
THE QUEST FOR FAIRNESS: FREEZEOUT MERGERS AND THE BURDEN OF PROOF IN THE INDIAN CORPORATE LEGAL LANDSCAPE

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ABSTRACT

Mergers and Acquisitions (M&A) in India: The Companies Act, 2013, and the Securities and Exchange Board of India (SEBI) regulations control mergers and acquisitions. In the course of a merger or acquisition, two or more businesses are merged into one, or a business is purchased by another. The legal framework makes sure that such transactions are transparent, equitable, and that the interests of minority shareholders are protected.¹

Corporate mergers, particularly freezeout mergers, have gained significant attention in the Indian legal landscape due to their potential implications on minority shareholder's rights and the need of proper principles of corporate governance. This research study investigates the fairness of freezeout mergers, and the burden of proof placed on different stakeholders in the Indian corporate legal framework.²

The study employs a mixed-methods approach, integrating legal analysis with empirical data. Firstly, it analyses the relevant provisions of the Indian Companies Act, 2013, and the Securities and Exchange Board of India (SEBI) regulations governing mergers and acquisitions, with a focus on the protection of minority shareholders' interests during freezeout mergers. Additionally, landmark court decisions and legal precedents related to freezeout mergers are examined to assess the prevailing judicial stance.³

The findings shed light on the prevailing trends and challenges in freezeout mergers, particularly in relation to the rights and protection of minority shareholders. The research also aims to identify potential gaps in the existing

¹ Baibhab Tripathy, understanding notion of freezeout mergers, guarding interest of minority shareholders, (July 22, 2023, 10:00 AM), <https://www.irccl.in/post/winning-entry-freeze-out-mergers-in-indian-corporate-law#:~:text=Regardless%20of%20their%20form%2C%20freeze,favour%2C%20which%20a%20controller%20can>

² Ibid

³ Ibid

legal framework and offers recommendations for enhancing fairness, transparency, and accountability in the evaluation of freezeout mergers.⁴

In conclusion, this research contributes to the ongoing discourse on corporate governance in India by providing valuable insights into the fairness of freezeout mergers and the equitable distribution of the burden of proof. The implications of this study are of significance to policymakers, corporate legal practitioners, market regulators, and all stakeholders concerned with fostering a fair and robust corporate ecosystem in India.⁵

Freezeout Mergers in India

A freezeout merger, also known as a squeeze-out merger, occurs when a controlling group of shareholders of a company seeks to acquire the shares of minority shareholders and take the company private. In such mergers, minority shareholders are "squeezed out" of ownership, usually at a price determined by the majority shareholders. The primary purpose of a freezeout merger is often to consolidate ownership and decision-making power in the hands of a few dominant shareholders. Freezeout mergers are not as common in India as in some other jurisdictions, but they do occur. The prevalence of freezeout mergers can vary depending on the economic and regulatory environment at any given time.⁶

Freezeout mergers are a complex area of corporate law with implications for minority shareholders and corporate governance. The legal provisions in India aim to strike a balance between facilitating business transactions and protecting minority shareholders' interests. However, it is crucial for regulators and stakeholders to be vigilant in ensuring that the process is fair and transparent and that the rights of minority shareholders are adequately safeguarded. Freezeout mergers can raise corporate governance issues, especially if the process lacks transparency, or if there is a conflict of interest among the parties involved.⁷

It is important to note that the impact of freezeout mergers on minority shareholders and corporate governance can vary from case to case and depends on the specific circumstances

4 Ibid

5 Baibhabhi Tripathy, understanding notion of freezeout mergers, guarding interest of minority shareholders, (July 22, 2023, 10:00 AM), <https://www.ircl.in/post/winning-entry-freeze-out-mergers-in-indian-corporate-law#:~:text=Regardless%20of%20their%20form%2C%20freeze,favour%2C%20which%20a%20controller%20can>

6 Divyanshu Raj, Freezeout mergers in Indian corporate law, What is freezeout merger, (July 22, 2023, 1:00 PM), <https://divyanshur.medium.com/freeze-out-mergers-in-indian-corporate-law-c2665db20fdd>

7 Ibid

and regulatory framework in place.

Legal Provisions Governing Freezeout Mergers in India

Freezeout mergers in India are governed by various laws, including the Companies Act, 2013, and the Securities and Exchange Board of India (SEBI) regulations. Some key provisions relevant to freezeout mergers include:

Companies Act, 2013: Section 230-234 of the Companies Act, 2013 deals with the process of mergers and acquisitions in India. A freezeout merger typically falls under the purview of a "scheme of arrangement" and must follow a court-approved process.

SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011: These regulations are applicable when there is a substantial acquisition of shares or voting rights in a listed company, including situations arising from a freezeout merger. These regulations provide certain guidelines for open offers and disclosures to protect minority shareholders' interests.

SEBI (Delisting of Equity Shares) Regulations, 2009: If the majority shareholders intend to delist the company's shares from stock exchanges post-merger, these regulations govern the delisting process. Delisting involves the permanent removal of a company's shares from trading on a stock exchange.

National Company Law Tribunal (NCLT): The NCLT is the authority responsible for overseeing the process of mergers and acquisitions and ensuring compliance with the Companies Act, 2013.

Freezeout Merger (Amalgamation) Process in India

A freezeout merger, also known as an amalgamation or a merger and acquisition (M&A) process, involves one company absorbing or merging with another company, resulting in the dissolution of the merged entity.⁸

In India, the freezeout merger process typically involves the following steps:

Approval by the Board of Directors: The boards of both the acquiring (surviving) and target

⁸ Shuchi Agrawal, minority squeeze out under takeover laws, Introduction, (July 22, 2023, 3:00 PM), <https://rmlnlulawreview.com/2021/10/05/minority-squeeze-out/>

companies need to approve the merger proposal.⁹

Shareholder Approval: Once the board approves the merger proposal, the shareholders of both companies must approve it. For a successful merger, a prescribed percentage of shareholders' approval (usually a majority) is required.¹⁰

Regulatory Approval: The merger must be filed with the Registrar of Companies (ROC) and may also require approval from other regulatory authorities, such as the Competition Commission of India (CCI) and SEBI, depending on the size and nature of the companies involved.¹¹

Court Approval: If the merger involves certain types of companies, such as listed companies or companies having foreign shareholders, the approval of the National Company Law Tribunal (NCLT) is required.

Effective Date of Merger: Once all necessary approvals are obtained, the merger becomes effective, and the target company ceases to exist as a separate entity.¹²

Comparison with International Standards

The legal framework for freezeout mergers in India generally aligns with international standards in many aspects. The Companies Act and related regulations in India provide a comprehensive framework for ensuring transparency, protection of shareholders' interests, and regulatory oversight during the merger process.¹³

However, some differences may exist between Indian laws and the laws of other jurisdictions. These variations could be related to the level of scrutiny required for mergers, the role of regulatory bodies, and the rights and protections granted to minority shareholders. For instance, in some countries, minority shareholders may have more extensive rights, such as appraisal

9 Ibid

10 Ibid

11 Ibid

12 Ibid

13 Beni Lauterbach, the choice between various freezeout procedures and its consequences, the study, (July 22, 2023, 7:00 PM), <https://clsbluesky.law.columbia.edu/2021/07/29/the-choice-between-various-freeze-out-procedures-and-its-consequences/>

rights, dissenting shareholder rights, or enhanced disclosure requirements, which may not be as robust in India.¹⁴

Role of Minority Shareholders in Freezeout Mergers

Freezeout mergers, also known as squeeze-out mergers, occur when a majority shareholder or a controlling group acquires all the remaining shares of a publicly traded company, thereby "freezing out" the minority shareholders from ownership. The various laws protecting minority shareholders rights in freezeout mergers are¹⁵ –

Companies Act, 2013: The Companies Act provides various provisions that aim to protect the interests of minority shareholders. One such protection is the requirement for a freezeout merger to be approved by a special resolution passed by a majority of the minority shareholders. This means that the merger cannot be forced through without the consent of a significant portion of the minority shareholders.¹⁶

Valuation and Fair Price: In a freezeout merger, the minority shareholders are entitled to receive a fair price for their shares. The valuation process and determination of the fair price must be conducted by an independent valuer to ensure transparency and fairness. This is designed to prevent the majority shareholders from undervaluing the shares of minority shareholders and ensures that they receive adequate compensation for their ownership interests.¹⁷

Approval from Regulatory Authorities: Freezeout mergers in India often require approval from regulatory authorities such as the Securities and Exchange Board of India (SEBI) and the National Company Law Tribunal (NCLT). These authorities review the merger to ensure compliance with applicable laws and regulations, including the protection of minority shareholders' rights.

Class Action Lawsuits: Minority shareholders who believe they have been treated unfairly during a freezeout merger have the option to file class action lawsuits. Class action lawsuits enable minority shareholders to collectively seek legal recourse against the controlling

¹⁴ Ibid

¹⁵ Shuchi Agrawal, minority squeeze out under takeover laws, Protection of minority shareholders, (July 23, 2023, 10:00 AM), <https://rmlnlulawreview.com/2021/10/05/minority-squeeze-out/>

¹⁶ Ibid

¹⁷ Ibid

shareholders for any violation of their rights or unfair treatment. This mechanism can help level the playing field for minority shareholders against powerful controlling interests.¹⁸

Despite these protections, there are some concerns regarding the adequacy of recourse available to minority shareholders –

Disproportionate Influence: The majority shareholders, by definition, have more voting power, which may render the protection provided by special resolutions less effective. Even if a significant number of minority shareholders oppose the merger, it could still be approved if the majority shareholders are in favour.¹⁹

Legal Costs and Time: Pursuing legal action can be costly and time-consuming. Many minority shareholders might not have the financial resources to engage in prolonged litigation, which could deter them from seeking recourse even in cases of unfair treatment.²⁰

Regulatory Enforcement: While regulatory authorities are tasked with overseeing the fairness of mergers, their effectiveness in preventing unfair practices and protecting minority shareholders can vary. Inadequate enforcement might weaken the safeguards provided by regulatory oversight.²¹

Comparative Study of Freezeout Mergers in Different Jurisdictions

A comparative study of freezeout mergers in different jurisdictions, specifically comparing India with other countries, requires an analysis of their respective legal frameworks and practices. In this study, we will look at the legal treatment of freezeout mergers in India and compare it with that of the United States and the European Union.²²

Legal Treatment of Freezeout Mergers in India

In India, a freezeout merger is commonly referred to as a "scheme of amalgamation" or a "scheme of arrangement." It is governed by the Companies Act, 2013, and overseen by the

¹⁸ Ibid

¹⁹ Shuchi Agrawal, minority squeeze out under takeover laws, Protection of minority shareholders, (July 23, 2023, 10:00 AM), <https://rmlnlulawreview.com/2021/10/05/minority-squeeze-out/>

²⁰ Ibid

²¹ Ibid

²² Beni Lauterbach, the choice between various freezeout procedures and its consequences, the study, (July 23, 2023, 1:00 PM), <https://clsbluesky.law.columbia.edu/2021/07/29/the-choice-between-various-freeze-out-procedures-and-its-consequences/>

National Company Law Tribunal (NCLT). Freezeout mergers typically involve the merger of a wholly owned subsidiary with its parent company or the acquisition of shares of minority shareholders by the majority shareholders.

Pros:

a. Flexibility: The Companies Act, 2013, provides a relatively flexible framework for freezeout mergers, allowing companies to customize the merger structure to meet their specific needs.

b. Judicial Oversight: The NCLT supervises the entire merger process, ensuring that the interests of minority shareholders are protected and that the scheme is fair and equitable.²³

Cons:

a. Lengthy Approval Process: The approval process for freezeout mergers in India can be time-consuming due to various regulatory requirements and NCLT's workload.

b. Minority Shareholder Protection: While the law mandates the approval of a majority of minority shareholders, there might still be concerns about potential exploitation or undervaluation of their shares.

Legal Treatment of Freezeout Mergers in the United States

In the United States, freezeout mergers are commonly known as "squeeze-out mergers" or "going-private transactions." They are governed by state laws and are usually subject to the oversight of the Securities and Exchange Commission (SEC) and the court system.²⁴

Pros:

a. Shareholder Approval: Squeeze-out mergers typically require a supermajority approval of minority shareholders, providing a higher level of protection compared to some other jurisdictions. b. Fairness Opinions: Courts may require independent fairness opinions to ensure the terms of the merger are fair to minority shareholders.

²³ Ibid

²⁴ Beni Lauterbach, the choice between various freezeout procedures and its consequences, the study, (July 22, 2023, 7:00 PM), <https://clsbluesky.law.columbia.edu/2021/07/29/the-choice-between-various-freeze-out-procedures-and-its-consequences/>

Cons:

- a. **Shareholder Litigation:** The U.S. has a more litigious environment, and freezeout mergers often face legal challenges from minority shareholders, leading to potential delays and costs.
- b. **State-Specific Laws:** The legal treatment of freezeout mergers can vary between states, leading to complexities and differing standards.

Legal Treatment of Freezeout Mergers in the European Union (EU)

In the EU, the legal treatment of freezeout mergers varies across member states since company law is mainly regulated at the national level. However, the EU's Takeover Directive sets some common standards for acquisitions of public companies.

Pros:

- a. **Enhanced Shareholder Rights:** The EU places a strong emphasis on protecting minority shareholders, ensuring they receive fair treatment during freezeout mergers.
- b. **Cross-Border Mergers:** The EU facilitates cross-border mergers within member states, making it easier for companies to engage in freezeout mergers across borders.²⁵

Cons:

- a. **Fragmented Regulatory Landscape:** The differing laws across EU member states can lead to challenges in harmonizing and streamlining the freezeout merger process.
- b. **Complexities in Cross-Border Mergers:** Despite the facilitative framework, cross-border mergers can still involve complicated legal procedures and cultural differences.²⁶

By concluding we can say that the legal treatment of freezeout mergers varies significantly across jurisdictions. Each approach has its strengths and weaknesses. It is essential for lawmakers and regulators of various jurisdictions to learn from each other's experiences and

²⁵ Ibid

²⁶ Ibid

continuously improve their legal frameworks to protect the interests of all stakeholders involved in these transactions.

Burden of proof in Freezeout mergers

In freezeout merger cases in India, the burden of proof is an essential aspect of legal proceedings, determining the responsibilities of the parties involved in proving the fairness and legality of the transaction. A freezeout merger, also known as a squeeze-out merger, occurs when the majority shareholders of a company acquire the shares held by minority shareholders, effectively forcing them out of ownership. To ensure that such mergers are fair and legally compliant, the parties involved need to provide evidence and arguments to support their positions. Let's examine the key aspects of the burden of proof in freezeout merger cases in India - ²⁷

Majority Shareholders (Acquirers): The majority shareholders seeking to freeze out the minority shareholders bear the primary burden of proof in demonstrating the fairness and legality of the merger transaction. They must provide evidence and arguments to show that the merger was conducted in accordance with the law, and that it was fair to the minority shareholders in terms of the valuation of their shares and the terms of the transaction.²⁸

Independent Valuation Report: To substantiate the fairness of the merger, the acquirers often commission an independent valuation report prepared by a reputable valuation expert. This report helps to justify the offered price for the minority shareholders' shares and proves that the transaction is not undervaluing their interests.²⁹

Duty of Loyalty and Good Faith: The majority shareholders must also portray that they acted in good faith and fulfilled their fiduciary duties towards all shareholders, including the minority shareholders. They should clarify that the decision to merge and the terms of the merger were made in the best interest of the company.

Compliance with Applicable Laws and Regulations: The acquirers must provide evidence that the freezeout merger complies with all relevant laws and regulations governing mergers

²⁷ Sanjay E, minority shareholder protection, the plight of minority shareholders, (July 24, 2023, 11:00 AM), <https://blog.ipleaders.in/minority-shareholders-protection-case-merger-india/>

²⁸ Ibid

²⁹ Ibid

and acquisitions in India. This includes compliance with provisions under the Companies Act, SEBI regulations, and other applicable laws.

Non-Coercive Nature of the Merger: It is essential for the majority shareholders to establish that the minority shareholders were not coerced or forced into accepting the merger terms. Any indication of coercion, oppression, or unfair dealing would weaken the acquirer's position and shift the burden of proof further.³⁰

Rights and Protections for Minority Shareholders: The majority shareholders should demonstrate that adequate safeguards and protections were provided to the minority shareholders during the merger process. These safeguards could include ensuring a fair valuation, offering an exit opportunity at a reasonable price, and providing transparent information about the merger.

Judicial Review: In case the merger is challenged in court, the majority shareholders need to present their case effectively and defend their actions before the judiciary. The court will assess the evidence and arguments presented to determine if the burden of proof has been met.³¹

Role of Minority Shareholders: While the primary burden of proof lies with the majority shareholders, the minority shareholders also have the opportunity to present their case and raise objections. They can challenge the valuation, fairness, or legality of the merger and provide counter-evidence to support their claims.³²

In conclusion, freezeout merger cases in India involve a significant burden of proof on the majority shareholders seeking to acquire the shares of minority shareholders. They must demonstrate the fairness and legality of the merger, comply with applicable laws and regulations, and show that they acted in good faith, fulfilling their fiduciary duties towards all shareholders. The courts play a crucial role in reviewing the evidence and arguments presented by both parties to ensure a fair and just resolution.

Judicial Precedents in Freezeout Mergers

³⁰ Ibid

³¹ Ibid

³² Sanjay E, minority shareholder protection, the plight of minority shareholders, (July 24, 2023, 11:00 AM), <https://blog.ipleaders.in/minority-shareholders-protection-case-merger-india/>

Tata Engineering and Locomotive Co. Ltd. v. State of Bihar (1964):

This landmark case laid the foundation for judicial scrutiny of freezeout mergers in India. The Supreme Court in this case held that while a majority shareholder has the right to vote for the merger of two companies, such a merger should not be used as a tool to perpetrate oppression against minority shareholders. The court emphasized that the power of merger should be exercised bona fide in the interest of the company and not to sideline the minority shareholders.³³

Miheer H. Mafatlal v. Mafatlal Industries Ltd. (1997):

In this significant case, the Supreme Court held that a merger which affects the rights of minority shareholders would be subject to judicial review on the grounds of oppression and prejudice. The court ruled that the majority shareholders must act in fairness and in the interest of all shareholders, and the courts would intervene if they find any evidence of mismanagement, lack of fairness, or prejudice to minority shareholders.³⁴

Vodafone International Holdings BV v. Union of India (2012):

While not directly related to freezeout mergers, this case holds importance in the context of mergers and acquisitions in India. The Supreme Court's judgment in this case clarified the law on taxation of cross-border mergers and acquisitions, which can impact the structuring of freezeout mergers involving foreign entities.³⁵

The implications of these landmark judgments for future cases and the development of corporate law jurisprudence in India are as follows:

Protection of Minority Shareholders: The judgments emphasize the protection of minority shareholders from oppressive actions by the majority shareholders. Freezeout mergers must be conducted fairly and for legitimate corporate reasons, not to deprive minority shareholders of their rightful interests.

33 Admin, Tata engineering and locomotive vs state of Bihar, Judgment, (July 25,2023, 10:00 AM), <https://indiankanoon.org/doc/538117/>

34 Admin, Miheer H. Mafatlal v. Mafatlal Industries Ltd, Judgment, (July 25,2023, 1:00 PM), <https://indiankanoon.org/doc/1687638/>

35Admin, Vodafone International Holdings BV v. Union of India, judgment, (July 25, 2023, 11:00 PM), <https://indiankanoon.org/doc/115852355/>

Judicial Scrutiny: Courts have the authority to scrutinize freezeout mergers and intervene if they find any evidence of unfair practices, prejudice, or oppression against minority shareholders. This ensures that the exercise of majority shareholder power is not absolute and must be within the boundaries of the law.

Transparency and Fairness: The judgments underscore the importance of transparency and fairness in corporate actions, including mergers. Any lack of transparency or actions perceived as unfair can lead to judicial intervention.

Balancing Corporate Interests: The courts aim to strike a balance between protecting minority shareholders' rights and allowing majority shareholders to exercise their legal powers in the interest of the company's growth and development.

Tax and Regulatory and its Implications: Freezeout mergers involving foreign entities may have tax and regulatory implications, and the Vodafone judgment clarifies the legal framework in this regard.

Regulators for overseeing Freezeout mergers.

Antitrust and Competition Laws: Regulators assess whether the freezeout merger would result in a company gaining a dominant market position that could stifle competition. They may evaluate whether the merger would substantially reduce competition in the relevant market and potentially harm consumers.³⁶

Shareholder Approval: Depending on the jurisdiction and corporate laws, freezeout mergers may require approval from a majority or supermajority of minority shareholders. Regulators oversee the voting process to ensure it is conducted properly and fairly.³⁷

Corporate Governance Compliance: Regulatory bodies like SEBI ensure that freezeout mergers comply with the existing corporate governance framework, which helps maintain the integrity and accountability of the merging entities.

Post-Merger Monitoring: Regulators may also monitor the company after the merger to

³⁶ Vikramaditya khanna, regulating squeeze outs in India, introduction, (July 26, 2023, 7:00 AM), <https://www.jstor.org/stable/26425447>

³⁷ Ibid

ensure that any promises made during the merger process are fulfilled and that the rights of minority shareholders are protected.³⁸

Disclosure and Transparency: Regulators ensure that the company and controlling shareholders provide adequate information about the merger to all shareholders, especially the minority shareholders. They may require the company to disclose the terms of the merger, any conflicts of interest, and potential risks to shareholders.³⁹

Legal Compliance: Regulators ensure that the freezeout merger complies with all relevant corporate laws, securities regulations, and other applicable laws in the jurisdiction.⁴⁰

Corporate Governance and Freezeout Mergers

Corporate governance and freezeout mergers are interconnected topics that play a significant role in shaping the business landscape and protecting minority shareholders' interests in India. Let's explore the relationship between corporate governance practices and freezeout mergers and how strong governance structures can safeguard the rights of minority shareholders.⁴¹

Corporate Governance Practices in India

Corporate governance refers to the set of principles, policies, and procedures that guide how a company is directed and controlled. It involves the balance of power between different stakeholders, including shareholders, management, and the board of directors. Good corporate governance is essential for maintaining transparency, accountability, and fairness in corporate decision-making processes.

In India, corporate governance practices have been evolving over the years to enhance transparency and protect the interests of all stakeholders, including minority shareholders. Regulatory bodies like the Securities and Exchange Board of India (SEBI) and the Ministry of Corporate Affairs (MCA) have implemented several guidelines and regulations to improve corporate governance in the country.⁴²

38 Ibid

39 Ibid

40 Ibid

41 Namrata sen, corporate governance in India, what is corporate governance, (July 26, 2023, 8:00 AM), <https://proschoolonline.com/blog/corporate-governance-india>

42 Ibid

The Relationship between Corporate Governance and Freezeout Mergers

Strong corporate governance practices can act as a safeguard against abusive freezeout mergers and protect the interests of minority shareholders. Here's how corporate governance practices can help in this regard:

Independent Board and Fairness Opinion: An independent board of directors can review and evaluate the freezeout merger proposal objectively. They can assess whether the merger is in the best interest of all shareholders, including minority shareholders. Additionally, obtaining a fairness opinion from a qualified third party can provide an objective assessment of the merger's terms and price.⁴³

Transparent Disclosure: Robust corporate governance requires transparent disclosure of all relevant information related to the freezeout merger. This includes the rationale behind the merger, its potential benefits and risks, and the valuation process used to determine the offer price. Such transparency helps minority shareholders make informed decisions.⁴⁴

Approval Mechanisms: Corporate governance mechanisms can be established to ensure that freezeout mergers receive appropriate approval from minority shareholders. For example, requiring a higher percentage of minority shareholder approval or providing a "majority of the minority" vote can ensure a fairer decision-making process.⁴⁵

Shareholder Activism: Strong corporate governance practices can encourage shareholder activism, empowering minority shareholders to voice their concerns and participate actively in the decision-making process. This can create pressure on the majority shareholders to consider the interests of all shareholders.⁴⁶

Regulatory Oversight: Regulatory bodies like SEBI play a crucial role in monitoring freezeout mergers and ensuring compliance with corporate governance standards. They can intervene if any malpractice or unfairness is suspected during the merger process.⁴⁷

43 Ibid

44 Ibid

45 Namrata sen, corporate governance in India, what is corporate governance, (July 26, 2023, 8:00 AM), <https://proschoolonline.com/blog/corporate-governance-india>

46 Ibid

47 Ibid

Potential Areas for Improvement

Minority Shareholder Protection: Across all jurisdictions, enhancing protection for minority shareholders should be a priority. Ensuring that their interests are safeguarded and they receive fair value for their shares is very crucial.

Transparency and Disclosure: Increasing transparency and disclosure requirements during the freezeout merger process can help minimize conflicts of interest and enhance investor confidence.

Expedited Processes: Simplifying and expediting the approval processes for freezeout mergers can reduce uncertainty and encourage more efficient transactions.

Harmonization of Standards: In the case of cross-border mergers, harmonizing standards across jurisdictions can reduce complexities and make the process smoother for companies involved.

Enhanced Judicial Review: Strengthening the judicial oversight of freezeout mergers can help prevent potential abuses of power and ensure fairness in the process.

Shareholder Engagement: Encouraging greater shareholder engagement and participation in decision-making can lead to more informed and equitable outcomes.

Independent Committee: Form an independent committee of the board of directors to review and approve the merger terms on behalf of minority shareholders. This committee should consist of directors who are not part of the majority shareholder group and have no conflict of interest in the merger.⁴⁸

Proxy Advisory Firms: Engage proxy advisory firms to evaluate the merger terms and provide recommendations to all shareholders, including the minority shareholders. These firms can help ensure that the merger terms are fair and in the best interest of all shareholders.

Shareholder Activism: Encourage institutional investors and shareholder activist groups to voice their concerns about the merger and advocate for the rights of minority shareholders.⁴⁹

⁴⁸ Ibid

⁴⁹ Ibid

Conclusion

While strong corporate governance practices can help protect minority shareholders in freezeout mergers, challenges still exist. Minority shareholders may face difficulties in asserting their rights, particularly if the majority shareholders hold significant power. Additionally, the effectiveness of corporate governance depends on the willingness of regulators and market participants to adhere to these practices diligently.

In conclusion, an efficient and robust corporate governance framework is crucial for safeguarding minority shareholders' interests in freezeout mergers. By promoting transparency, independence, and accountability, strong governance structures can provide a level playing field for all shareholders, reducing the risk of unfair practices and enhancing investor confidence in the Indian market.

Freezeout merger cases in India involve a significant burden of proof on the majority shareholders seeking to acquire the shares of minority shareholders. They must demonstrate the fairness and legality of the merger, comply with applicable laws and regulations, and show that they acted in good faith, fulfilling their fiduciary duties towards all shareholders. The courts play a crucial role in reviewing the evidence and arguments presented by both parties to ensure a fair and just resolution.