CORPORATE MERGERS AND THE TRANSFER OF MINING LEASES IN INDIA: A CRITICAL ANALYSIS OF REGULATORY OVERLAPS AND LEGAL CONSTRAINTS IN LIGHT OF THE SARDA MINES CASE

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ABSTRACT

Mergers and acquisitions have become an important tool for corporate restructuring in India's mining and steel industries. However, mergers involving mining corporations present special regulatory hurdles since, mining rights are subject to sector-specific legislation. While the Companies Act of 2013 allows for the automatic vesting of assets and liabilities in the transferee company after approval by the National Company Law Tribunal, the Mines and Minerals (Development and Regulation) Act of 1957 requires prior approval from the state government for mining lease transfers.

This dual regulatory structure raises legal concerns about the transferability of mining leases during mergers and amalgamations. This study investigates the legislative framework, judicial interpretations, and regulatory practices that govern such transfers. It claims that a lack of coordination between corporation law and mineral governance causes procedural delays and legal issues in mining-related mergers. The study concludes by advocating legislative harmonization and a streamlined regulatory structure to allow for effective business reorganization while maintaining governmental control over natural resources.

Keywords: mining leases, mergers and acquisitions, mineral governance, corporate restructuring, and mining regulations.

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1.Introduction

The mining and steel sector is critical to India's economic development, accounting for a sizable portion of industrial production and infrastructural developments. In recent years, the sector has undergone significant consolidation through mergers and acquisitions (M&A), owing to factors such as financial restructuring, operational efficiency, and market competitiveness.

Corporate restructuring processes under the Companies Act[2] of 2013 enable businesses to combine or amalgamate through plans of arrangement approved by the tribunal. Such schemes often involve the automatic transfer of all assets, liabilities, and obligations from the transferor firm to the transferee company.

The regulatory landscape became particularly contentious following the modifications made by the Mines and Minerals (Development and Regulation) Amendment Act[3], 2015. The amendment established an auction process for the grant of mineral concessions and limited the transfer of mining leases to those gained through auction. Leases granted before the auction regime could not be easily transferred, hampering corporate restructuring deals in businesses reliant on captive mining. Several big mergers and acquisitions in sectors such as cement and metals faced uncertainty as a result of these constraints, exposing the regulatory friction between mineral law and corporate restructuring frameworks. This raises a legal quandary when a mining lease-holding company undergoes corporate reorganization through mergers or amalgamations. The key question is whether mining leases immediately vest in the transferee business when the merger scheme is approved, or if such transfers require separate official clearance.

The study also addresses regulatory concerns, legislative changes, and judicial interpretation that influence how mining leases are transferred in business transactions. By analyzing these problems, the study aims to find shortcomings in the current regulatory system and suggest legislative and policy changes to align corporate restructuring procedures with the governance of natural resources.

[2] Companies Act, 2013, No. 18, Acts of Parliament, 2013 (India) §§ 230–232.
[3] Mines and Minerals (Development and Regulation) Amendment Act, No. 10 of 2015, Acts of Parliament, 2015 (India).

2. Legal Framework Governing Transfer of Mining Leases in India

The Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act) is the main law governing the regulation of mineral resources in India. The Act establishes the legal foundation for the issuance, control, and transfer of mineral concessions, such as mining leases and prospecting licenses. In order to guarantee that mineral extraction is carried out in the public interest, the regulatory framework heavily emphasizes governmental control and monitoring because minerals are regarded as precious natural resources.[4]

Under the MMDR Act, the ownership of mineral resources vests in the state, and mining rights are granted through statutory concessions rather than private ownership. Consequently, mining leases are treated as regulatory privileges rather than ordinary commercial assets. This distinction is important because it determines the conditions under which such leases may be transferred or assigned. Unlike other assets of a company, mining leases cannot be freely transferred without complying with statutory requirements and obtaining approval from the appropriate governmental authority.[5]

Section 12A of the MMDR Act is a significant provision that governs mining lease transfers[6]. This provision provides for the transfer of mineral concessions, including mining leases, subject to specific statutory requirements. The clause mandates that any transfer of a mining lease be undertaken with the prior consent of the appropriate state government and must follow the Act's standards.[7] The necessity for governmental clearance underscores the concept that natural resources are public assets that must be properly managed to avoid abuse or speculative deals.

The legal framework regulating mining lease transfers underwent significant revisions following the passage of the Mines and Minerals (Development and Regulation) Amendment Act in 2015[8]. The amendment established a competitive auction procedure for allocating mineral concessions in order to increase openness and accountability in the mining industry. Prior to this modification, mining leases were frequently given via discretionary administrative

[4] *State of Tamil Nadu v. M.P.P. Kavery Chetty,* (1995) 2 SCC 402
[5] *Mines and Minerals (Development and Regulation) Act,* 1957, No. 67, Acts of Parliament, 1957 (India).
[6] MMDR Act, 1957, § 12A.
[7] Id. § 12A.
[8] Mines and Minerals (Development and Regulation) Amendment Act, 2015.

procedures, raising concerns about corruption and a lack of openness in mineral allocation.[9]

The regulatory approach to mining lease transfers was drastically changed with the implementation of the auction regime. Only mining licenses awarded through the auction procedure are typically transferable under the modified conditions.[10] The goal of this modification was to stop the trade of mining concessions acquired through opaque methods. However, businesses running captive mines that were authorized before the auction system also faced practical difficulties as a result of the ban. The transferability of mining leases to the new corporate entity was a common source of confusion for companies engaged in mergers or acquisitions.

Subsequent legislative changes addressed these issues by permitting the transfer of some captive mining licenses that had not been awarded by auction, especially in situations involving business transfers or corporate restructuring. These changes were implemented to uphold the idea of government control over mineral resources while ensuring that legal business transactions were not hindered by regulatory obstacles. However, the transfer of such leases still needs to adhere to legal requirements and is subject to regulatory inspection.

The regulatory framework for the distribution of natural resources has also been significantly shaped by judicial interpretation. The Indian Supreme Court has made it clear time and time again that the public interest and transparency standards must guide the management of natural resources. According to the Court's ruling in ***Centre for Public Interest Litigation v. Union of India***, the state is a trustee of natural resources and must make sure that they are distributed fairly and openly.[11] Despite the fact that this case dealt with the distribution of telecommunications spectrum, the Court's rulings have had an impact on the legal framework governing the distribution and control of natural resources, including minerals.

Similarly, judicial review of natural resource allocation in instances like ***Manohar Lal Sharma v. Principal Secretary*** highlighted the significance of openness and legality in mineral resource distribution.[12] These rulings pushed the government to implement more transparent methods for issuing mining concessions, such as the auction system adopted with the 2015 amendment.

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[9] Government of India, Report of the Committee on Allocation of Natural Resources (2011).
[10] MMDR Act, 1957 (as amended in 2015), § 10A and § 12A.
[11] *Centre for Public Interest Litigation v. Union of India*, (2012) 3 SCC 1.
[12] *Manohar Lal Sharma v. Principal Secretary*, (2014) 9 SCC 516.

In general, India's legal system for transferring mining leases strikes a compromise between economic growth and regulatory oversight. The legislation highlights the state's obligation to guarantee that mineral resources are handled in the public interest, even as it acknowledges the necessity of facilitating lawful business transactions. Therefore, statutory requirements and regulatory permissions continue to govern the transferability of mining leases, especially when such transfers take place in the context of business reorganization.

3. Transferability of Mining Leases in Corporate Mergers and Amalgamations

In the context of corporate mergers and amalgamations, when assets, liabilities, and contractual rights are usually transferred to a resulting company by operation of law, the question of transferability of mining leases has particular relevance. The assets and liabilities of the transferor company are automatically transferred to the transferee firm under merger and amalgamation plans approved by the National Company Law Tribunal (NCLT) under the Companies Act, 2013.[13] Without needing separate conveyances for every asset, this legal procedure is meant to enable company reorganization and guarantee business continuation.

However, because of their regulated nature, mining leases have a unique position. Mining leases are subject to a unique regulatory framework that places a higher priority on governmental control over natural resources than regular property or contractual rights[14]. Because of this, mining leases are not easily covered by the automatic vesting concept that applies under company law. Instead, Section 12A of the Mines and Minerals (Development and Regulation) Act, 1957 ("MMDR Act"), which requires previous state government clearance[15], governs the transfer of such licenses in the context of mergers and amalgamations.

This creates a fundamental contradiction between the corporate and mineral law regimes. While corporate law aims to promote the smooth transfer of assets through judicially sanctioned procedures, mineral law adds an extra degree of regulatory scrutiny. As a result, even if a merger scheme is authorized by the NCLT, the transfer of mining leases does not take effect until the necessary governmental authorization is secured.[16]This dual compliance requirement frequently causes delays and legal ambiguity, especially in large-scale mergers

[13] Companies Act, 2013, No. 18 of 2013, §§ 230–232 (India).
[14] Mines and Minerals (Development and Regulation) Act, 1957, No. 67 of 1957 (India).
[15] Id. § 12A.
[16] Id.; see also *Embassy Prop. Dev. Pvt. Ltd. v. State of Karnataka*, (2020) 13 S.C.C. 308 (India)

involving several mining assets.

When mining leases make up a sizable amount of the company's asset base, the problem gets more complicated. In certain situations, the proper transfer of these leases may be critical to the merger's overall commercial viability. Therefore, conditional clauses that make the merger's effectiveness dependent on regulatory approvals under the MMDR Act [17]must be included by the parties to the transaction. This raises transaction expenses and risks in addition to lengthening the transaction timetable.

To some extent, judicial interpretation has tried to resolve this issue. The supremacy of statutory rules controlling natural resources has typically been recognized by courts, who emphasize that sector-specific regulatory frameworks[18] cannot be superseded by corporate restructuring. Specifically, the Supreme Court has made it clear that rights pertaining to natural resources are subject to statutory control and public trust responsibilities rather than being solely private. As a result, every transfer of mining leases must follow the guidelines set forth by the MMDR Act, even in the event of a court-approved merger.

At the same time, courts and tribunals have taken a practical approach, acknowledging the corporate realities of corporate reorganization. In other circumstances, orders have been given to speed up governmental approvals or to review transfer petitions in light of the authorized merger scheme[19]. However, court interventions do not erase the need for legislative compliance, and the state government retains the final authority to authorize the transfer.[20]

Another aspect of the issue is the idea of "vesting by operation of law." While this approach is widely established in corporate law, its application to regulated assets like mining leases is restricted. Legally, statutory licenses and concessions cannot be transferred without formal authorization from the controlling laws. Because the MMDR Act requires particular criteria for transfer, including prior permission, the theory is subject to these legislative constraints.

In essence, the transferability of mining leases in mergers and amalgamations is characterized by a layered regulatory system in which corporation law processes coexist with, but do not replace, mineral law obligations. This relationship demands careful legal architecture and

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[17] Umakanth Varottil, *Mergers & Acquisitions in India: Law and Practice* (Cambridge Univ. Press)
[18] Umakanth Varottil, *Mergers & Acquisitions in India: Law and Practice* (Cambridge Univ. Press)
[19] *Embassy Prop. Dev. Pvt. Ltd. v. State of Karnataka*, (2020) 13 S.C.C. 308 (India).
[20] *Centre for Public Interest Litigation v. Union of India*, (2012) 3 S.C.C. 1 (India).

strategic planning to guarantee that corporate transactions are not hampered by regulatory barriers while remaining true to the overriding idea of sovereign control over natural resources.

4. Conflict Between Corporate Law and Mineral Regulation

The combination of corporate law and mineral regulation presents a significant difficulty to the transferability of mining leases during mergers and amalgamations. Under the Companies Act of 2013, once a merger scheme has been approved by the National Company Law Tribunal (NCLT), the assets and liabilities of the transferor company automatically vest in the transferee firm.[21]

Mining leases, however, do not adhere to this automatic vesting principle. The Mines and Minerals (Development and Regulation) Act, 1957 (the "MMDR Act") governs these statutory concessions, and any transfer under Section 12A[22] requires the state government's prior consent. Because corporate law compliance is not enough to complete the transfer of mining leases, this leads to a regulatory overlap.

When assets, including mining leases, are transferred as part of resolution plans under the Insolvency and Bankruptcy Code, 2016, the dispute intensifies. The Supreme Court has made it clear that the IBC does not supersede legislative rules controlling natural resources and that such transactions are still subject to sector-specific legislation.[23]

The administrative discretion used by state governments to approve the transfer of mining leases presents another difficulty. Because the MMDR Act gives the state government the authority to authorize such transfers, differences in administrative procedures between states might result in contradictory outcomes. These discrepancies may undermine investor trust and make merger and acquisition planning more difficult in the mining industry.

State control over natural resources is further strengthened by judicial reliance on the public trust concept, which emphasizes that their transfer and distribution must serve the public interest and uphold transparency norms[24]. Because of this, business reorganization involving mining assets frequently results in delays, uncertainty, and higher transaction costs due to the

[21] Companies Act, 2013, No. 18 of 2013, §§ 230–232 (India).
[22] Mines and Minerals (Development and Regulation) Act, 1957, No. 67 of 1957, § 12A (India).
[23] *Embassy Prop. Dev. Pvt. Ltd. v. State of Karnataka*, (2020) 13 S.C.C. 308 (India)
[24] *Centre for Public Interest Litigation v. Union of India*, (2012) 3 S.C.C. 1 (India).

dual legal environment.

In essence, the interplay of corporate restructuring legislation and mineral regulation indicates a fundamental contradiction between two policy goals: facilitating corporate transactions and maintaining state control over natural resources. While both goals are valid, the lack of a unified regulatory system frequently causes procedural complexity and delays in the transfer of mining licenses during mergers and amalgamations.

5. Regulatory and Legal Complications of Corporate M&A in India's Mining Sector: A Case Study of the Sarda Mines Dispute

The potential of corporate mergers and acquisitions to boost market share, foster efficiency, and create synergies is frequently praised. However, these transactions can create complicated legal issues in highly regulated industries like mining, especially when it comes to the transferability of crucial licenses and leases. In this sense, India's mining industry, which is regulated by a complex web of laws, offers an interesting case study, as demonstrated by the Sarda Mines case.

The Sarda Mines Case:

The Thakurani Block-B iron ore mines in Odisha's Keonjhar district, run by Sarda Mines Pvt. Ltd. (SMPL), are a well-known example of these complications.

- **The Initial Transfer**: Members of the Sarda family initially owned the mining rights to this profitable 947.046-hectare area. In order to make bank financing simpler, the family requested authorization in 2001 to transfer the lease to SMPL, a newly established corporate organization. This transfer was authorized by the Odisha government in June 2006 under Rule 37[25], and it was valid until August 12, 2021.[26]
- **The Corporate Restructuring**: SMPL offered shares to corporate companies allegedly connected to Naveen Jindal's business interests shortly after the corporate transfer. Without actually changing the lease title itself, this change in ownership decreased the Sarda

[25] Mineral Concession Rules, 1960, Rule 37, G.S.R. 1398 (India)
[26] M/s. Sarda Mines Pvt. Ltd. v. State of Odisha, W.P.(C) No. 17905 of 2021, order dated Jan. 10, 2022 (High Court of Orissa)

family's interest to just 1%, so giving other corporate organizations control and financial advantages of the mine.[27]

- **Regulatory Conflict**: The "proxy" control of mines was a major source of contention as a result of this reorganization. The question of whether such an indirect purchase of shares in a closely held mining business violates the spirit of Rule 37, which expressly calls for state approval for a transfer of control, was discussed by state officials and critics.[28]

Legal Restrictions and Regulatory Overlaps

An important issue of contention between the Ministry of Mines and the Ministry of Corporate Affairs (MCA) is shown by the Sarda Mines predicament. Mergers, amalgamations, and share transfers are commonplace under general company legislation (such as the Companies Act, 2013) and are motivated by capital restructuring and economic viability. However, as the MMDR framework views natural resources as sovereign assets, corporate mergers cannot be accompanied by the careless transfer of control over these resources.

A mining firm is subject to a number of legal restrictions when it merges or is purchased.

Issues with Expiration and Lapse: A mine's ability to continue operating after a corporate merger is often scrutinized. For example, activities at Thakurani Block-B were suspended after the lease expired. As a result, SMPL requested lease extensions from the Supreme Court.

Statutory and Environmental Clearances: Even in corporate family mergers, the transferee of a lease must deal with the difficult process of re-obtaining environmental and forest clearances, which frequently do not instantly pass to the new corporate organization.[29]

Priority Rights and State Revenue: State governments frequently try to enforce regulations mandating that the extracted minerals be set aside for regional steel and sponge iron facilities. The parent company's corporate strategy and larger national supply chain often conflict with these localized demands.

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[27] The Companies Act, 2013, §§ 230–232, No. 18, Acts of Parliament, 2013 (India).
[28] *Common Cause v. Union of India*, (2020) 3 SCC 484
[29] Ministry of Environment, Forest and Climate Change, Letter No. J-11015/193/2004-IA.II(M) (Jan. 15, 2015) (India)

Navigating India's Mining M&A Future

The Indian government has periodically implemented measures to address the issues brought to light by incidents such as Sarda Mines. The Mineral Laws (Amendment) Act sought to alleviate some of the obstacles in mergers and acquisitions by facilitating the smooth transfer of statutory rights and licenses to new lessees for a certain amount of time.

But the fundamental problem of regulatory overlap still exists. The Supreme Court's orders governing lease renewals and transfers, as well as the standards put forth by the Income Tax Appellate Tribunal, must be strictly adhered to by companies undertaking mergers involving mining assets.To fully realize the potential of corporate mergers in the Indian mining industry, legal clarification about whether a straightforward change in corporate ownership triggers Rule 37 and simplified processes for the concurrent transfer of approvals are crucial.

Conclusion and Way Forward

A uniform legal framework is needed to handle the regulatory issues pertaining to the transferability of mining leases in corporate mergers and amalgamations. To ensure the smooth transfer of mining leases in legitimate corporate restructuring cases, it is imperative to harmonize the rules of the Companies Act, 2013 and the Insolvency and Bankruptcy Code, 2016 with the Mines and Minerals (Development and Regulation) Act, 1957 ("MMDR Act").[30]

Establishing a system for deemed approval or time-bound clearance by state authorities for the transfer of mining leases in cases where mergers or resolution plans have previously been approved by competent tribunals might be a significant improvement.[31] This would improve transactional certainty and cut down on delays without compromising regulatory scrutiny.

The Central Government should issue universal guidelines to unify the approval procedure among states under Section 12A of the MMDR Act. These standards would reduce administrative discretion and improve consistency in decision-making, boosting investor trust in the mining sector.

Clarification is also needed on the transferability of **pre-auction and captive mining leases**,

[30] Companies Act, 2013, No. 18 of 2013 (India); Insolvency and Bankruptcy Code, 2016, No. 31 of 2016 (India); Mines and Minerals (Development and Regulation) Act, 1957, No. 67 of 1957 (India).
[31] Id. § 12A

especially in the context of insolvency and restructuring. Clear legislative provisions or comprehensive guidelines would help to minimize interpretational difficulties and make transactions go more smoothly.[32]

Additionally, improved cooperation between regulatory agencies, including the Ministry of Mines, state governments, and adjudicatory organizations such as the NCLT, is required to simplify procedures and decrease approval duplication.

To conclude, while the present framework correctly promotes public interest and state control over natural resources, it must develop to reflect economic realities. A balanced strategy that assures openness and regulatory compliance while also allowing for efficient corporate reorganization is critical to the long-term success of India's mining sector.

[32] Id.

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