# LEGAL RISK MANAGEMENT IN M&A: THE EFFECT OF REGULATORY FRAMEWORKS

Aarthi D. Asrani, LL.M (Corporate and Financial Law), O.P Jindal Global University.

## ABSTRACT

Mergers and acquisitions (M&A) are strategic instruments that firms use to expand into new markets, diversify their holdings, and realize economies of scale. A merger occurs when two or more businesses combine to form a single entity, whereas an acquisition occurs when one business buys another. Due to the complexity of these operations, it is necessary to carefully examine all operational, financial, and legal factors to properly manage the risks involved.

M&A deals are divided into two categories: horizontal mergers, which increase market share and lessen rivalry within the same industry, and vertical mergers, which improve supply chain efficiency by combining businesses at different stages of production. Through the combination of businesses in various geographic markets within the same industry, market-extension mergers increase market reach. Conglomerate mergers, which combine enterprises in unrelated industries, provide advantages for diversification. Product-extension mergers combine businesses that produce related items to broaden product offerings.

In India, M&A activities are conducted with fairness, openness, and stakeholder protection guaranteed by a strong legal and regulatory framework. The Companies Act of 2013 includes fast-track merger measures to streamline the process for small businesses or mergers involving a holding company and its wholly owned subsidiary. It also lays out key corporate governance principles, including M&A procedures. To stop anti-competitive practices, mergers that meet certain requirements must be approved by the Competition Commission of India (CCI) under the Competition Act of 2002. By enforcing disclosure laws and takeover regulations, the Securities and Exchange Board of India (SEBI) protects investor interests and controls the conduct of listed firms. The 2016 Insolvency and Bankruptcy Code makes distressed asset acquisitions through mergers and acquisitions easier.

The scene has been greatly shaped by notable M&A cases. While the Vodafone-Hutchison merger's tax ramifications resulted in substantial revisions to tax rules, Tata Steel's acquisition of Corus highlighted issues associated with worldwide expansion and integration. WhatsApp's acquisition by Facebook serves as a stark reminder of how digital mergers affect user privacy and market competition.

This paper delves into the intricacies of mergers and acquisitions (M&A), scrutinizing various forms, legal structures, and seminal instances to offer a thorough comprehension of their strategic significance for the expansion of businesses.

**Keywords:** Mergers, Acquisitions, Corporate Growth, Market Expansion, Portfolio Diversification, Economies of Scale, Regulatory Framework, Competitive Practices, Legal Compliance and Strategic Transactions.

## INTRODUCTION

Corporate growth requires mergers and acquisitions (M&A) as a key tactic since it gives businesses access to new markets, portfolio diversification, and economies of scale. A merger occurs when two or more businesses come together to form a single entity, whereas an acquisition occurs when one business buys another. These procedures are intricate and multidimensional, necessitating a close examination of operational, financial, and legal aspects to properly manage related risks. M&A transactions can be divided into several categories, such as vertical mergers, which involve companies at different stages of the production process to improve supply chain efficiency and cut costs, and horizontal mergers, which take place between businesses in the same industry to increase market share and reduce competition. While market-extension mergers involve organizations in different geographic markets within the same industry to expand market reach, conglomerate mergers occur between companies in unrelated businesses and offer benefits relating to risk management and diversification. Conversely, product-extension mergers take place between businesses that have similar products with the goal of expanding the product line and entering new markets.[1]

A thorough legal and regulatory structure that guarantees justice, transparency, and stakeholder protection oversees M&A activity in India. One of the most important pieces of law is the Companies Act of 2013, which establishes the fundamental guidelines for corporate governance, including merger and acquisition processes. Fast-track merger provisions are included in this act, which streamlines and shortens the process for small businesses or mergers

[1] Adam Hayes, 'Mergers & Acquisitions (M&A): Types, structures, valuations', <https://www.investopedia.com/terms/m/mergersandacquisitions.asp> accessed 15 June 2024.

involving a holding company and its wholly-owned subsidiary.[2] The Competition Commission of India (CCI) oversees the Competition Act, of 2002,[3] which requires corporations to get CCI permission for mergers and acquisitions that reach certain criteria to avoid anti-competitive behavior and maintain fair competition in the market.[4]

To safeguard investor interests, the Securities and Exchange Board of India (SEBI) Regulations regulate how listed firms behave. These regulations include takeover codes and disclosure requirements during mergers and acquisitions (M&A).4. A framework for handling insolvency and bankruptcy is provided by the Insolvency and Bankruptcy Code, 2016, which makes it easier to acquire troubled assets through mergers and acquisitions.

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Under the Companies Act of 2013, fast track mergers simplify the process for certain types of mergers, enabling small businesses or businesses with unique features to combine without requiring extensive regulatory approvals that are normally necessary for larger transactions. By lowering the time and expense of the merger procedure, this clause seeks to facilitate corporate dealings.[8] The M&A landscape in India and around the world has been greatly influenced by a number of historic cases. One of the biggest cross-border purchases by an Indian corporation,

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[2] MCA, 'The Companies Act, 2013', < https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/acts.html?act=NTk2MQ==#Merger_and_Amalgamation_of_Companies> accessed 15 June 2024.

[3] CCI, 'The Competition Act, 2002', < https://www.cci.gov.in/images/legalframeworkact/en/the-competition-act-20021652103427.pdf> accessed 13 June 2024.

[4] CCI, 'The Competition (Amendment) Act, 2023', < https://www.cci.gov.in/images/legalframeworkact/en/the-competition-amendment-act-20231681363446.pdf> accessed 15 June 2024.

[5] SEBI, 'Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 [Last amended on May 17, 2024]', < https://www.sebi.gov.in/legal/regulations/may-2024/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-regulations-2015-last-amended-on-may-17-2024-_80422.html> accessed 07 July 2024.

[6] SEBI, 'Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 [Last amended on May 17, 2024]', < https://www.sebi.gov.in/legal/regulations/may-2024/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-regulations-2018-last-amended-on-may-17-2024-_80421.html> accessed 11 July 2024.

[7] India Code, 'The Insolvency and Bankruptcy Code, 2016', < https://www.indiacode.nic.in/handle/123456789/2154?sam_handle=123456789/1362> accessed 14 June 2024.

[8] MCA, 'The Companies Act, 2013', < https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/acts.html?act=NTk2MQ==#Merger_or_Amalgamation_of_Certain_Companies> accessed 14 June 2024.

Tata Steel's purchase of Corus, is one of the notable examples that emphasize the strategic significance of global expansion and integration issues.[9] The Vodafone-Hutchison merger, which was noteworthy for its tax ramifications and the ensuing legal dispute over capital gains tax, which had a major impact on the modifications of tax laws pertaining to international mergers and acquisitions in India.[10] The impact of digital mergers on market competitiveness and user privacy is highlighted by Facebook's acquisition of WhatsApp, which has drawn scrutiny from regulatory bodies across the globe.[11]

**Analysis:**

**The following regulations govern mergers and Acquisitions in India:**

**A. The Companies Act, 2013:**

**(i) Section 230: Power to Compromise or Make Arrangements with Creditors and Members:[12]**

Companies may suggest agreements or compromises with their creditors or members under Section 230. This could involve demergers, mergers, or debt restructuring. A request for a meeting of the creditors or members must be made to the National Company Law Tribunal (NCLT) to start this process. A majority of the creditors or members present and voting, or three-fourths of them must approve the compromise or solution. Following approval, the plan needs to be filed with the Registrar of Companies and approved by the NCLT. This part guarantees that any major reorganization is carried out openly and with the stakeholders' approval.

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[9] Tata Steel, 'Tata Steel completes £6.2bn acquisition of Corus Group plc', < https://www.tatasteel.com/media/newsroom/press-releases/india/2007/tata-steel-completes-62bn-acquisition-of-corus-group-plc/> accessed 14 June 2024.

[10] Swarnendu Chatterjee† and Anwesha Pal††, 'Vodafone versus India: A Never-Ending Saga', <https://www.scconline.com/blog/post/2022/11/29/vodafone-versus-india-a-never-ending-saga/>, accessed 12 July 2024.

[11] Parmy Olson, 'Facebook Closes $19 Billion WhatsApp Deal', < https://www.forbes.com/sites/parmyolson/2014/10/06/facebook-closes-19-billion-whatsapp-deal/> accessed 17 July 2024.

[12] MCA, 'The Companies Act, 2013', https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/acts.html?act=NTk2MQ==#Power_to_Compromise_or_Make_Arrangements_with_Creditors_and_Members accessed 16 July 2024.

**(ii) Section 231: Power of Tribunal to Enforce Compromise or Arrangement:**[13]

The NCLT is empowered under Section 231 to oversee and enforce the execution of any compromise or agreement approved by Section 230. This entails seeing to it that the agreement's conditions are correctly implemented and resolving any problems that may come up. The Tribunal has the authority to settle any disagreements that may arise between the business and its members or creditors as well as to create conditions for the arrangement's correct execution. The method for ongoing monitoring and enforcement provided in this section makes sure that everyone's interests are safeguarded during the implementation phase.

**(iii) Section 232: Merger and Amalgamation of Companies:**[14]

The process for a company merger or amalgamation is outlined in Section 232. Businesses that want to merge need to create a plan that outlines the sharing of shares, the transfer of assets and liabilities, and other pertinent information. At meetings scheduled for this purpose, the approval of this scheme must be obtained by most of the number representing three-fourths of the creditors or members. After that, the plan needs to be approved by the NCLT and submitted to the Registrar of Companies. This section also covers the safeguarding of dissident shareholders by offering them an escape strategy. Transparency and equitable treatment of all parties engaged in the merger or amalgamation are guaranteed by the comprehensive procedural procedures.

**(iv) Section 233: Merger or Amalgamation of certain Companies:**[15]

A streamlined process for the merger or amalgamation of holding companies, minor businesses, and their wholly owned subsidiaries is offered by Section 233. The procedure starts with the Boards of Directors of the participating firms approving the scheme. Next, the scheme is filed with the Registrar of Firms, and notification is sent to the Central Government and the official liquidator. The merger is considered

[13] MCA, 'The Companies Act, 2013', https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/acts.html?act=NTk2MQ==#Power_of_Tribunal_to_Enforce_Compromise_or_Arrangement accessed 16 July 2024.
[14] MCA, 'The Companies Act, 2013', https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/acts.html?act=NTk2MQ==#Merger_and_Amalgamation_of_Companies accessed 16 July 2024.
[15] MCA, 'The Companies Act, 2013', https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/acts.html?act=NTk2MQ==#Merger_or_Amalgamation_of_Certain_Companies accessed 08 June 2024.

accepted if no objections are voiced within 30 days of the merger. By lowering the complexity and duration of the procedures involved, this section seeks to make intra-group restructurings and mergers for smaller companies simpler and faster.

**(v) Section 234: Merger or Amalgamation of Company with Foreign Company:[16]**

Under certain conditions and by Central Government regulations, Indian corporations may combine with foreign companies under Section 234. The merger plan needs to be approved by the NCLT and adhere to both jurisdictions' regulatory criteria. The provision guarantees the protection of Indian stakeholders' interests while addressing the cross-border transfer of assets and liabilities. With the support of this provision, Indian businesses can grow internationally through mergers and acquisitions, promoting worldwide business prospects under regulatory supervision.

**(vi) Section 235: Power to Acquire Shares of Shareholders Dissenting from Scheme or Contract Approved by Majority:[17]**

A firm may purchase the shares of shareholders who are in disagreement with a plan or contract after it has been approved under Section 235. The purchasing business may give notice to dissenting shareholders to purchase their shares if a plan or contract has received approval from holders of at least 90% of the shares' value. Dissident shareholders may contest the acquisition by submitting an application to the NCLT. This clause permits the majority-approved schemes to move forward without hindrance while guaranteeing minority shareholders an exit option in the event of significant restructuring decisions.

**(vii) Section 236: Purchase of Minority Shareholding:[18]**

A means for majority shareholders to purchase the remaining shares in a firm is provided under Section 236, which deals with the purchase of shares from minority

[16] MCA, ‘The Companies Act, 2013’, https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/acts.html?act=NTk2MQ==#Merger_or_Amalgamation_of_Company_with_Foreign_Company accessed 08 June 2024.
[17] MCA, ‘The Companies Act, 2013’, https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/acts.html?act=NTk2MQ==#Power_to_Acquire_Shares_of_Shareholders_Dissenting_from_Scheme_or_Contract_Approved_by_Majority accessed 08 June 2024.
[18] MCA, ‘The Companies Act, 2013’, https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/acts.html?act=NTk2MQ==#Purchase_of_Minority_Shareholding accessed 09 June 2024.

shareholders. In order to ensure equitable treatment, the clause requires the valuation of shares and the purchase offer to minority shareholders. Minority shareholders are entitled to sell their shares for a price set by a registered valuer at fair market value. This clause guarantees that minority shareholders' interests are taken into account during material ownership changes and guards against their being driven out without just recompense.

**(viii) Section 237: Power of Central Government to Provide for Amalgamation of Companies in Public Interest:[19]**

The Central Government may, in the public interest, mandate the merger of two or more corporations under Section 237. When it is required to safeguard the public interest, such as in situations involving economic development, financial stability, or the abolition of unfair practices, this authority may be used. Prior to putting into effect the merger plan, the government must draft it and confer with the NCLT. This clause gives the government a way to become involved in business matters in order to protect the public interest and make sure mergers and amalgamations are carried out in a way that is advantageous to society and the economy as a whole.

**(ix) Section 238: Registration of Offer of Schemes Involving Transfer of Shares:[20]**

Any offer including the transfer of shares under a scheme of compromise, arrangement, or amalgamation must be registered by Section 238. To ensure openness and compliance with legal obligations, the corporation must abide by the rules of the offer and transfer of shares. To safeguard shareholder interests and uphold market integrity, this department makes sure that all offers for the transfer of shares are made in a fair and controlled way.

[19] MCA, 'The Companies Act, 2013', https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/acts.html?act=NTk2MQ==#Power_of_Central_Government_to_Provide_for_Amalgamation_of_Companies_in_Public_Interest accessed 15 June 2024.

[20] MCA, 'The Companies Act, 2013', https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/acts.html?act=NTk2MQ==#Registration_of_Offer_of_Schemes_Involving_Transfer_of_Shares accessed 15 June 2024.

**(x) Section 239: Preservation of Books and Papers of Amalgamated Companies:**[21]

Section 239 requires combined firms' books and records to be kept for a set amount of time, which is set by the NCLT. The official liquidator or the combined business is in charge of keeping these records up to date. By guaranteeing the preservation of significant records and papers for future use, audits, and regulatory compliance, this part upholds accountability and openness throughout the amalgamation process.

**(xi) Liability of Officers in Respect of Offences Committed Prior to Merger, Amalgamation, etc:**[22]

Officers' culpability for crimes done before to the merger or amalgamation is covered under Section 240. It makes sure that after the merger, the executives' obligations and liabilities of the merging companies don't vanish. According to the section, any legal actions or prosecutions brought against the officials for crimes done before the merger are permitted to proceed, and the combined company is responsible for paying these debts. By upholding corporate governance principles, this clause guarantees accountability and continuity in resolving any previous wrongdoing or transgressions.

**B. The Indian Contract Act, 1872:**

**(i) Section 10: What Agreements are Contracts:**[23]

The requirements for a legally binding contract are outlined in Section 10 of the Indian Contract Act of 1872. It states that if an agreement is made with the free assent of persons who are legally able to enter into contracts, for a legitimate consideration, and for a legitimate purpose, and it is not expressly declared void herein, then it is a contract. This section is essential to the M&A environment since it guarantees the enforceability of the merger or acquisition agreement. An M&A transaction must be made with free consent, which means that no party—usually the target firm nor the acquiring

[21] MCA, 'The Companies Act, 2013', https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/acts.html?act=NTk2MQ==#Preservation_of_Books_and_Papers_of_Amalgamated_Companies accessed 15 June 2024.
[22] MCA, 'The Companies Act, 2013', https://www.mca.gov.in/content/mca/global/en/acts-rules/ebooks/acts.html?act=NTk2MQ==#Liability_of_Officers_in_Respect_of_Offences_Committed_Prior_to_Merger_Amalgamation_etc accessed 18 June 2024.
[23] Manupatra, 'Indian Contract Act, 1872', https://www-manupatrafast-in.opj.remotlog.com/ba/dispbot.aspx?nActCompID=15336, accessed 18 June 2024.

company—can engage into the agreement by force, fraud, or deception. The consideration, which may consist of money, stock, or other assets, must also be legitimate, and the agreement's goals cannot be unlawful or contrary to public policy. Making sure these components are included is essential to the M&A transaction's legal legality.

**(ii) Section 13 – Consent[24] and Section 14 – Free Consent:[25]**

The concepts of consent and free consent are discussed in Sections 13 and 14, respectively. Consent is defined in Section 13 as the same thing that two or more people agree upon in the same sense. In Section 14, it is further explained that consent is free from coercion, undue influence, fraud, misrepresentation, or error. These clauses are essential to M&A deals because they shield the parties from being coerced into a deal by unfair tactics or under duress. For example, if one party employs deception to trick the other into signing the M&A deal, that consent would not be deemed free and the deceived party could choose to cancel the agreement.

**(iii) Section 2(a)[26] and 2(b) – Offer and Acceptance:[27]**

Offer and acceptance are defined in Sections 2(a) and 2(b), respectively. An offer is a proposition that a party extends to another, signifying their desire to engage into a contract with specific conditions. The unqualified consent to all of the terms of the offer is called acceptance. These sections are crucial throughout the negotiating stage of a merger or acquisition. An offer made by the acquiring business to the target company creates a legally enforceable contract if it is accepted without reservation. Offer and acceptance procedures need to be precise and explicit. The target company would be making a fresh offer and rejecting the first one if it made a counteroffer or changed the parameters. Therefore, in order to create a legally binding M&A agreement, clear communication and documentation of the offer and acceptance are crucial.

**(iv) Section 2(d) – Consideration:[28]**

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[24] Ibid
[25] Ibid
[26] Ibid
[27] Ibid
[28] Ibid

According to Section 2(d), consideration is defined as something of value provided by both parties to a contract in order to persuade them to engage in an exchange of reciprocal performances. Consideration is an essential element of M&A transactions since it symbolizes the value that is transferred between the target and acquiring company. This compensation may come in the form of stock swaps, cash payments, or a mix of the two. The consideration needs to be lawful, which means it can't contain any unethical or illegal content. In the event that a merger agreement calls for the exchange of shares, for instance, the shares must be tradable legally and free from any fraudulent behavior. A fair and equitable transaction is ensured by proper consideration, which also gives the contract legal basis for enforcement.

**(v) Section 11 – Who are competent to contract[29] and Section 12 – What is a sound mind for purposes of contracting**:[30]

Sections 11 and 12 address the ability to contract. According to Section 11, anyone who satisfies the requirements of being of sound mind, of majority age, and not barred from entering into contracts by any applicable laws is competent to enter into a contract. What constitutes a sound mind for the purposes of entering into a contract is defined in Section 12. These clauses guarantee that the parties to an M&A transaction are legally entitled to engage into legally binding agreements. This implies that in order to negotiate and complete the M&A transaction, the directors or representatives of the participating companies must possess the necessary legal authority. For example, if the merger is not approved by the board of directors of the firm, the agreement may be ruled unlawful for lack of capacity. The legal capability of each party to enter into a contract must be ensured for the M&A transaction to be valid and enforceable.

**(vi) Section 23 - What considerations and objects are lawful and what not:[31]**

According to Section 23 of the Indian Contract Act, an agreement's consideration or object is lawful unless it is prohibited by law, of a kind that, if allowed, would circumvent the provisions of any law, fraudulent, involves or implies injury to another person's person or property, or is deemed by the court to be immoral or against public

[29] Ibid
[30] Ibid
[31] Ibid

policy. This element of M&A transactions guarantees that the merger or acquisition's goal is legal and does not conflict with any existing laws or public policy. For instance, it would be illegal to combine businesses with the goal of monopolizing the market or restricting commerce in a way that violates competition regulations. To ensure that the transaction is both legally and morally sound, the M&A agreement's purpose and considerations must adhere to both ethical and standard legal requirements.

**(vii) Section 29 – Agreements void for uncertainty[32] and Section 30 – Agreements by way of wager, void:[33]**

A contract's terms must be certain or able to be rendered certain according to Section 29. A contract that contains ambiguous or imprecise language cannot be enforced. This means that in M&A transactions, all terms and conditions—such as the price, mode of payment, and any contingencies—must be precisely stated and accepted by both parties. Section 30 deems wagering agreements null and unenforceable. This section emphasizes the idea that agreements should be established with clear terms and a legitimate goal rather than with speculative or gambling reasons, even though it is less directly applicable to M&A. Having clarity in the provisions of the M&A agreement promotes a smooth and enforceable transaction by averting misconceptions and conflicts.

**(viii) Section 37 to 39: contracts which must be performed:[34]**

The performance of contracts is covered in Sections 37 through 39, which state that unless the Act's provisions allow for it, parties to a contract must either perform or propose to perform their respective commitments. These sections highlight the significance of carrying out the contractual duties outlined in the merger or acquisition agreement in M&A transactions. This covers the transfer of assets, the issuance of shares, the payment of the agreed-upon value, and any further promises made throughout the negotiation. If these duties are not fulfilled, there may be legal problems and possible remedies, such as damages or specific performance. In order to preserve

[32] Ibid
[33] Ibid
[34] Ibid

the integrity and dependability of the contractual connection, compliance with these sections guarantees that the requirements of the M&A agreement are respected.

**(ix) Section 62 - Effect of novation, rescission, and alteration of contract:**[35]

According to Section 62, a contract does not have to be carried out if the parties agree to replace it with a new one, to revoke it, or to modify it. This clause permits the parties to change the terms of their agreement in the context of M&A, so long as both parties agree. This may be pertinent in cases where unanticipated events or new knowledge necessitate adjusting the original terms of the merger or acquisition. It makes M&A deals more flexible and adaptable by allowing the agreement to be amended to better meet the changing needs and interests of both parties.

**(x) Section 65 - Obligation of person who has received advantage under void agreement, or contract that becomes void:**[36]

According to Section 65, the recipient of any benefit obtained through a void agreement or contract is required to return the benefit to the source of the advantage or compensate them. In M&A transactions, the parties are required to repay any benefits or payment obtained if an agreement is determined to be void or becomes void for grounds such as lack of free consent. By preventing unfair enrichment and ensuring fairness, this safeguards both parties' interests in the event that the M&A agreement is declared void.

**(xi) Section 72 - Liability of person to whom money is paid or thing delivered by mistake or under coercion:**[37]

Compensation for any loss or damage resulting from the contract breach is provided under Section 73. It says that in the event that a contract is broken, the person who is harmed is entitled to compensation for any loss or harm that naturally results from the breach or that the parties knew, at the time the contract was made, would probably result from the breach. In the context of M&A, the party that has been wronged may claim damages for any losses incurred if the other party breaches its commitments under the terms of the merger or acquisition agreement. In order to preserve the fairness and

[35] Ibid
[36] Ibid
[37] Ibid

balance of the transaction, this clause guarantees that the parties will be held responsible for their contractual obligations and that any violations will be made good with suitable compensation.

**C. Specific Relief Act, 1963:**

**(i) Section 10 - Specific performance in respect of contracts:**[38]

According to Section 10 of the Specific Relief Act, if the actual harm caused by non-performance cannot be determined or if monetary compensation is insufficient to provide a sufficient remedy, specific performance of a contract may be enforced. This section is important in the context of M&A because these deals frequently entail intricate and one-of-a-kind arrangements that are difficult to put monetary value on. For example, if one party violates a merger or acquisition agreement, the other party may demand particular performance to force the violating party to carry out the transaction according to the original terms. This guarantees that the party that is harmed receives the benefit of the particular agreement they made, as opposed to merely receiving monetary compensation that might not be sufficient to compensate for the loss sustained as a result of the breach.

**(ii) Section 11 - Cases in which specific performance of contracts connected with trusts enforceable:**[39]

Specific performance of trust-related contracts is permitted under Section 11. This section may be pertinent in M&A transactions where trust-structured firms are involved or where trust-related issues are addressed in the agreement, even though it is not immediately applicable to every transaction. This clause, for instance, guarantees the enforceability of the trust's conditions and any related contractual duties if a merger involves assets held in trust. This gives the parties to the M&A transaction clarity and security.

[38] Manupatra, 'Specific Relief Act, 1963', https://www-manupatrafast-in.opj.remotlog.com/ba/dispbot.aspx?nActCompID=63527 accessed 23 July 2024.
[39] Ibid

**(iii) Section 12 - Specific performance of part of the contract:[40]**

The precise performance of a portion of a contract is covered in Section 12. It says that the court may order specific performance of a separable and independently performable portion of a contract, so long as it doesn't give an unfair benefit to one party. When unanticipated events limit the transaction's completion, this part of M&A transactions becomes important. This section enables the aggrieved party to request specific performance for the parts that can be independently performed, for instance, if an acquisition consists of multiple phases or components and some are completed while others are not. This ensures that the parties benefit from the portions of the transaction that can be carried out.

**(iv) Section 14 - Contracts not specifically enforceable:[41]**

The categories of contracts that are expressly unenforceable are listed in Section 14. This includes contracts involving personal abilities or qualifications, contracts that are determinable in nature, and contracts where payment in cash serves as an adequate remedy. This section suggests that in the context of M&A, particular performance might not be allowed if a transaction contains personal services or agreements that are naturally terminable. An M&A agreement can, for example, have a provision allowing either party to terminate the agreement under circumstances. In such a case, the enforcement of specific performance would be precluded, highlighting the need to have precise and binding provisions in the agreement.

**(v) Section 16 - Personal bars to relief:[42]**

Personal bars to the alleviation of specific performance are outlined in Section 16. It specifies that a party that has broken a contract or behaved dishonestly cannot have particular performance enforced against them. This clause guarantees that parties seeking enforcement of the agreement in M&A transactions must either have fulfilled their obligations or be prepared to do so. For instance, a party to a merger would not be permitted to demand specific performance if they had omitted to make required

[40] Ibid
[41] Ibid
[42] Ibid

disclosures or had misrepresented important information. This clause protects equity by limiting the parties who may seek redress to those who have behaved in good faith.

**(vi) Section 19 - Relief against parties and persons claiming under them by subsequent title:**[43]

Subject to the exception of individuals who obtained the title for value and without knowledge of the original contract, Section 19 permits particular performance to be enforced against parties to the contract and those claiming under them by a subsequent title. This clause is crucial to the M&A setting since it guarantees that the original parties' obligations will apply to their successors and assigns. For example, if a business engaged in an acquisition sells off its assets or changes ownership, the new claimants or owners—as long as they knew about it—remain subject to the terms of the original M&A agreement. This guarantees that, even in the event of ownership changes, contractual obligations will remain in effect.

**(vii) Section 20 - Substituted performance of a contract:**[44]

Section 20 gives the court the authority to decide whether to order specific performance based on the particulars of each case. The conduct of the parties, the fairness and justice of the contract, and whether giving specific performance would put the defendant through undue hardship are all considered by the court. This provision emphasizes that in M&A transactions, the court will consider all relevant factors before deciding, especially in cases where a party requests specific performance. For instance, the court may decide to grant damages rather than specific performance if implementing the M&A agreement would cause substantial hardship to one party or if the arrangement was unjustly biased in that party's favor. This clause guarantees a fair and balanced approach that considers the interests of all parties involved.

**(viii) Section 21 - Power to award compensation in certain cases:**[45]

The court may grant compensation in addition to or instead of specified performance under Section 21. This section applies to M&A transactions when a particular

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[43] Ibid
[44] Ibid
[45] Ibid

performance is either impractical or not the best course of action. The harmed party may receive financial remedy from the court in the form of compensation for any losses incurred as a result of the breach. For example, if regulatory concerns prevent a merger from moving forward, the court may compensate the party that loses out for the losses experienced because of the transaction's failure. This clause guarantees the aggrieved party sufficient recompense for their losses even if specified performance is not granted.

**(ix) Section 22 - Power to grant relief for possession, partition, refund of earnest money, etc.:[46]**

When specific performance is requested, the court may also award other relief under Section 22, such as possession, division, or earnest money reimbursement. This section may be used in M&A transactions to request ancillary reliefs needed to finish the deal or address any problems that may have arisen. If a seller breaches the terms of the acquisition, for instance, and the acquiring business has already paid earnest money, the court has the authority to mandate specific performance or compensation in addition to the earnest money refund. This clause guarantees all-encompassing relief by attending to every facet of the violation and its aftermath.

**(x) Section 23 - Liquidation of damages not a bar to specific performance:[47]**

According to Section 23, a contract's mention of liquidated damages does not automatically bar the court from requiring performance. This clause in M&A transactions indicates that the party that has been wronged may still seek performance even if the agreement provides for damages in the event of a breach. For example, if a merger agreement contains a penalty for non-completion, the party that is impacted may elect to enforce the merger instead of only pursuing the penalty. This offers a more thorough remedy for breaches by ensuring that the existence of liquidated damages does not impair the ability to demand specific performance.

**(xi) Section 26 - When the instrument may be rectified:[48]**

[46] Ibid
[47] Ibid
[48] Ibid

If both parties made a mistake in the contract's drafting, it can be corrected under Section 26. When a drafting error causes the agreement to not fully reflect the parties' objectives, this section becomes extremely important in M&A deals. For instance, the court has the authority to force the revision of a merger agreement to accurately reflect the parties' intentions if it specifies too many shares to be issued. This clause guarantees fairness and prevents conflicts by guaranteeing that the contractual contracts accurately reflect the terms that have been agreed upon.

**(xii) Section 27 - When rescission may be adjudged or refused:[49]**

In situations where a contract is voidable or has been broken, Section 27 allows for its revocation. This clause permits a party to request the termination of an M&A agreement if the other party has violated the terms of the agreement or if the contract is determined to be voidable for reasons such as fraud or misrepresentation. For instance, a corporation may attempt to rescind the merger agreement if it finds during due diligence that the other party withheld material facts. This clause offers a mechanism to cancel the transaction and go back to the pre-contractual condition, protecting parties from being forced to abide by agreements that are essentially faulty or violated.

**(xiii) Section 28 - Rescission in certain circumstances of contracts for the sale or lease of immovable property, the specific performance of which has been decreed:[50]**

Contracts about the purchase or leasing of real estate may be rescinded under Section 28 if specific performance has been mandated and the party being directed to perform does not comply. This section can be applied to M&A transactions involving sizable immovable property assets, even if it is more pertinent to real estate transactions. For example, if real estate is transferred as part of a merger and the seller doesn't deliver the property as directed by the court, the buyer may attempt to rescind the agreement. This guarantees that if specific performance concerning immovable property is not accomplished, parties will not be left without redress.

**D. Income Tax Act, 1961:**

[49] Ibid
[50] Ibid

**(i) Section 2 (1B): Amalgamation:**[51]

A thorough definition of "amalgamation" is provided in Section 2(1B) of the Income Tax Act, which also establishes the framework for how amalgamations are treated tax-wise. This section defines amalgamation as the joining of two or more firms to form a new company or the joining of one or more corporations with another company. For the transaction to be considered an amalgamation for this section, all of the merging entities' assets and liabilities must be assumed by the resulting firm, and shareholders who own at least 75% of the value of the amalgamating company's shares must become shareholders of the combined company. This term is important since the Act's benefits and tax breaks are only available to transactions that match these requirements.

**(ii) Section 47 – Transactions not regarded as transfers:**[52] Certain transactions are not considered transfers for capital gains tax, according to Section 47. With regard to M&A, subsections 47(vi), 47(vii), and 47(xiii) are especially pertinent.

**(iii) Section 47(vi):** According to this part, if the combined company is an Indian business, any transfer of a capital asset made by the merging firm to the combined company is not considered a transfer. This clause reduces the tax burden on such transactions by exempting the merging firm from capital gains tax on the transfer of assets during an amalgamation.

**(iv) Section 47(vii):** According to this part, if the merged company is an Indian business, any transfer of shares made in exchange for the allotment of shares in the combined company is not considered a transfer. Because of this clause, shareholders of the combining firm benefit from not paying capital gains tax on the shares they exchange during the merger.

**(v) Section 47(xiii):** If certain requirements are completed, such as the transfer of all assets and liabilities and the participation of all partners as shareholders in the new business, this paragraph applies to the transfer of a capital asset or an intangible asset from a partnership firm to a company because of a conversion. This guarantees that the

[51] Indiacode, 'The Income-tax Act, 1961', https://www.indiacode.nic.in/handle/123456789/2435?view_type=browse accessed 20 July 2024.
[52] Ibid

transformation of a corporation into a firm—a frequent event in mergers and acquisitions—does not result in capital gains tax.

**(vi) Section 49 – Cost concerning certain modes of acquisitions:[53]**

The cost of acquiring capital assets through specific acquisition types, such as amalgamation and demerger, is outlined in Section 49. According to subsection 49(1), the cost of acquisition for the merged company is the price at which the asset was purchased by the combining firm when a capital asset is transferred under a plan of amalgamation. This clause prevents any tax liability on the part of the combined firm resulting from changes in the cost base by guaranteeing continuity in the cost base for capital assets.

**(vii) Section 72A - Carry Forward and Set Off of Accumulated Loss and Unabsorbed Depreciation Allowance in Amalgamation or Demerger:[54]**

Section 72A allows the merged firm to carry over and deduct unabsorbed depreciation and cumulative loss from the merging entity. This advantage is only accessible if certain requirements are satisfied, such as the combined firm maintaining a minimum level of assets for five years and the merging company continuing the business of the original company for at least five years. Companies that are restructuring especially benefit from this provision since it lets them use depreciation and accumulated losses to lower their taxable income, which improves the combined company's financial health.

**(viii) Section 56(2)(x) - Income from Other Sources:[55]**

Section 56(2)(x) pertains to M&A transactions that include the transfer of shares or assets at a price lower than their fair market value and deals with income from other sources. This clause states that any property, including shares, that is received by an individual or a business for less than its fair market worth is subject to income tax in the recipient's hands. This implies that in the context of mergers and acquisitions, any difference that results from the transfer of shares at a price lower than fair market value

[53] Ibid
[54] Ibid
[55] Ibid

may be subject to taxation. This clause makes sure that all transfers are performed at arm's length and attempts to stop tax avoidance through undervalued trades.

**(ix) Section 79 - Carry Forward and Set Off of Losses in Case of Certain Companies:[56]**

When a company's shareholding changes, Section 79 limits the ability to carry forward and deduct losses. More specifically, losses earned before to the shift cannot be carried forward and offset against future profits if more than 51% of the shares change hands. Companies whose shareholding changes because of an amalgamation or demerger that has been approved by the relevant authority are exempt, nevertheless. This part is essential to M&A transactions because it guarantees that businesses going through mergers or acquisitions can still profit from their cumulative losses as long as the deal is set up by Act regulations.

**(x) Section 115JB - Minimum Alternate Tax (MAT):[57]**

The Minimum Alternate Tax (MAT), which is imposed on businesses whose regular tax burden is less than a specific proportion of their book earnings, is covered by Section 115JB. This clause guarantees that firms cannot completely avoid tax liability by restructuring in the context of M&A. The MAT requirements mandate that a business pay a minimum tax based on its book profits even if it has sizable exemptions or deductions that lower its regular tax bill. This clause guarantees that all businesses, even those engaged in mergers and acquisitions, pay a minimum amount of taxes to the government.

**(xi) Section 50B - Special Provision for Computation of Capital Gains in Case of Slump Sale:[58]**

In the event of a slump in sale—a transaction in which a division or undertaking is transferred as a continuing concern for a lump sum consideration—Section 50B outlines the procedure for calculating capital gains. Slump sales are a typical method used in M&A to move business units. This part treats the net worth of the undertaking as the cost of acquisition and improvement, ensuring that the capital gains deriving

[56] Ibid
[57] Ibid
[58] Ibid

from such sales are computed appropriately. It offers a straightforward technique for figuring out taxable gains, guaranteeing compliance and accurate tax assessment for transactions including slump sales.

**(xii) Section 115-O - Dividend Distribution Tax (DDT):[59]**

Domestic corporations that distribute dividends are subject to a tax under Section 115-O. When the combined firm pays dividends to its shareholders, this section becomes pertinent in the context of mergers and acquisitions. In order to avoid double taxing dividend money in the hands of shareholders, the Dividend Distribution Tax makes sure that corporations pay tax on the dividends distributed. Companies' post-merger financial planning is impacted by this clause since it requires them to take the DDT into consideration when issuing dividends.

**(xiii) Section 2(22)(e) - Deemed Dividend:[60]**

Regarding considered dividends, which are advances or loans given by a closely held firm to its shareholders or to companies in which owners have a significant stake, see Section 2(22)(e). If specific requirements are satisfied, transactions in the framework of mergers and acquisitions that involve advances or loans to shareholders or affiliated companies may be taxed as considered dividends. In order to ensure that earnings are distributed fairly as dividends, this clause forbids the distribution of profits under the pretense of loans or advances.

**E. Competition Act, 2002:**

**(i) Section 5 – Combination:[61]**

The Competition Commission of India (CCI) notification thresholds and the definition of "combination" are established in Section 5 of the Competition Act. The combined entities' assets and turnover determine the thresholds. These levels are updated on a regular basis by the revised Act to reflect changes in the economy. This is an important

[59] Ibid
[60] Ibid
[61] Manupatra, 'Competition Act, 2002', https://www-manupatrafast-in.opj.remotlog.com/ba/dispbot.aspx?nActCompID=1711&iActID=29 accessed 09 July 2024.

provision since it establishes which M&A transactions are subject to the CCI's review jurisdiction. The Act's establishment of these standards guarantees that only large transactions with the potential to affect the market are examined, limiting anti-competitive behavior while enabling smaller transactions to move forward with minimal delays from the regulatory authorities.

**(ii) Section 6 – Regulation of Combinations:**[62]

Any combination that has the potential to materially harm competition within the relevant Indian market is forbidden by Section 6. The CCI will now be able to evaluate such effects more quickly and with greater precision thanks to the changes made to this section. If there are concerns about competition, the CCI has the authority to accept, reject, or suggest changes to a transaction. This part is essential to M&A deals since it makes sure that the emergence of monopolies or other powerful market actors won't unnecessarily change the competitive landscape, safeguarding consumer interests and upholding market equity.

**(iii) Section 29 - Procedure for investigation of combinations:**[63]

The protocol for the investigation of combinations is described in Section 29. Upon being notified of a proposed combination, the CCI has the authority to launch an inquiry to evaluate the potential effects on competition. For these kinds of inquiries, the revisions have brought in more precise protocols and stricter deadlines. Within 30 days, the CCI must finish the preliminary evaluation and determine whether to move on with a thorough inquiry. Businesses benefit from this streamlined approach since it lowers uncertainty and delays in the approval process, facilitating more effective M&A transaction execution.

**(iv) Section 30 - Procedure in case of notice under sub-section (2) of section 6:**[64]

The CCI has the power to control how it conducts its combination investigation processes under Section 30. The CCI now has the authority to implement more adaptable and effective procedures, such as utilizing technology for assessments and

[62] Ibid
[63] Ibid
[64] Ibid

filings. By streamlining processes, businesses may handle merger and acquisition (M&A) transactions more quickly and transparently, lowering their administrative load and guaranteeing that competition-related disputes are resolved more quickly.

**(v) Section 31 - Orders of Commission on combinations:**[65]

The possible orders the CCI may issue regarding combinations are described in Section 31. If the merger is likely to hurt competition, the CCI has the authority to approve it, approve it with modifications, or ban it. The criteria for adjustments and the schedule for their execution have been made clearer by the amendments. This means that, in the case of M&A deals, businesses may need to modify certain aspects of their proposed agreement, either structurally or behaviorally, to secure approval and prevent the transaction from undermining market competition.

**(vi) Section 32 - Acts taking place outside India but having an effect on competition in India:**[66]

The Competition Act's jurisdiction is expanded by Section 32 to include actions that occur outside of India but affect competition within the country. This clause has been reinforced by the modifications to guarantee that international M&A deals that have an impact on Indian markets are also carefully examined. In an increasingly globalized economy, it is crucial to make sure that international mergers and acquisitions do not have a detrimental effect on Indian enterprises or customers.

**(vii) Section 44 - Penalty for making false statement or omission to furnish material information:**[67]

False statements or the omission of material information from notifications and submissions to the CCI are punishable under Section 44. To guarantee that companies give correct and complete information and to discourage non-compliance, the changes have enhanced the penalties. This is essential to preserving the M&A review process's integrity and guaranteeing that the CCI can make defensible choices.

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[65] Ibid
[66] Ibid
[67] Ibid

**(viii) Section 45 - Penalty for contraventions about furnishing of information:[68]**

Penalties are imposed under Section 45 for not informing the CCI of a combination as required by the Act. More severe penalties have been added by the revisions to guarantee compliance. This means that to avoid serious penalties, M&A companies need to be careful when determining if their transaction fits the notification standards and make sure they notify the CCI.

**(ix) Section 46 - Power to impose lesser penalty:[69]**

If the defaulting company cooperates with the investigation and discloses all relevant information about the alleged violation, Section 46 gives the CCI the authority to impose a lower penalty. This provision has been improved by the revisions to promote collaboration and self-reporting. This part encourages corporations to be open and helpful during the review process in the context of M&A, potentially lowering their liability in the event of unintentional non-compliance.

**(x) Section 53B - Appeal to Appellate Tribunal:[70]**

Parties may appeal CCI orders to the National Company Law Appellate Tribunal (NCLAT) under Section 53B. The modifications have clarified the grounds for appeal and expedited the appeals process. As a result, businesses engaged in M&A transactions are guaranteed the protection of their rights and the chance for judicial review if they feel that the CCI's judgment has wronged them.

**(xi) Section 53N - Awarding compensation:[71]**

Compensation for loss or damage resulting from anti-competitive behavior or misuse of a dominant position is stipulated in Section 53N. This has been expanded by the changes to cover combinations that were completed against the Act. This provision adds another level of accountability for businesses involved in anti-competitive mergers

[68] Ibid
[69] Ibid
[70] Ibid
[71] Ibid

or acquisitions by guaranteeing that impacted parties can pursue remedies and compensation if an M&A transaction negatively affects them.

**F. FEMA Act 1999:**

**(i) Section 2 – Definitions:**[72]

Definitions for terminology used in the Act, including "authorised person," "foreign exchange," "foreign security," and "person resident in India," are given in Section 2 of the FEMA. These definitions are essential because they define the parameters within which the Act can be applied. Comprehending these definitions is essential for assessing whether a transaction in the M&A setting is subject to FEMA's jurisdiction. For example, determining whether an entity is a "foreign security" or a "person resident in India" has an impact on the transaction's regulatory obligations.

**(ii) Section 3 – Dealing in foreign exchange, etc.:**[73]

Dealings in foreign exchange other than through authorized individuals are prohibited by Section 3. This covers deals like when a foreign corporation transfers or buys shares in an Indian company. This ensures that all foreign exchange transactions are regulated and monitored for M&A transactions by requiring any foreign investment or divestiture to go via authorized dealers. This clause stops illicit capital flows and contributes to the preservation of India's foreign exchange reserves.

**(iii) Section 6 – Capital account transactions:**[74]

The Reserve Bank of India (RBI) is given authority under Section 6 to control capital account transactions, such as purchases and investments. The transfer of immovable property in India and the issuance of any security by an individual residing outside of the country are particularly covered by subsections 6(2) and 6(3). This section on M&A transactions suggests that any merger or acquisition involving foreign investment needs

[72] Directorate of Enforcement, 'The Foreign Exchange Management Act, 1999', https://enforcementdirectorate.gov.in/sites/default/files/Act%26rules/FEMA_ACT_1999.pdf accessed 12 July 2024.
[73] Ibid
[74] Ibid

to abide by the guidelines set forth by the RBI. This guarantees that these transactions won't have a negative impact on India's financial stability or balance of payments.

**(iv) Section 7 – Export of goods and services:**[75]

The realization and repatriation of foreign exchange, as well as the export of products and services, are covered in Section 7. This area affects deals involving companies that have major export operations, even though it is not directly related to M&A. The target company's export activity compliance status under FEMA may be a crucial consideration in due diligence for a merger or acquisition. For the transactional company to remain legal and financially stable, it is imperative that all foreign exchange revenues from exports are accurately realized and repatriated.

**(v) Section 9 - Exemption from realization and repatriation in certain cases:**[76]

Remittance of foreign cash, specifically that which is owed or accrued to an Indian resident, is required by Section 9. This provision guarantees that any foreign exchange gains—such as dividends or sale proceeds—arising from the M&A transaction are repatriated to India. This clause guarantees that the gains from M&A deals assist the Indian economy and contribute to the preservation of the nation's foreign exchange reserves.

**(vi) Section 10 – Authorised person:**[77]

Certain entities are designated as "authorised persons" in Section 10 and are permitted to deal in foreign exchange. To guarantee compliance with FEMA requirements, it is imperative to route the exchange of funds for M&A transactions involving foreign firms through these designated persons. In order to lower the possibility of illicit transactions and maintain openness, this section makes sure that all foreign exchange deals are carried out through channels that are controlled and closely watched.

**(vii) Section 13 – Penalties:**[78]

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[75] Ibid
[76] Ibid
[77] Ibid
[78] Ibid

The penalties for breaking any of the FEMA's provisions or any rules, regulations, or orders made pursuant to the Act are outlined in Section 13. This part works as a disincentive to non-compliance in M&A deals. Any violation of FEMA regulations can result in serious consequences, such as fines and jail time. Examples of these violations include unapproved foreign currency transactions and the failure to repatriate foreign exchange. This highlights how crucial it is to follow FEMA regulations during M&A deals to prevent legal issues.

**(viii) Section 15 – Power to compound contravention**:[79]

FEMA regulations can be violated, but Section 15 permits the RBI to compound those infractions and facilitate an out-of-court settlement. If a firm mistakenly breaches FEMA requirements in the context of M&A, it can apply with the RBI to compound the infraction and avoid drawn-out legal proceedings. This part guarantees that businesses may carry on with minimal interruptions to their operations and offers a way to address inadvertent violations.

**(ix) Section 46 – Power to make rules:[80]**

The Central Government is authorized by Section 46 to establish regulations to implement the FEMA provisions. This covers regulations about foreign investment, securities purchase and transfer, as well as other matters pertinent to M&A deals. The specific regulatory framework that businesses must adhere to during M&A transactions involving foreign exchange is provided by the regulations outlined in this section. Smoother cross-border M&A operations are made possible by these regulations, which guarantee uniformity and clarity in the application of FEMA provisions.

**(x) Section 47 – Power to make regulations:[81]**

The RBI is authorized by Section 47 to promulgate regulations to carry out the FEMA's provisions. A wide range of actions are covered by these regulations, such as share

[79] Ibid
[80] Ibid
[81] Ibid

acquisition and transfer, foreign exchange repatriation, and foreign investor compliance obligations. The RBI's regulations give precise instructions on how foreign investments should be organized, reported, and managed for M&A transactions. The legality and viability of M&A transactions involving foreign corporations depend heavily on compliance with these restrictions.

**Regulations under FEMA that are relevant to M&A transactions:**

**(i) Foreign Exchange Management (Issue of security in India by a branch, office, or agency of a Person resident outside India) Regulations, 2000:**[82]

The issuing and transfer of securities to overseas investors are governed by these regulations. They lay out the procedures for reporting on these transactions as well as the circumstances in which foreign enterprises can engage in Indian businesses.

**(ii) Foreign Exchange Management (Cross Border Merger) Regulations, 2018:**[83]

Cross-border mergers and amalgamations are expressly covered by this legislation. They guarantee that inbound and outbound mergers adhere to FEMA regulations by defining the regulatory framework for these kinds of transactions.

**(iii) Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018:**[84]

These rules control how foreign entities can purchase and transfer real estate in India. They are pertinent to M&A deals that include large real estate holdings.

[82] Directorate of Enforcement, ‘Foreign Exchange Management ( Issue of security in India by a branch, office or agency of a Person resident outside India) Regulations, 2000’, https://enforcementdirectorate.gov.in/sites/default/files/Act%26rules/Foreign%20Exchange%20Management%20%28Issue%20of%20Security%20in%20India%20by%20a%20branch%2C%20office%20or%20agency%20of%20a%20person%20resident%20outside%20India%29Regulations%2C%202000_0.pdf accessed 23 June 2024.

[83] Directorate of Enforcement, ‘Foreign Exchange Management (Cross Border Merger) Regulations, 2018’, https://enforcementdirectorate.gov.in/sites/default/files/Act%26rules/Foreign%20Exchange%20Management%20%28Cross%20Border%20Merger%29%20Regulations%2C%202018_0.PDF accessed 19 June 2024.

[84] Directorate of Enforcement, ‘Foreign Exchange Management (Acquisition and Transfer of Immovable Property in India) Regulations, 2018’, https://enforcementdirectorate.gov.in/sites/default/files/Act%26rules/Foreign%20Exchange%20Management%20%28Acquisition%20and%20Transfer%20of%20Immovable%20Property%20in%20India%29%20Regulations%2C%202018_0.PDF accessed 22 June 2024.

## G. Indian Stamp Act, 1899:

### (i) Section 3: Instruments chargeable with duty.[85]

The Indian Stamp Act's fundamental provision, Section 3, requires that all instruments specified in the Act's Schedule that are performed in India be subject to duty charges. This covers documents like contracts, agreements, share certificates, and transfer deeds in the context of M&A. For a document to be deemed legally genuine, it must bear the necessary stamp duty during a merger or acquisition. This clause guarantees the legal validity of the documents and the government's revenue collection from these large transactions.

### (ii) Section 17 – Instruments executed in India:[86]

According to Section 17, all instruments that are executed in India and subject to duty charges must be stamped either prior to or during the execution process. This implies that all agreements, transfer deeds, and other relevant papers for M&A transactions must have the appropriate stamp duty on them at the time of execution. Penalties and the documents' inadmissibility in court for noncompliance might complicate the transaction and its legal standing.

### (iii) Section 29: Duties by whom payable:[87]

The parties accountable for paying the stamp duty are listed in Section 29. As stated in the transaction paperwork, the parties to an M&A transaction are normally responsible for paying stamp duty. This part helps avoid disagreements over payment obligations by making it clear who is responsible for paying stamp duty, which may be a substantial outlay in big transactions.

### (iv) Section 35: Instruments not duly stamped inadmissible in evidence, etc.:[88]

Instruments that are not properly stamped are not admissible in evidence, according to

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[85] Indiacode, 'The Indian Stamp Act, 1899', https://www.indiacode.nic.in/handle/123456789/15510?view_type=browse accessed 22 June 2024.
[86] Ibid
[87] Ibid
[88] Ibid

Section 35. This suggests that in the context of M&A transactions, any document pertaining to the transaction that has not been properly stamped is not admissible as evidence in court. If a disagreement emerges and the parties are unable to produce their contracts or transfer documents in court because of inadequate stamping, this could have dire consequences. Thus, it is essential to check that all documents have been properly stamped if you want the transaction to be enforceable in court.

**(v) Section 40 - Collector's power to stamp instruments impounded.**[89]

The process for handling instruments that are not properly stamped is outlined in Section 40. If a document is discovered to be understamped in the context of M&A, the relevant parties may be required to pay the deficient duty in addition to a penalty, and the document may be seized by the authorities. Though it may cause delays and extra expenses, this part guarantees adherence to stamp duty regulations and offers a way to address inadequacies.

**H. SEBI Regulations:**

**(i) Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011:**[90]

**(a) Regulation 3 - Substantial Acquisition of Shares or Voting Rights:**[91]

Any acquirer who plans to purchase a significant number of shares or voting rights in a target firm is required by Regulation 3 to publicly declare an open offer. A purchase of 25% or more of the shares or voting rights is required to meet the criterion. This rule makes that minority shareholders have a way out of the company in the event of a major ownership shift. This means that in M&A deals, obtaining a sizable position in a listed business necessitates making an open offer in order to safeguard the interests of minority shareholders.

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[89] Ibid

[90] SEBI, 'Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 [Last amended on May 17, 2024]', https://www.sebi.gov.in/legal/regulations/may-2024/securities-and-exchange-board-of-india-substantial-acquisition-of-shares-and-takeovers-regulations-2011-last-amended-on-may-17-2024-_69218.html accessed 22 July 2024.

[91] Ibid

**(b) Regulation 4 – Acquisition of control:[92]**

Regulation 4 mandates that an open offer must be made public prior to any acquisition of control over a target company, whether it be direct or indirect. The ability to designate a majority of the directors, supervise the management, and make policy decisions are all included in the broad definition of control. This rule is essential to M&A deals that involve takeovers because it guarantees transparency in the event of a change in control and allows minority shareholders to sell at a reasonable price.

**(c) Regulation 7: Offer size:[93]**

The extent of the open offer is outlined in Regulation 7, and it must be for a minimum of 26% of the target company's total shares. This maintains market liquidity and fairness by guaranteeing that a sizeable fraction of the company's shares are accessible for purchase by the general public. This rule guarantees that acquirers in M&A transactions cannot outmaneuver minority shareholders' interests and must offer a sizable exit option.

**(d) Regulation 8: Offer price:[94]**

The guidelines for figuring out the offer price on an open offer are laid out in Regulation 8. The price must be greater than the average price over the last 26 weeks, the highest price paid by the acquirer in the 52 weeks prior, or the average price over the last two weeks. By doing this, shareholders are shielded from receiving a low offer price during a takeover and ensure that the offer price is reasonable and indicative of the market value. Because it upholds equity in share pricing, this law is essential to M&A transactions.

**(e) Regulation 17: Provision of escrow:[95]**

A portion of the entire consideration payable under the open offer must be

[92] Ibid
[93] Ibid
[94] Ibid
[95] Ibid

deposited into an escrow account, per Regulation 17. This serves as a safeguard to guarantee that the acquirer has the money needed to finish the deal. This rule ensures that the acquirer is dedicated to the deal and has the resources to fulfill its financial commitments to the target company's shareholders in M&A deals.

**(ii) Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 [Last amended on May 17, 2024][96]**

**(a) Regulation 158: Preferential issue:[97]**

The preferential issuance of shares in the context of mergers and acquisitions is governed by Regulation 158. It lays out the terms—such as price limits and prerequisites for shareholder approval—under which a business may issue shares at a discount. This rule safeguards the interests of current shareholders and avoids disproportionate dilution of their shareholding in M&A transactions by ensuring that any preferential issuance of shares is carried out fairly and transparently.

**(b) Regulation 171: Qualified Institutions Placement:[98]**

The Qualified Institutional Placement (QIP) method of capital raising is covered under Regulation 171. It offers instructions on the price, disclosures, and issuance procedure necessary for QIPs. This rule makes it easier to get money from institutional investors for M&A deals, particularly those that need a large influx of capital. It also makes sure that these capital-raising activities are carried out legally and transparently.

**(iii) Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 [Last amended on May 17, 2024]:[99]**

[96] SEBI, 'Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 [Last amended on May 17, 2024]', https://www.sebi.gov.in/legal/regulations/may-2024/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-regulations-2018-last-amended-on-may-17-2024-_80421.html accessed 24 July 2024.
[97] Ibid
[98] Ibid
[99] SEBI, 'Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 [Last amended on May 17, 2024]', https://www.sebi.gov.in/legal/regulations/may-2024/securities-and-

**(a) Regulation 30 - Disclosure of Events or Information:**[100]

Listing firms are required by Regulation 30 to disclose material events or information on time. This covers the disclosures about acquisitions, takeovers, and mergers. To maintain openness and update investors, companies that have substantial developments in M&A deals are required to notify the stock exchanges as soon as possible. In the course of M&A activity, this regulation is essential for preserving investor interests and upholding market integrity.

**(b) Regulation 31A – Reclassification of promoters:**[101]

Guidelines for the reclassification of promoters following an M&A transaction are provided under Regulation 31A. It lays out the circumstances in which current promoters may be reclassified as public shareholders, making sure that the reclassification procedure is open and does not have an unfavorable impact on the standards for public shareholding. This rule is important because it preserves a distinct line between promoters and public shareholders in M&A transactions involving changes in control.

**(iv) Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2021 [Last amended on August 3, 2021]:**[102]

**(a) Regulation 5 - Delisting from some of the recognised stock exchanges and Regulation 6 - Procedure for delisting where no exit opportunity is required:**[103]

The unique provisions for the voluntary delisting of equity shares in the context of M&A transactions are outlined in Regulations 5 and 6. It requires a thorough delisting process that includes shareholder and board of directors' approval as

exchange-board-of-india-listing-obligations-and-disclosure-requirements-regulations-2015-last-amended-on-may-17-2024-_80422.html accessed 25 July 2024.

[100] Ibid

[101] Ibid

[102] SEBI, 'Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2021 [Last amended on August 3, 2021]', https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-delisting-of-equity-shares-regulations-2021-last-amended-on-august-3-2021-_50517.html accessed 29 May 2024.

[103] Ibid

well as adherence to exit price specifications. During major M&A transactions, this rule guarantees a fair and transparent delisting procedure, allowing public shareholders to leave at a reasonable price.

**I. Insolvency Code 2016:[104]**

**(a) Section 7 - Initiation of corporate insolvency resolution process by financial creditor:[105]**

Section 7 permits financial creditors to apply to the National Corporation Law Tribunal (NCLT) to start the corporate insolvency resolution procedure (CIRP) against a corporation that is in default. This clause frequently results in the sale of distressed assets or restructuring during the M&A resolution process. To reach a settlement that maximizes value recovery, financial creditors can utilize this mechanism to either purchase the distressed company themselves or to assist a third party in acquiring it.

**(b) Section 9 - Application for initiation of corporate insolvency resolution process by operational creditor:[106]**

After the debtor defaults, Section 9 allows operational creditors to start the CIRP by applying the NCLT. This provision extends the reach of filing for bankruptcy beyond creditors with financial stakes, including operational creditors (suppliers, service providers) to pursue settlement. In terms of mergers and acquisitions, this can result in the acquisition of distressed businesses through resolution plans, which give operational creditors a way to recoup payments while allowing strategic purchasers to purchase distressed assets.

**(c) Section 12 - Time limit for completion of insolvency resolution process:[107]**

Section 12 establishes a 180-day deadline for finishing the CIRP, which is subject to an additional 90-day extension. This clause guarantees the timeliness of the settlement process and guards against protracted uncertainty. This time-bound method for M&A

[104] Manupatra, 'Insolvency and Bankruptcy code, 2016', https://www-manupatrafast-in.opj.remotlog.com/pers/Personalized.aspx accessed 29 May 2024.
[105] Ibid
[106] Ibid
[107] Ibid

transactions expedites the acquisition of distressed enterprises and offers transparency and speed when purchasing assets or businesses that are subject to insolvency proceedings.

**(d) Section 29A - Persons not eligible to be resolution applicants:**[108]

The requirements that exclude some people from being resolution applicants are outlined in Section 29A. These people include those who have been disqualified as directors, have defaulted on loans, or have been found guilty of a crime. This clause makes sure that only reliable and solvent parties may offer M&A deals and other resolution strategies. This is essential to preserving the integrity of the resolution process and guaranteeing that competent and accountable parties oversee the purchase of distressed assets.

**(e) Section 30 - Submission of resolution plan:**[109]

The procedure for proposing a resolution plan is described in Section 30, and the Committee of Creditors (CoC) must approve it. Proposals for mergers, acquisitions, or other restructuring actions might be included in the resolution plan. For M&A deals, this portion is essential since it formalizes the filing and approval of plans, which frequently entail buying the distressed company or its assets. By approving these plans, the CoC makes sure that the interests of all parties involved—especially creditors—are safeguarded.

**(f) Section 31 - Approval of resolution plan:**[110]

According to Section 31, a resolution plan must be submitted to the NCLT for final approval after receiving approval from the CoC. All parties involved, including the corporate debtor, creditors, and shareholders, are bound by the plan following the NCLT's approval. When it comes to mergers and acquisitions, this gives the acquisition legal certainty by guaranteeing that the resolution plan—which includes any merger or acquisition—is enforceable and final. This makes the transaction go more smoothly.

[108] Ibid
[109] Ibid
[110] Ibid

**(g) Section 33 - Initiation of liquidation:**[111]

According to Section 33, the NCLT will order the corporate debtor to be liquidated if no settlement plan is accepted within the allotted time. The company's assets are sold during bankruptcy to pay off creditors, which frequently creates M&A opportunities for strategic purchasers to purchase assets at possibly reduced valuations. This part affects M&A transactions by providing opportunities to purchase liquidated companies' assets, allowing for resource reallocation and corporate reorganization.

**(h) Section 35 - Powers and duties of liquidator:**[112]

The authority to sell the corporate debtor's movable and immovable assets as well as actionable claims is granted to the liquidator under Section 35. In terms of M&A, this implies that the liquidator can help with the sale of the company's assets or even the firm as a going concern, giving acquirers the chance to buy businesses or assets in a planned way. By ensuring that the liquidation process is carried out effectively and transparently, this part maximizes the amount that creditors can recover.

**(i) Section 39 - Verification of claims:**[113]

All proceeds from the sale of assets during liquidation must be put into a bank account set up for this purpose, according to Section 39. In M&A deals involving asset purchases during liquidation, this guarantees responsibility and transparency in the handling of funds. It offers a precise and open method for allocating proceeds to creditors and other interested parties.

**(j) Section 53 - Distribution of assets:**[114]

The distribution of proceeds from the sale of assets during liquidation and the order of priority of claims are described in full in Section 53. By deciding how the revenues from the sale of a distressed company's assets are distributed among creditors, employees, and other stakeholders, this section affects M&A. Acquirers must

[111] Ibid
[112] Ibid
[113] Ibid
[114] Ibid

comprehend this priority since it influences the net value realized from the purchase of business units or assets.

**(k) Section 61 - Appeals and Appellate Authority:**[115]

Parties that have been wronged by NCLT decisions may appeal to the National Company Law Appellate Tribunal (NCLAT) under Section 61. This clause affects M&A deals by possibly postponing results and giving parties unhappy with the NCLT's resolution plans or liquidation orders a legal avenue to appeal. But it also guarantees the right of judicial review to all parties, preserving the impartiality of the settlement procedure.

## CONCLUSION:

Mergers and acquisitions (M&A) are a key strategy for company growth in the dynamic and competitive landscape of modern business. They provide access to new markets, product diversification, and improved economies of scale. Whether they take the form of mergers or acquisitions, these deals give businesses a lot of chances to pool resources, optimize workflows, and strengthen their positions in the marketplace. However, due to its complexity and diversity, M&A requires a thorough analysis of its financial, legal, and operational aspects to manage related risks efficiently and produce the intended strategic results.

The goals and characteristics of the merging entities are the main factors that classify M&A transactions. The goals of vertical mergers, which combine businesses at various phases of the production process, are to lower costs and increase supply chain efficiency. Conversely, horizontal mergers take place between businesses in the same sector to increase market share and reduce rivalry. While product-extension mergers help companies expand their product lines and reach new customers, market-extension mergers allow organizations to grow geographically within the same industry. Conglomerate mergers, which bring together enterprises in unrelated industries, offer advantages in risk management and diversification while demonstrating the variety of strategic goals driving M&A activity.

A strong legal and regulatory structure intended to guarantee equity, openness, and the preservation of stakeholder interests supports India's M&A environment. A key component of

[115] Ibid

this framework is the Companies Act of 2013, which lays out the fundamental rules for corporate governance and specifies the procedures for mergers and acquisitions. Of particular note are the Act's fast-track merger provisions, which streamline and shorten the procedure for small businesses or those between a holding company and a wholly-owned subsidiary. By shortening the duration and expense of mergers, this clause hopes to improve the climate for corporate consolidation.

Another important piece of legislation is the Competition Act of 2002, which is governed by the Competition Commission of India (CCI). To prohibit anti-competitive behavior and preserve fair market competition, requires businesses to apply for CCI permission for mergers and acquisitions that satisfy certain requirements. Regulatory oversight plays a vital role in safeguarding consumer interests and fostering a healthy competitive environment by preventing monopolies or unfair advantages from being created by M&A operations.

Protecting investor interests is greatly aided by the Securities and Exchange Board of India (SEBI) regulations, especially when it comes to listed companies. To ensure openness and safeguard minority shareholders, these policies include extensive takeover guidelines and strict disclosure requirements during M&A transactions. A formal framework for managing insolvency and bankruptcy is also provided by the Insolvency and Bankruptcy Code of 2016, which makes it easier to acquire troubled assets through mergers and acquisitions. This structure has proven crucial in resolving corporate insolvency matters and facilitating more seamless transfers of ownership and management of financially troubled businesses.

Lessons and insights gained from historical M&A cases have greatly impacted the M&A landscape in India and around the world. One of the biggest cross-border acquisitions by an Indian corporation, Tata Steel's acquisition of Corus, brought attention to the challenges of international integration and emphasized the strategic significance of global expansion. Due to the Vodafone-Hutchison merger, the tax ramifications of M&A deals came to light. This resulted in protracted court disputes and changes to the tax regulations that regulate foreign mergers and acquisitions in India. Global attention has been focused on Facebook's acquisition of WhatsApp, highlighting the effects of digital mergers on user privacy and market competition.

In conclusion, strategic aspirations in line with company growth goals, thorough due diligence, and smooth operational and cultural integration will likely shape the future of M&A in India.

Businesses need to take advantage of technological developments to optimize workflows and guarantee adherence to changing legal requirements. Through the implementation of a comprehensive strategy that includes technological integration, stringent compliance, and strategic planning, businesses can effectively negotiate the intricacies of mergers and acquisitions. By using a comprehensive approach, they will be able to fully realize the potential of mergers and acquisitions, resulting in sustainable growth and long-term value creation for all parties involved. Adaptability, insight, and strategic acumen will be critical success factors in this dynamic industry of M&A as the landscape continues to change.

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