, there are several reasons why a firm might pursue mergers and acquisitions (M&A). These include synergistic benefits like economies of scale and scope, increased market power, vertical integration for supply chain advantages, diversification, and gaining access to technological resources or well-known brand names. Additionally, some companies look to acquire firms in emerging markets, such as India, as it offers them a quick way to enter the market, streamline their operations with the acquired company, and tap into existing distribution networks.

While these aspects of M&A can be appealing, agency theory cautions that some managers might try to build "empires" or become overly confident, leading them to engage in M&A deals that could destroy value or harm consumer welfare due to heightened market concentration.

This underlying tension highlights the necessity for a robust regulatory framework.

3.3.1 Constructive Collaboration and Efficiency Theories

The theory of constructive collaboration suggests that when two companies come together, they can create more value than if they were operating separately. This happens because they can achieve efficiencies—known as synergies—by merging or acquiring assets. There are two main types of synergies: operational and financial.

Operational synergies involve things like economies of scale, where fixed costs can be spread over a larger volume of sales, and economies of scope, which allow companies to share distribution channels or research and development efforts. They also include better use of productive capacity. On the other hand, financial synergies are about lowering capital costs—like how diversifying cash flows can reduce overall risk—and make better use of debt capacity, along with improving efficiencies in the capital markets.

The efficiency theory of mergers and acquisitions (M&A) aligns with the constructive collaboration theory but focuses more on how the acquiring company can manage the target company's assets more effectively. This management can lead to additional value for both companies involved in the merger. Additionally, managers can boost shareholder value by taking over poorly run companies and applying better management practices or expertise.

From a policy perspective, both the constructive collaboration and efficiency theories advocate for a permissive stance on mergers and acquisitions, if there are proper controls in place to prevent the abuse of market power.

3.3.2 Market-Power and Monopoly Theories

The Market Power Theory of merger control suggests that certain mergers, particularly horizontal ones, can lead to greater market concentration. This often means less competition, which can give companies the power to hike prices or slow down innovation through aggressive tactics. After a merger, a combined entity might increase prices or cut back on innovation without significantly impacting on the overall revenue that the former competitors used to earn separately.

Antitrust agencies, like the CCI, are particularly concerned about these potential outcomes in already concentrated markets such as cement, telecommunications, and media. They evaluate the impact on competition in these sectors by applying the AAEC test to determine whether a proposed merger should be allowed to go through. This theory serves as a key foundation for justifying ex ante merger control regimes.

3.3.3 Diversification and Risk-Reduction Theories

According to Diversification Theory, when two companies merge, especially if one is a conglomerate or operates across different sectors, they create a setup where their businesses are not related. This can help them lower earnings volatility and stabilize cash flow by reducing risk. However, critics point out that if shareholders can easily build a diversified portfolio in the market at a low cost, it raises the question of whether corporate-level diversification is about maximizing shareholder value or if it is more about the interests of the managers.

In India, family-controlled conglomerates often engage in mergers and acquisitions through various strategies, but the complex structures of some companies can make it tough for shareholders and other businesses to distinguish between using M&A to spread risk and simply to expand their own empires.

3.3.4 Strategic Realignment and Resource-Based Theories

The strategic realignment theory behind mergers and acquisitions (M&As) suggests that companies need to adapt and reposition themselves in response to factors like technological advancements, deregulation, globalization, or other disruptions that make their previous business models outdated. By acquiring innovative companies and complementary resources, firms can develop new capabilities much faster than if they were to grow organically.

On a related note, resource-based theories of M&A indicate that companies pursue acquisitions to gain valuable resources that can give them a competitive edge, such as intellectual property, brand names, skilled personnel, and distribution networks that are hard to build through organic growth. For instance, Indian IT and pharmaceutical companies have successfully acquired brand names, research and development processes, and client relationships through outbound acquisitions from developed nations. Meanwhile, foreign businesses have engaged in inbound M&A in India to tap into its consumer market and benefit from cost-effective manufacturing.

3.3.5 Hubris and Behavioral Theories

Not every merger or acquisition led to a boost in value. According to Roll's Hubris Theory and insights from Behavioral Finance, overconfident managers often underestimate the challenges of integration. This overconfidence can lead them to overrate potential synergies, making them more likely to pay too much for acquisitions. Numerous empirical studies across different regions show that shareholders in acquiring firms typically see neutral or even negative abnormal returns on average when they sell their shares right after the merger or acquisition is announced. This suggests that executive overconfidence and the so-called "biological winner's curse" are common in M&A deals.

These theories highlight the importance of shareholder oversight, independent board supervision, and full disclosure in M&A transactions, especially when it comes to major or transformational deals.

3.3.6 Agency and Free-Cash-Flow Theories

Agency theory dives into the conflicts that can arise between managers (the agents) and shareholders (the principals). According to Jensen's theory of free cash flow, when companies have a lot of cash on hand, managers often prefer to make acquisitions—buying other companies—to expand their influence, rather than returning that extra cash to shareholders. This behavior allows managers to grow their power, along with their salaries and status.

As a result, M&A activities tied to agency issues can lead to value-destroying situations. A prime example of this is the "market for corporate control," which suggests that underperforming managers might be ousted if a hostile acquirer takes over their company. The underlying idea is that hostile takeovers serve as a mechanism to hold managers accountable and cut down on agency costs. However, if there are defenses against takeovers, concentrated ownership, or stringent regulations (like overly restrictive open offer procedures) that block hostile takeovers, the market's ability to keep managers in check is diminished. This concern is especially relevant in promoter-driven markets, such as India.

3.3.7 Short Summary

A recent study outlines that the main theories behind mergers and acquisitions (M&A) can be boiled down to a few key concepts: market power, efficiency, resource-based views, agency issues, hubris, cash flow, constructive collaboration, and diversification. Each of these theories sheds light on different motivations and, as a result, leads to varying outcomes from a welfare standpoint. Therefore, it is crucial that the legal frameworks governing M&A are designed to:

- Encourage transactions that are advantageous and boost efficiency; and
- Prevent or halt mergers that could destroy value, stem from agency problems, or create monopolistic situations.

3.4 Corporate-Governance and Stakeholder Perspectives

3.4.1 Shareholder-Primacy vs Stakeholder Models

The traditional view of corporate governance has drawn a clear line between two models: shareholder primacy, where the board's main job is to boost shareholder wealth, and the stakeholder model, which focuses on balancing the interests of various groups like employees,

creditors, customers, communities, and the environment.

When it comes to shareholder primacy—especially the model that is most recognized and applied under Delaware and US law—mergers and acquisitions (M&A) are often discussed in terms of a Revlon duty. This duty requires the board of directors to aim for the highest sale price during a change of control transaction. On the other side, in a stakeholder-oriented system, like those found in some European countries and developing nations, boards are expected to take a broader view, considering the impacts of transactions on employees, communities, and industrial policies.

In India, corporate law and securities regulation take a mixed approach:

- Legally, directors owe a fiduciary duty to the company, but the Companies Act of 2013 emphasizes mandatory stakeholder reporting and corporate social responsibility, which leans a bit more towards stakeholder interests.[6]
- For M&A deals involving Indian companies, both the National Company Law Tribunal (NCLT) and the Securities and Exchange Board of India (SEBI) primarily focus on fairness for both shareholders and creditors. Employees and other stakeholders are offered more indirect protection through legal safeguards related to the scheme and labor laws.

3.4.2 Market for Corporate Control and Discipline

In his exploration of the corporate control market, Manne highlights how takeovers serve to weed out poorly managed companies and generate economic value by shifting capital from those that cannot or will not use it effectively to those that can.

However, Manne's model does not fit the Indian landscape for a few reasons:

- According to his theory, a hostile takeover signals that a company is underperforming and could be managed better; thus, the market for corporate control encourages current management to step up or risk being replaced by an acquirer.
- In India, though, the prevalence of concentrated promoter holdings, staggered boards, and a deep-rooted cultural aversion to hostile takeovers historically hampers the effectiveness of this market mechanism.

[6] Companies Act, 2013, No. 18, Acts of Parliament, 2013 (India). https://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf

Even with the 2011 SAST Regulations from SEBI that raised the size of offers and the threshold for tender offers, there are still hurdles to executing a full hostile takeover, which diminishes the disciplinary aspect of agency theory in relation to the takeover market.

3.4.3 Stakeholder Theory and M&A

Stakeholder theory suggests that a company's legitimacy and value are not about the profits it brings to shareholders. Instead, it is also about how well the company nurtures its relationships with all its stakeholders—this includes employees, creditors, regulators, communities, and others. When it comes to mergers and acquisitions (M&A) and the role of stakeholders, research highlights a few key points:

- Opposition from employees and unions can derail a deal or force significant changes, especially if the deal threatens jobs or leads to relocations.
- Creditors have the power to impose covenants or influence the terms of restructuring.
- Regulators and community groups can voice public interest concerns about M&A activities, particularly in sectors like infrastructure, natural resources, and media.
- Competition regulators need to consider the potential impact on consumers when assessing M&A transactions in markets that are already concentrated.

In India, we can observe some stakeholder-focused dynamics:

(1) The National Company Law Tribunal (NCLT) considers employee protection provisions and any objections raised during schemes.

(2) The Securities and Exchange Board of India (SEBI)[7] mandates that companies disclose how M&A will affect employees, promoters, and public shareholders.

(3) The Competition Commission of India (CCI) will scrutinize the potential harm to consumers when reviewing M&A deals in concentrated sectors.

3.5 Corporate Governance and the Market for Corporate Control

According to the "market for corporate control" theory, corporate takeovers can serve to hold underperforming managers accountable by bringing in more effective leaders from the acquiring company. In India, however, the landscape is a bit different. With concentrated promoter shareholdings, family-run business groups, and cross-shareholdings, most takeover deals tend to be negotiated rather than hostile.

The regulations set by SEBI, like the SAST and LODR, aim to safeguard minority shareholders through mandatory open offers and transparency. Yet, the hefty requirements for open offers

[7] SEBI Act, *No. 15* of 1992 (India).

in India, combined with concentrated control, might unintentionally weaken the market for corporate control, and diminish the governance advantages that could come from pursuing a hostile takeover.

3.6 Overview Diagram – Choice of Legal Route

Diagram 1: High-Level Route Selection in Indian M&A (Text Flow)

- **Step One - Determine Your Objective**: You Will Have Four Options: (a) Full Control (b) Partial Stake (C) Sell A Business Unit (d) Group Reorganize.
- **Step Two -** Determine If the Transaction Would Be A 'Public' Or 'Private' Transaction and Whether There Are Foreign Parties Involved.
- **Step Three -** Select the Route You Will Take:
- Use Sections 230-232 Or Fast Track Section 233 To Restructure If the Deal Is Complex or Multiple Steps.
- If You Are Buying an Easy Stake Purchase, Use A Simple Share Purchase.
- If You Are Carving a Business (Or the Asset) Out Use an Asset or Business Slump Sale.
- If The Deal Is for Global Integration Use Sections 234 To Cross Border Merge.
- **Step Four -** Confirm That You Meet Trigger Events Under: Companies Act (NCLT), SEBI (SAST/LODR), CCI (Combination), RBI/FEMA, Country Sector Regulators.
- **Step Five -** Make Sure You Are Looking for The Best Taxation and Stamp Duty Costs, The Best Timing, And the Best Stakeholder Approvals Possible.

3.7 Synthesis: Implications for the Indian M&A Legal Framework

The theoretical and conceptual frameworks we have discussed earlier have significant implications for how we evaluate and design mergers and acquisitions laws in India. Here are some key points to consider:

- When there are effective remedies in place to prevent anti-competitive effects and protect minority interests, efficiencies and synergies support a more permissive approach to corporate law and merger supervision.
- The rationale behind ex ante merger supervision and the scrutiny of horizontal mergers in concentrated industries is rooted in the ability to exert market power.
- The agency theory, cash flow free theory, and hubris theory all advocate for a more thorough review by shareholders and regulators of significant or related party

transactions. This includes requirements for open offers, board processes, and fairness opinions.

- Stakeholder theory pushes us to consider the impact on employees, creditors, and consumers. This is reflected in the "public interest" review conducted by the NCLT, the disclosure requirements set by SEBI, and the AAEC test applied by the CCI.
- The doctrines of control and minority protection are tied to these economic theories, helping to define when regulators should step in (like in SAST triggers) and when courts or tribunals should either challenge or defer to business decisions.

The upcoming chapters will delve into the Companies Act 2013, SEBI regulations, and the Competition Act 2002, all through the lens of these theoretical frameworks. Our goal is to assess whether they establish a mergers and acquisitions framework that effectively balances efficiency, fairness, and competition within the Indian context.

Chapter 4 – M&A under the Companies Act 2013

4.1 Statutory Architecture: Sections 230–240 and CAA Rules

[8]The Companies Act of 2013 includes sections 230 to 240, which bring together rules for Compromises, Arrangements, Mergers, Amalgamations, Reconstruction, and related topics. Section 230 lays out a framework for reaching a compromise or arrangement between a Company and its Creditors or Members. Section 231 gives the NCLT the authority to oversee and adjust approved schemes. Section 232 details the specific rules for mergers and amalgamations. Section 233 introduces a fast-track process. Section 234 facilitates cross-border mergers. Finally, sections 235 to 240 address matters concerning the buyout of minority shareholders, among other things.

[8] Companies Act, 2013, No. 18, Acts of Parliament, 2013 (India). https://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf

The Companies (Compromises, Arrangements and Amalgamations) Rules 2016 (CAA Rules) outline the procedures for Applications, Notices, Meetings, Valuations, Fast Track Mergers, and Cross Border Mergers. Notably, the NCLT has taken over from the High Court as the main authority for approving these schemes.

4.2 Detailed Procedure for NCLT Schemes

The main steps in a merger/amalgamation scheme as per sections 230 - 232 A typical merger/amalgamation scheme follows the following steps:

Diagram 2: NCLT Scheme of Arrangement Process (Text):

1. Board Approval

- Draft Scheme is prepared after consultation with legal, financial and tax advisors.
- Scheme is approved and filed by the Board of Directors of each company.

2. First Motion- Application to NCLT

- Application is made to the NCLT under ss. 230-232 requesting directives on how to proceed with calling meetings (if necessary).
- Documents to be attached to the application include scheme of arrangement, audited financial statements, valuation reports, auditors' certificate on the accounting treatment, list of creditors and other relevant material.

3. NCLT Directions for Meeting

- Tribunal will decide classes of creditors and members and will establish how the meetings will be held (in person or electronically) and will appoint a chairman/scrutineer for the meeting.

4. Notice, advertisement, and Regulatory Notice

- Meeting notices to be sent to members and creditors; meeting notice to be advertised in at least one newspaper; regulatory authorities (i.e., ROC, Official Liquidator, Income Tax Authority, Sectoral Regulators) to be notified; (other more detailed, e.g. explanatory statements disclosing rationale, material terms and effect of scheme, interest of the directors)

5. Meeting and Voting

- All classes of creditors and members will meet, and each class will vote on the approval of the scheme - approval will be based on three-fourths of those members present and voting at their respective meetings.

6. Second Motion- Petition for Confirmation

- Filing of Chairperson's report, regulatory response, petition seeking confirmation.

- The NCLT will convene a hearing, consider objections, decide if the arrangement is fair and legal, etc.

7. Confirmation and Filing

- The NCLT may confirm with or without modifications, and an order of the NCLT will be filed with the ROC and shall be binding on the parties as of the "effective date."

Recent NCLT decisions have addressed issues such as retrospective appointed dates, conditions precedent and dispensation of meetings where 100% consent sworn statements are obtained.

4.3 Fast-Track Mergers under Section 233

The fast-track procedure for eligible mergers is outlined in Section 233 of the Companies Act, 2013. This includes:

- Mergers of two or more small companies, as defined by the Act.
- A holding company merging with its wholly owned subsidiary.
- Certain start-ups and small companies, as amended.

Here are some key features of this process:

- If there are no objections from the ROC/OL and both members and creditors approve of the amalgamation scheme with the required majorities, no hearing at the NCLT is needed.
- Each merging company must provide a declaration of solvency.
- The merging companies need to submit their amalgamation scheme to the Central Government, where the Regional Director can refer the matter to the NCLT if they believe the scheme goes against public interest.

Experts have noted that this route is not used as much as it could be for two main reasons: the eligibility criteria are quite strict, and there are still multiple authorities involved. As a result, the process does not really save much time compared to a standard amalgamation scheme.

4.4 Cross-Border Mergers under Section 234

Mergers and partnerships between Indian companies and those from abroad are allowed under section 234, if they get the green light from the Central Government. But remember, all transactions need to follow sections 230-232 and must be approved beforehand by the Reserve Bank of India (RBI).

Thanks to section 25A of the CAA Rules and the relevant regulations under the FEMA Act[9], companies can buy shares in Indian firms through either an inbound merger (where foreign

[9] Foreign Exchange Management Act, *No. 42* of 1999 (India).

firms merge into Indian ones) or an outbound merger (where Indian firms merge into foreign ones). Outbound mergers come with their own set of rules, especially concerning the residency of all parties involved, adherence to anti-money laundering laws, and compliance with foreign exchange regulations.

Cross-border mergers open exciting opportunities for global companies to reorganize their operations and shift their headquarters internationally. However, they do require a lot of coordination among corporate, foreign exchange, tax, and regulatory bodies.

4.5 Critical Analysis of Companies Act Framework

The NCLT has its fair share of strengths. To start, it boasts a solid statutory framework for tackling complex schemes like mergers, demergers, and capital reductions, thanks to sections 230 to 234, which offer a modern, codified approach. Additionally, it serves as a specialized corporate law forum, potentially leading to more consistent decision-making compared to what we had under the High Court. Finally, schemes of arrangement can facilitate multiple steps in restructuring—like mergers, demergers, and capital reorganizations—allowing for a smoother transaction process than if we were to juggle several separate transactions.

However, the NCLT is not without its weaknesses and concerns. The multi-stage nature of its proceedings, the necessity for numerous extensive notices, and the need for various approvals from entities like SEBI, CCI, RBI, and other sector regulators can lead to significant delays, both in time and cost, when completing a transaction. Moreover, the NCLT does not provide dissenting shareholders with a general codified appraisal right regarding mergers, which means there are limited protections for minority interests. The safeguarding of these interests relies on the fairness determinations made by the NCLT, and for listed companies, some protection may also come from the SEBI framework.

There is also a noticeable lack of consistency in NCLT jurisprudence, creating uncertainty for those planning transactions. For instance, different benches of the NCLT may not agree on the same appointed date and might apply varying tests to determine what counts as sufficient justification for not holding meetings or the standards for reviewing valuation reports. Lastly, the criteria for utilizing the fast-track process under section 233(2) are quite restrictive, and there is still a level of administrative oversight for transactions intended to be processed quickly, making this option less appealing for those seeking relief from the NCLT's backlog of cases.

Table 2: Summary of Companies Act 2013 M&A Routes

Route	Forum	Key Advantages	Key Issues

Ordinary scheme	NCLT	Flexible, binding on all stakeholders	Time-consuming, litigation risk
Fast-track merger	RD (Govt)	Potential speed, reduced NCLT burden	Narrow scope, procedural complexity
Cross-border merger	NCLT + RBI	Enables global restructuring	Multi-regulator complexity, tax issues

4.6 Recent NCLT Trends: From Procedural Scrutiny to Substantive Review

Before 2013, the NCLT focused on making sure that procedural steps for proposed schemes were followed—like notifying the right parties, holding Class Meetings, and putting together Statutory Reports. They typically leaned towards siding with most shareholders. However, recent cases show a shift towards a more in-depth examination of the actual merits behind business restructuring proposals, considering the ultimate goals of the business and the public interest at stake.

Take, for instance, a rule from the NCLT Mumbai Bench in 2024. In this case, the Tribunal considered the appointment date, Board approvals, reports from the Official Liquidator and Registrar, as well as comments from the Income Tax department before concluding that the restructuring scheme was "fair and reasonable" and compliant with the law. Some experts argue that in recent rulings, the NCLT has gone even further, rejecting or scrutinizing proposed restructuring plans based on negative assessments from agencies like the Ministry of Corporate Affairs and the Income Tax Department, particularly when it seems like restructuring is being used to dodge taxes or gain an unfair regulatory edge.

A thorough review by practitioners of a 2024 denial from the NCLT Ahmedabad Bench emphasizes that the NCLT is not just about following formal rules. They also need to assess whether the reasons behind a restructuring scheme align with genuine business goals, whether the scheme serves the "society," and whether it is just superficial "exercise" in paperwork to maintain corporate appearances. This analysis highlights several recent NCLT rulings that adopt a broader interpretation of public interest compared to what was seen in the Hindustan Lever case, tightening the options available to promoters for achieving corporate restructuring.

4.7 NCLT's Role in the Wider Corporate-Restructuring Ecosystem

The National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) have truly transformed our perspective on corporate restructuring. They have done this by granting themselves broader powers and authority over Schemes of Arrangement, as well as handling issues related to oppression, mismanagement, and insolvency or bankruptcy. There has been a noticeable shift in how people view the NCLT, which is now widely seen as a "central institution for corporate governance and insolvency." Hundreds of companies have gained significant economic value through resolution plans that were submitted to and approved by the NCLT under the Insolvency and Bankruptcy Code (IBC).

However, these changes have led to quite a bit of confusion in the realm of Mergers and Acquisitions (M&A). Many of the resolution plans approved by the NCLT under the IBC are perceived by relevant parties—like distressed companies and potential buyers—as "de facto" M&A transactions. This is because, in all cases, the party or parties that successfully submit an approved resolution plan end up taking control of the distressed company, business unit, or assets through a court-supervised process. This process often resembles, or even replaces, a traditional Scheme of Arrangement as outlined in sections 230 to 232 of the IBC.

Recently, a series of rulings from the Supreme Court, along with new guidelines from the Competition Commission of India (CCI), have made it clear that the CCI must be consulted before or right after the Committee of Creditors gives its approval. This establishes a framework where NCLT-sanctioned M&A transactions can take place under the oversight of both the CCI and the IBC, creating two distinct regulatory approvals within the evolving landscape shaped by the IBC.

The establishment of the NCLT and NCLAT has really transformed the landscape of corporate restructuring. Now, there is a centralized authority overseeing schemes of arrangement, oppression, and mismanagement, as well as insolvency and bankruptcy. Many experts have pointed out that the NCLT is becoming the go-to institution for corporate governance and insolvency resolution. It has already approved hundreds of resolution plans under the IBC, bringing significant value back to the economy.

This new setup is going to have some real-world effects on mergers and acquisitions (M&A):

- The resolution plans that get the green light under the IBC often resemble de facto M&A activities. Successful applicants will follow a court-approved process to take over distressed companies, business units, or assets, which serves as an alternative to the traditional schemes outlined in sections 230-232 of the Companies Act 2013.

- Recent rulings from the Supreme Court and the CCI have introduced new requirements for aligning merger control with IBC timelines. More frequently, bidders looking to acquire companies under the IBC will need to obtain CCI clearance either before or shortly after getting the nod from the Committee of Creditors (CoC), effectively embedding the NCLT-supervised M&A process within a multi-regulatory framework.

4.8 Valuation, Accounting Treatment and Professional Gatekeepers

The NCLT's legal decisions show that valuers, auditors, and independent experts are crucial in validating a company's scheme, going beyond just the legal text. For instance, the tribunal typically asks for:

- Registered valuers to submit detailed valuation reports explaining the methods used to assess the company's shares (like DCF, market multiples, asset-based approaches, or a mix of these) and to justify the exchange ratio.
- Auditors provide a certificate that confirms the accounting treatment in the scheme aligns with the relevant standards (for example, the auditor must verify that the scheme adheres to Ind AS 103 regarding business combinations and Schedule III of the Act).

Research highlights a gap in established minimum standards for valuations within the Act and Rules, which limits the NCLT's ability to depend on benchmark valuations when deciding if a scheme is fair. Additionally, the NCLT's power to reject a scheme over valuation methodology disputes, while sensible from a business perspective, means that minority shareholders may need to invest considerable resources to gather expert evidence to effectively contest the company's valuation. This underscores the pressing need for clearer statutory guidance on fair and reasonable valuations.

4.9 Case Law on Schemes of Arrangement and Amalgamation

4.9.1 Hindustan Lever Employees' Union v Hindustan Lever Ltd (HLL–TOMCO Merger)

[10]The Supreme Court's decision in the case of Hindustan Lever Employees' Union v Hindustan Lever Ltd serves as a key reference for amalgamation schemes under the Companies Act 2013, particularly regarding sections 230 to 232. This case revolved around the merger of Tata Oil Mills Company Ltd, commonly known as TOMCO, with Hindustan Lever Ltd, or HLL, as directed by the Bombay High Court under sections 391 to 394 of the Companies Act 1956. The merger faced pushbacks from employee unions and some shareholders who argued that they were undervalued, that the MRTP Act was violated, and that the interests of employees were

[10] Hindustan Lever Employees' Union v. Hindustan Lever Ltd. (1995). Supreme Court of India.

not adequately safeguarded by the scheme.

The Supreme Court supported the merger. It clarified that when exercising its powers under section 391, the court needed to check if the statutory requirements were fulfilled, if the relevant groups were properly represented at the meetings, whether the proposed scheme was lawful and aligned with public policy, and if a reasonable businessman would approve the scheme. The Court was not willing to reassess asset valuations without unambiguous evidence of significant unfairness, as doing so would place the courts in a position of expertise that could undermine the commercial judgment of shareholders who made decisions based on the company's valuation. The Supreme Court concluded that the scheme adequately addressed employee rights, noting that the terms of service for TOMCO employees were protected. The potential for future layoffs of TOMCO employees by HLL, being speculative, was not sufficient grounds to block the scheme or deem the merger unfair, allowing employees to seek industrial remedies if actual layoffs occurred.

In this ruling, some important guidelines were laid out that have since become standard in NCLT decisions: (i) the tribunal doesn't have the authority to second-guess shareholders' business choices; (ii) a valuation should only be challenged if there's clear evidence of injustice or if the process was improper; (iii) while it's important to consider the protection of current employees, expectations for future employment aren't the deciding factor; and (iv) any evaluation of public interest must be comprehensive and shouldn't just aim to safeguard one specific group. These guidelines now shape how the NCLT approaches decisions related to Sections 230 to 232 of the Companies Act 2013.

4.9.2 NCLT Jurisprudence on Appointed Date, Fairness and Objections

After the 2013 Act was enacted, the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT) have turned to Hindustan Lever's framework to tackle new challenges surrounding "appointed dates," class formation, and the scope of opposition to schemes of arrangement. Many experts have pointed out that NCLT tribunals have accepted schemes with retrospective appointment dates for solid commercial reasons, ensuring that creditors and minority shareholders are not at a disadvantage. The benches in Delhi and Bengaluru have supported schemes with retrospective dates tied to accounting or tax periods, or the effective date of economic transfers, but they have scrutinized schemes that create uncertainty or appear to be designed to sidestep taxation.

NCLT's practices reflect the legal shift that now allows only members holding at least 10% of the share capital or creditors with 5% of the debt to formally oppose schemes. Analysts have noted that this threshold aims to filter out frivolous objections, but it might also make it tougher

for small minority shareholders to challenge mergers driven by promoters, especially as NCLT increasingly relies on its own assessments of fairness. In various CAA petitions so far, the NCLT has declined to address valuation disputes due to a lack of credible expert evidence, emphasizing that its role is more about supervising business decisions rather than acting as an appellate body.

4.9.3 Application to Cross-Border and Fast-Track Mergers

While there have not been many significant legal developments regarding cross-border mergers under section 234 of the Companies Act, practitioners have shared valuable insights on the early approvals of both inbound and outbound mergers. These insights suggest that the National Company Law Tribunal (NCLT) has followed a similar approach to its past approvals, like those involving Hindustan Lever Ltd. The focus remains on ensuring compliance with procedures, securing clearances from the Reserve Bank of India (RBI) and the Foreign Exchange Management Act (FEMA), and safeguarding the interests of Indian shareholders. Additionally, the NCLT places considerable weight on independent expert valuations to determine the exchange ratio and the structure of consideration.

When it comes to fast-track mergers under section 233 of the Indian Companies Act, there's noticeably less case law compared to section 234. This is mainly because fast-track merger schemes can bypass the NCLT if there are no objections. However, existing orders show that if a Regional Director raises public interest concerns, they will refer the case to the NCLT. In such instances, the NCLT applies the same fairness and public interest standards for fast-track mergers as it does for other merger types. Scholars have pointed out that this consistency is a positive aspect, but they have also criticized the absence of empirical data to back up the claim that section 233 has significantly lessened the workload of the judicial system.

Chapter 5 – SEBI Regulations and M&A in Listed Companies

5.1 SEBI's Mandate and Relevant Regulations

The Securities and Exchange Board of India (SEBI) serves as the main regulatory body for publicly traded companies in India, focusing on protecting investors, ensuring the integrity of financial markets, and promoting accurate information disclosure about these companies. The key regulations that oversee mergers and acquisitions (M&A) activities include:

- SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 2011 (commonly known as SAST Regulations)

- SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 (often referred to as LODR Regulations)
- SEBI Circulars related to Schemes of Arrangement with Listed Entities, which cover aspects like stock exchange and fairness opinions.

5.2 Open Offer Triggers and Thresholds

[11]When it comes to the SAST Regulations, mandatory open offers kick in when an acquirer, along with anyone they are working with, grabs more than 25% of the voting rights in a publicly listed company. This also applies if the acquirer has taken control of the company by acquiring anywhere between 25% and 75%.

Interestingly, if an acquirer already has control over a company, they can buy more equity securities without having to worry about those mandatory open offer rules, even if they hold more than 25% of the voting power.

Additionally, a new mandatory open offer can be for less than 26% of the total issued equity share capital of a listed company, which gives affected public shareholders a chance to exist if they receive this new offer.

Table 3: Selected SAST Open Offer Triggers

Scenario	Open Offer?	Legal Basis
Acquirer moves from 10% to 27% voting rights	Yes	Reg. 3(1) – 25% trigger
Acquirer at 30% buys additional 3% in same FY	No	Reg. 3(2) – within 5% creep
Financial investor acquires 20% + control rights	Yes	Reg. 4 – control trigger
Inter se transfer among qualifying promoters	Exempt	Reg. 10(1)(a)
Court/NCLT-approved scheme of arrangement	Exempt	Reg. 10(1)(d), conditions

5.3 The Contested Concept of "Control"

According to Regulation 2(1)(e), "control" is defined quite broadly. It refers to the ability to appoint most directors or to influence the management and policies of a business, whether that

[11] Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (India). https://www.sebi.gov.in/legal/regulations/oct-2024/sebi-substantial-acquisition-of-shares-and-takeovers-regulations-2011-last-amended-on-october-07-2024-88181.html

is done by one party acting alone or by multiple parties working together, either directly or indirectly.

This expansive definition has led to some confusion, especially when it comes to whether veto rights in shareholder agreements or investor protections imply "control." [12]

In the case of Subhkam Ventures, the SAT ruled that the veto clauses in lengthy contracts did not amount to "control" and were instead seen as a form of investor protection. After an appeal to the Supreme Court, it was made clear that the SAT's ruling would not set a legal precedent, leaving the law ambiguous on this issue. Since then, SEBI has released several papers exploring how to create a clearer definition of "control"—debating between a bright line test and a hybrid test—but so far, no solid guidelines have been established. This uncertainty continues to put both private equity and strategic investors at risk when it comes to structuring deals.

5.4 Process and Pricing of Open Offers

When an open offer is on the table, it is essential to make a public announcement first. This is followed by crafting and sharing a detailed public statement (DPS) and submitting a draft letter of offer to the SEBI (Securities and Exchange Board of India). The open offer also needs a clear timeline for all related activities, including the announcement, DPS, filing, the period for tendering offers, and payment considerations.

To figure out the offer price, a formula is used that takes the highest value from these three options:

- The price agreed upon in the underlying transaction
- The volume-weighted average price of the shares over certain look-back periods
- The price the acquirer paid during a specific period before the offer date.

The goal of setting the offer price is to ensure that no shareholder is treated unfairly and that everyone receives just compensation when exiting.

5.5 LODR Regulations and Disclosure of M&A Events

Companies that are publicly listed need to follow Regulation 30 of LODR[13], which means they must disclose all momentous events they have experienced. This includes things like entering into a share purchase agreement (SPA), getting board approval for a merger or demerger, filing scheme documents, and completing each transaction in the required format (like a letter) and within a specific time (for instance, 24 hours).

Moreover, the recent changes to Schedule III have created a non-exhaustive list of these notable

[12] Interpretation of Control under SEBI Takeover Regulations, Journal of Indian Business Law (2023)
[13] Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, Gazette of India, Noti. No. SEBI/LAD-NRO/GN/2015-16/013, Sept. 2, 2015

events. These amendments have also tightened the rules around public disclosures of binding agreements and related party transactions, which often come up during group reorganizations and mergers or acquisitions involving promoters from the same group.

5.6 SEBI Oversight of Schemes of Arrangement

When a listed company wants to propose an arrangement, it first needs to get the green light from the relevant stock exchanges before sending any plans to the NCLT for approval, following SEBI guidelines. Specifically, the company must provide the stock exchanges with:

1. A valuation report and fairness opinion from a SEBI-registered merchant banker

2. Recommendations from each independent director regarding the arrangement

3. Proof of compliance with SEBI's guidelines on accounting treatment, dilution, and the listing of the resulting entity.

The review by SEBI and the Stock Exchange of the scheme must be completed before the NCLT proceedings begin to approve the plan, creating a two-tier review process for arrangements involving listed companies.

5.7 Critical Evaluation of SEBI's Role

Advantages:

- Strong Protection for Minority Rights. With a higher threshold of 25 percent instead of the previous 15 percent, investors now enjoy better protection and a more trustworthy market. The new minimum for open offers has been raised to 26 percent, which will boost market liquidity compared to the old minimum of 15 percent. Additionally, the New Rules mandate that target companies provide more detailed disclosures about valuable information to investors and the public before and after any M&A activity, promoting greater transparency in these transactions.

Disadvantages and Criticisms:

- Ambiguous Definition of Control. The New Rules define control in a vague manner, leaving little room for safe harbors to determine if someone has control. This ambiguity can create uncertainty for both minority and financing investments that typically rely on traditional veto rights.
- Hostile Takeovers Are Limited. The established open offer obligations, a prominent level of promoted ownership in listed companies, and cultural barriers make hostile takeovers challenging. There is not much market pressure on companies to perform, which further limits the effectiveness of the corporate control market.

- SEBI's review of schemes in relation to NCLT has faced criticism for being redundant. At times, some NCLT benches have claimed authority over assessing the fairness of schemes of arrangement, leading to occasional conflicts between the two authorities.

5.8 Strengthening Governance via Related-Party Transaction (RPT) Reforms

Let us take a closer look at your current chapter, which focuses on SAST. However, SEBI's recent changes to the LODR framework regarding related party transactions (RPT) are equally relevant to mergers and acquisitions (M&A), particularly when it comes to mergers and reorganizations within the same group. Back in 2021, SEBI rolled out some significant amendments that broadened the scope of what we consider "related parties." Now, this includes anyone in the promoter group and any individual or entity that meets specific shareholding thresholds within the listed company—20% until April 2023, and then it drops to 10%.

They also expanded the definition of "related party transaction" to cover not just direct dealings with related parties but also transactions involving their subsidiaries and any dealings that benefit a related party. Plus, the criteria for what counts as a material transaction have tightened up, now set at INR 1,000 crore or 10% of the consolidated turnover of the listed entity, whichever is lower. This means that before moving forward with these material transactions, companies need to get the green light from their audit committee and, in some cases, from shareholders as well.

Looking ahead, SEBI has provided further guidance, especially for M&A, and with amendments set to take effect in 2025, the criteria for materiality will be revised, along with some clarifications on exemptions. For instance, certain retail purchases made by directors or key management personnel will not be classified as related party transactions. These changes mean that intra-group business transfers, slump sales, guarantees, and financial support arrangements are more likely to be flagged as material-related party transactions, which will require careful examination by both the board and shareholders. This shift is set to bring a new level of governance scrutiny to many group restructuring deals that might have flown under the radar before.

5.9 Institutional Investors, Proxy Advisers and Stewardship in M&A

A different layer of practice-oriented development looks at how institutional investors and proxy advisors shape public mergers and acquisitions. The Securities and Exchange Board of India (SEBI) has rolled out stewardship codes and voting disclosure requirements for mutual

funds and institutional investors, boosting transparency around how major shareholders cast their votes on potential mergers, related party transactions, and control transactions. Proxy advisors typically provide recommendations on schemes of arrangement, open offers, and listings, weighing in on aspects like valuation, governance implications, and the dilution of the transaction. While proxy recommendations are not legally binding, they do have a significant impact by:

- Swaying the outcome of votes from institutional shareholders who hold substantial stakes in a company; and
- Pressuring boards of directors to provide stronger justifications for the exchange ratio and transaction structure in their communications with shareholders and during investor presentations.

This interaction between the "soft law" landscape and the formal SEBI regulations has fostered a more contentious and governance-focused public M&A environment compared to one that is strictly driven by promoters.

5.10 SEBI's Evolving Interface with Delisting and Voluntary Offers

Recent studies in academia are diving into the intricate dance between the SAST Act, the SEBI (Delisting of Equity Shares) Regulations, and voluntary open offers. For instance, acquirers might craft their deals in a way that allows them to:

- Initiate a voluntary open offer to boost their shareholding percentage without crossing the limit on non-publicly held shares.
- Launch a voluntary open offer, and if their shareholding surpasses certain thresholds and they meet the pricing and disclosure requirements, they could then aim for delisting.

To help with this, SEBI has laid out guidelines and issued orders stressing the importance of providing investors with clear and honest disclosures about whether an acquisition is just a steppingstone toward potential delisting. They also emphasize that delisting should not be a way to sidestep the protections offered by the takeover code. This adds another layer of complexity for major promoters or those looking to consolidate shares in publicly traded companies.

5.11 Case Law on "Control," Open Offers and Schemes

5.11.1 Subhkam Ventures v SEBI – Positive vs Negative Control

[14]Subhkam Ventures (I) Pvt Ltd v. SEBI stands out as a landmark case regarding the idea of "control" under the SEBI Takeover Regulations. In this instance, Subhkam had taken a significant minority stake in a public company, which came with considerable affirmative veto rights over crucial business decisions. These included things like changing the charter documents, taking on debt, making capital expenditures, selling off major assets, and hiring or firing key management personnel. However, they did not have the power to appoint most directors or unilaterally steer the company's policies.

SEBI interpreted these rights as conferring "control" and instructed Subhkam to make an open offer. This decision was later overturned by the SAT, which concluded that "control," as defined in the takeover regulations, refers to "initiative-taking" or "positive" control, and does not encompass "negative" control or rights meant to protect minority investors from losses. The Tribunal also pointed out that having veto power can align with good corporate governance and safeguard minority shareholders' interests, but it should not automatically imply that management control exists or is being exercised over companies.

The Supreme Court then accepted the appeal, focusing solely on the procedural aspects of Subhkam's judicial decision. While the SAT Judgment would not set a binding precedent for other cases at the Supreme Court, it would still play a role in future court decisions. The SAT Judgment would keep the legal landscape in a state of flux, with Subhkam's reasoning being influential in practice, even as regulators retained the authority to advocate for a broader interpretation of control.

5.11.2 NDTV/VCPL – Revival of Subhkam Principle

[15]The recent conclusion by the SAT regarding the NDTV–VCPL case has revived the "positive control" or "Subhkam principle." However, it is important to note that the SAT did not officially address the Supreme Court's previous comments on the matter. VCPL had provided loans to NDTV's promoters through warrants and a call option—a "future purchase option"—which potentially gave VCPL some rights to NDTV shares. SEBI concluded that these loans meant VCPL had gained control over NDTV, thus requiring them to make an open offer for NDTV shares.

The SAT conducted a thorough examination of the loan, warrant, and option documents, deciding that VCPL had not acquired control of NDTV. This was because VCPL did not have

[14] Subhkam Ventures (I) Private Limited v. Securities and Exchange Board of India. (2010). Securities Appellate Tribunal.
[15] Securities and Exchange Board of India. (2020). Informal Guidance on Control under SAST Regulations: NDTV-VCPL. https://www.sebi.gov.in

the right to appoint directors to NDTV's board or to unilaterally make management or policy decisions for the company. The SAT also clarified that simply having a negative or veto right does not automatically mean one has control over a company. Additionally, the safeguards in place to protect investors should be viewed differently when assessing whether a company has effectively granted major influence on an individual over its operations.

The NDTV ruling is seen as a practical endorsement of the Subhkam "positive control" concept, offering some clarity for financial investors as they negotiate rights packages. However, SEBI has yet to establish a clear standard in its code of practice.

5.11.3 Case Law on Open Offer Triggers and Exemptions

Let us take a closer look at the insights from various SAT and SEBI decisions regarding how open offers are triggered and when they can be exempted in real transactions. Here is what the case law reveals:

- If the holding period and disclosure rules under Regulation 10(1)(a) are met, transferring shares among qualifying promoters does not require an open offer.
- This also applies to situations where open offers are triggered by share ownership below 25%, if the transaction documents grant the acquirer rights that are equivalent to control over the target company, qualifying them as an "acquirer" under Regulation 4.[16]
- The interplay between voluntary open offers, delisting attempts, and creeping acquisitions has been examined, particularly when corporate acquirers achieve consolidated ownership without surpassing the maximum allowable non-public shareholdings.

For instance, a practitioner's article on potential hostile bids under the 2011 code reviews around ten cases, including L&T's acquisition of Mindtree. This case illustrates how acquiring additional shares on the secondary market, combined with an open offer (and control), demonstrates the mathematical relationship between the 25% trigger, the 26% minimum open offer size, and promoter shareholding in creating a hostile bid. The article also highlights the practical challenges of launching hostile bids under the 2011 code, such as concentrated promoter holdings and the significant capital requirements that come with them.

[16] When Does SEBI SAST Get Triggered? Key Case Laws, IndiaCorpLaw Blog (Nishith Desai Associates, 2024), https://indiacorplaw.in.

5.11.4 SEBI and Schemes of Arrangement – NCLT Interaction

The Securities and Exchange Board of India (SEBI) has been busy shaping case law and sharing insights about its role in evaluating schemes of arrangement for companies listed on Indian stock exchanges. This involvement has sparked some questions from the stock exchanges and prompted SEBI to raise objections to certain schemes. As a result, some schemes have undergone structural changes, especially when SEBI has found that the valuation ratios could dilute the interests of public shareholders or allow companies to exploit restructuring to bypass listing and delisting rules.

There's also case law from the National Company Law Tribunal (NCLT), which often shows inconsistency in whether it respects SEBI's no objection letters or opts for an independent assessment of the scheme's fairness. This inconsistency makes it tough for the NCLT to apply its statutory authority under the Companies Act consistently, especially when determining if a scheme is just, fair, and reasonable, without risking double veto points and creating a stalemate in the regulatory process.

Chapter 6 – Merger Control under the Competition Act 2002

6.1 Statutory Basis and Evolution

The merger control laws in India are outlined in Sections 5 and 6 of the Competition Act, 2002 (referred to as the "Act"). Section 5 defines "combinations" by looking at financial thresholds, which include the asset value and turnover of each party, as well as the groups they belong to.

Since July 2020, it also considers the monetary value of the transaction. Meanwhile, Section 6 prohibits any combinations that could significantly harm competition in India.

The merger control rules under this Act kicked in back in 2011, thanks to the Competition Commission of India (Procedure regarding the transaction of business relating to combinations) Regulations 2011. These regulations saw a major update with the introduction of the Competition Commission of India (Combinations) Regulations 2024.

6.2 Jurisdictional Thresholds, De Minimis and DVT

[17]Historically, combinations were considered notifiable if the parties or group surpassed certain assets or turnover thresholds, with a de minimis exemption for smaller targets. Starting in September 2024 in India, a Deal Value Threshold (DVT) will come into play, requiring notification if:

- The deal value (which includes direct, indirect, immediate, or deferred consideration) exceeds INR 2000 crores; and
- The target has "substantial business operations" in India based on specific criteria, such as turnover, gross merchandise value, or user base.

DVT aims to capture high-value, low-turnover transactions, particularly in the rapidly expanding digital and technology sectors, which may have slipped through the cracks under the previous asset/turnover thresholds.

6.3 Detailed Features of the New DVT-Based Regime

The upcoming overhaul of India's merger control regime in 2024 is set to bring about significant changes that warrant a closer look. Various articles on the reforms have pinpointed five key areas of impact, with the introduction of the Deal Value Threshold (DVT) taking center stage. Now, any transaction where the total consideration—covering direct, indirect, immediate, and deferred payments, along with related arrangements—exceeds INR 20 billion will require approval from the Competition Commission of India (CCI), regardless of whether the asset or turnover thresholds are met or if de minimis exemptions apply.

To determine if a target has "substantial operations," several factors will be considered, such as its user or subscriber base, sales figures within India, the gross value of merchandise sold in the country, and other indicators of economic presence. This shift is especially significant for smaller tech companies with low revenues that previously avoided notification requirements

[17] Gopalan, S. (2022). Digital mergers and deal value thresholds: CCI's new frontier. NUJS Law Review, 15(1), 23-45.

due to their minimal earnings.

However, experts have voiced several concerns regarding the new DVT requirements:

- Accurately assessing the "deal value" for complex multi-party transactions could prove challenging, especially when these deals are contingent or involve earn-outs.
- Parties will now have to keep track of multi-year ancillary arrangements (like IP licenses, branding, and data sharing) as part of the DVT, which adds another layer of complexity to the notification process.
-

6.4 Notification, Standstill and Forms

When it comes to filing CCI Notifiable Combinations, it is important to submit your application before the deal is finalized, and you will need to hold off on any action until you get the green light. Here are the key components to keep in mind:

- **Form I:** This is where you will provide basic details about all parties involved, along with any overlap and market information.
- **Form II:** This is a more detailed form that the CCI requires for complex cases, especially those with significant market share or overlap.
- **Standstill:** Be aware that any delays in getting clearance can result in "gun jumping" penalties, so it is crucial to stay compliant.

From what we have seen, most transactions that are notified get cleared in Phase I, with very few complications, it is a smooth process.

6.5 Green Channel Route

[18]The introduction of a 'green channel' for automatic approval of mergers or acquisitions has made it easier for the Competition Commission of India (CCI) to streamline processes for businesses and encourage competition in the country. Companies can now self-evaluate their eligibility for this green channel based on factors like "horizontality," "verticality," and/or "complementarity," and submit a straightforward notification to the CCI. However, if it turns out that the parties were approved based on incorrect information, the CCI can declare that the approval was invalid from the start and may impose penalties on the involved businesses.

[18] Singh, A. (2019). Green channel and deal value thresholds: CCI's merger control evolution. Competition Law Journal, 14(2), 89-110.

While this new system has significantly cut down on the costs and complexities associated with non-anti-competitive transactions, it does pose a risk for businesses that find themselves in gray areas, particularly in the rapidly evolving digital landscape.

6.6 Implementation Experience: Filing Volumes, Green Channel, and Invalidations

Commentators are already looking ahead to 2025 and 2026, spotting early signs of going concern (GCR) that have been stress-evaluated, especially with the new doctrine introduced into CCI. There have been some updates regarding CCI combinations, revealing that 134 combinations received approval for CCI in 2025, an increase from the 131 approvals in the previous episode. It looks like 2025 is set to be a bustling year for CCI's combination group.

Additionally, the CCI has acted against Green Channel notifications, invalidating them and penalizing parties that misjudged their overlapping businesses. A case in point is the situation involving India Business Excellence Fund IV (India) and VVDN Technologies (VVDN), where the acquirer mistakenly claimed there were no overlapping businesses between its group and the target company. This misstep led to the invalidation of the Green Channel application and a gun-jumping penalty. The key takeaway here is that while the Green Channel can be appealing for its speed, misusing it can lead to grave consequences.

Given these insights, it seems that parties might adopt a more cautious approach when using the Green Channel for complex conglomerates or tech-related mergers, preferring to stick with a standard Form I or II filing until they get more guidance and case law that clarifies the boundaries of Green Channel usage.

6.7 Substantive Assessment and Remedies

When the CCI looks at different combinations, it takes a close look at each of the AAEC factors: market concentration, the risk of foreclosure, the power of buyers, barriers to entry, innovation, and the efficiencies that come from merging the companies. CCI gives green light to these combinations without any conditions, and this has been the case in all markets. However, there have been exceptions, like the Sun Pharma–Ranbaxy deal in the pharmaceutical sector and several mergers in the cement industry, where the CCI required structural divestitures or behavioral conditions.

In another media deal involving Sony and Zee, the CCI raised concerns about the high market share that would result from the merger. They asked for more time to review the transaction and discuss potential remedies. In the end, the deal never went through.

6.8 Gun-Jumping and Enforcement

The Competition Commission of India (CCI) has acted against parties that have improperly executed notifiable combinations, particularly when they have failed to meet pre-closing obligations—like covenants that give an acquirer control over the target—or when global closings happen without the necessary CCI approval.

In a time when the enforcement of laws is strict to ensure accountability and compliance with economic regulations, there is a growing concern that the lack of clarity around what constitutes "implementation" and the implications of a global closing agreement could deter parties from pursuing cross-border mergers.

6.9 Critical Evaluation

Table 4: Key Features and Critique of Indian Merger Cont.

Feature	Strengths	Concerns / Critique
Thresholds & DVT	Capture large and high-value deals, including digital acquisitions.	DVT may over-capture benign deals; complexity in valuing novel structures.
Green Channel	Reduces burden for non-overlapping deals; aligns with "ease of doing business."	Self-assessment risks; harsh consequences for misclassification.
Substantive test	Flexible AAEC standard, acceptance of efficiencies in some cases.	Limited transparency on innovation and dynamic effects, especially in digital markets.
Enforcement	Strong stance on gun-jumping, deterrent for non-compliance.	Risk of over-deterrence for global transactions with simultaneous closings.

Overall, India's merger control is converging with global best practice but remains in a period of active reform and interpretation, particularly around DVT, digital markets and control over minority acquisitions.

6.10 Merger Control and Insolvency: CCI–IBC Sequencing

Is the relationship between merger controls and insolvency resolution one of the emerging themes? Recent discussions surrounding the Supreme Court's decisions on these matters suggest that the Court emphasized the need for the Competition Commission of India (CCI) to grant clearance before the Committee of Creditors (CoC) votes on a resolution plan under the Insolvency and Bankruptcy Code (IBC). This is crucial because competition concerns can influence whether a plan can move forward. As a result, we have seen a rise in merger control

notifications for transactions under the IBC, with bidders now needing to secure a CCI decision much earlier in the process than they used to.

Additionally, there have been legislative proposals in the Bill to amend the Insolvency and Bankruptcy Code (Amendment) 2025. These proposals aim to change the sequence of events, allowing the CCI to approve a plan that has already received the CoC's approval, but before it gets the green light from the National Company Law Tribunal (NCLT). This shift is intended to ease the burden on bidders and the CCI by filtering out plans that are unlikely to be accepted. These changes highlight the ongoing development of the interplay between merger control and insolvency-related mergers and acquisitions in India.

6.11 Case Law on CCI's Merger Control Practice

6.11.1 Sun Pharma–Ranbaxy – Structural Remedies in Pharmaceuticals

[19]Back in May 2014, Sun Pharmaceutical Industries made headlines with its $4 billion acquisition of Ranbaxy Laboratories, prompting the Competition Commission of India (CCI) to take a closer look at the deal for any potential antitrust concerns. After diving into market shares and sifting through a mountain of information from both companies, the Commission concluded that this merger could threaten competition in several drug formulations.

To address these concerns, the CCI mandated that both companies sell ten overlapping products, six from Ranbaxy and four from Sun. They specified that each company had to divest one product from each of five therapeutic classes. Plus, an independent monitoring agency was to be appointed to ensure that these conditions were met. While these products represented just a tiny fraction of the overall sales for the newly merged entity, they were deemed crucial for preserving both healthcare options and competition in the relevant markets.

This case has become a go-to reference in discussions about the CCI's approach, highlighting its preference for targeted structural remedies rather than outright merger bans. This is especially true in sectors where companies only overlap in a few product markets, allowing the Commission to conduct detailed market definitions at the molecule level within the pharmaceutical industry.

6.11.2 Sony–Zee – Media Concentration and Multi-Regulator Dynamics

[20]The CCI's focus on major media mergers, like the one between Zee Entertainment Enterprises Ltd. and Culver Max Entertainment (Sony Pictures Networks India), has been making

[19] Competition Commission of India. (2014). Sun Pharmaceutical Industries Ltd. & Ranbaxy Laboratories Ltd. (Combination Registration No. C-2014/07/179). https://www.cci.gov.in

[20] Competition Commission of India. (2021). Zee Entertainment Enterprises Ltd. & Culver Max Entertainment Pvt. Ltd. (Case No. C-2021/09/825). https://www.cci.gov.in

headlines lately. This merger aimed to form a new entity that would combine the Indian operations of both Zee and Sony, with Sony (via its affiliates) owning about 50.86% of the new company, while the Zee promoters would keep a minority stake.

At first, the CCI raised concerns that the size of the merged company could lead to a significant market share (around 40-45%) in certain segments of Hindi language TV channels and related advertising markets, which could harm competition. To ease these worries, the companies agreed to shut down or sell off some of their overlapping channels in the areas where they were dominant, which led to the CCI approving the merger.

However, after the CCI and NCLT gave their approval for the merger, the parties decided to back out of the deal. The NCLT eventually retracted its approval after the companies settled various disputes with consumers and shareholders that had come up during the merger discussions. Critics point to the CCI's approval of this merger to highlight: (i) how the CCI analyzes the anti-competitive effects of large media conglomerates; (ii) the relationship between competition and regulatory authorities; and (iii) the fact that getting regulatory approvals does not always guarantee that a deal will go through successfully.

6.11.3 Other CCI Combinations and Gun-Jumping Jurisprudence

When we look beyond the big-name decisions, the literature on CCI merger control dives into various sectors like cement, financial services, and digital markets. Here, the Commission has either approved mergers with or without conditions and has increasingly cracked down on "gun jumping." Scholars in economic journalism and law reviews have pointed out that the CCI has taken action against cases where the acquirer—or the parties involved—failed to notify the Commission before merging or took steps in the transaction (like entering into pre-closing agreements that effectively transferred control or completing a global closing that included India) before receiving clearance. This has reinforced the mandatory and suspensory preconditions of the CCI framework.

At the same time, the Green Channel regime has led to a rise in deals that get cleared right away and do not overlap. However, academic articles caution that parties should tread carefully with this approach, as misclassifying a deal could lead to invalidation and penalties. Current discussions around DVT reform suggest that judicial authorities will need to clarify what "value of transaction" and "substantial business operations in India" mean for digital and platform-based acquisitions in the years to come.

Chapter 7 – Interplay and Regulatory Overlaps

7.1 Multi-Regulator Architecture

When it comes to complex M&A deals in India, it is rare to see just one regulator involved. Typically, these deals intersect with various areas like company law, securities regulations, competition law, foreign exchange rules, and specific sector oversight. Take, for instance, a significant cross-border deal involving a listed company; it might require:

- Approval from the NCLT for a scheme of arrangement if sections 230–232 are being utilized.
- Clearances from SEBI and stock exchanges, which would include aspects like open offers, disclosure requirements under LODR, and vetting of the scheme.
- Clearance from the CCI if certain thresholds or the dominance/vertical test come into play.
- Approval or compliance measures from RBI/FEMA concerning cross-border payments, share swaps, or mergers, whether inbound or outbound.
- Sectoral or FDI approvals from relevant ministries or regulators, such as RBI for banking, IRDAI for insurance, TRAI for telecom, or DPIIT for FDI policy.

This intricate web of authorities highlights the significance of M&A from a policy standpoint. The government is not just focused on letting companies operate freely; it also prioritizes protecting investors, ensuring competition, maintaining financial stability, managing foreign exchange, and achieving sector-specific goals. However, this complexity can lead to challenges in coordinating the sequence of approvals, managing timelines, ensuring consistent information, and addressing varying expectations, all of which can impact whether a deal closes on time or even at all.

7.2 Lifecycle of a Complex Transaction: A Stylized Roadmap

An illustrative life cycle of a complex transaction, e.g., merger of two listed telecom companies with foreign shareholders and significant overlaps in services, is useful in making overlaps concrete.

Diagram 3: Multi-Regulator Approval Map (Text)

Step 1- Deal structuring and term sheet

- Deal structuring and term sheet, parties decide whether to use a contractual share purchase/open offer or a court/NCLT approved scheme (often choose a scheme when share swaps and multi-step reorganizations involved).

- The pre-filing assessment will allow us to identify the regulators who will be involved in the transactions; namely, SEBI (SAST/LODR, scheme circulars); CCI (combination); NCLT (scheme); RBI/FEMA (foreign shareholding and consideration); TRAI and DoT (sector licenses); and, DPIIT/FDI approvals, if applicable.

Step 2 – Board approval and public disclosure

- The boards in principle approve the transaction and sign a non-binding or binding term sheet.
- Under Regulation 30 of LODR, listed entities must make a timely disclosure of the proposed transaction in relation to its nature, size, consideration, and rationale.
- The transaction also involves a scheme, and the boards must approve the draft scheme and related documents.

Step 3 – SEBI/Stock-Exchange Vetting (For Listed-Company Schemes)

- The draft scheme is filled with stock exchanges along with valuation reports, fair opinions, and auditor certificates.
- Stock Exchanges Request Comments From SEBI. SEBI could raise questions regarding the valuation, shareholding structure, related party transactions, and adherence to certain circulars (like dilution, listing of resultant entities).
- After getting a "no objection" letter from the exchanges, the company can approach the NCLT for scheme sanction.

Step 4 – CCI Merger-Control Notification

- In case the asset/turnover thresholds or DVT are crossed, and no exemption is available, parties must notify the combination to CCI and must observe a standstill till approval.
- Parties select either Green Channel when overlaps are absent or ordinary Form I/II. Due to the concern of invalidation of Green Channel options, parties prefer to file ordinary filings for deals which are complex or overlapping.

Step 5 – RBI/FEMA and FDI Approvals

- RBI/FEMA and FDI Approvals If there is any cross-border consideration, share swaps or inbound/outbound merger under section 234, parties must ensure statutory

compliance of FEMA cross-border merger regulations and sectoral caps and may require prior RBI or government approval.

- Foreign Direct Investment policy may require additional scrutiny or government approval of transactions involving investors from land border countries, and transactions in defense, telecom, financial services, or other strategic sectors."

Step 6 – NCLT Scheme Process

- Once the no-objection is completed from SEBI/stock exchange, the companies proceed to file an NCLT application for directions to convene meetings. After approval of the meetings, the companies file for sanction of the scheme following the procedure of sections 230-232 and CAA Rules.
- The National Company Law Tribunal examines compliance with corporate and insolvency laws as well as public interest aspects and the responses received from Authorities.

Step 7 – Closing and Post- Closing Compliances

- Upon fulfilment of all conditions' precedent (CCI, SEBI, NCLT, RBI/FDI, sectoral licenses), transaction closes.
- Filing and adjustments post-closing (merger share allotments, stamp duty payments, compliance post-merger share allotments, competitive monitoring obligations, RPT reporting under LODR) continue for a while. Keep experiencing delays.

7.3 SEBI–NCLT Interface[21]

7.3.1 Dual Review: Process and Substantive Fairness

SEBI's circulars regarding schemes and the LODR regulations set up a pre-clearance phase for arrangements involving listed companies. Here is the breakdown:

- SEBI and stock exchanges focus on key aspects like clear disclosures, safeguarding shareholders, managing related-party transactions, and ensuring minimum public shareholding rules are met.

[21] Tripathi, V. (2021). Regulatory overlaps in Indian M&A: SEBI-NCLT-CCI interface. Journal of Business Law, 22(4), 201-225.

- The NCLT is all about adhering to the law and ensuring that the scheme is fair to both members and creditors, with some benches taking a broader perspective on what constitutes "public interest."

Experts in the field have pointed out some tension between these two:

- Some NCLT benches have mentioned that while SEBI's opinions are important, they are not absolute, and the final decision on whether to approve a scheme lies with the Tribunal under the Companies Act.
- On the other side, other benches place significant weight on the stock exchange's approval, almost treating SEBI's nod as essential before a scheme can get the green light.

This double-checking system has its advantages, like promoting fairness and compliance, but it can also lead to:

- Redundancy, where both SEBI and NCLT scrutinize aspects like valuation, changes in capital structure, and the treatment of minority shareholders.
- Conflicting demands, such as SEBI advocating stricter valuation or related-party safeguards than what the NCLT would typically require, or vice versa.
- Longer wait times, as questions from SEBI and the stock exchanges need to be addressed before the NCLT even begins its review.

7.3.2 RPT and Governance Overlay

The SEBI amendments concerning Related Party Transactions (RPTs) from 2021 to 2023 have expanded the range of intra-group transactions that now require approval from both an independent audit committee and shareholders. This can sometimes lead to overlaps with scheme structures. For example, if a listed company merges with an unlisted entity linked to its promoter, it could trigger:

- A thorough review of the RPT by the audit committee.
- Recommendations from independent directors; and
- Approval from non-promoter shareholders for significant RPTs, in addition to the usual NCLT scheme approvals.

In practice, this adds an additional "governance layer" to schemes managed by the NCLT, providing greater protection for public shareholders. However, it also complicates the approval process for restructurings initiated by promoters.

7.4 SEBI–CCI Interface[22]

7.4.1 Sequencing Open Offers and Merger-Control Clearance

In many officially announced mergers and acquisitions, when someone acquires 25% or more of the shares or control in a publicly traded company, it triggers a mandatory open offer as per the SAST regulations, along with a notification under the Competition Act. Here are some practical points to consider:

- The SAST timeline includes various steps like public announcements, detailed statements, letters of offer, and the tendering period, all of which come with their own legally required deadlines. On the other hand, the CCI's review process, whether it is a Phase I or Phase II review, can take several months to complete.
- If getting the CCI's approval is a crucial step before finalizing the share purchase agreement and completing the open offer, then everyone involved needs to carefully align the CCI approval with the closing date of the offer. Failing to do so could lead to regulatory violations or the need to restart the entire process.

What happens in practice:

- SEBI allows open offers to commence based on conditional SPAs, meaning their completion depends on CCI approval.
- The funds can be held in escrow until the CCI gives the green light, and the termination date in the SPA is aligned with both SEBI and CCI timelines.

This interconnectedness means that any unexpected remedies imposed by the CCI, such as divestitures, could necessitate changes to the open offer or the structure of the transaction. This could potentially undermine the deal's fundamental business rationale or financial appeal.

7.4.2 Overlapping Substantive Concerns

While SEBI is all about safeguarding investors and maintaining the integrity of the market, and the CCI focuses on promoting competition, their responsibilities can sometimes overlap. Take media and telecom mergers like Sony–Zee, for instance:

- The CCI's concerns regarding audience share and competition in the advertising market align closely with SEBI's focus on governance, related-party transactions, and fair treatment of public shareholders.

[22] Tripathi, V. (2021). Regulatory overlaps in Indian M&A: SEBI-NCLT-CCI interface. Journal of Business Law, 22(4), 201-225.

- When it comes to structuring deals, deciding between a scheme that includes a share swap or opting for a straightforward cash acquisition—both regulators' viewpoints can influence the outcome, leading to complex negotiations and a flurry of filings.

Experts suggest that having joint guidelines, or at least a clearer public explanation of how SEBI and the CCI work together on major public M&A deals, could help make the entire process a lot more predictable.

7.5 CCI– IBC and Insolvency-Driven M&A

7.5.1 Sequencing between CoC and CCI Approvals

As we have mentioned before, tackling major insolvency cases under the IBC often resembles a behind-the-scenes merger or acquisition. In simple terms, a bidder steps in to take control of a struggling company or its operations through a resolution plan. This plan needs to get the nod from the Committee of Creditors (CoC) and the approval from the NCLT. If these bidders exceed certain combination limits, they must inform the CCI.

Initially, the Supreme Court ruled that the CCI should approve the plan before the CoC casts its vote. The intention was to alert creditors about any potential competition issues or necessary adjustments that could complicate things. However, this approach raised some concerns:

- Bidders had to bear the costs of CCI filings, even if their plans did not receive the CoC's support.
- It squeezed CCI timelines into the already tight IBC schedule.

Subsequent discussions and suggested changes to the IBC have been advocating for CCI approval to occur after CoC endorsement but before the NCLT gives its final go-ahead. This way, competition can take a closer look at the final plan while still ensuring the deal's certainty. It is a work in progress, highlighting how overlaps between institutions can lead to legal changes.

7.5.2 Practical Challenges

Experts in this field have observed that companies looking to acquire businesses through India's bankruptcy process are now ensuring their strategies include conditions for obtaining approval from the Competition Commission of India (CCI). They are also extending their deadlines. Given the need to adhere to the bankruptcy timeline, secure CCI approval promptly, and coordinate with the National Company Law Tribunal (NCLT), it is evident that merger control has become a crucial aspect of how companies are restructuring in India.

7.6 FDI, FEMA and Sectoral-Regulator Overlaps

7.6.1 FDI Screening and Sensitive Sectors

Changes in foreign direct investment (FDI) policies and the rollout of screening laws have added an extra layer of scrutiny for mergers and acquisitions that cross borders. Since 2020, any investments coming from countries that share a land border with the nation in question now require government approval. Additionally, there are specific limits and requirements for certain sectors, including defense, insurance, banking, telecommunications, media, and online retail.

This means that M&A deals that might seem straightforward under regular company law, SEBI (Securities and Exchange Board of India) regulations, or CCI (Competition Commission of India) rules could still face:

- Lengthy waits for FDI clearances or government approvals.
- Changes to the agreed ownership structures (like limits on foreign ownership percentages) or management arrangements (such as requirements regarding the composition of the board of directors).
- Obligations related to domestic production, security evaluations, or the sharing of technological expertise.

7.6.2 Sectoral Regulators (RBI, IRDAI, TRAI, etc.)

In various industries, there are specific regulators that conduct "fit and proper" assessments, establish minimum net worth requirements, set licensing conditions, and oversee approval processes for any changes in company control, particularly in sectors like finance and infrastructure. Here are a few examples to illustrate this:

- The RBI, acting as the bank regulator, must approve any changes in control at banks and NBFCs, applying different criteria than it does for foreign exchange regulations.
- The IRDAI must approve any takeovers in the insurance industry, ensuring that the companies involved are financially sound and that policyholders' interests are safeguarded.
- TRAI/DoT meticulously review any changes in control related to telecom licenses, paying close attention to security concerns and the effects on spectrum ownership.

These industry-specific approvals can often be sought simultaneously with, or even prior to, the processes involving the CCI and NCLT, which can complicate the sequence of steps even further.

7.7 NCLT and Public-Interest Review vs SEBI/CCI

As I mentioned earlier, some recent decisions made by the NCLT show a deeper consideration of public interest, tax implications, and regulatory issues within various schemes, moving beyond simply basic procedural checks. This raises important questions about the distinct roles of the NCLT, SEBI, and CCI:

- SEBI primarily focuses on protecting investors and ensuring that there's proper disclosure in schemes involving listed companies.
- CCI looks at how competition is affected when certain thresholds are crossed.
- The NCLT is becoming more inclined to assess the overall viability of the business rationale and whether the scheme might negatively impact public finances or other societal interests.

Experts caution that while this thorough review could help prevent the exploitation of schemes for tax or regulatory loopholes, it also risks blurring the lines between these institutions and creating confusion about what really counts as "public interest" in corporate restructurings.[23]

7.8 Practical Strategies and Transaction-Planning Responses

When dealing with this complex situation, transaction planners in India often rely on a few tried-and-true strategies:

1. Upfront Regulatory Assessment

At the outset of a deal, legal advisors usually put together a regulatory matrix. This handy tool outlines all the necessary approvals, conditions, and estimated timelines. It gets woven into the term sheet and final agreements, influencing key aspects like the conditions that need to be fulfilled, deadlines, and termination fees.

2. Phased or Parallel Approaches

In times of uncertainty, parties might consider parallel deal structures. For instance, they could combine a share purchase agreement with an open offer, rather than going for a court-approved scheme of arrangement. They may also devise alternative paths based on how regulators respond, though this can complicate the drafting and execution process.

3. Material Adverse Change (MAC) and Regulatory Change Clauses

Deals frequently come with MAC and regulatory change clauses. These provisions allow for renegotiation or even termination if unexpected regulatory challenges arise, such as sudden demands from the Competition Commission of India (CCI) to divest certain business segments,

[23] Tripathi, V. (2021). Regulatory overlaps in Indian M&A: SEBI-NCLT-CCI interface. Journal of Business Law, 22(4), 201-225.

or unfavorable directives from the Securities and Exchange Board of India (SEBI).

4. Communication and Preliminary Discussions

Often, parties are engaging with regulators informally or through pre-filing consultations, especially with the CCI and SEBI. This approach helps them understand opinions on overlaps, control issues, and potential solutions before finalizing the deal structure.

7.9 Normative Assessment: Costs and Benefits of Multi-Regulator Oversight

The multi-regulator model has its fair share of pros and cons. Let us break it down:

Strengths:

- **Multi-layered protection:** With various regulators involved, we get a range of perspectives—think investor protection, competition, prudential stability, foreign exchange management, and sector-specific policies. This diversity helps ensure that a potentially harmful transaction does not slip through the cracks due to one regulator missing it.
- **Specialization:** Regulators like SEBI, CCI, and RBI develop deep expertise in their specific areas, something a single, all-encompassing authority might struggle to replicate.

Weaknesses:

- **High transaction costs and timing risk:** The need for redundant filings, different information requirements, and mismatched statutory deadlines can drive up legal costs and create uncertainty, especially for cross-border and time-sensitive deals.
- **Definitional inconsistency:** Different statutes often have varying definitions for key terms like "control," "group," "promoter," "related party," and "substantial business operations." This can lead to interpretive challenges and even opportunities for regulatory arbitrage.
- **Institutional friction:** Sometimes, tensions can arise between bodies like NCLT and SEBI, or SEBI and CCI, over which entity has "primary" authority on matters of fairness or public interest. This can result in regulatory gridlock or conflicting views.

For the goals of this dissertation, the key question is not whether India should scrap multi-regulatory oversight—because that would be both impractical and undesirable—but rather how we can enhance the harmonization and coordination of these systems. The goal is to establish a cohesive M&A framework rather than a disjointed set of regulations.

7.10 Towards a More Coherent Inter-Regulatory Framework

Taking insights from international examples and our own experiences, we can identify a few thoughtful changes that might help clarify the tricky spots where regulations overlap, all while preserving the essential oversight they offer. Here are some ideas to consider:

- **Aligning Definitions:** Gradually, we could work towards harmonizing key terms like "control," "group," "promoter," and "substantial business operations" across the Companies Act, SEBI rules, and the Competition Act. This could involve coordinated updates or, at the very least, shared explanatory notes to clarify meanings.
- **Creating Collaborative Frameworks:** We could set up formal agreements and ongoing committees that include representatives from SEBI, CCI, MCA/NCLT, RBI, and other key industry regulators for significant mergers and acquisitions. These would establish clear timelines for discussions and procedures for sharing information.
- **Offering Clear Guidelines:** By publishing joint guidance on the typical steps and expectations for common transactions—such as mergers of publicly traded companies, acquisitions stemming from bankruptcy resolutions, or international mergers in the telecom sector, we could help reduce uncertainty for everyone involved.
- **Monitoring Performance:** Regularly releasing public reports on approval times, the rate of approvals with conditions, withdrawals, and rejections (especially for Green Channel and Deemed Approvals) would provide an objective way to assess whether the system is becoming more efficient.

Chapter 8 – Comparative Perspectives

8.1 introduction

A comparative analysis helps us grasp India's M&A regulations by looking at global trends and highlighting how different countries manage aspects like takeover rules, protecting minority shareholders, and overseeing mergers. This chapter dives into three key regions: the United Kingdom (UK), the European Union (EU), and the United States (US). These areas have significantly influenced India's corporate, investment, and competition laws, with many of India's recent changes drawing inspiration from them. It examines (i) company and takeover laws, (ii) the regulation of mergers, and (iii) strategies for safeguarding minority shareholders and evaluating their share value. In the end, it highlights crucial lessons and what realistic changes can be pursued in India.

8.2 United Kingdom

8.2.1 Schemes of Arrangement and Company Law

In the UK, the Companies Act of 2006 still views schemes of arrangement (found in Parts 26 and 26A) as a keyway to manage mergers, demergers, and capital restructurings, both domestically and internationally. For a scheme to be legally binding, it must meet a couple of important criteria:

- A majority vote from each class of members or creditors, with at least 75% of those present and voting in favor.
- Approval from the High Court, which must be satisfied that all legal requirements are fulfilled and that the scheme is fair.

Here are a few key points to remember:

- The way classes are formed is scrutinized by UK courts to ensure that everyone in a class has sufficiently similar rights under the scheme. A notable example is the AB InBev–SABMiller case[24], where shareholders with a special share option were placed in their own distinct class.
- The court's role in assessing fairness: The court employs a test like the one used in the Indian Hindustan Lever case. It considers whether a reasonable and honest person, acting in their own best interest, would approve the scheme. However, this process is more established and clearly defined in the UK.

8.2.2 UK Takeover Code and Mandatory Bid Rule

In the UK, public takeovers are governed by the City Code on Takeovers and Mergers—or Takeover Code, as it is usually called—which is overseen by the Takeover Panel. The main ideas here are treating all shareholders fairly, making sure they have enough info and time to decide, and keeping the bidding process nice and organized.

One of the most important parts of this system is the mandatory offer rule (Rule 9):

- If someone buys up 30% or more of the voting rights in a company covered by the Code, they must make an offer to buy out all the other shareholders.
- This offer must be in cash (or at least include a cash option) and must be at least as high as the highest price the bidder (or anyone collaborating with them) paid for shares in the last year.

[24] AB InBev-SABMiller (UK scheme class formation, comparative reference).

- The only condition the bidder can place on the offer is that they acquire shares carrying more than 50% of the voting rights; they cannot add any other conditions to a mandatory bid.

This setup makes sure that:

- Every shareholder gets a fair chance to exist at the best price offered.
- There is a straightforward threshold for control (30%), which is easier to understand than the rules in India, where they use a 25% shareholding trigger combined with a vague idea of "control" under their SAST regulations.

The UK system also encourages more activity in the corporate takeover market. Hostile bids are possible, the Panel keeps a close eye on how offers are conducted and timed, and there are rules that allow a bidder to force out remaining shareholders (squeeze-out) or for minority shareholders to force the bidder to buy them out (sell-out) once the bidder has 90% acceptances.

8.2.3 Lessons from the UK for India

Taking a cue from the UK's approach, India might consider the following steps:

- Establishing a clearer numerical standard or a mix of criteria, like the UK's 30% Rule 9 threshold, to better define what "control" really means. This would still leave room for flexibility in unique situations.
- Enhancing the rights of shareholders to ensure their shares can be valued and bought out, while also simplifying the process for acquiring remaining shares after a successful bid or arrangement. This would provide minority shareholders with a more dependable withdrawal plan compared to the current patchwork of open offers and scheme options in India.

Creating a more transparent and consistent collaboration between the court or tribunal managing a scheme and an independent regulatory body for takeovers. This would help avoid the conflicts that have sometimes popped up between SEBI and the NCLT in Indian schemes involving listed companies.

8.3 European Union

8.3.1 EU Merger Regulation and Institutional Framework

When it comes to merger control in the EU, it all boils down to Council Regulation (EC) No. 139/2004, commonly referred to as the EU Merger Regulation (EUMR). This regulation kicks in for concentrations that have what is called an “EU dimension,” which is determined by turnover thresholds across various districts. The European Commission’s Directorate General for Competition (DG COMP) is the body that enforces the EUMR.

Here are some key points to keep in mind:

- **Phase I (25 working days):** After a notification is submitted using Form CO, the Commission has twenty-five working days to figure out if the concentration raises any "serious doubts" about its compatibility with the internal market. If the parties involved suggest remedies, this deadline can stretch to thirty-five working days.
- **Phase II (90 working days):** If there are serious doubts, a deeper investigation kicks off. This usually takes about ninety working days to wrap up, but it can be extended by an additional 15 to 35 days if commitments are made or if delays arise from information requests.
- **Outcomes:** The possible results include unconditional clearance, clearance with remedies (like structural divestitures or behavioral commitments), or outright prohibition.

Research shows that the Commission tends to approve most mergers it reviews, with prohibitions being quite rare. Most transactions get sorted out during Phase I, with only a handful needing the more in-depth Phase II investigation. This mirrors the high clearance rate seen in India during Phase I, although the EU benefits from more experience and detailed guidelines in this field.

8.3.2 Substantive Test and Digital Mergers

The Commission assesses whether a merger would "significantly impede effective competition" (SIEC). This benchmark closely resembles India's AAEC test, but it has been refined over the years through practical applications. Recent research shows that the Commission is paying more attention to:

- The pace of innovation and the shifting competitive landscape in the tech and pharmaceutical sectors.
- The accumulation of data and the effects of network dynamics in digital and platform markets, as highlighted by the Facebook/WhatsApp and Microsoft/LinkedIn transactions.

In the Facebook/WhatsApp scenario, the Commission approved the merger despite concerns about potential data integration. However, Facebook later faced penalties for providing misleading information regarding their ability to match users across different platforms. As for

the Microsoft/LinkedIn merger, it received the green light, but not without certain stipulations, such as ensuring that competing professional networks could access Microsoft APIs and allowing PC manufacturers to disable LinkedIn integration in Windows. The Commission specifically noted the risks of market foreclosure but felt these could be mitigated with the commitments made.

These examples illustrate a balanced yet economically sensible approach to digital mergers. Meanwhile, India is just beginning to adopt a similar strategy through its DVT initiative and the ongoing refinement of its AAEC analysis[25].

8.3.3 Comparative Perspective: EU vs India

A look at merger control in the EU and India shows some interesting similarities and differences:

- Both regions use a two-phase review process, sticking to strict legal timelines and taking a supportive stance on deals that do not raise any red flags.
- The EU has a more detailed set of guidelines and a long history of experience in the digital sector. Meanwhile, India is making strides to catch up with initiatives like the Digital Markets Act and a closer examination of digital and platform mergers.
- EU merger control operates alongside robust state aid regulations and specific sector rules. In contrast, while India has fewer formal state aid controls, its foreign direct investment (FDI) and sectoral screening processes play a similar role in sensitive industries.

Looking ahead, Indian merger control reforms could really benefit from the EU's insights in:

- Creating clearer frameworks to tackle killer acquisitions and data-driven platform mergers.
- Formulating and managing behavioral remedies in fast-changing technology markets.

8.4 United States

8.4.1 Corporate Law: Board Duties, Takeovers and Appraisal Rights

In the U.S., corporate law is primarily shaped by state regulations, with Delaware leading the way. When it comes to mergers and acquisitions, it is usually the boards and shareholders who

[25] Gopalan, S. (2022). Digital mergers and deal value thresholds: CCI's new frontier. NUJS Law Review, 15(1), 23-45.

give the green light based on these state rules. Instead of needing a court's approval upfront, judges typically review these deals afterward, who assess whether everyone acted in good faith and if the company's value was evaluated fairly. Here are some key principles to keep in mind:

- Business judgment rule: Courts do not interfere with board decisions if they were made honestly, thoughtfully, and without conflicts of interest.
- Revlon duties: If a company is on the verge of being sold or undergoing a meaningful change in control, the board must prioritize securing the best short-term value for shareholders. This involves conducting a fair sale process and treating all potential buyers equally.
- Appraisal rights: Under Section 262 of Delaware's General Corporation Law, if shareholders disagree with a merger, they can petition the Court of Chancery to determine the "fair value" of their shares. This often involves methods like discounted cash flow analysis or comparing the company to similar entities.

Recently, experts have been looking into appraisal arbitrage, where hedge funds purchase shares after a deal is announced but before a specific date, aiming to secure better appraisal values. This can create uncertainty for buyers. Consequently, courts and lawmakers have made some adjustments, such as establishing exceptions for exceedingly small claims, altering interest rates, and clarifying certain rules. This illustrates how U.S. law continually strives to balance the protection of smaller shareholders with the need for smooth deal execution.

8.4.2 Antitrust Merger Control: HSR, DOJ/FTC and Litigation

In the United States, the oversight of mergers is governed by Section 7 of the Clayton Act and the Hart-Scott-Rodino (HSR) Act. Both the Department of Justice (DOJ) and the Federal Trade Commission (FTC) are responsible for enforcing these laws. Companies that meet certain thresholds must submit pre-merger notifications and observe a waiting period. During this time, the agencies can either approve the merger, suggest modifications, or even take legal action in federal courts to block the deal.

A notable example is the AT&T-Time Warner case. The DOJ tried to prevent AT&T from acquiring Time Warner, arguing that this vertical merger would lead to higher content prices for rival distributors and hinder innovation. However, the District Court rejected this challenge, and the D.C. Circuit upheld that decision, allowing the merger to proceed. This outcome sparked a debate about whether existing antitrust regulations are adequate for the current landscape of platforms and content, influencing later revisions to the DOJ/FTC merger

guidelines.

As a result, the U.S. tends to lean more towards litigation in these matters compared to systems in the EU or India. In the U.S., courts play a crucial role in contested mergers, rather than leaving decisions solely to an administrative body.

8.4.3 Comparative Perspective: US vs India

When we look at the differences between India and the US, a few key points stand out:

- In the US, corporate law heavily relies on post-fact fiduciary duty and valuation lawsuits to maintain fairness and safeguard minority shareholders. In contrast, India tends to prioritize upfront approvals from regulatory bodies like the NCLT, SEBI, and CCI.
- Merger oversight in the US is managed through actions taken by regulatory agencies and, if necessary, court proceedings. Meanwhile, in India, the CCI serves as both the investigator and the decision-maker, with appeals directed to the NCLAT or the Supreme Court, rather than going through a full re-evaluation of the case.
- Unlike India, the US does not have a mandatory takeover code like SEBI's SAST regulations or the UK Takeover Code. Instead, hostile takeover attempts and defense strategies are guided by tender offer rules and principles of fiduciary duty.

This comparison highlights the distinct institutional approaches: one that leans heavily on lawsuits and court involvement versus another that is driven by regulators and emphasizes pre-approval processes.

8.5 Comparative Table: Structural Features

Table 5: High-Level Comparison of M&A Regimes

Aspect	India	UK	EU	US
Corporate M&A route	NCLT schemes; share/asset deals	Court schemes; contractual offers	National laws; EU directives on cross-border	Board + shareholder approvals (no court sanction)
Takeover regulation	SEBI SAST (25% + control triggers)	UK Takeover Code (30% Rule 9 mandatory bid)	National codes, EU Takeover Directive	No unified code: tender-offer +

				fiduciary duties
Minority exit	Open offers; limited appraisal in schemes	Mandatory bid; squeeze-out/sell-out	Varies by state; squeeze-out/ sell-out rights	Appraisal rights; fiduciary-duty litigation
Merger control	CCI, AAEC test; DVT + Green Channel	CMA (post-Brexit), SLC test	EC under EUMR, SIEC test	DOJ/FTC, Clayton Act s.7, litigation
Procedure	Administrative + tribunal	Court + Panel + CMA	Administrative (DG COMP)	Administrative + federal court

8.6 Lessons and Limits of Transplant for India

This comparative analysis highlights some important insights and warnings:

1. Control Clarity and Mandatory Offerings

- The UK and many EU systems enjoy the advantage of having a clear, quantitative trigger for mandatory bids, along with consistent pricing rules. This setup fosters predictability and ensures fair treatment for all shareholders.
- In contrast, India's "control" model, which is based on a 25% threshold, offers some flexibility but lacks the necessary clarity. Global practices indicate that India could benefit from establishing a more precise hybrid test for control. Rethinking these thresholds might also invigorate the market for corporate control while still safeguarding minority shareholders.

2. Valuation Rights and Minority Shareholder Protection

- Delaware's appraisal system and the UK's squeeze-out/sell-out mechanisms offer structured exit options during changes in control.
- At present, India relies on SEBI open offers and the NCLT's fairness reviews, which come with limited statutory appraisal rights. Insights from other countries suggest that there is a need for well-designed appraisal or sell-out rights in significant schemes and takeovers to fill this gap.

3. Advanced Merger Oversight in Digital Industries

- The EU and US strategies for digital and vertical mergers provide useful frameworks for developing theories of competitive harm, crafting suitable remedies, and performing data-driven analyses.
- India's recent reforms regarding deal value thresholds and green channel approvals bring it closer to global standards. However, ongoing learning from international comparisons will be crucial for refining enforcement in digital and platform-based markets.

4. Balancing Courts and Regulatory Bodies

- In the UK and EU, specialized administrative bodies like the Takeover Panel and DG COMP take the lead, with courts playing a more supportive role. On the other hand, the US leans heavily on courts for both corporate and antitrust issues.
- India's approach is a blend, featuring a strong regulatory framework alongside tribunal oversight. Looking at international examples, it seems that adding clearer guidance and soft law tools—such as the UK Panel's practice statements or the EU's Horizontal Merger Guidelines—could boost predictability without fully embracing the US litigation style.

5. Adapting to the Indian Context

- Any reforms need to consider India's distinct features: promoter-led ownership structures, varying judicial capacities, a large retail investor base, and the government's considerable influence in certain sectors.
- Simply copying systems like Revlon duties or a completely independent UK-style Takeover Panel might not be feasible. However, we can draw on aspects of these systems to inform gradual and customized reforms.

8.7 Emerging Convergence and Divergence in Digital Merger Control

The EU's recent decisions regarding Facebook/WhatsApp and Microsoft/LinkedIn show a gradual recognition of how crucial data and platform influence really are. Yet, they still tend to approve mergers while adding some behavioral conditions. Meanwhile, the US is starting to explore legal challenges against vertical or ecosystem mergers, like the AT&T–Time Warner case, but the outcomes have been mixed.

India's new Digital Vertical Template, combined with its growing tech sector and platform economy, brings it closer to the EU's approach in theory. However, in practice, it seems to favor an "approve with conditions or Green Channel" strategy. Based on comparative studies, India should:

- Keep an eye on the EU and US experiences in defining harm theories related to data and ecosystems.
- Develop its own guidelines for digital mergers to reduce uncertainty for both acquiring companies and their targets, while still being ready to intervene when problematic deals come up.

Chapter 9 – Findings and Reform Proposals

9.1 Summary of Findings

The Companies Act of 2013, along with SEBI regulations and the Competition Act of 2002, creates a sophisticated yet intricate framework for managing mergers and acquisitions in India. Here is what we found:

- Company law lays a solid groundwork for schemes and international mergers, but it is weighed down by complicated procedures, varying capabilities of the NCLT, and a lack of clear, written guidelines for valuation and protecting minority interests.
- SEBI's SAST and LODR frameworks do an excellent job of safeguarding public shareholders. However, they also introduce some confusion regarding the idea of "control," leaving little space for hostile takeovers, and overlapping with the NCLT's role in overseeing schemes.
- The merger control system under competition law, which now features the 'deal value threshold' and updated Green Channel criteria, is aligning more closely with global standards. Still, it is figuring out how to manage digital markets and minority stake acquisitions.
- The overlapping regulations can drive up transaction costs and create uncertainty, even though having multiple layers of oversight does come with its benefits.

9.2 Reforms to the Companies Act Framework

Here are a few ideas for improvement:

1. Allow shareholders who are against major mergers and schemes that surpass certain thresholds to have legal **appraisal rights**, particularly in companies with numerous owners or

those that are publicly traded. This would enhance the existing court reviews of fairness.

2. Clearly outline the criteria for determining **value and fairness** in official guidelines. This should help reduce legal disputes over valuations and provide the National Company Law Tribunal (NCLT) with more defined standards to follow.

3. Streamline the NCLT approval process to make it **quicker and more efficient**. This might include granting them greater authority to manage cases and establishing dedicated M&A divisions.

4. Simplify and promote **fast-track mergers** by raising the threshold for what qualifies as a "small company" and reducing government oversight for low-risk internal reorganizations.

9.3 Reforms to SEBI's M&A Regime

Here are some thoughtful reforms that could really benefit SEBI:

1. They might want to clarify what **"control"** means by adopting a hybrid approach. This would involve establishing a clear, measurable threshold along with a detailed list of rights that signify control. At the same time, it is important to specifically exclude standard investor protections, like veto rights, from being classified as control.

2. They could foster a more vibrant market for **corporate control** by allowing greater flexibility in partial and competing offers. However, it is crucial to maintain strict standards for transparency and equal treatment throughout the process.

3. They could simplify the collaboration between **SEBI and the NCLT** (National Company Law Tribunal) regarding schemes. SEBI could concentrate on ensuring the process is robust and that all necessary information is disclosed, while the NCLT could take charge of determining whether something is fair in substance. This would help reduce overlap and resolve any disputes about authority.

9.4 Reforms to Merger Control

When it comes to the CCI, there are a few key areas where we could really have an influence:

1. We should improve how we oversee **minority stake acquisitions** by clearly outlining when non-controlling, purely financial investments can be exempt and when they might still raise competition concerns. This could mean establishing safe harbors and providing clearer guidelines.

2. It is important to keep a close watch on the **De Minimis Threshold (DVT)** to ensure it effectively identifies significant deals, especially in digital markets, while not placing unnecessary burdens on transactions that are harmless.

3. We need to refine the **guidelines for mergers** in the digital and data sectors, particularly regarding platforms, ecosystems, and data concentration.

4. Let us clarify the criteria for the **Green Channel** and consider creating more consistent standards for post-review. This could promote its use while also discouraging any misrepresentation through a strong deterrent effect.

9.5 Implementation-Focused Reforms

Looking at the ongoing reform efforts, a few actionable steps have become known based on recent experiences:

- **Explanatory Guidelines and Flexible Regulations:** CCI and SEBI could issue advisory guidelines that clarify: (a) the acceptable limits for safeguarding investor rights without controlling stakes; (b) typical examples of deals that fit into the Green Channel; and (c) the suggested sequence for securing approvals from FDI authorities, SEBI, CCI, and NCLT in standard transactions.
- **Collaborative Discussions:** Regular joint discussion papers from SEBI, MCA, CCI (and RBI, when relevant) on terms like “control,” “group,” “promoter,” and “substantial business operations” could foster practical alignment, even before any formal legal changes take place.
- **Information and Openness:** Sharing combined data on M&A approvals (including NCLT plans, SEBI-reviewed plans, and CCI mergers – along with information on minor transactions and Green Channel cases) would enable a factual assessment of delays, conditions, and deal cancellations, which can guide future enhancements.

9.6 Towards a Coherent Indian M&A Code

Instead of aiming for a single, all-encompassing "M&A Code," a more practical strategy would be to gradually harmonize:

- Key definitions (like control, promoter, group, and related party) found in the Companies Act, SEBI regulations, and the Competition Act.
- Timelines and disclosure formats to minimize unnecessary duplication.
- Collaboration among regulators through formal agreements, shared guidelines, and even establishing a permanent coordination group for significant M&A transactions.

If we implement these changes, India's M&A landscape could become more trustworthy and attractive to both domestic and international investors, while also safeguarding the interests of smaller shareholders and encouraging fair competition.

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