# THOUGHTS ON MERGERS & ACQUISITIONS: A NEW TREND OF EXPONENTIAL GROWTH IN BUSINESS

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## Introduction

Mergers and acquisitions are powerful strategies that can transform businesses and drive growth in an increasingly competitive global market. As companies continue to seek ways to enhance their operations and market position, M&A will remain a prominent aspect of corporate strategy. The M&A field also offers a diverse range of career opportunities for professionals with various skill sets and backgrounds. As businesses increasingly look to M&A as a strategy for growth, the demand for skilled professionals in this area continues to rise.

Business is one of the oldest professions practiced in the world. With the passage of time the way of doing business has been changed a lot. Nowadays merger and acquisition are very common phenomenon. These proves to be a great opportunity to expand business worldwide.

The corporate sector all over the world is restructuring its operations through different types of consolidation strategies like mergers and acquisitions. Various companies come together to form a large company in order to expand its business. The government has also taken various efforts to strengthen such policies. The purpose of such merger and acquisition revolves around a company's growth

strategy. The reason of doing this is to increase market share, make more profits, enter into new sector, reduce competition, geographical outreach etc.

## Professional Opportunities in M&A field

CAs play a vital role in evaluating deal valuation, due diligence and post-merger integration. The M&A field offers a diverse range of career opportunities for professionals with various skill sets and backgrounds. Some of the key professional opportunities within the M&A field are as below:

1. Investment Banking Analyst

- Role: Support the execution of M&A transactions, conduct financial modeling, and prepare pitch books.
- Skills Required: Strong analytical skills, proficiency in financial modeling, and knowledge of valuation techniques.

2. M&A Associate

- Role: Work closely with senior bankers to manage deal execution, perform due diligence, and interact with clients.
- Skills Required: Excellent communication and negotiation skills, understanding of M&A processes, and project management abilities.

3. Corporate Development Manager

- Role: Identify and evaluate potential acquisition targets, oversee integration processes, and drive strategic initiatives.
- Skills Required: Strategic thinking, strong networking abilities, and expertise in market analysis.

4. Private Equity Professional

- Role: Evaluate investment opportunities, conduct due diligence, and manage portfolio companies post-acquisition.
- Skills Required: Strong financial analysis skills, deep understanding of business operations, and experience in deal sourcing.

5. M&A Consultant

- Role: Provide advisory services to clients on M&A strategies, integration processes, and value creation.
- Skills Required: Expertise in industry trends, analytical thinking, and ability to develop strategic recommendations.

6. Valuation Analyst

- Role: Conduct valuations of companies to support M&A transactions, utilizing various methodologies.
- Skills Required: Strong quantitative skills, proficiency in valuation techniques, and understanding of financial statements.

7. Due Diligence Specialist

- Role: Assess the financial, operational, and legal aspects of potential acquisitions to identify risks and opportunities.
- Skills Required: Attention to detail, analytical skills, and knowledge of legal and regulatory compliance.

8. Integration Manager

- Role: Oversee the integration of acquired companies, ensuring alignment with strategic goals and smooth transitions.

- Skills Required: Project management skills, strong interpersonal skills, and experience in change management.

9. Financial Analyst

- Role: Analyze financial data to support M&A decisions, focusing on profitability, revenue growth, and risk assessment.
- Skills Required: Proficiency in financial modeling and analysis, critical thinking, and proficiency with financial software.

10. Regulatory Affairs Specialist

- Role: Ensure compliance with local and international regulations during M&A transactions, managing legal risks.
- Skills Required: Understanding of regulatory frameworks, strong analytical skills, and attention to detail.

Chartered Accountants (CAs) are well-positioned to leverage their expertise in the field of Mergers and Acquisitions (M&A). Here's how CAs can benefit from professional opportunities in M&A:

1. Financial Due Diligence

- Role: CAs can lead or assist in financial due diligence processes, analyzing financial statements, tax records, and accounting practices to identify potential risks and value drivers in a target company.
- Benefit: Their deep understanding of accounting principles enables them to uncover discrepancies that non-financial professionals might miss.

2. Valuation Expertise

- Role: CAs can provide valuations of companies using various methodologies such as discounted cash flow (DCF), comparable company analysis, and precedent transactions.
- Benefit: This skill is crucial during negotiations and helps ensure that clients make informed decisions regarding the value of a potential acquisition.

3. Tax Planning and Compliance

- Role: CAs can advise on tax implications associated with M&A transactions, including structuring deals to minimize tax liabilities and ensuring compliance with tax regulations.
- Benefit: Their expertise can help clients avoid costly tax pitfalls and optimize the financial structure of deals.

4. Financial Modeling

- Role: CAs are adept at creating complex financial models to project future performance, assess synergies, and evaluate different transaction scenarios.
- Benefit: Strong modeling skills are critical for providing insights during the negotiation phase and in post-merger integration.

5. Strategic Advisory

- Role: CAs can offer strategic advice on potential M&A opportunities based on financial health, market position, and alignment with business goals.
- Benefit: Their analytical skills enable them to identify and assess suitable targets for acquisition or merger.

6. Risk Assessment and Management

- Role: CAs can identify financial, operational, and compliance risks associated with M&A transactions and recommend mitigation strategies.

- Benefit: Their ability to evaluate risks ensures that clients are aware of potential pitfalls before finalizing a deal.

7. Post-Merger Integration

- Role: CAs can play a vital role in integrating financial systems and processes after a merger or acquisition, ensuring a smooth transition and alignment of financial reporting.
- Benefit: Their involvement helps streamline operations and enhance financial transparency post-transaction.

8. Networking and Relationship Building

- Role: CAs can leverage their professional networks to connect with potential clients, investment banks, private equity firms, and other stakeholders involved in M&A.
- Benefit: Building relationships within the M&A ecosystem can lead to more opportunities for participation in high-profile deals.

9. Continuous Learning and Specialization

- Opportunity: Pursuing additional certifications related to M&A, such as the Chartered Financial Analyst (CFA) or Certified Valuation Analyst (CVA), can enhance a CA's qualifications.
- Benefit: Specialization can open doors to more senior roles and increase demand for their expertise in M&A transactions.

## **Merger and Acquisition**

As a concept, a merger refers to a combination of two or more entities into one, the desired effect being not just the accumulation of assets and liabilities of the distinct entities, but organization of such entity into one business.

In India, the term merger is not defined under the Companies Act, 2013 or the Income-tax Act, 1961. However, Section 2 (1B) of the Income-tax Act defines the synonymous term "amalgamation" in relation to companies, as the merger of one or more companies with another company or the merger of two or more companies to form one company, subject to following conditions:

- All properties to be transferred to the amalgamated company
- All liabilities to be transferred to the amalgamated company
- Shareholders holding at least 3/4th in value of shares of the amalgamating company should become shareholders of the amalgamated company

On the other hand, an acquisition or Takeover is the purchase by one party – of controlling interest in the share capital or of all or substantially all the assets and/or liabilities – of the target. It may be friendly or hostile.

For management, one of the biggest challenges is to enter into new market and run the business successfully. It can be done through two ways either to start a new business or to merge or acquire the running business. While setting up a new business will take more time and money, on the other hand acquiring or merging with another business will save both time and money. It also helps in gathering knowledge, entering into new market and improve output.

Depending on the type of economic activity, mergers can be classified as below

**Horizontal merger:** When two or more companies dealing with the same product or services come together to form a new company it is known as horizontal merger.

**Vertical merger:** It means combining of two or more companies in the same industries who operate in different stages of production.

**Concentric or Co-generic merger:** It is the merger where the acquirer and target company have different products or services, but operate within the same market and also deals with the same customers. They are complementing to each other.

**Conglomerate merger:** It is a Merger between two unrelated companies. This type of merger and acquisition occurs when both the target company and target seeking company are different in terms of industry, product offering, and stage of production.

**Reverse merger:** A reverse merger, also known as a reverse acquisition or reverse takeover, is a transaction where a private company buys a majority stake in a public company. This allows the private company to become public without going through an initial public offering (IPO). It is a merger where private company becomes a public company by purchasing/ acquiring it. Also known as backdoor IPO, reverse mergers although not prohibited, are strictly regulated by Companies Act 2013 and Securities and Exchange Board of India (SEBI). Section 232(h) of the Companies Act 2013 states that in case of amalgamation between a listed and an unlisted company, the final entity will be treated as an unlisted company. Also, listed companies undergoing mergers need mandatory approval from SEBI.

**Recent Trends in M&A**

1. Sector-Specific Consolidation: Significant consolidation is occurring in industries like healthcare, pharmaceuticals, and technology. For instance, the acquisition of Blinkit by Zomato and the merger of HDFC Bank with HDFC Ltd. are prime examples of how companies are reshaping their operational strategies.

2. Private Equity Involvement: Private equity firms are actively investing in Indian companies, often leading to strategic buyouts or partnerships. This influx of capital is driving growth and innovation in various sectors.

3. Cross-Border M&A: Indian companies are increasingly engaging in cross-border acquisitions to expand their global footprint. This trend reflects the ambition of Indian firms to tap into new markets and access advanced technologies.

4. Focus on Sustainability: Companies are also looking for M&A opportunities that align with sustainability goals. Acquisitions in renewable energy and sustainable practices are becoming more common as businesses prioritize environmental responsibility.

## Some Notable Mergers and Acquisitions

During 2023, the number of deals announced stood at 1,850 of which 26.7% (494) were domestic M&A deals. The deal value stood at US$ 75 billion, and the largest deal executed was at US$ 1.8 billion. The number of domestic deals is on the rise as investors are apprehensive about global uncertainties, and hence, cross border deals are taking a back seat.

### Top deals of 2023 and 2024

| Year | Target | Sellers | Buyers | Deal nature | Deal value (US$ billion) |
|---|---|---|---|---|---|
| 2023 | ONGC Petro additions Ltd | Gas Authority of India Ltd | Oil and Natural Gas Corporation Ltd | JV buyout | 1.80 |
| 2023 | SREI Infrastructure Finance Ltd | NA | National Asset Reconstruction Company Ltd, India Debt Resolution Company Ltd | Insolvency-driven acquisition | 1.79 |
| 2023 | GMR Airports Ltd | Aeroports de Paris SA | GMR Airports Infrastructure Ltd | JV buyout | 1.76 |
| 2023 | Aster DM Healthcare FZC | NA | Fajr Capital, Moopen Family and consortium | PE buyout | 1.70 |
| 2023 | TV18 Broadcast Ltd | NA | Network18 Media & Investments Ltd | Stock merger | 1.57 |
| 2024 | Star India Pvt. Ltd | Walt Disney Co. | Viacom 18 Media Pvt Ltd (media undertaking) | Joint venture | 4.53 |
| 2024 | ATC Telecom Infrastructure Pvt. Ltd | American Tower Corp | Data Infrastructure Trust | Strategic investment | 1.98 |

*Source: PwC*

**Notable Mergers and Acquisitions abroad**

1. Microsoft and Activision Blizzard

- Date: Announced in January 2022
- Details: Microsoft announced its acquisition of Activision Blizzard for approximately $68.7 billion. The deal aims to strengthen Microsoft's gaming portfolio and enhance its presence in the metaverse. The acquisition has faced scrutiny from regulators in various countries.

2. Elon Musk and Twitter (now X Corp)

- Date: Completed in October 2022

- Details: Elon Musk acquired Twitter for $44 billion. The acquisition has led to significant changes in the platform's policies, features, and management structure, reflecting Musk's vision for the company.

3. Merger of Warner Bros. Discovery

- Date: Completed in April 2022
- Details: Warner Media and Discovery, Inc. merged to form Warner Bros. Discovery, creating a major player in the media landscape. The merger aims to leverage both companies' content and distribution capabilities.

4. Salesforce and Slack

- Date: Completed in July 2021
- Details: Salesforce acquired Slack for $27.7 billion to enhance its collaboration tools and integrate them into its customer relationship management (CRM) platform.

5. Thermo Fisher Scientific and PPD

- Date: Completed in December 2021
- Details: Thermo Fisher acquired PPD, a global provider of clinical research services, for approximately $20.9 billion, aiming to expand its life sciences capabilities.

6. Broadcom and VMware

- Date: Announced in May 2022
- Details: Broadcom announced plans to acquire VMware for around $61 billion, seeking to diversify its portfolio beyond semiconductors into enterprise software.

7. Kroger and Albertsons

- Date: Announced in October 2022
- Details: Kroger announced plans to acquire Albertsons for $24.6 billion, which would create one of the largest grocery chains in the U.S. The deal is under regulatory review.

**Notable Merger and Acquisitions in India**

1. Zomato and Blinkit

- Date: Completed in June 2022
- Details: Zomato acquired Blinkit (formerly Grofers) for approximately $568 million. This deal aimed to bolster Zomato's quick-commerce capabilities and expand its food delivery and grocery services.

2. Tata Steel and Bhushan Steel

- Date: Completed in May 2022
- Details: Tata Steel completed its acquisition of Bhushan Steel, which was valued at around ₹35,000 crore. This acquisition enhanced Tata Steel's production capacity and market presence in India.

3. HDFC Bank and HDFC Ltd.

- Date: Announced in April 2022
- Details: HDFC Bank announced its merger with HDFC Ltd., creating a combined entity valued at approximately $150 billion. This merger aimed to strengthen the financial services ecosystem in India.

4. RIL and Future Group

- Date: Announced in 2020, with ongoing developments
- Details: Reliance Industries Limited (RIL) announced plans to acquire Future Group's retail and wholesale business for approximately ₹24,713 crore. However, this deal has faced legal challenges and regulatory scrutiny.

5. Adani Group and Ambuja Cements

- Date: Completed in September 2022
- Details: Adani Group acquired Ambuja Cements and its subsidiary ACC for around $10.5 billion, significantly increasing its footprint in the cement industry.

6. Hindustan Aeronautics Limited (HAL) and Tata Advanced Systems

- Date: Announced in 2023
- Details: HAL entered into a partnership with Tata Advanced Systems to collaborate on defense manufacturing, including projects related to military aircraft and drones.

7. Tech Mahindra and Brainscale

- Date: Completed in January 2023
- Details: Tech Mahindra acquired Brainscale, a digital services company, to enhance its capabilities in the digital transformation space.

M&A activities in India reflect the growing trend of consolidation across various sectors, including technology, finance, and manufacturing. The focus is on enhancing market share, expanding service offerings, and responding to evolving consumer demands.

Some more examples -

1. ICICI Lombard gets final IRDAI approval for Bharti Axa acquisition
2. Kalpathi AGS Group-Owned Veranda Acquires Edureka For Rs 245 Crore
3. HDFC Life Acquires Exide Life Insurance In Rs 6,687-Crore Deal
4. Prosus Buys Indian Payments Company Billdesk For $4.7 Billion

**List of Acquisitions in India**

| Aquirer | Aquiree | Year of Aacquisition |
|---|---|---|
| Lenskart | DailyJoy | 2021 |
| Byju's | Aakash Educational Services Ltd | 2021 |
| ITC | Sunrise Foods | 2020 |
| Ebix | Yatra | 2020 |
| Reliance Retail | Future Group's Retail Business | 2020 |
| Infosys | Kaleidoscope Innovation | 2020 |
| Medlife | PharmEasy | 2020 |
| Zomato | Fitso | 2020 |
| Big Basket | Daily Ninja | 2020 |
| Zomato | Uber Eats | 2020 |
| PayU | PaySense | |
| Ola | Etergo | 2020 |

**List of Mergers in India**

| Name of the First Company | Name of the Company Merged with | Year of merger |
|---|---|---|
| National Institute of Miners'Health (NIMH) | ICMR – National Institute ofOccupational Health (NIOH) | 2019 |
| Bank of Baroda | Vijaya Bank and Dena Bank | 2019 |
| Vodafone India | Idea Cellular | 2018 |
| Housing.com | PropTiger.com | 2017 |

| | | |
|---|---|---|
| State Bank of India | Bhartiya Mahila Bank, SB of Bikanerand Jaipur, SB of Patiala, SB of Travancore | 2017 |
| Flipkart | E-bay India | 2017 |

## Regulatory Framework governing M&A in India

There are a number of laws viz. company, securities, tax, foreign exchange, and sector-specific laws and regulations impacting Mergers & Acquisitions (M&A) in India.

The regulations governing Indian companies differ, among other things, depending on the following distinctions:

- Private or public companies
- Listed or unlisted companies
- Non-resident (foreign-owned and foreign controlled companies) or resident companies
- Operating in specified sectors

An indicative list of the legislations governing M&A or which may come into effect in certain circumstances, is as follows:

1. The Companies Act, 2013 and the rules, orders, notifications and circulars issued thereunder, which prescribe the general framework governing companies in India, including the manner of issuance and transfer of securities of a company incorporated in India and the process for schemes of arrangements of such companies
2. The Indian Contract Act 1872, which governs contracts and the rights that parties can agree to contractually under Indian laws

3. The Specific Relief Act, 1963, which prescribes remedies available to parties for breach of contract
4. The Securities and Exchange Board of India Act, 1992 and the rules and regulations issued thereunder (as amended) read together with the circulars, notifications, guidelines and directions issued by the Securities and Exchange Board of India, which regulate the securities markets in India, including acquisitions involving companies listed on stock exchanges in India
5. The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (Takeover Code)
6. SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations)
7. SEBI (Prohibition of Insider Trading) Regulations, 2015 (Insider Trading Regulations)
8. The Competition Act, 2002 read with The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011. The Competition Act, 2002, which regulates combinations (such as M&A) of companies and prohibits anti-competitive agreements, which have or are likely to have an appreciable adverse effect on competition in India;
9. The Insolvency and Bankruptcy Code, 2016, and rules and regulations issued thereunder, which regulates the restructuring/acquisition of corporate debtors undergoing insolvency.
10. The Income Tax Act 1961 and the Central Goods and Services Tax Act, 2017 read with the relevant state laws on the taxation of goods and services, which prescribe taxation-related considerations with respect to M&A in

India, and to transactions that have cross-border elements. Double taxation-avoidance treaties also play an important role;

11. The Indian Stamp Act 1899, read with relevant rules and notifications issued thereunder, and the relevant state laws, which prescribe stamp duty-related considerations and rates with respect to transaction documents, agreements, share certificates, etc.;
12. Penal laws - Bharatiya Nyaya Sanhita (BNS) 2023 (which replaced The Indian Penal Code, 1860) as well as the Bharatiya Nagarik Suraksha Sanhita (BNSS) 2023 (which replaced the Code of Criminal Procedure, 1973) determine the penalty and the procedure of investigation, respectively, in case of M&A disputes pertaining to allegations of fraud and cheating. Additionally, cases involving money laundering are investigated by the Enforcement Directorate under the Prevention of Money Laundering Act, 2002.
13. Sector specific laws may become applicable to a typical M&A transaction in India depending on the industry sector(s) the acquirer and the target fall under e.g. such as the Banking Regulation Act, 1949, Insurance Act, 1938, Mines and Minerals (Development and Regulation) Act, 1957, Drugs and Cosmetics Act, 1940, and Telecom Regulatory Authority of India Act, 1997, apply to transactions involving Indian companies operating in the relevant sector & Guidelines/Regulations by Sector Specific Regulators
14. Foreign Exchange Management Act 1999, and the rules and regulations issued thereunder read together with the circulars, directions and rules issued by the Reserve Bank of India, which, collectively, regulate foreign investment in India, including the Foreign Exchange Management (Cross Border Merger) Regulations, 2018, which govern mergers between Indian companies and foreign companies;

15. The consolidated Foreign Direct Investment Policy (FDI Policy)

## Company Law

### The Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

The Companies Act, 2013 provides a structured approach to mergers and acquisitions, ensuring that processes are transparent, fair, and in compliance with regulatory standards.

Section 230 to 240 of the Companies Act, 2013 under Chapter XV deals with 'Compromises, Arrangements and Amalgamations', that covers compromise or arrangements, mergers and amalgamations, Corporate Debt Restructuring, demergers, fast track mergers for small companies/holding subsidiary companies, cross border mergers, takeovers, amalgamation of companies in public interest etc.

MCA vide notification dated 14th Dec, 2016 has issued rules i.e. The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. These rules will be effective from 15th December, 2016.

The MCA notified Section 234 of the Companies Act 2013 which permits cross border mergers with effect from 13 April 2017. Further, in consultation with the Reserve Bank of India (RBI), the MCA has also notified corresponding amendments to the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 by inserting a new Rule 25A effective from 13 April 2017, which deals with cross border mergers.

**Power to Compromise or Make Arrangements with Creditors and members**

(1) Where a compromise or arrangement is proposed—

(a) between a company and its creditors or any class of them; or

(b) between a company and its members or any class of them,

The NCLT may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator, appointed under the Companies Act 2013 or under the Insolvency and Bankruptcy Code, 2016, as the case may be, order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the NCLT directs.

An application under Section 230 for compromise/arrangement/amalgamation, have to disclose the following to the NCLT:

(a) all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company and the pendency of any investigation or proceedings against the company;

(b) reduction of share capital of the company, if any, included in the compromise or arrangement;

(c) any scheme of corporate debt restructuring consented to by not less than seventy-five per cent. of the secured creditors in value, including—

(i) a creditor's responsibility statement in the prescribed form;

(ii) safeguards for the protection of other secured and unsecured creditors;

(iii) report by the auditor that the fund requirements of the company after the corporate debt restructuring as approved shall conform to the liquidity test based upon the estimates provided to them by the Board;

(iv) where the company proposes to adopt the corporate debt restructuring guidelines specified by the Reserve Bank of India, a statement to that effect; and

(v) a valuation report in respect of the shares and the property and all assets, tangible and intangible, movable and immovable, of the company by a registered valuer.

- Notice of proposed meeting required to be sent to all the creditors or class of creditors and to all the members or class of members and the debenture-holders of the company, individually at the address registered with the company which shall be accompanied by a statement disclosing the details of the compromise or arrangement, a copy of the valuation report, if any, and explaining their effect on creditors, key managerial personnel, promoters and non-promoter members, and the debenture-holders and the effect of the compromise or arrangement on any material interests of the Directors of the company or the debenture trustees, and such other matters as may be prescribed.
- Notice shall also provide an option to vote through postal ballot.
- Only those shareholders can raise objection to the scheme who holds not less than 10% of the shareholding.
- Only those creditors can raise objection to the scheme who holds 5% of the total outstanding debt.
- The NCLT may provide the order for exit option to dissenting shareholders based upon the valuation by Registered valuer.
- A notice along with all the documents shall also be sent to the Central Government, the income-tax authorities, the Reserve Bank of India, the

Securities and Exchange Board, the Registrar, the respective stock exchanges, the Official Liquidator, the Competition Commission of India established under sub-section (1) of section 7 of the Competition Act, 2002, if necessary, and such other sectoral regulators or authorities which are likely to be affected.

- Certificate from Statutory Auditor that accounting treatment complies with prescribed accounting standards.
- The order of the NCLT shall be filed with the Registrar by the company within a period of thirty days of the receipt of the order
- Every company has to file a yearly statement with ROC until the completion of the scheme, certifying that compliance is as per an order of NCLT.
- No compromise or arrangement in respect of any buy-back of securities under this section shall be sanctioned by the Tribunal unless such buy-back is in accordance with the provisions of section 68.
- An aggrieved party may make an application to the Tribunal in the event of any grievances with respect to the takeover offer of companies other than listed companies in such manner as may be prescribed and the Tribunal may, on application, pass such order as it may deem fit.

**Power of Tribunal to enforce compromise or arrangement**

Section 231 provides the power to the NCLT to enforce compromise or arrangement. These powers are-

- to supervise the implementation of the compromise or arrangement; and
- may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the

compromise or arrangement as it may consider necessary for the proper implementation of the compromise or arrangement.

In the situation where the NCLT is satisfied that the compromise or arrangement sanctioned under section 230 cannot be implemented satisfactorily with or without modifications, and the company is unable to pay its debts as per the scheme, it may make an order for winding up the company and such an order shall be deemed to be an order made under section 273.

Note - In case of Government Company - In section 231 for the word "Tribunal" the words “Central Government” shall be substituted - Notification Dated 13th June, 2017.

**Merger and Amalgamation of Companies**

Section 232 prescribes for the procedure for Mergers and Amalgamations under Companies Act, 2013.

Where an application is made to the NCLT under section 230 for the sanctioning of a compromise or an arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the NCLT—

(a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of the company or companies involving merger or the amalgamation of any two or more companies; and

(b) that under the scheme, the whole or any part of the undertaking, property or liabilities of any company (hereinafter referred to as the transferor company) is required to be transferred to another company (hereinafter referred to as the

transferee company), or is proposed to be divided among and transferred to two or more companies,

The NCLT may on such application, order a meeting of the creditors or class of creditors or the members or class of members, as the case may be, to be called, held and conducted in such manner as the NCLT may direct.

**Filing of application:**

Rule 3 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 prescribes the details of filing of application for order of a meeting

An application is to be filed with the National Company Law Tribunal ("NCLT") in Form No. NCLT-1 along with following documents:

- A Notice of Admission in Form No. NCLT-2.
- An Affidavit in Form No. NCLT-6.
- A Copy of Scheme of Amalgamation.
- Fee as prescribed in the Schedule of Fees.

The application shall also disclose to NCLT, the basis on which each class of members or creditors have been identified for purposes of approval of the scheme of amalgamation between the transferor and transferee company.

Note: Where more than one company is involved in a scheme, such application may, at the discretion of such companies, be filed as a joint-application before NCLT. However, where the registered office of the companies is in different states, there will be two Tribunals having the jurisdiction over those companies, hence separate petition will be required to be filed for the purpose of amalgamation.

**Notice of Meeting**

Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 prescribes that the meeting shall be called as per the order of NCLT and the notice of the meeting shall be sent to all the creditors, members and debenture holders, to their respective addresses in Form No. CAA.2. The notice of the meeting sent to the creditors and members shall be accompanied by a copy of the scheme of amalgamation along with the relevant details and documents as mentioned in the section, if not already mentioned in the scheme.

A chairperson is appointed for the meeting of the company or other person who is directed to issue the advertisement and the notices of the meeting shall file an affidavit before the NCLT in not less than seven days before the date fixed for meeting or date of the first of the meetings, as the case may be, stating that the directions regarding the issue of notices and the advertisement have been duly complied with.

The notice shall be sent by the chairperson appointed for the meeting or any other person as the NCLT may direct, by registered post or speed post or by courier or by e-mail or by hand delivery or any other mode as directed by NCLT to their last known address at least one month before the date fixed for the meeting.

**Advertisement**

Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 prescribes that the notice of the meeting shall also be advertised, in not less than thirty days before the date fixed for the meeting, in Form No. CAA.2 in at least one English newspaper and in at least one vernacular newspaper having wide circulation in the state in which the registered office of the company is situated or such newspaper as may be directed by the NCLT.

Note: Provided that where separate meetings of classes of creditors or members are to be held, a joint advertisement for such meetings may be given.

**Notice to Statutory Authorities**

Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 states that the aforesaid notice of a meeting of creditors and members in Form No. CAA.3 along with a copy of amalgamation shall be sent to the Central Government, the Registrar of Companies, the Income-tax authorities and other sectoral regulators or authorities, as required by NCLT. The notice of the authorities shall be sent forthwith, after the notice is sent to the members or creditors of the company, by registered post or by speed post or by courier or by hand delivery at the office of the authority. If the authorities desire to make any representation, the same shall be sent to the NCLT within a period of thirty days from the date of receipt of such notice and copy of such representations shall simultaneously be sent to the concerned companies. In case no representation is received within the stated period of thirty days, it shall be presumed that the authorities have no representation to make on the proposed scheme of amalgamation.

**Report of the result of the meeting**

Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 states that the chairperson of the meeting shall within the time period fixed by the NCLT or where no time has been fixed, within 3 (three) days after the conclusion of the meeting, give a report to

NCLT providing the result of the meeting of the members and creditors in Form No CAA.4 and shall state accurately the number of creditors and members, as the case may be, who were present and who voted at the meeting either in person or by proxy, and where applicable, who voted through electronic means, their individual values and the method of voting adopted by them.

**Filing of petition for confirming the scheme of amalgamation**

Rule 15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 states that where the proposed amalgamation is agreed to by the members or creditors or both as the case may be with or without modification, the company, shall, within seven days of the filing of the report by the chairperson, present a petition to the NCLT in Form No.CAA.5 for sanction of the scheme of amalgamation.

Note: Where the company fails to present the petition for confirmation of the compromise or arrangement as aforesaid, it shall be open to any creditor or member as the case may be, with the leave of the NCLT, to present the petition and the company shall be liable for the cost thereof.

**Date and Notice of Hearing**

Rule 15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 states that the NCLT shall fix a date for the hearing of the petition, and a notice of the hearing shall be advertised in the same newspaper in which the notice of the meeting was advertised or in such other newspaper as the NCLT may direct, not less than ten days before the date fixed for the hearing. The notice of the hearing of the petition shall also be served by the Tribunal to the objectors or to

their representatives and to the central government and other authorities who have made representation and have desired to be heard in their representation.

**Order on the Petition**

Rule 17 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 states that where the NCLT sanctions the amalgamation, the order shall include such directions in regard to any matter or such modifications in the scheme as the NCLT may think to fit to make for the proper working of the scheme. The order shall direct that a certified copy of the same shall be filed with the registrar of companies within thirty days from the date of the receipt of the copy of the order, or such other time as may be fixed by the NCLT. The order shall be in Form No. CAA. 6, with such variations as may be necessary.

**Filing of Order:**

The order of the NCLT shall be filed with the Registrar in Form INC-28 by the company within a period of thirty days of the receipt of the order.

**Circulation**

Circulation of the following documents for the meeting:

- The proposed draft scheme adopted by the directors of merging companies,
- Confirmation of filing the draft copy of the scheme with the Registrar,
- Valuation report,
- Report adopted by the directors of the merging companies explaining the effect of the compromise,

- Supplementary accounting statement if the last annual accounts of any of the merging companies relate to a financial year ending more than six months before the first meeting of the company summoned for the purposes of approving the scheme.

**Order of NCLT**

The NCLT, after satisfying itself that the procedure been complied with, may, by order, sanction the compromise or arrangement or by a subsequent order, make provision for the following matters, namely:—

(a) the transfer to the transferee company of the whole or any part of the undertaking, property or liabilities of the transferor company from a date to be determined by the parties unless the Tribunal, for reasons to be recorded by it in writing, decides otherwise;

(b) the allotment or appropriation by the transferee company of any shares, debentures, policies or other like instruments in the company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person:

Provided that a transferee company shall not, as a result of the compromise or arrangement, hold any shares in its own name or in the name of any trust whether on its behalf or on behalf of any of its subsidiary or associate companies and any such shares shall be cancelled or extinguished;

(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company on the date of transfer;

(d) dissolution, without winding-up, of any transferor company;

(e) the provision to be made for any persons who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement;

(f) where share capital is held by any non-resident shareholder under the foreign direct investment norms or guidelines specified by the Central Government or in accordance with any law for the time being in force, the allotment of shares of the transferee company to such shareholder shall be in the manner specified in the order;

(g) the transfer of the employees of the transferor company to the transferee company;

(h) where the transferor company is a listed company and the transferee company is an unlisted company,—

(A) the transferee company shall remain an unlisted company until it becomes a listed company;

(B) if shareholders of the transferor company decide to opt out of the transferee company, provision shall be made for payment of the value of shares held by them and other benefits in accordance with a pre-determined price formula or after a valuation is made, and the arrangements under this provision may be made by the Tribunal.

**Other Procedures**

- If the Tribunal order to transfer any property or liabilities then those properties and liabilities shall be transferred to the Transferee Company by the Transferor company.

- Filing a certified copy of the order with the Registrar for registration within thirty days of the receipt of the certified copy of the order.
- The scheme shall indicate clearly the appointed date from which it shall be effective
- A statement certified by a Company Secretary or Chartered Accountant or Cost Accountant in Practice indicating whether the scheme has complied with the orders of the Tribunal every year until the completion of the scheme shall be filed.

**Penalty**

If a company fails to comply with any of the above provisions, the company and every officer of the company who is in default shall be liable to a penalty of twenty thousand rupees, and where the failure is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such failure continues, subject to a maximum of three lakh rupees.
Note: In case of Government Company - In section 232 for the word "Tribunal" the words "Central Government" shall be substituted.- Notification Dated 13th June, 2017.

**Merger or Amalgamation of Certain Companies**

As per Section 233, a scheme of merger or amalgamation may be entered into between two or more small companies or between a holding company and its wholly-owned subsidiary company or such other class or classes of companies as may be prescribed.

**Notice of the proposed scheme**

Rule 25 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 states that the notice of the proposed scheme, to invite objections or suggestions from the Registrar and Official Liquidator or persons affected by the scheme shall be in Form No. CAA.9.

The notice of the meeting to the members and creditors shall be accompanied by -

(a) a statement, as far as applicable, referred to in sub-section (3) of section 230 of the Act read with sub-rule (3) of rule 6 hereof;
(b) the declaration of solvency made in pursuance of clause (c) of sub-section (1) of section 233 of the Act in Form No. CAA.10;
(c) a copy of the scheme.

Copy of the scheme shall also be filed, along with Form No. CAA. 11 with -

(i) the Registrar of Companies in Form No. GNL-1 along with fees provided under the Companies (Registration Offices and Fees) Rules, 2014; and
(ii) the Official Liquidator through hand delivery or by registered post or speed post.

Where no objection or suggestion is received to the scheme from the Registrar of Companies and Official Liquidator or where the objection or suggestion of Registrar and Official Liquidator is deemed to be not sustainable and the Central Government is of the opinion that the scheme is in the public interest or in the interest of creditors, the Central Government shall issue a confirmation order of such scheme of merger or amalgamation in Form No. CAA.12.

Where objections or suggestions are received from the Registrar of Companies or Official Liquidator and the Central Government is of the opinion, whether on the basis of such objections or otherwise, that the scheme is not in the public interest or in the interest of creditors, it may file an application before the Tribunal in Form

No. CAA.13 within sixty days of the receipt of the scheme stating its objections or opinion and requesting that Tribunal may consider the scheme under section 232 of the Act.

The confirmation order of the scheme issued by the Central Government or Tribunal, shall be filed, within thirty days of the receipt of the order of confirmation, in Form INC-28 along with the fees as provided under Companies (Registration Offices and Fees) Rules, 2014 with the Registrar of Companies having jurisdiction over the transferee and transferor companies respectively.

If the Registrar or Official Liquidator has any objections or suggestions, he may communicate the same in writing to the Central Government within a period of thirty days.

On receipt of an application from the Central Government or from any person, if the Tribunal, for reasons to be recorded in writing, is of the opinion that the scheme should be considered as per the procedure laid down in section 232, the Tribunal may direct accordingly or it may confirm the scheme by passing such order as it deems fit.

The registration of the scheme under sub-section (3) or sub-section (7) of section 233, shall be deemed to have the effect of dissolution of the transferor company without process of winding-up.

**Registration of the scheme**

The registration of the scheme shall have the following effects, namely: —

(a) transfer of property or liabilities of the transferor company to the transferee company so that the property becomes the property of the transferee company and the liabilities become the liabilities of the transferee company;

(b) the charges, if any, on the property of the transferor company shall be applicable and enforceable as if the charges were on the property of the transferee company;

(c) legal proceedings by or against the transferor company pending before any court of law shall be continued by or against the transferee company; and

(d) where the scheme provides for purchase of shares held by the dissenting shareholders or settlement of debt due to dissenting creditors, such amount, to the extent it is unpaid, shall become the liability of the transferee company.

**Merger or Amalgamation of Company with Foreign Company**

Section 234 of the Companies Act, 2013 deals with the cross-border merger i.e. merger or amalgamation of company with foreign company. The Ministry of Corporate Affairs (MCA) has vide its Commencement Notification notified Section 234 of Companies Act, 2013 which provides for Merger or Amalgamation of company with Foreign Company which has come into force with effect from 13th April, 2016. MCA has also notified Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2017 by inserting Rule 25A for Merger or Amalgamation of company with a Foreign company and vice versa.

As per section 234, a foreign company may with the prior approval of Reserve Bank of India, merge into a company registered under this Act or vice versa.

Further Rule 25A has been inserted by the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2017 on 13th April, 2017. It provides that a foreign company may with the prior approval of Reserve Bank of India, merge into a company registered under this Act or vice versa.

A company may merge with a Foreign company incorporated in any of the jurisdictions:

(i) Whose security market regulator is a signatory to: - International Organisation of Securities Commission's Multilateral Memorandum of Understanding, or - Bilateral Memorandum of Understanding with SEBI

(ii) Whose Central Bank is a member of Bank of International Settlements (BIS), and

(iii) Which is not identified in the public statement of Financial Action Task Force (FATF) as:

- A jurisdiction having a strategic Anti-Money Laundering, A jurisdiction combating the financing of Terrorism deficiencies to which countermeasures apply,
- A jurisdiction that has not made significant progress in addressing the deficiencies or
- A jurisdiction that has not committed to an action plan developed with FATF to address the deficiencies.

**Power to Acquire Shares of Shareholders Dissenting from Scheme or Contract Approved by Majority**

Section 235 of the Companies Act, 2013 prescribes that where a scheme or contract involving the transfer of shares or any class of shares in a company (the

transferor company) to another company (the transferee company) has, within four months after making of an offer in that behalf by the transferee company, been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved, other than shares already held at the date of the offer by, or by a nominee of the transferee company or its subsidiary companies, the transferee company may, at any time within two months after the expiry of the said four months.

The transferee company shall send a notice to the dissenting shareholder(s) of the transferor company, in Form No. CAA.14 at the last intimated address of such shareholder, for acquiring the shares of such dissenting shareholders.

The company is entitled to acquire, and the transferor company shall—

(a) thereupon register the transferee company as the holder of those shares; and
(b) within one month of the date of such registration, inform the dissenting shareholders of the fact of such registration and of the receipt of the amount or other consideration representing the price payable to them by the transferee company.

Any sum received by the transferor company under this section shall be paid into a separate bank account, and any such sum and any other consideration so received shall be held by that company in trust for the several persons entitled to the shares in respect of which the said sum or other consideration were respectively received and shall be disbursed to the entitled shareholders within sixty days.

For the purposes of this section, “dissenting shareholder” includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

## Securities Law

## SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (Takeover Regulations), which replaced the 1997 regulations, were notified on September 23, 2011, and have been amended multiple times to meet evolving corporate needs.

In terms of the Takeover Regulations, acquiring control and/or shares/voting rights of a listed company beyond the specified quantitative thresholds (i.e. initial acquisition of 25% or more of the voting rights; or subsequent acquisition by a person holding at least 25%, of more than the creeping acquisition limit of 5% voting rights in a financial year) can trigger an obligation to make an open offer to its shareholders (Open Offer). The Takeover Regulations contemplate two methods for availing exemptions from SEBI from the requirement to make an Open Offer - general exemptions under Regulation 10 & specific exemptions under Regulation 11.

**Few key provisions of the Takeover Regulations are:**

- Open offer

  An acquirer must make an open offer to shareholders if they acquire shares or voting rights that exceed certain thresholds.

  A mandatory open offer is triggered if an acquirer exceeds 25% voting rights or increases their stake by more than 5% in a financial year.

  Special conditions apply for companies on the Innovators Growth Platform, raising the threshold to 49%.

- Offer price

  The offer price must be not lower than the price determined in accordance with the Takeover Regulations. The acquirer can increase the offer price up to three working days before the offer opens.
- Escrow account

  The acquirer must set up an escrow account for 25% of the consideration if the offer is less than ₹500 crores, and 10% for the excess.
- Withdrawal

  An offer can only be withdrawn if:
  - Statutory approval is refused
  - The sole acquirer dies
  - A condition in the acquisition agreement is not met
  - SEBI deems it necessary in special circumstances
- Public shareholding

  If the offer results in public shareholding falling below the minimum threshold, the acquirer must bring it back up to the required level within the time permitted.
- Delisting

  The acquirer can't voluntarily delist for at least 12 months after the offer period ends.
- Acquiring additional shares

  An acquirer holding more than 25% but less than the maximum permissible limit can buy up to 5% more shares or voting rights each financial year without making a public announcement.
- Disclosures and Announcements

Acquirers must notify stock exchanges and the public of any acquisitions within specified timelines. A public announcement must include details about the acquirer, nature of acquisition, consideration, and conditions.

- Obligations of Company

  The target company's board must conduct business as usual during the offer period and cannot make significant changes without shareholder approval. The target company's board must not engage in significant transactions outside ordinary business without special resolution approval.

## The Competition Act, 2002 read with the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011

The Competition Act, 2002 was passed by the Parliament in the year 2002, to which the President accorded assent in January, 2003. It was subsequently amended by the Competition (Amendment) Act, 2007. Thereafter, it was again amended vide the Competition (Amendment) Act 2023. The Competition (Amendment) Act, 2023 has been published in the Gazette of India on 11th April, 2023.

The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 were notified on the 11th day of May, 2011 and came into effect on 1st day of June, 2011.

The Competition Act 2002 contains 9 Chapters, 66 Sections and is concerned with eradication of 3 types of agreements which are:

- Anti-competitive agreements,
- Abuse of dominant position and

- Regulation of combinations i.e. merger and acquisitions

**What is Combination?**

Section 5 of the Competition Act, 2002 defines the term "Combination" as acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprise shall be combination of such enterprises and persons or enterprises, if--

(a) any acquisition where--

(i) the parties to the acquisition, being the acquirer and the enterprise, whose control, shares, voting rights or assets have been acquired or are being acquired jointly have -

(A) either, in India, the assets of the value of more than rupees 1000 crores or turnover more than rupees 3000 crores; or

(B) in India or outside India, in aggregate, the assets of the value of more than 500 million US dollars, including at least rupees 500 crores in India, or turnover more than 1500 million US dollars, including at least rupees 1500 crores in India; or;

(ii) the group, to which the enterprise whose control, shares, assets or voting rights have been acquired or are being acquired, would belong after the acquisition, jointly have or would jointly have -

(A) either in India, the assets of the value of more than rupees 4000 crores or turnover more than rupees 12000 crores; or

(B) in India or outside India, in aggregate, the assets of the value of more than 2 billion US dollars, including at least rupees 500 crores in India, or turnover more than 6 billion US dollars, including at least rupees 1500 crores in India; or

(b) acquiring of control by a person over an enterprise when such person has already direct or indirect control over another enterprise engaged in production, distribution or trading of a similar or identical or substitutable goods or provision of a similar or identical or substitutable service, if--

(i) the enterprise over which control has been acquired along with the enterprise over which the acquirer already has direct or indirect control jointly have -

(A) either in India, the assets of the value of more than rupees 1000 crores or turnover more than rupees 3000 crores; or

(B) in India or outside India, in aggregate, the assets of the value of more than 500 million US dollars, including at least rupees 500 crores in India, or turnover more than 1500 million US dollars, including at least rupees 1500 crores in India; or

(ii) the group, to which enterprise whose control has been acquired, or is being acquired, would belong after the acquisition, jointly have or would jointly have -

(A) either in India, the assets of the value of more than rupees 4000 crores or turnover more than rupees 12000 crores; or

(B) in India or outside India, in aggregate, the assets of the value of more than 2 billion US dollars, including at least rupees 500 crores in India, or turnover more than 6 billion US dollars, including at least rupees 1500 crores in India; or

(c) any merger or amalgamation in which--

(i) the enterprise remaining after merger or the enterprise created as a result of the amalgamation, as the case may be, have -

(A) either in India, the assets of the value of more than rupees 1000 crores or turnover more than rupees 3000 crores; or

(B) in India or outside India, in aggregate, the assets of the value of more than 500 million US dollars, including at least rupees 500 crores in India, or turnover more than 1500 million US dollars, including at least rupees 1500 crores in India; or

(ii) the group, to which the enterprise remaining after the merger or the enterprise created as a result of the amalgamation, would belong after the merger or the amalgamation, as the case may be, have or would have -

(A) either in India, the assets of the value of more than rupees 4000 crores or turnover more than rupees 12000 crores; or

(B) in India or outside India, in aggregate, the assets of the value of more than 2 billion US dollars, including at least rupees 500 crores in India, or turnover more than 6 billion US dollars, including at least rupees 1500 crores in India; or

(d) value of any transaction, in connection with acquisition of any control, shares, voting rights or assets of an enterprise, merger or amalgamation exceeds rupees 2000 crore:

Provided that the enterprise which is being acquired, taken control of, merged or amalgamated has such substantial business operations in India as may be specified by regulations.

(e) notwithstanding anything contained in clause (a) or clause (b) or clause (c), where either the value of assets or turnover of the enterprise being acquired, taken control of, merged or amalgamated in India is not more than such value as may be prescribed, such acquisition, control, merger or amalgamation, shall not constitute a combination under section 5.

**Threshold Limits for Combination**

The Act prescribes that if the specified threshold limits are crossed then the parties to the combination have to notify about the combination to the Commission. The threshold limits under are revised by the Central Government through the Ministry of Corporate Affairs (MCA).

The Ministry of Corporate Affairs has revised the existing threshold value of assets and turnover mentioned under Section 5 of the Competition Act, 2002 vide Notification S.O 1131(E) dated 7th March 2024.

Earlier, the threshold limits prescribed under Section 5 of the Act were revised in year 2011 vide notification S. O. No. 480 (E) dated 4th March 2011. Subsequently, the threshold limits were reviewed and revised in 2016 vide notification S. O. No. 675 (E) dated 4th March, 2016.

As per the revised threshold, the increase in value is 150% over the original value under section 5 of the Competition Act, 2002.

In exercise of the powers conferred by clause (a) of section 54 of the Competition Act, 2002 it has also been decided with regards to de-minimis thresholds that the value of assets and turnover be enhanced from INR 350 crore to INR 450 crore for assets and from INR 1000 crore to INR 1250 crore for turnover.

**Regulation of combinations**

Section 6 deals with the provisions which are concerned with the regulation of combinations. It says that no person can enter into a combination that causes harm or creates any adverse effect on competition in the relevant market in India. If any person enters into any such combination, then it shall be treated as void.

Section 6(2) of the Competition Act, 2002 mandates that any enterprise which proposes to enter into a combination and satisfies the threshold limits as

enumerated above shall send a Notice to the Commission in the prescribed form and along with the prescribed fee. The notice shall disclose the details of the combination.

As per Section 6(2A), No combination shall come into effect until 150 days have passed from the day on which the notice has been given to the Commission or the Commission has passed orders under section 31, whichever is earlier.

**Orders of Commission on Combinations**

Where the Commission is of the opinion that any combination does not, or is not likely to, have an appreciable adverse effect on competition, it shall, by order, approve that combination in respect of which a notice has been given under section 6(2). Provided that if the Commission does not form a prima facie opinion, the combination shall be deemed to have been approved and no separate order shall be required to be passed.

Where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall direct that the combination shall not take effect.

Where the Commission is of the opinion that any appreciable adverse effect on competition that the combination has, or is likely to have, can be eliminated by modification proposed by the parties or the Commission, as the case may be, it may approve the combination subject to such modifications as it thinks fit.

Where—

(a) the Commission has directed that the combination shall not take effect; or

(b) the parties to the combination, fail to carry out the modification within such period as may be specified by the Commission; or

(c) the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition which cannot be eliminated by suitable modification to such combination,

then, without prejudice to any penalty which may be imposed or any prosecution which may be initiated under this Act, the Commission may order that such combination shall not be given effect to, or be declared void, or frame a scheme to be implemented by the parties to address the appreciable adverse effect on competition, as the case may be.

Where the Commission has ordered a combination to be void, the acquisition or acquiring of control or merger or amalgamation referred to in section 5 of the Competition Act 2002, shall be dealt with by the authorities under any other law for the time being in force as if such acquisition or acquiring of control or merger or amalgamation had not taken place and the parties to the combination shall be dealt with accordingly.

**Appeals**

The Competition Appellate Tribunal under the Competition Act, 2002, to hear appeals against the Competition Commission of India was merged with The National Company Law Appellate Tribunal (NCLAT) under the Companies Act, 2013, in lieu of section 185 of the Finance Act 2017 and as specified in the Ninth Schedule to the Finance Act 2017. Thus appeals against the orders of the Competition Commission of India (CCI) may be filed with NCLAT.

Checklist for filing of Appeals under the Competition Act, 2002, with the NCLAT is as follows:

- Appeals to be in Form appended to 'The Competition Appellate Tribunal (Form and Fee for Filing an Appeal and Fees for Filing Compensation Applications) Rules, 2009' (Rules 2009) Along with an affidavit.
- Refer also Rules 3 & 6 and the Form appended to the aforesaid Rules and Regulation 7, 8 and 9 of 'The Competition Appellate Tribunal (Procedure) Regulations, 2011'
- In E-Filing: (User manual is available on e-filing portal in Help Center, i.e., https://efiling.nclat.gov.in/helpInner.drt)
- 'Act', 'Section', 'NCLAT Location', 'Jurisdiction/Location' should be selected correctly.
- Case title will be auto filled, which is to be filled by the respective parties at the time of filling the details of Appellant(s) and Respondent(s)).
- In case of penalty imposed by the C.C.I., penalty amount to be mentioned correctly as per the impugned order.
- C.C.I. case details should be mentioned correctly such as (i) Case number and (ii) Case title.
- Copy order dates & Presiding Judge(s) and other members' details should be mentioned correctly as per the impugned order.
- If parties want to file Interlocutory Application (IA) along with appeal, tick mark (✓) in the given column.
- Appellant's and Respondent's list as well as representative details under the tab "Add Appellant", "Add Respondent" and "Add Representative" should be updated accordingly, as per memo of parties.

- Upload documents. (Color scanned copies of original documents should be uploaded.)
- Filing fees is to be deposited through Bharatkosh/Demand Draft as per Act/Rules (details of Transaction ID for Bharatkosh payments and Demand draft fees particulars should be mentioned correctly and separately for each appeal/application).
- Details are required to be submitted separately for each impugned order being challenged.
- In IA, Contempt case, Review Application, Restoration Application, e-filing number/case number of pending/disposed case should be mentioned correctly.
- In IA(s), Contempt case, review application, restoration application, etc. case type and subject should be selected correctly before uploading documents.
- Please ensure that uploading of documents for IA should be done separately from main case in e-filing.
- Separate IAs to be filed in e-filing portal for exemption from filing certified copy of impugned order, true typed/translated copy of annexures and dim/illegible pages etc.
- Please check and ensure that all documents are uploaded with correct indexing in single PDF (Volume-wise).
- Bookmarking / pagination should be done as per index, while uploading the documents in e-filing portal and it is mandatory to fill all the details.

## Cross Border Mergers

A cross-border merger is a combination of two or more companies from different countries into a single entity. Thus, when an India Company merges with a foreign company it is known as cross boarder merger. Various companies acquire foreign companies in recent years to enter into global market. Doing business globally will undoubtedly improve the company potential for expansion and growth.

By setting up a manufacturing unit in other country where labor and other production cost are cheaper than the home country will help in lowering cost of production. Hence proves to be fruitful for the company.

Benefits of Cross Border Mergers & Acquisitions

- Expansion of markets
- Revenue generation
- Geographic and business diversification
- Technology transformation
- Potential employees
- Lower cost of production
- Exposure to new culture
- Avoiding access obstacles & Industry consolidation
- Tax planning and benefits
- Increasing Goodwill
- Increased customers base & Competitive gain
- Capital accumulation
- Sharing of management skills

The Ministry of Corporate Affairs notified Section 234 of the Companies Act, 2013 with effect from 13th April, 2017, and inserted Rule 25A to the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 to permit merger of a foreign company with an Indian company and vice versa, subject to fulfilling all the requirements under Sections 230 to 232 of Companies Act 2013 as well as the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the transferor company obtaining prior approval of Reserve Bank of India (RBI). In case of outbound cross-border merger, an Indian company can merge only with a foreign company incorporated in prescribed jurisdictions.

Complementing this development under Companies Act 2013, the RBI notified the Foreign Exchange Management (Cross Border Merger) Regulations, 2018 on March 20, 2018 in order to facilitate and address all the exchange control related issues that may arise in cross-border mergers.

The Rule 25A of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 was later amended on May 30, 2022, to add sub-rule (4), requiring filing of specific declaration along with the application, in case of cross-border merger/demerger/ compromise between an Indian company and a foreign company situated in a country which shares land border with India.

The Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2024 has further amended this Rule 25A to introduce sub-rule (5). Earlier, Rule 25A permitted inbound cross-border reverse mergers subject to National Company Law Tribunal's approval under Sections 230 to 232 of Companies Act 2013. Now, effective from September 17, 2024, this sub-rule (5) to Rule 25A has extended the scope of fast-track merger option to cover inbound cross-border merger between a holding company and its wholly owned subsidiary as well, subject to satisfying certain prescribed conditions.