

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

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REGULATION OF MERGER AND ACQUISITION UNDER THE COMPETITION (AMENDMENT) ACT 2024 AFTER CERTAIN THRESHOLD LIMITS

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Introduction

In the corporate world, Mergers and Acquisitions (M&A) are the ultimate power moves. While they are often lumped together, they represent two distinct ways for companies to combine forces.

1. Defining the Concepts

Merger

A merger occurs when two separate entities combine to create a new, single legal entity. Usually, the companies are of similar size (a "merger of equals"). The stocks of both original companies are surrendered, and new stock is issued in the name of the new company.

Acquisition

In an acquisition, one company (the acquirer) purchases the bulk of another company's (the target) shares or assets. Unlike a merger, the target company is swallowed up but may continue to exist as a subsidiary, or it may be completely liquidated into the parent company.

2. Statutory Frameworks and Regulations

M&A activity is heavily regulated to ensure market fairness, protect shareholders, and prevent monopolies. Depending on the jurisdiction (using a global/common law framework as a baseline), several key "rulebooks" apply:

A. Corporate/Companies Act

This is the foundational law. It dictates the procedure for the merger.

- Board Approval: Both boards must approve the scheme of arrangement.

- Shareholder Approval: Usually requires a "special majority" (often 75%) of shareholders to vote in favor.
- Valuation: Ensures that the exchange ratio of shares is fair to all parties.

B. Antitrust and Competition Law

Regulators (like the FTC in the US or the CCI in India) watch M&A to ensure it doesn't create a monopoly that hurts consumers.

- Thresholds: If the combined turnover or asset value exceeds a certain limit, the companies *must* notify the regulator.
- Gun Jumping: Companies cannot act as a single entity until the regulator gives the "green light."

C. Securities and Exchange Regulations (SEBI/SEC)

If one or both companies are publicly traded, these laws protect minority shareholders.

- Takeover Code: If an acquirer buys a certain percentage of shares (e.g., 25%), they are often legally mandated to make an "Open Offer" to buy shares from the public at a set price.
- Insider Trading: Strict rules prevent people from trading on "non-public price-sensitive information" before the deal is announced.

D. Tax Laws

M&A can be a tax minefield.

- Capital Gains: Depending on how the deal is structured (Cash vs. Stock), it may trigger significant tax liabilities.
- Tax Neutrality: Many jurisdictions allow "tax-neutral" mergers if certain conditions are met, meaning the merger itself isn't taxed as a sale of assets.

E. Insolvency and Bankruptcy Codes

In many modern economies, M&A is a primary tool for "Corporate Insolvency Resolution." A healthy company might acquire a distressed one under a court-supervised process, often bypassing some standard shareholder consent requirements to save the business from liquidation. Recent decisions from the **National Company Law Tribunal (NCLT)** and the **Securities and Exchange Board of India (SEBI)** highlight a shift toward stricter governance, shareholder protection, and the enforcement of "commercial wisdom" in M&A deals.

Below are notable cases and regulatory decisions that have shaped the current landscape.

1. Landmark NCLT Decisions (Schemes of Arrangement)

The NCLT primarily focuses on the **procedural fairness** and **legality** of a merger.

A. *Zee Entertainment vs. Sony (Culver Max Entertainment)*

- **Context:** One of India's largest proposed media mergers. After getting NCLT approval in 2023, the deal collapsed in early 2024.
- **Key Issues:** Sony terminated the merger citing Zee's failure to meet "closing conditions" and leadership disputes (specifically SEBI's investigation into Zee's CEO, Punit Goenka).
- **NCLT/NCLAT Standing:** While the NCLT initially sanctioned the merger, it later had to deal with pleas regarding its **implementation**. The case established that even with NCLT approval, a scheme remains a "contract" at its core; if conditions precedent aren't met, the tribunal cannot easily force a "marriage" between unwilling parties, though it can penalize bad-faith terminations.

B. *HDFC Bank and HDFC Ltd Merger (2023)*

- **The Decision:** The NCLT approved the \$40 billion mega-merger, creating one of the world's most valuable banks.
- **Significance:** The NCLT emphasized that when an **overwhelming majority** of shareholders (over 99% in this case) and creditors approve a scheme, the Tribunal will not interfere unless the scheme is illegal or against public policy. This reinforced the doctrine of "**Commercial Wisdom**," where the court defers to the business judgment of the stakeholders.

C. *Reliance Velocity Ltd & Reliance Infrastructure (2025)*

- **Context:** Recent 2025 orders involving internal restructuring and group consolidation.
- **The Decision:** The NCLT Mumbai Bench sanctioned the scheme to "rationalize and consolidate" the group structure.
- **Key Takeaway:** The NCLT allowed for the **dispensation of meetings** for equity shareholders and creditors when 100% consent affidavits are provided. This is a vital procedural efficiency for group companies looking to reduce regulatory costs.

2. Key SEBI Decisions (Takeovers & Compliance)

SEBI focuses on **market integrity** and the protection of **minority shareholders** during acquisitions.

A. The "Open Offer" Enforcement (*Sungold Capital Case, 2025*)

- **Context:** A long-standing violation where acquirers breached the 15%/25% threshold (as per the Takeover Code) without making a mandatory public announcement.
- **The Decision:** In late 2025, SEBI passed orders debarring entities and mandating the payment of the offer price **plus 10% interest per annum** for the delay (dating back years).
- **Significance:** This underscores that SEBI will not "grandfather" old violations. If you sneakily acquire control without giving minority shareholders an exit option, the financial penalties (compounded over a decade) can be ruinous.

B. SEBI's Stance on "Indirect Control" (*Ongoing 2025-26*)

- **Regulation 3 & 4:** SEBI has recently updated its interpretation of "Control." In several informal guidance notes in 2024 and 2025, SEBI clarified that even if you don't own 25% of the shares, if your **veto rights** or **board seats** allow you to drive policy, you have "acquired control" and must launch an Open Offer.

Under the Competition Act, 2002, the regulation of mergers and acquisitions (M&A) is governed by the concept of a "Combination."

Transactions that cross specific financial or deal-value thresholds must be notified to the Competition Commission of India (CCI) for approval before they can be consummated.

This "suspensory" regime ensures that the CCI can prevent transactions that might cause an Appreciable Adverse Effect on Competition (AAEC) in the Indian market.

1. Relevant Provisions

The legal framework is built on two primary sections of the Act, significantly updated by the Competition (Amendment) Act, 2023 and the 2024 Regulations.

Section 5 (The Thresholds): Defines what constitutes a "combination" based on assets, turnover, and now, Deal Value.

Section 6 (Regulation & Pre-notification): Mandates that no combination shall come into effect until approved by the CCI (or after a waiting period of 150 days—reduced from 210 days by

the 2023 Amendment).

Section 43A (Penalty for Gun-Jumping):

Empowers the CCI to penalize parties who fail to notify or who consummate a deal before approval.

2. Notification Thresholds (Revised 2024/2025)

Transactions are notifiable if they meet any of the following three categories:

A. Asset and Turnover Thresholds

If the parties (Acquirer + Target) exceed these limits, notification is mandatory:

Level Asset Limit (India) Turnover Limit (India)

Enterprise Level > ₹2,500 Crores > ₹7,500 Crores

Group Level > ₹10,000 Crores > ₹30,000 Crores

For global transactions, different thresholds apply involving USD limits and a minimum India-specific presence.

B. The New "Deal Value Threshold" (DVT)

Introduced to capture "killer acquisitions" (especially in the digital/tech sector) where a target might have low turnover but high strategic value.

* **Value of Transaction:** Exceeds ₹2,000 Crores.

Substantial Business Operations (SBO) in India: The target must have significant Indian operations (e.g., 10% of its global users, turnover, or Gross Merchandise Value is in India).

C. De Minimis (Small Target) Exemption

A transaction is exempt if the target enterprise in India has:

Assets: ≤ ₹450 Crores OR

Turnover: ≤ ₹1,250 Crores

Note: This exemption does not apply if the Deal Value Threshold (₹2,000 Cr) is breached.

3. CCI Observations & Key Case Laws

The CCI is notoriously strict about "Gun-Jumping"—the act of taking steps to implement a merger before receiving clearance.

SCM Soilfert vs. CCI: The CCI clarified that even an "indirect" acquisition (like buying shares

through a market purchase) triggers the 30-day notification rule (though the 30-day filing deadline has now been removed, the suspensory obligation remains).

Adani Transmission Case (2025): The CCI emphasized that "standstill obligations" apply from the moment a binding agreement is signed. Any "integration" or "coordination" between the companies before approval is a violation.

Jet-Etihad Case: The CCI observed that parties must disclose all "interconnected" transactions. Failing to notify a side-agreement (like a commercial cooperation pact) that is part of the main deal can lead to penalties.

4. Impact of the Current Regime

Shorter Review Timelines: The 2023 Amendment reduced the maximum review period from 210 to 150 days. This speeds up M&A but puts pressure on the CCI to find competition issues faster.

Digital Market Scrutiny: The DVT ensures that acquisitions of startups (like WhatsApp by Facebook, which originally escaped CCI review) will now be scrutinized if they have a large Indian user base.

Green Channel Route: For transactions where there are no horizontal, vertical, or complementary overlaps between the parties, the CCI allows "automatic approval" upon filing, significantly reducing the "Ease of Doing Business" friction.

Strict Penalties: Under Section 43A, the CCI can impose a penalty of up to 1% of the total turnover or assets (whichever is higher) of the combined entity for gun-jumping.