MINORITY SHAREHOLDER PROTECTION IN MERGERS AND ACQUISITIONS UNDER THE COMPANIES ACT, 2013

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ABSTRACT

The Companies Act, 2013 marks a significant turning point in Indian corporate law, bringing with it a substantially more protective framework for minority shareholders engaged in merger and acquisition transactions. This article examines the statutory protections available to minority shareholders under the Act, with particular attention to provisions governing schemes of arrangement, amalgamation, squeeze-out rights, and remedies for oppression and mismanagement. The study evaluates the interplay between the Act and the Securities and Exchange Board of India Takeover Code, identifying gaps and inconsistencies that leave minority shareholders vulnerable in practice. Through a systematic analysis of judicial pronouncements, statutory provisions, and regulatory developments, the article argues that while the legislative framework is robust in design, effective enforcement remains hampered by procedural delays, informational asymmetries, and inadequate valuation standards. The article proposes targeted reforms to strengthen minority protection, drawing on comparative models from the United Kingdom and the European Union. The findings contribute to the ongoing discourse on corporate governance reform in India, underscoring the need for a more coherent, transparent, and investor-friendly M&A regulatory regime.

Keywords: Minority Shareholders; Mergers and Acquisitions; Companies Act, 2013; Squeeze-Out Mechanisms; Oppression and Mismanagement; SEBI Takeover Code; Valuation Standards; Corporate Governance.

I. INTRODUCTION

Among all forms of corporate activity, mergers and acquisitions produce the most far-reaching changes to the ownership, control, and governance of companies. Within this process, minority shareholders, that is, those without a controlling stake, find themselves in a structurally vulnerable position. Majority shareholders drive the key decisions on price, structure, and timing; minority shareholders are left with little influence and often face the real prospect of being squeezed out, underpaid, or simply ignored.

The vulnerability of minority shareholders in M&A arises from a structural reality that pervades Indian corporate governance: the concentration of shareholding in promoter hands. This creates the conditions for self-dealing, tunnelling, and the systematic subordination of minority interests to promoter objectives in M&A transactions.

The Companies Act, 2013 (hereinafter "the Act")[1] was enacted with the avowed objective of modernising Indian company law and aligning it with global best practices. A central feature of this legislative overhaul was the introduction of a multi-layered framework for minority shareholder protection in M&A transactions, encompassing provisions on schemes of arrangement, amalgamation, squeeze-out rights, and remedies for oppression and mismanagement. The Act also operates alongside the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter "the SEBI Takeover Code")[2] to form the regulatory ecosystem governing M&A in India.

Despite this comprehensive statutory architecture, the practical efficacy of minority protections in Indian M&A remains contested. Persistent enforcement deficits, valuation ambiguities, and procedural impediments continue to dilute the protective intent of the legislation. This article undertakes a critical analysis of the minority shareholder protection framework under the Act. Part II provides an overview of the legislative architecture. Part III analyses substantive protections. Part IV examines judicial developments. Part V identifies reform imperatives. Part VI offers conclusions.

[1]Companies Act, No. 18 of 2013 (India) [hereinafter Companies Act].
[2]Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, reg. 3 (India) [hereinafter SEBI Takeover Code].

II. THE LEGISLATIVE ARCHITECTURE: AN OVERVIEW

The Companies Act, 2013 consolidates and significantly expands the protections available to minority shareholders in M&A, replacing the corresponding provisions of the Companies Act, 1956. The primary statutory provisions relevant to minority protection in M&A are: section 230 (Schemes of Compromise and Arrangement),[3] section 232 (Merger and Amalgamation of Companies),[4] section 235 (Purchase of Minority Shareholding),[5] section 236 (Purchase of Minority Shareholding, the Squeeze-Out Mechanism), and sections 241 through 244 (Oppression and Mismanagement).[6]

These provisions are supplemented by the regulatory framework of the Securities and Exchange Board of India, established under the SEBI Act, 1992.[7] The SEBI Takeover Code mandates an open offer obligation where an acquirer crosses specified shareholding thresholds, thereby ensuring that minority shareholders in listed companies receive a fair exit opportunity.[8] The Competition Act, 2002 adds a further regulatory dimension, requiring prior approval of the Competition Commission of India for M&A transactions exceeding prescribed thresholds.[9] This multi-agency regulatory framework, while comprehensive in coverage, also creates the risk of jurisdictional fragmentation, necessitating effective coordination between the NCLT, SEBI, and CCI.

III. SUBSTANTIVE PROTECTIONS FOR MINORITY SHAREHOLDERS

A. Schemes of Arrangement and Amalgamation

Section 230 of the Act mandates that any scheme of compromise or arrangement must receive the approval of the NCLT, in addition to the requisite majority of shareholders and creditors.[10] The NCLT is empowered to scrutinise the fairness and legality of the scheme before according sanction, providing a critical check against majority shareholder overreach. This judicial oversight function distinguishes the Indian framework from purely contractual M&A models

[3]Companies Act § 230.
[4]Companies Act § 232.
[5]Companies Act § 235.
[6]Companies Act § 236.
[7]Securities and Exchange Board of India Act, No. 15 of 1992 (India).
[8]SEBI Takeover Code reg. 26.
[9]Competition Act, No. 12 of 2002, § 6 (India).
[10]Companies Act § 230(1).

and places the court at the centre of minority protection.

Section 230(4) requires that the notice convening the meeting of shareholders and creditors be accompanied by a disclosure of all material facts, including the auditor's report on the financial position of the company.[11] Section 230(5) further requires the notice to be accompanied by a valuation report from a registered valuer, ensuring independent assessment of the scheme's consideration.[12] Section 230(6) provides minority shareholders with the right to object to the scheme before the NCLT, ensuring their voice is formally heard in the approval process.[13]

Section 232 governs mergers and amalgamations specifically, requiring approval from both the NCLT and the concerned shareholders. The provision mandates the preparation of a merger report, the adoption of a common appointed date, and the exchange of shares at a fair ratio, thereby promoting transparency and equity throughout the transaction. The requirement for a registered valuer's report on share exchange ratios is particularly significant for minority shareholders, as exchange ratio manipulation is among the most common forms of minority exploitation in related-party mergers.

Despite these safeguards, the scheme of arrangement route has historically been criticised for facilitating regulatory arbitrage, permitting promoters to restructure share capital or effect quasi-mergers through the scheme mechanism while circumventing the more stringent requirements of takeover regulations. The SEBI-NCLT coordination framework introduced in 2018, requiring SEBI's no-objection for schemes involving listed companies, represents a significant step toward closing this gap.

B. Open Offer Obligations under the SEBI Takeover Code

For listed companies, the SEBI Takeover Code imposes open offer obligations on acquirers crossing specified shareholding thresholds, specifically twenty-five per cent under Regulation 7[14] and through creeping acquisitions under Regulation 8,[15] requiring them to make a public offer to acquire at least twenty-six per cent of the total shares of the target company at a fair

[11]Companies Act § 230(4).
[12]Companies Act § 230(5).
[13]Companies Act § 230(6).
[14]SEBI Takeover Code reg. 7.
[15]SEBI Takeover Code reg. 8.

price.[16]

The open offer mechanism is the cornerstone of minority protection in listed company M&A. It ensures that the control premium is shared with minority shareholders rather than being exclusively appropriated by the controlling shareholder. The minimum offer price is determined by reference to the volume-weighted average market price over prescribed periods, supplemented by independent valuation where necessary, providing a market-based benchmark that is difficult to manipulate.

However, the open offer regime has its limitations. The obligation is triggered only upon crossing specified thresholds, leaving minority shareholders in transactions structured below these thresholds without mandatory exit rights. Furthermore, the VWAP-based pricing formula may not adequately capture intrinsic value in illiquid or thinly traded securities, a common feature of mid-cap and small-cap listed companies in India. Regulators have periodically revisited the adequacy of the minimum open offer price formula, but a comprehensive overhaul remains pending.

C. Squeeze-Out Rights and Minority Purchase

Sections 235 and 236 of the Act address the contentious issue of squeeze-outs. Section 236 empowers an acquirer holding not less than ninety per cent of the issued equity share capital of a company, by virtue of an amalgamation, share exchange, or conversion of securities, to notify the minority shareholders of its intention to purchase their shares.[17] Conversely, minority shareholders holding shares in a company in which a person has acquired ninety per cent equity are entitled to demand that such person purchase their shares at the same price.[18]

The reciprocal nature of the squeeze-out mechanism, conferring rights both on the majority acquirer and on minority shareholders, represents a significant advance over the pre-2013 framework. The price for squeeze-out transactions must be determined by a registered valuer and must represent fair value. The issuer's ability to issue preference shares[19] and differentiated voting rights[20] further complicates the valuation of minority holdings in M&A transactions.

[16]SEBI Takeover Code reg. 10.
[17]Companies Act § 236(1).
[18]Companies Act § 236(2).
[19]Companies Act § 55.
[20]Companies Act § 47.

The current statutory framework provides insufficient guidance on these complexities, leaving registered valuers and the NCLT to develop principles on a case-by-case basis.

D. Remedies for Oppression and Mismanagement

Sections 241 and 242 of the Act empower minority shareholders to petition the NCLT for relief where the affairs of the company are being conducted in a manner prejudicial to their interests or in a manner oppressive to any member.[21] These provisions codify and significantly expand the equitable remedy developed in English common law since *Foss v. Harbottle,*[22] extending protection beyond the narrow categories of traditional minority actions and vesting wide remedial powers in the NCLT.

The NCLT's remedial powers under section 242 are deliberately broad, encompassing the power to regulate the conduct of the company's affairs, order the purchase of shares, remove a director, and even wind up the company. An early authority recognising the breadth of oppression protections is *Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd.,*[23] where the Supreme Court extended protection to minority shareholders subjected to conduct departing from standards of fair dealing.

The class action remedy introduced under section 245 of the Act, enabling members and depositors to bring representative suits against the company, its directors, auditors, or advisors, further strengthens minority shareholders' ability to seek collective redress in M&A transactions.[24] The National Company Law Tribunal Rules, 2016 provide the procedural framework for such actions.[25] The class action remedy is potentially transformative in allowing dispersed minority shareholders to aggregate their claims, overcoming the individual cost-benefit calculus that otherwise deters litigation.

IV. JUDICIAL DEVELOPMENTS

The Indian courts and the NCLT have played a pivotal role in elaborating and, at times, extending the scope of minority protections in M&A. The judicial architecture governing the review of M&A schemes reflects a delicate balance between respecting the commercial

[21]Companies Act §§ 241–242.
[22]Foss v. Harbottle, (1843) 2 Hare 461 (Ch.).
[23]Needle Indus. (India) Ltd. v. Needle Indus. Newey (India) Holding Ltd., (1981) 3 SCC 333 (India).
[24]Companies Act § 245.
[25]National Company Law Tribunal Rules, 2016, r. 84 (India).

judgment of shareholders and ensuring that minority interests are not sacrificed on the altar of transaction expediency.

In *Miheer H. Mafatlal v. Mafatlal Industries Ltd.,*[26] the Supreme Court held that courts must not merely rubber-stamp schemes approved by shareholder majorities but must independently assess whether the scheme is fair, reasonable, and not contrary to public interest. The Court identified the "prudent businessman test" as the standard against which scheme fairness is to be measured, requiring the court to consider whether a man of business would reasonably approve the scheme having regard to its commercial merits and the interests of all stakeholders, including minority shareholders. This judicial approach has since become the cornerstone of NCLT scrutiny in M&A scheme approvals.

The English case *Re Hoare & Co.*[27] established the principle that the court must satisfy itself that consideration offered to minority shareholders represents a fair equivalent for the shares being acquired, a standard Indian courts have adopted and adapted within the statutory framework of the Act.

The Bombay High Court in *In re Hindustan Lever Employees' Union v. Hindustan Lever Ltd.* emphasised that the fairness of a scheme must be assessed from the perspective of minority shareholders independently, and not merely by reference to the approval of the majority.[28] Before the NCLT, Ahmedabad Bench,[29] the Tribunal scrutinised valuation reports and demanded transparency where the minority alleged undervaluation in a squeeze-out, signalling that registered valuer reports are necessary but not sufficient, and their methodology must itself withstand independent judicial scrutiny.

In *McDermott International Inc. v. Burn Standard Co. Ltd.,*[30] the Supreme Court reinforced that court sanction of a scheme is not a mere formality but a substantive gatekeeping function designed to protect all shareholders, especially minorities without the power to influence transaction terms.

In the landmark *Tata Consultancy Services Ltd. v. Cyrus Investments Pvt. Ltd.,*[31] the Supreme

[26]Miheer H. Mafatlal v. Mafatlal Indus. Ltd., (1997) 1 SCC 579 (India).
[27]Re Hoare & Co., (1933) 150 L.T. 374 (Ch.).
[28]In re Hindustan Lever Emps.' Union v. Hindustan Lever Ltd., (1995) 83 Company Cases 30 (Bom.).
[29]National Company Law Tribunal, Ahmedabad Bench, C.P. (CAA) No. 05/NCLT/AHM/2020 (unreported).
[30]McDermott Int'l Inc. v. Burn Standard Co., (2006) 11 SCC 181 (India).
[31]Tata Consultancy Servs. Ltd. v. Cyrus Invs. Pvt. Ltd., (2021) 9 SCC 449 (India).

Court clarified that not every act of majority control constitutes oppression; rather, conduct must be characterised by a lack of probity and fair dealing. While affirming the protective framework, the decision underscored the substantial evidentiary burden minority shareholders face in NCLT proceedings.

The NCLAT's decision in *Reliance Industries Ltd. v. SEBI*[32] affirmed that a scheme must not result in a disproportionate transfer of value from minority to controlling shareholders, illustrating the appellate tribunal's willingness to scrutinise the economic substance, and not merely the formal structure, of M&A transactions.

V. CRITICAL GAPS AND REFORM IMPERATIVES

A. Valuation Standards and Independent Assessment

While the Act mandates registered valuer reports in the context of schemes of arrangement, squeeze-outs, and open offers, the standards governing such valuations remain insufficiently developed and inconsistently applied. The IBBI, which regulates registered valuers, has issued broad valuation standards, but these do not provide specific methodological guidance for complex M&A transactions. The absence of a comprehensive valuation methodology framework creates scope for manipulation, particularly in related-party M&A transactions where the interests of the majority and minority shareholders diverge sharply.

The United Kingdom's squeeze-out regime under the Companies Act 2006[33] and the European Union's Takeover Directive[34] provide instructive comparative models. In both jurisdictions, squeeze-out pricing is subject to a court-supervised independent appraisal process where minority shareholders are entitled to challenge valuations through expert evidence. Analogous mechanisms in India, including mandatory disclosure of valuation methodology, the right to commission independent counter-valuations at the acquirer's cost, and judicial appointment of valuers in contested cases, would substantially enhance the reliability of the process and the confidence of minority shareholders.

[32]Reliance Indus. Ltd. v. SEBI, Company Appeal (AT) No. 254 of 2019 (NCLAT).
[33]Companies Act 2006, c. 46, § 955 (U.K.).
[34]Council Directive 2004/25/EC of 21 April 2004 on Takeover Bids, art. 15, 2004 O.J. (L 142) 12 (EU).

B. Information Asymmetry and Disclosure

Despite section 230(9)'s disclosure mandate[35] and the general disclosure obligations under the SEBI Listing Obligations and Disclosure Requirements Regulations, 2015,[36] information asymmetries between controlling and minority shareholders persist in practice. In related-party mergers and promoter-driven restructurings, the majority shareholder group typically possesses extensive inside information about the target company's true value, synergies, and strategic rationale to which minority shareholders have no independent access.

Mandatory disclosure of valuation assumptions, independent expert opinions, and the board's justification for the transaction from the perspective of all shareholders would materially improve minority decision-making. Independent board committees for related-party M&A, already partially mandated under SEBI regulations, should be made universal and more robust. A stewardship framework[37] requiring institutional investors to actively monitor and engage with investee companies on M&A transactions would serve as a counterweight to promoter dominance and complement the statutory minority protection architecture.

C. Squeeze-Out Pricing and Fairness

The pricing mechanism for squeeze-outs under section 236 lacks the granularity and methodological precision needed to prevent the systematic undervaluation of minority holdings. The statutory requirement to pay the "fair value" as determined by a registered valuer leaves enormous discretion in the hands of the valuer and the acquirer, without adequate procedural safeguards to ensure independence and rigour. The use of different valuation bases, whether book value, market value, or discounted cash flow, can produce widely varying results, and the Act does not specify which basis is to be preferred or how conflicts between different methodologies are to be resolved.

A clearer statutory formula specifying that fair value must include a control premium commensurate with the degree of control being acquired, and establishing an independent arbitration mechanism for the resolution of valuation disputes, would substantially strengthen

[35]Companies Act § 230(9).
[36]Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, reg. 37 (India).
[37]Securities and Exchange Board of India, Discussion Paper on Stewardship Code for Institutional Investors (Jan. 2019), https://www.sebi.gov.in.

minority protections in squeeze-out transactions. The requirement that the acquirer bear the full cost of independent valuation in contested cases would also redress the existing power imbalance between the well-resourced acquirer and the dispersed minority shareholders.

D. Institutional Capacity of the NCLT

The NCLT's effectiveness as a protector of minority rights is critically dependent on its institutional capacity and expertise. Persistent delays in the disposal of company petitions, resource constraints, the limited availability of specialised benches with M&A expertise, and the high volume of insolvency-related matters competing for tribunal time continue to undermine the practical utility of minority protection provisions. The average time from filing to final disposal of a scheme application before the NCLT significantly exceeds international benchmarks, creating uncertainty and additional transaction costs that disproportionately affect minority shareholders.

Dedicated M&A benches within the NCLT, staffed by members with expertise in corporate finance and valuation, would enhance adjudication quality and speed. Clear procedural timelines for scheme and squeeze-out applications, analogous to the time-bound process under the Insolvency and Bankruptcy Code, would reduce the scope for delay tactics and improve investor confidence.

E. Class Action Suits: Underutilisation and Reform

Despite the introduction of class action suits under section 245, this remedy has been substantially underutilised since the Act's commencement. The procedural complexity of initiating a class action, the absence of a contingency fee culture in Indian legal practice, the requirement for a minimum number of members to join the action, and the practical difficulty of coordinating dispersed minority shareholders all contribute to the low take-up of this mechanism.

Reform should draw on the experience of the United States and Australia, where class action mechanisms have proven effective in M&A accountability. Simplifying procedural requirements for class certification, permitting third-party litigation funding, and providing for cost shifting in favour of successful claimants would encourage wider use of this powerful protective mechanism.

VI. CONCLUSION

The Companies Act, 2013 marks a genuine legislative advance in the protection of minority shareholders within M&A transactions. Scheme approval procedures, open offer obligations, squeeze-out pricing requirements, and oppression remedies together create a framework that, on its face, is well structured to guard minority shareholders against majority overreach. The legislative purpose was straightforward: to prevent M&A transactions from being structured in ways that allow controlling shareholders to capture all the value while leaving minority holders with inadequate returns and no real recourse.

However, the effectiveness of these protections in practice is constrained by persistent valuation ambiguities, information asymmetries, institutional capacity deficits, and the chronic underutilisation of collective remedies. The jurisprudence of the Supreme Court and the NCLT has progressively expanded the scope of minority protections, articulating important principles of scheme fairness, valuation independence, and the limits of oppressive conduct. Yet the practical experience of minority shareholders in Indian M&A transactions, particularly in related-party restructurings, promoter-driven mergers, and unlisted company squeeze-outs, frequently falls short of the legislative ideal.

A holistic approach to reform must encompass enhanced valuation standards, strengthened disclosure obligations, simplified class action mechanisms, and sustained investment in the NCLT's capacity. Comparative experience from the United Kingdom and the European Union offers tested solutions that India can adapt to its own legal and institutional context.

Ultimately, the quality of minority shareholder protection is not a narrow technical issue. It tells us something important about how seriously India's legal system takes the interests of those who commit capital without the power to control outcomes. Where that protection is credible, investment is deeper, capital is cheaper, and growth is more sustainable. The protection of minority investors and the integrity of the market are two sides of the same coin. Any meaningful reform of corporate law must start from that recognition.

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