

International Mergers & Acquisitions in India: A Study of the Rights and Regulatory Challenges for Multinational Companies

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ABSTRACT

The research paper aims to examine the intricate nature that governs cross border mergers and acquisitions in India, the rights awarded to multinationals and the compliance difficulties that multinationals are subjected to. As the world continues to be globalized and encourages cross-border investments, India has become a very good destination of the multinationals. However, the acquisition or the merger of the Indian firms is affected by strata of regulation or legislation that tends to create confusion to investors. The study tries to study the impact of such regulations to the strategy and confidence of the multinational corporations that have entered the Indian economy.

The paper scrutinizes in great detail the most significant legal tools that are applicable when carrying out cross-border acquisitions and mergers in India, such as the Companies Act, the Competition Act, the Foreign Exchange Management Act, and industry-specific policies. It describes the impact of the regulations on the international transaction structure by providing foreign businesses with rights and extremely burdensome requirements at the same time. These are prior clearance requirements, an investment ceiling limit on limited industries, disclosure requirements, competition law compliance, and protection of minority shareholders. The paper also addresses the post transaction period when the multinational firms should still comply with the reporting, monitoring and other regulations. This type of analysis reveals the interconnection between rights and obligations in the Indian regulatory system revealed in the study.

The study evaluates whether India's current regime effectively balances regulatory control with the need to attract investment and promote economic development using a doctrinal and analytical methodology. The study also looks at whether complicated procedures and redundant compliance requirements discourage foreign companies from entering Indian markets. Finding weaknesses in the current structure and suggesting changes to improve transparency, efficiency,

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and global competitiveness for international mergers and acquisitions are the goals. In so doing, the paper contributes to the bigger debate on how the investment and corporate regulations of India can be aligned with the best practices in the world without jeopardizing the interests of the stakeholders and the nation.

Keywords: Compliance, Cross-border Transactions, Foreign Investment, Multinational Companies, Regulatory Challenges.

INTRODUCTION

International mergers and acquisitions have now become one of the most viable means for multinational firms to grow and their occupation in the world. The global corporate landscape requires business organizations to seek opportunities in foreign markets to access new markets, technology, skilled resource of people, and competitive advantages. The economy of India is ranked among the fastest-growing economies in the worldwide competitive environment, and so it is an ideal place to conduct such cross-border acquisitions. Inbound and outbound mergers and acquisitions in the country have already increased significantly in the last two decades, both of which lead to complicated legal and regulatory obstacles to international companies as well as opportunities in economic development.⁷³⁴

The Indian legal and regulatory environment under which mergers and acquisitions are conducted is inseparably linked to the practice. Indian cross-border transactions must comply with a number of laws and rules, including the Companies Act,⁷³⁵ the Competition Act,⁷³⁶ the Foreign Exchange Management Act,⁷³⁷ the Income Tax Act,⁷³⁸ and sector-specific regulations, even if they are solely business negotiations. They are meant to defend public interest, foster fair competition, and offer effective regulatory oversight. However, in reality, they frequently create obstacles for global corporations. The system is complicated by the presence of several permission requirements, sectoral limits, and procedural obstacles, which can occasionally result in uncertainty and additional expenses for foreign investors.

⁷³⁴ N. Balasubramanian, Cross-Border Mergers and Acquisitions in India: Trends and Challenges, 53(2) Indian J. Indus. Rel. 183, 185–87 (2018).

⁷³⁵ The Companies Act, 2013, No. 18, Acts of Parliament, 2013 (India).

⁷³⁶ The Competition Act, 2002, No. 12, Acts of Parliament, 2003 (India).

⁷³⁷ Foreign Exchange Management Act, 1999, No. 42, Acts of Parliament, 1999 (India).

⁷³⁸ The Income Tax Act, 1961, No. 43, Acts of Parliament, 1961 (India).

This structure is also closely related to the rights of multinational corporations and international investors operating in India. Foreign investors acquire ownership, management, profit-sharing, and decision-making rights following the approval of an acquisition or merger. These rights do not, however, come without obligations, including as continued compliance, financial and governance information sharing, and safeguarding employees, minority shareholders, and other stakeholders. In India, overseas mergers and acquisitions present both opportunities and challenges due to the dual nature of responsibility and right.

While India has opened up its economy since the 1990s and implemented measures to attract international investment,⁷³⁹ the regulations governing mergers and acquisitions outside are still fragmented.⁷⁴⁰ Procedural inefficiencies result from a lack of a standardized framework and several regulators, and these are seen as barriers to global best practices. This emphasizes how urgently the system needs to be adjusted to protect national interests while becoming more consistent, logical, and investor-friendly.

This research paper looks at how international mergers and acquisitions are structured in India, taking into account the legal framework in which they occur as well as the rights that the multinational corporations get as a result of these transactions. It looks at the pre- and post-transaction regulatory challenges faced by foreign investors to ascertain if India's current strategy facilitates simple cross-border transactions or serves as a deterrent to investment. This paper looks at statutory laws, case laws, academic publications, and regulatory practices in order to suggest ways to improve the transparency, efficiency, and international-level parity of the Indian M&A regime while maintaining the protection of stakeholder and national interests.

REGULATORY FRAMEWORK CONCERNING INTERNATIONAL M&A

India's reliance on many laws and agencies rather than a single code makes regulating its foreign mergers and acquisitions complicated. Its foundation is the Companies Act of 2013,⁷⁴¹ which provides the legal foundation for restructuring through schemes of arrangement, including international mergers. Even though the law expressly permits such transactions, the

⁷³⁹ Government of India, Ministry of Finance, Economic Survey 1991–92 (1992).

⁷⁴⁰ Ernst & Young, Mergers and Acquisitions in India: Trends and Regulatory Issues (2022).

⁷⁴¹ The Companies Act, No. 18 of 2013 (India).

process is complicated by steps like shareholder permission, disclosures, and tribunal sanction. This means that even when the legal road is clear, implementation is hampered by judicial oversight and compliance-driven procedures, which is problematic for international corporations.⁷⁴²

Focus is placed on the Reserve Bank of India and the foreign exchange system to regulate the financial side of cross-border mergers. Capital inflows and outflows from India are governed by the FEMA⁷⁴³ and the Cross Border Merger Regulations, 2018,⁷⁴⁴ which link the merger to the broader foreign investment policy. The sectoral queues of the framework, the limitation of the ownership and the valuation rules in India depict the Indian reservations towards foreign entry. Multinational companies experience a paradox of decision making since they are able to design transactions so as to maximize investment arrangements, and at the same time they must deal with regulatory handicaps that tend to undermine control or shift business assumptions.

Competition regulation adds an additional degree of supervision. Large mergers are scrutinized by the Competition Commission of India⁷⁴⁵ to ensure that market forces are not manipulated. Although this has the justifiable goal of preserving domestic competition, it adds uncertainty to high-value or industry-concentrated transactions and lengthens the clearance process.⁷⁴⁶ The difficulty of compliance is further increased for listed firms by SEBI's takeover and disclosure rules.⁷⁴⁷ Despite being designed to protect minority rights and transparency, these regulations raise transaction costs and may deter quick deals in sectors with intense competition.

In India's M&A regime, taxes are arguably the most contentious aspect. Although there are exceptions for legitimate restructurings, anti-avoidance laws and retroactive taxation have greatly increased investor anxiety.⁷⁴⁸ The Vodafone case and the ensuing legislative responses demonstrated how India's tax laws can fluctuate without warning, endangering international

⁷⁴² Umakanth Varottil, *Evolution and Regulation of Cross-Border Mergers in India*, 9 NAT'L L. SCH. INDIA REV. 69 (2017).

⁷⁴³ Foreign Exchange Management Act, No. 42 of 1999 (India).

⁷⁴⁴ Reserve Bank of India, *Foreign Exchange Management (Cross Border Merger) Regulations, 2018*, Notification No. FEMA 389/2018-RB (Mar. 20, 2018).

⁷⁴⁵ The Competition Act, No. 12 of 2003 (India).

⁷⁴⁶ Competition Commission of India, *Combination Regulations, 2011*, Notification No. 10 of 2011.

⁷⁴⁷ Securities and Exchange Board of India (*Substantial Acquisition of Shares and Takeovers*) Regulations, 2011, Gazette of India, Notification No. LAD-NRO/GN/2011-12/24/30181.

⁷⁴⁸ General Anti-Avoidance Rules, Income Tax Act, No. 43 of 1961, §§ 95–102 (India).

investments' reputations.⁷⁴⁹ The cost evolution of deal structure in India is attested to by ancillary costs such as stamp duty on merger paperwork, which remain significant deterrents even in the absence of direct taxation.

An exclusive chance for foreign parties to buy distressed assets has been made possible under insolvency law. Even though it is still in its early stages of development, global corporations have used the Insolvency and Bankruptcy Code, 2016⁷⁵⁰ to gain entry to the Indian market. However, as the Jet Airways⁷⁵¹ resolution process demonstrates, the absence of a comprehensive cross-border bankruptcy system limits certainty in situations where assets or creditors are situated in multiple jurisdictions.

The impact of these overlapping laws and authorities is a fragmented system that puts regulation ahead of transactional efficiency. Although the framework represents India's aim to strike a balance between safeguarding national interests and gaining access to international finance, it also introduces uncertainty and delays in the legal process. This leads to increase in compliance cost, lack of predictability and even reluctance to make agreements among global companies. Thus, despite high level of defensiveness, the legal structure in India is nevertheless a point of entry and a hindrance to international mergers and acquisitions.

RIGHTS AND OBLIGATIONS OF MULTINATIONAL COMPANIES IN INTERNATIONAL M&A

Understanding the balance between duties and rights is essential to comprehending the opportunities and prospects presented by India's regulatory landscape. The establishment of multinational corporations in India through mergers and acquisitions marks a turning point when foreign capital meets the home country's legal and policy regimes. The benefits of MNCs by the time a deal is finalized are a certain package of rights enabling them to have involvement in the Indian economy, but which are offset by debts to protect the interest of the populace, to exercise regulatory control and to aid in adherence with Indian law.

⁷⁴⁹ Vodafone Int'l Holdings B.V. v. Union of India, (2012) 6 S.C.C. 613 (India).

⁷⁵⁰ Insolvency and Bankruptcy Code, No. 31 of 2016 (India).

⁷⁵¹ In re Jet Airways (India) Ltd., [2019] NCLAT (India).

The right of ownership is the most fundamental right obtained through cross-border M&A. Shares, assets, intellectual property, and control over Indian enterprises can all be acquired by foreign corporations. MNCs may access new markets, leverage domestic resources, and integrate Indian operations with their global objectives thanks to ownership. In addition to direct ownership, Indian law permits foreign acquirers to vote in proportion to their ownership stake, allowing foreign investors to have a significant say in business choices.

The right to operational control and governance is another essential right. Following the purchase, MNCs obtain the authority to designate board members, exert influence over the management group, and establish the target entity's business policies in accordance with the Companies Act.⁷⁵² This includes technological transfer, corporate strategy, funding, and integrating with global supply chains. However, industry restrictions or terms and conditions for regulatory approvals under the FDI Policy⁷⁵³ may have an impact on the degree of operational control.

The right to repatriate profits is another privilege enjoyed by foreign investors. MNCs can transfer profits, royalties, interest, or capital gains to their home nations as long as they comply with FEMA and RBI requirements.⁷⁵⁴ India is a viable location for cross-border capital investment since repatriation enables foreign shareholders to get returns on their investments. Additionally, as long as they are carried out within the parameters of corporate and securities legislation, MNCs have the right to restructure company operations following acquisitions, including entity consolidation, forays into new business sectors, and sales of non-core assets. Enshrined under India's FDI policy⁷⁵⁵, international companies in a number of industries are entitled to the same treatment as local investors. For instance, the automatic route permits 100 percent foreign direct investment (FDI) in some sectors, like as manufacturing and e-commerce marketplace services, giving international investors the same opportunities as Indian competitors. Foreign shareholders also have equal access to the protections against oppression and poor management that the Indian company law offers.⁷⁵⁶

⁷⁵² Companies Act, No. 18 of 2013, §§ 149–172 (India).

⁷⁵³ Dep't for Promotion of Industry & Internal Trade, Consolidated FDI Policy, ¶¶ 5.2.15.2–5.2.15.3 (2020), <https://dpiit.gov.in>

⁷⁵⁴ Foreign Exchange Management Act, No. 42 of 1999, (India); Reserve Bank of India, Foreign Exchange Management (Cross Border Merger) Regulations, 2018.

⁷⁵⁵ Dep't for Promotion of Industry & Internal Trade, Consolidated FDI Policy, ¶¶ 5.2.15.2–5.2.15.3 (2020), <https://dpiit.gov.in>

⁷⁵⁶ Companies Act, No. 18 of 2013, §§ 241–246 (India).

These rights come with significant procedural and substantive requirements for MNCs. Following sectoral restrictions and limitations is one of the main responsibilities. In industries like banking, telecom, insurance, and defense, foreign direct investment is either restricted to a certain extent or requires government approval.⁷⁵⁷ Since regulators monitor ownership patterns to discourage foreign investors from exceeding permitted levels, complying with such sectoral limits continues even after an acquisition.

MNCs are also faced with reporting and disclosure responsibilities. According to FEMA laws⁷⁵⁸, the RBI must declare all cross-border acquisitions within legally mandated timeframes. According to SEBI standards⁷⁵⁹, listed businesses must disclose substantial shareholdings, make open offers to minority shareholders, and report on continuing corporate governance practices.⁷⁶⁰ Although these are procedural requirements, non-compliance has a significant cost.

Another crucial issue is the obligations for taxes. Foreign businesses must adhere to transfer pricing standards, capital gain taxation, and withholding tax obligations. Prominent cases such as *Vodafone International Holdings v. Union of India*⁷⁶¹ demonstrate how tax authorities look into cross-border structuring and indirect transfers. MNCs are also required by the General Anti-Avoidance Regulations (GAAR) to ensure that transactions have business purposes other than taxation. While Section 47 of the Income Tax Act offers exclusions for legitimate mergers, these must adhere to strict guidelines.⁷⁶²

Another area of obligation is introduced by labor and employment commitments. Workers must be compensated upon ownership transfer under Section 25FF of the Industrial Disputes Act,⁷⁶³ unless continuation of service is ensured. The Employees' Provident Funds and Miscellaneous

⁷⁵⁷ Dep't for Promotion of Industry & Internal Trade, Consolidated FDI Policy, ¶ 5.2 (2020), <https://dpiit.gov.in>

⁷⁵⁸ Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017, RBI Notification No. FEMA 20(R)/2017-RB.

⁷⁵⁹ Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, Gazette of India, Regs. 3–5.

⁷⁶⁰ Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, Gazette of India, Regs. 17–27.

⁷⁶¹ *Vodafone Int'l Holdings BV v. Union of India*, (2012) 6 S.C.C. 613 (India).

⁷⁶² Income Tax Act, No. 43 of 1961, § 47(vi) (India).

⁷⁶³ Industrial Disputes Act, No. 14 of 1947, § 25FF (India).

Provisions Act of 1952⁷⁶⁴ and the Payment of Gratuity Act of 1972⁷⁶⁵ are two examples of social security legislation that require the maintenance of provident funds, gratuities, and other benefits for employees following acquisition. Therefore, MNCs must integrate their staff without violating legal protections, particularly in industries where unions have a prominent position.

The requirement for market fairness and competition also gives birth to pragmatic obligations. The Competition Act stipulates that combinations above certain thresholds must be reported to the CCI.⁷⁶⁶ To prevent anti-competitive effects, this obligation not only slows down transactions but may also impose restrictions or remedies, such as asset divestiture. As a result, adhering to competition law is essential when planning international M&A deals.

MNCs are furthermore subject to corporate responsibility and governance requirements. According to SEBI's LODR laws, listed companies must follow guidelines for independent directors, audit committees, and financial reporting transparency.⁷⁶⁷ Regulations against insider trading forbid the improper use of confidential information during acquisitions.⁷⁶⁸ Additional compliance obligations are created by the Companies Act's standards for corporate social responsibility, which also apply to subsidiaries of international corporations that reach certain criteria.⁷⁶⁹

REGULATORY CHALLENGES FOR MULTINATIONAL COMPANIES

At every stage of a transaction, multinational firms face numerous challenges due to India's extremely complex regulatory environment for cross-border mergers and acquisitions. Among these issues, obtaining several approvals from different agencies is the most pressing. The Ministry of Corporate Affairs is responsible for approving merger plans under the Companies Act, while the Reserve Bank of India oversees compliance with the FEMA (Cross Border

⁷⁶⁴ Employees' Provident Funds and Miscellaneous Provisions Act, No. 19 of 1952 (India).

⁷⁶⁵ Payment of Gratuity Act, No. 39 of 1972 (India).

⁷⁶⁶ Competition Act, No. 12 of 2003, § 5 (India).

⁷⁶⁷ Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, Gazette of India, Regs. 17–23.

⁷⁶⁸ Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, Gazette of India, Regs. 3–5.

⁷⁶⁹ Companies Act, No. 18 of 2013, § 135 (India).

Merger) Regulations, 2018⁷⁷⁰ and the Foreign Exchange Management Act.⁷⁷¹ In the case of public firms, the Securities and Exchange Board of India enforces its takeover code, listing regulations, and disclosure standards,⁷⁷² while the Competition Commission of India examines combinations that beyond certain specified criteria.⁷⁷³ In addition to these, tax authorities review structuring and compliance under the Income Tax Act.⁷⁷⁴ Each authority follows its own procedures, timelines, and compliance requirements, creating overlapping requirements that slow the process, make it uncertain, and are frequently duplicative.

The issue is exacerbated by jurisdictional overlap. Multiple authorities can simultaneously assess a single M&A transaction from different angles. For instance, a transfer of control through a change in shareholding may result in open offer requirements under SEBI's takeover code,⁷⁷⁵ RBI reporting requirements under FEMA, and a Competition Act competition review by the CCI. The idea of "control" may be interpreted differently by each regulator, which makes things more unpredictable and uncertain for international investors.⁷⁷⁶ Businesses typically create conditional agreements, add deferred payment terms, or redesign their transactions to account for regulatory risks because there is no one mechanism that can reconcile these regulatory viewpoints.

Another level of complication is brought about by India's foreign direct investment policy's sectoral limits and restrictions. Targeted restrictions on foreign ownership and even government clearance are in place for industries like retail, defense, insurance, telecom, and print media. Furthermore, some of these businesses have restrictions on what a foreign party can do in terms of control over operations, sourcing conditions, and board composition. These limitations have an impact on long-term company plans, post-acquisition governance rights, and deal structure for international firms.⁷⁷⁷

⁷⁷⁰ Reserve Bank of India, FEMA (Cross Border Merger) Regulations, 2018, Notification No. FEMA 389/2018-RB.

⁷⁷¹ Foreign Exchange Management Act, No. 42 of 1999 (India).

⁷⁷² Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (India); SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (India).

⁷⁷³ Competition Act, No. 12 of 2003, §§ 5–6 (India).

⁷⁷⁴ Income Tax Act, No. 43 of 1961 (India).

⁷⁷⁵ SEBI (SAST) Regulations, 2011, reg. 3.

⁷⁷⁶ Umakanth Varottil, The Concept of "Control" in Corporate Law and Takeover Regulation in India, 11 *Indian J. Corp. L.* 23, 45–47 (2019).

⁷⁷⁷ Afra Afsharipour, Corporate Governance Convergence: Lessons from the Indian Experience, 29 *Nw. J. Int'l L. & Bus.* 335, 372–74 (2009).

Perhaps the most contentious topic has been taxes. India has a complicated tax system that has historically proven unpredictable.⁷⁷⁸ The post-Vodafone retrospective taxes modification is a prime illustration of how sudden law changes can erode the trust of foreign investors.⁷⁷⁹ Concerns about transfer pricing, indirect transfer regulations, and the broad reach of anti-avoidance laws like GAAR persist even after the deletion of the retroactive tax measures.⁷⁸⁰ Foreign investors have to expend large costs in terms of tax due diligence, advance rulings, indemnification arrangements, and complicated structuring in order to shield themselves from unanticipated penalties.

Foreign investors are also burdened by procedural lags and transaction costs, which include mandatory valuation reports, court or tribunal approvals, and very high disclosure requirements as well as jurisdiction-specific state stamp duties on merger schemes, asset transfers, and share purchase agreements that significantly increase deal costs.⁷⁸¹ In rapidly changing markets, these lags reduce deal value and give foreign investors a competitive edge when they want to buy Indian companies.

Multinational corporations are additionally burdened by post-deal compliance requirements. Foreign buyers are required to comply with sector-specific regulations, file with the RBI, register revisions with the MCA, disclose to SEBI in the case of listed firms, and make filings even after the deal is finalized.⁷⁸² Furthermore, the Income Tax Act,⁷⁸³ labor laws,⁷⁸⁴ and environmental laws⁷⁸⁵ still have obligations that must be met, which makes the establishment of strong compliance systems necessary. This typically results into high compliance costs and the possibility of unintentional infractions for international businesses who are not accustomed to India's compliance-heavy environment.⁷⁸⁶

⁷⁷⁸ R. Prasad, *Commentary on the Income Tax Act* 614–16 (2022 ed.).

⁷⁷⁹ *Vodafone Int'l Holdings B.V. v. Union of India*, (2012) 6 S.C.C. 613; Finance Act, No. 23 of 2012, § 4 (India).

⁷⁸⁰ Income Tax Act, *supra* note 6, §§ 92–92F (transfer pricing), 95 (GAAR), 9(1)(i) (indirect transfer).

⁷⁸¹ Ramaiya, *Guide to the Companies Act* 4123–27 (19th ed. 2020).

⁷⁸² Dep't for Promotion of Industry & Internal Trade, *Consolidated FDI Policy* (2020).

⁷⁸³ Income Tax Act, No. 43 of 1961, §§ 139, 195 (India).

⁷⁸⁴ Industrial Disputes Act, No. 14 of 1947, §§ 25FF–25FFF (India).

⁷⁸⁵ Environment (Protection) Act, No. 29 of 1986, § 7 (India).

⁷⁸⁶ Praveen K. Sharma, *Compliance Costs and the Ease of Doing Business in India*, 12 *Indian J.L. & Econ.* 59, 71–73 (2020).

One area of regulatory ambiguity that has not been resolved is cross-border insolvency. Even though the Insolvency and Bankruptcy Code of 2016 made it easier for international companies to buy distressed Indian businesses,⁷⁸⁷ there is still a lack of a comprehensive cross-border insolvency framework, which leaves things unclear when it comes to foreign creditors or assets located outside of India. An illustration of the uncertainty that multinational corporations may encounter when insolvency-driven acquisitions involving multiple jurisdictions occur is the Jet Airways case, which involved ad hoc collaboration between Indian and Dutch courts.⁷⁸⁸

The totality of these rules of law dilemmas attests to the fact that global bodies that conduct business in the M&A sphere of India have a host of these issues. market has to contend with substantive laws which are complex, and procedures which are scattered and ambiguous on tax and. regulatory interpretations and burdensome compliance requirements. Compared to other countries with fewer complicated rules, such challenges render conducting business in India more costly, risky, and time-consuming.

JUDICIAL IMPACT ON INTERNATIONAL M&A IN INDIA

Delineating the limits of international mergers and acquisitions has been made possible in large part by India's legal and regulatory agencies. The resulting nature of M&A legislative system in India owing to the scatteredness of the various laws under the Indian law is that, very often the legislative gaps are merely bridged by the court interpretation of the law, ambiguity sought to be clarified, and the balance between the rights of the investors and regulatory action recalibrated. At the same time, the legal precedent has also been a causal factor as the uncertainty may also arise because of the different interpretation of the laws concerning taxation, competition or a takeover.

The Vodafone case, which brought the topic of territorial taxation of cross-border transactions to the forefront, is a perfect illustration of judicial involvement.⁷⁸⁹ First, the Supreme Court ruled in Vodafone's favor, concluding that offshore transactions involving indirect transfers of Indian assets were exempt from Indian taxation. Foreign investors enjoyed the clarity this provided. However, the latter government's decision to overturn and change the ruling

⁷⁸⁷ Insolvency and Bankruptcy Code, No. 31 of 2016, §§ 5, 31 (India).

⁷⁸⁸ Jet Airways (India) Ltd., In re, NCLT Mumbai Bench, Order dated June 20, 2019.

⁷⁸⁹ Vodafone Int'l Holdings B.V. v. Union of India, (2012) 6 S.C.C. 613.

retroactively has created a great deal of ambiguity and shows that legislation can override judicial protection. The episode highlighted the judiciary's capacity to reassure foreign investors, but it also demonstrated how susceptible that assurance is to policy retrenchment when court rulings are challenged.⁷⁹⁰

The growth of international M&A has also been facilitated by judicial interpretation. The Siemens Healthcare⁷⁹¹ case showed the judiciary's willingness to support incoming cross-border mergers, as it was the first merger approved under Section 234 of the Companies Act of 2013. The case demonstrated judicial support for India's openness to international finance by maintaining RBI permission and applying a pragmatic interpretation of procedural restrictions. Similar to this, SEBI's stringent enforcement of takeover laws during Sun Pharma's acquisition of Ranbaxy demonstrated that the interests of minority shareholders would not be jeopardized.⁷⁹² This demonstrated that even in significant, high-value transactions, regulators and judges were dedicated to upholding market justice.

The courts have been in the forefront of bridging assurance in purchases guided by insolvency sales. In the landmark Essar Steel case, the Supreme Court upheld the finality of resolution plans approved by the Insolvency and Bankruptcy Code,⁷⁹³ reinforcing the idea that winning bidders shouldn't have to endure protracted legal action from creditors.⁷⁹⁴ The confidence of bidders, especially international buyers, to enter India's insolvency market was bolstered by this verdict. Similar to this, Indian and Dutch courts collaborated ad hoc in the Jet Airways bankruptcy case, establishing a precedent for cross-border collaboration even in the absence of a formal structure.⁷⁹⁵ Despite being pragmatic, the collaboration demonstrated the need for India to create a structured cross-border insolvency procedure in order to guarantee predictability in future situations.⁷⁹⁶

⁷⁹⁰ Aradhna Aggarwal, *Vodafone Case and Its Aftermath: Taxation of Indirect Transfers in India*, 48 *Econ. & Pol. Wkly.* 62 (2013).

⁷⁹¹ *Siemens Healthcare Pvt. Ltd., In re*, NCLT Mumbai Bench, Order dated May 11, 2017.

⁷⁹² *Sun Pharmaceutical Indus. Ltd. v. Ranbaxy Laboratories Ltd.*, SEBI Order, Nov. 2014.

⁷⁹³ *Insolvency and Bankruptcy Code*, No. 31 of 2016, § 31 (India).

⁷⁹⁴ *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, (2020) 8 S.C.C. 531.

⁷⁹⁵ *Jet Airways (India) Ltd., In re*, NCLT Mumbai Bench, Order dated June 20, 2019.

⁷⁹⁶ Vinod Kothari, *Cross-Border Insolvency in India: Lessons from Jet Airways Case*, 61 *Chartered Secretary* 45 (2019).

Judicial precedents have significantly influenced specific areas of M&A law outside of these high-profile cases. The Supreme Court upheld the substance-over-form criterion in *McDowell*, warning against tax evasion schemes that pass as legitimate transactions.⁷⁹⁷ The policy is still in place to direct how tax authorities and courts evaluate deal structures in international mergers and acquisitions. The Reliance Industries stamp duty verdict reaffirmed the economic implications of M&A transactions by clarifying that court-approved merger plans are subject to state-level stamp charges.⁷⁹⁸ Meanwhile, the *Hindustan Lever* decision, which balanced labor protection with commercial necessity, maintained that although employees' interests must be considered during mergers, they cannot be permitted to veto agreements if there are more important economic concerns at play.⁷⁹⁹

Cumulatively, through these judicial decisions, the Indian courts and authorities have gone the extra mile to define the rights and obligations of international companies and scope in terms of M&A, although it has also led to confusion when the action of the legislature or the regulation strives to overturn their consequences. The courts not only provide a certain degree of stability but a wakeup call of the changing and sometimes unpredictable legal environment of India and this presents a twofold challenge to foreign businesses.

INDIA VS. GLOBAL BEST PRACTICES

The structure of M&As in India is diametrically opposite to the systems employed by various developed economies where highly streamlined regimes are concerned with accuracy, predictability, and investor confidence. An analysis of the US, UK, EU, and Singapore demonstrates how these countries strike a balance between speed and regulation in cross-border transactions.

The Hart-Scott-Rodino regime in the US ensures a clear pre-merger filing process with predetermined results and specified timetables.⁸⁰⁰ In addition, the CFIUS example demonstrates that national security concerns may be addressed in a targeted way without affecting the majority of business dealings.⁸⁰¹ Another model that outlines specific steps and

⁷⁹⁷ *McDowell & Co. Ltd. v. CTO*, (1985) 3 S.C.C. 230.

⁷⁹⁸ *Chief Controlling Revenue Auth. v. Reliance Indus. Ltd.*, (2018) 10 S.C.C. 1.

⁷⁹⁹ *Hindustan Lever Employees' Union v. Hindustan Lever Ltd.*, (1995) Supp. (1) S.C.C. 499.

⁸⁰⁰ Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a (2021).

⁸⁰¹ 50 U.S.C. § 4565 (2021) (establishing the Committee on Foreign Investment in the United States (CFIUS)); U.S. Dep't of Treasury, CFIUS Annual Report to Congress (2023).

deadlines for mandatory offers under the Takeover Panel's code and makes bidders aware of their responsibilities is the United Kingdom.⁸⁰² In parallel, the UK Competition and Markets Authority conducts an open process to examine deals for potential competition issues. With its "one-stop shop" established by the EU Merger Regulation, the European Union once more maximizes efficiency by concentrating reviews at the Commission level to remove duplication among member states.⁸⁰³ As a prominent jurisdiction in rising markets worldwide, Singapore offers the benefits of quick approvals, tax certainty, and strong institutional support for arbitration, all of which contribute to its status as a regional cross-border hub.⁸⁰⁴

India's multi-approval system of fragmentation and overlapping authorities appears less efficient and more time-consuming when compared to those standards. Even if competition, transparency, and the national interest are protected under each of the comparator regimes, these are maintained by systems that place a high value on predictability and reduce duplication. The contrast demonstrates how India's lack of a unified framework and statutory timelines creates regulatory burden and raises deal uncertainty. The comparative analysis thus identifies India's potential to move closer to practices that have successfully balanced investor confidence with regulatory intervention elsewhere, such as more integrated processes, binding definiteness on taxation and foreign exchange matters, and a dedicated regime for cross-border insolvency.

CONCLUSION

The Indian Law governing acquisitions and mergers overseas has two facets, including opportunity, and constraint. On one hand, multinational enterprises are provided with cases of ownership, profit repatriation, and management control; and on the other, they are liable to sectoral restrictions, long processes and stages of regulatory checks. One of the things that are affected by this is predictability and investor credibility because procedural inefficiencies and tax uncertainties are caused by the decentralization of power among various statutes and agencies. Regardless of their significance, judicial interventions tend to emphasize the absence of the systemic homogeneity, owing to which the regime seems to be rather reactive than proactive when it comes to encouraging the cross-border investments.

⁸⁰² The City Code on Takeovers and Mergers (U.K. Takeover Panel, 2021).

⁸⁰³ Council Regulation 139/2004, 2004 O.J. (L 24) 1 (EC) (EU Merger Regulation).

⁸⁰⁴ Competition & Consumer Comm'n of Singapore, Merger Procedures Guidelines (CCCS, 2016); Singapore Int'l Arbitration Centre, Annual Report 2023.

The regulatory framework in India should be enhanced to achieve more balance, efficiency, and transparency to achieve maximum potential as a foreign investment destination. The confidence would be greatly needed with an upfront cross-border insolvency setup, simplified clearing systems as well as simplified taxes protecting national interests.⁸⁰⁵ In addition to reducing transaction costs and delays, these measures would also indicate that India is open to long-term foreign investment,⁸⁰⁶ allowing its M&A framework to be supportive rather than stifling the global economy.



⁸⁰⁵ OECD, FDI Regulatory Restrictiveness Index 2023 (2023).

⁸⁰⁶ UNCTAD, World Investment Report 2023: Investing in Sustainable Energy for All (United Nations, 2023).