MINORITY SHAREHOLDERS AND THE COMPLEXITIES OF MERGERS AND ACQUISITIONS

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ABSTRACT

Mergers and Acquisitions (M&A) are strategic corporate transactions aimed at achieving cost savings, market expansion, and enhanced shareholder value. While M&A processes create opportunities for business growth, they also pose challenges for minority shareholders, who often lack the power to influence key decisions. This article explores the imbalance of influence between majority and minority shareholders during M&A transactions and the resulting risks of minority shareholder oppression. It highlights the legal protections offered under Indian corporate law, including rights to participation, redressal against oppression, access to critical financial information, and safeguards against unfair transactions. The role of corporate governance in ensuring transparency, accountability, and equitable treatment for all shareholders is discussed, with a focus on independent committees, conflict management, and fairness in decision-making. Despite statutory protections, risks such as unfair buyout offers, loss of voting rights, and diminished shareholder roles persist. The article emphasizes the importance of fairness, equity, and inclusivity in M&A transactions to foster trust, prevent legal disputes, and ensure sustainable corporate growth. Safeguarding minority shareholder interests is essential not only for ethical and legal compliance but also for the long-term success of corporate governance systems.

1. Introduction

The process by which two companies merge into one company, with one company taking over the other is known as Mergers and Acquisitions (M&A). This type of a transaction is very common in corporate companies, and is considered to be the most effect corporate strategy which is often pursued to save costs, expand their operations, to potentially reach new markets, for acquiring new assets or technologies, and to increase the value of the share for the shareholders.[2]

A merger, is when two companies combine in order to form a new company, which will operate as a single entity from then on. Typically, companies that are of the same nature, size and operating within

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[2] Mehta, D., & Samanta, S. (1997). Mergers and acquisitions: nature and significance. *Vikalpa*, *22*(4), 31-38.

similar markets, merge together, with the objective to create a company which has more value than if the both companies had decided to stay as separate entities. Both the companies come to an agreement to combine their resources and manpower, and they might adopt a new way to contribute to the company.

Acquisition is the process by which one company buys another company. While in a merger, both the companies merge into one and operate as a single entity from then on, in an Acquisition, the targeted company ceases to exist as a separate legal entity. The entire control over the targeted company is taken over by the targeting company, and acquires the company's operations, employees, culture and structure.

There are a variety of strategic reasons as to why a company engages itself in mergers and acquisitions. One of the would be in order to expand their mark, by entering into new geographic regions or by tapping into new product markets. Economies of Scale is another one of the significant reasons as to why companies get involved in Mergers and Acquisitions. By the way of mergers and acquisitions, the companies can combine both of their resources, reduce the total costs thereby and also establish greater operational efficiencies. Through the way of mergers and acquisitions, a company also diversifies it, and reduces the business risks by acquiring companies that are existing in different industries. Mergers and Acquisitions could help the companies in gaining new experience, acquire new patents or the innovations that were owned by the other company. Additionally, it also increases their share in the market and eliminates competitors.

2. The Importance of Shareholder Interest during Mergers & Acquisitions

The ultimate owners of a company are its shareholders. When a company gets involved in a Merger and Acquisition process, the success or the failure of the transition of such a company will have a direct effect on the investments made by the shareholders. The primary goal behind the process of Mergers and Acquisitions is to create and increase value, which can be seen in the increase in share price, dividends payable to the shareholders and other such financial benefits. However, a merger or an acquisition process initiated by a company will only affect the shareholders depending on their position as a shareholder.[3]

Majority Shareholders, who own a huge part of the company's shares, will have the control and the power to influence or even decided the terms and conditions of the Merger and Acquisition deal. They are the ones who actively take part in the decision-making process of the company, as their votes hold

[3] Gangwal, B., & Koolwal, M. (2023). Pragmatic analysis of the legal framework on mergers and acquisitions in India under the Companies Act, 2013. *Russian Law Journal*, *11*(2S), 187-195.

a significant weightage in the final approval stage. Because of them being the majority shareholder, the outcomes of the merger and acquisition is directly tied to their financial interest in the future. However, they also have the responsibility to take into consideration, the wellbeing of the minority shareholders while signing a deal.

3. Majority v. Minority Shareholders in M&A Transactions

In the process of mergers and acquisition, the majority shareholders usually hold a significant voting power and control over the direction of the company and the decisions that have to be made. This power of the company, allows them to make important decisions for the company, regarding the terms and conditions of the M & A deal. This ability of the majority shareholders is directly related to the outcomes of the mergers and acquisitions as they are the ones making all the critical decisions. They also have financial benefits like the increased price in dividends, a rise in the share price, other such forms of investment.[4]

Even though the power to guide and approve the terms and conditions of the Mergers and Acquisitions is vested with the majority shareholders, they have an obligation to behave according to the laws of corporate governance, which advises them to act in the best interest of all the shareholders, and not just their own. In this way, their responsibility is not just limited to them trying to maximize their own financial return, but also to ensure that the interest of the minority shareholders is protected in the process.[5]

On the other hand, the minority shareholders have very less to no control over the decision-making process of the company. Their influence in the merger and acquisition process is limited to voting on minor corporate decisions. Despite the minority shareholders having very less stake in the company, their concerns must still be addressed. Minority shareholders might also have valid reasons for avoiding an M & A transaction, especially if that particular decision undervalues their shares, possibly ignores their rights, or even puts their investment at risk. If the M & A deal does not meet with their expectations, then there is no guarantee for their continued stay in the company, and they might be forced out of the company without being given the chance to bargain.

Some countries offer specific protections for the minority shareholders during the M&A transactions. These protections safeguard the minority shareholders from being oppressed or marginalized during

[4] Kumar, S., & Bansal, L. K. (2008). The impact of mergers and acquisitions on corporate performance in India. *Management Decision*, *46*(10), 1531-1543.
[5] Gangwal, B., & Koolwal, M. (2023). Pragmatic analysis of the legal framework on mergers and acquisitions in India under the Companies Act, 2013. *Russian Law Journal*, *11*(2S), 187-195.

the decision-making process. One of the major concerns of the minority shareholders is if the terms of the deal regarding the M&A will benefits the majority shareholders at the expense of the minority. This concern is commonly referred to as a "minority shareholder oppression". This usually happens when the majority shareholders take advantage of their position in the company, and prioritize their own well-being and financial investment's return over the interest of the minority shareholder.

4. Legal Protections for Minority Shareholders

Despite being in a relatively weaker position while compared to the majority shareholders, the Indian Corporate Law does offer a few legal protections to the minority shareholder in order to safeguard their rights and interests from being overlooked by the majority shareholders.

4.1 The Right to Participate in General Meetings

According to Section 96 of the Companies Act, 2013, the minority shareholders have the statutory right to participate in the general meetings of the company, and also take part in the voting process with regard to the resolutions which could potentially affect their interests in the company. Shareholders have the option to either cast their votes in person or through a proxy, and the resolutions hence passed in such general meetings must be in accordance with the interest of all the shareholders of the company, including the minority.[6]

4.2 Protection against Oppression and Mismanagement

Sections 241 to 246 of the Companies Act, 2013, provides significant protection to minority shareholders, through which they could file a petition against them being oppressed and mismanaged in the company.[7] If the minority shareholders believe that the majority shareholders have no taken their interests into consideration at all, then they could approach the National Company Law Tribunal for redressal procedures. The tribunal has the power to pass the following orders:

- The Removal or Replacement of the Board of Directors or the management.
- By Altering the company's Articles of Association (AOA)
- The tribunal could also provide financial relief to the minority shareholders by ordering buy-back of shares or by simply compensating them.

4.3 Right to Receive Information

[6] Companies Act, 2013, § 62 (India).
[7] NCLT Rulings, 2022 SCC OnLine NCLT 73

Sections 128 & 129 of the Companies Act, 2013, provide the minority shareholders with the right to access all the important and critical financial documents and reports, such as the annual financial statements or the auditor's reports, which could help them in evaluating the performance of the company and how they are managed. This right that is vested with the minority shareholders help them in making all of their decisions regarding the investments, while they stay informed about the major progressions made by the company.[8]

4.4 Right to Call for a Special Resolution

Section 113 of the Companies Act, 2013, states that the minority shareholders who hold at least a minimum of 10% of the total voting power can call for a special resolution during a general meeting in order to discuss anything that they consider to be important. This provision in a way empowers the minority shareholders to bring up any issues that they might face, which might require the attention of the company and its members.

4.5 Protection against Fraudulent or Unfair Transactions

Section 447 of the Companies Act, 2013, gives the shareholders the statutory right to file complaints against the fraudulent or unfair transactions which are prejudicial to their interests. And additionally, they could also file complaints against the decisions taken by the majority shareholders which disproportionately benefits them or the company while disregarding the interest of the minority shareholders, to the NCLT.

4.6 Shareholder Agreements and Minority Protection Clauses

In private companies, a lot of the minority shareholders protect themselves from being oppressed or mismanaged, by adding a few clauses in the Shareholders' Agreement. These provisions will typically provide them with veto rights on certain key decisions to be taken, like the sale of the company, the amendments which have to be made to the MOA or AOA or the issuance of new shares. Provisions for tag-along rights can also be instituted in the agreements which states that in case the majority shareholders decide to sell their shares, then the minority shareholders could also sell their shares under the same terms and conditions. By including drag along rights, the minority shareholders will be

[8] Sanjay Shanbhag, S. (2024). *A study on the majority rule and minority interest in Indian listed companies in the context of minority shareholder oppression with reference to majority rule as a framework* (Doctoral dissertation, National Law School Of India University).

required to sell their shares to a third party, under the same terms that it was sold by the majority shareholders.[9]

4.7 Minority Buyout Rights

In case the minority shareholders are being oppressed in the company by the majority shareholders, they can demand a buyout of their shares by the majority shareholders or the company themselves.[10] The power to order the purchase of such shares at a fair price by the majority shareholders or the company itself lies with the NCLT.

4.8 Right to Appeal to NCLT

If the minority shareholders consider any of the decisions taken by the company to be oppressive, prejudicial or in violation of the Companies Act, then they have the statutory right to appeal to the NCLT. The NCLT has the authority to provide them with remedies, which includes financial compensation or they could pass some orders to change the company's management.

4.9 Right to Appeal to Securities Appellate Tribunal (SAT)

In case there is an issue related to the violations of the SEBI regulations, or an issue related to the securities market, the minority shareholders have the right to appeal to the Securities Appellate Tribunal.

4.10 Pre-Emptive Rights

According to Section 62 of the Companies Act, 2013, in case there is a fresh issue of shares, the minority shareholders in the company have pre-emptive rights, which simply means that they are given priority in purchasing additional shares proportionate to their existing shares. This particular right prevents them from totally diluting their ownership and control in the company.

Even though the minority shareholders in India have little to no control in a company, however, the Companies Act, 2013 provides a legal framework through which the interests of the minority shareholders are legally protected. They are safeguarded from being oppressed by the majority shareholders, they are vested with the right to access critical information, and the right to challenge unfair practices that is being carried out inside a company through the courts or tribunals. Minority

[9] Patel, A. S., & Tripathi, D. (2023). Protecting Minority Shareholder Rights: Evaluating the Effectiveness of Legal Frameworks in Promoting Shareholder Democracy. *Issue 2 Int'l JL Mgmt. & Human.*, *6*, 1748.
[10] David, Y. (2024). The Role of Minority Shareholder Protections in M&a Deals: Legal Implications and Analysis. *Available at SSRN 4922312*.

shareholders must be educated about the rights and protections that are available to them, and they need to be empowered so as to take proactive steps if their rights are being undermined.

5. The Role Played by Corporate Governance in Protecting the Interests of the Minority Shareholders

The system of rules, practices and processes by which a company is directed and controlled is known as corporate governance. It is the process through which the objectives of the company are set, how its performance is monitored, and how the interests of various stakeholders including the shareholders, the management, the employees, customers and the community are balanced. The goal behind corporate governance is to ensure transparency, accountability, and foster a responsible management, ultimately leading to sustainable growth of their business and thereby also protecting the value of the shareholders.[11]

Corporate governance plays a significant and vital role in protecting the rights of all the shareholders, majority and minority during the M&A transactions. It also makes sure that the needs of everyone is adequately represented during the process of merger and acquisitions. A well-structured corporate governance framework will promote transparency, fairness, and accountability in the decision-making process.

The board of directors' act in a fiduciary capacity, and thus, they must ensure that all the transactions are negotiated and executed, after taking due diligence, and after considering the interests of all the shareholders, the minority included. Practically speaking, the board needs to asses if the merger or acquisition would create a long-term value for the company and its stakeholders, and not just a short-term financial gain for a select few.

Independent committees have to be established during the Merger & Acquisition process, in order to represent the interests of the minority shareholders. These committees need to be comprised of independent directors who have no stake in the outcome of the merger or acquisition, and are able to oversee the negotiation and ensure that the terms of the transaction are fair and in line with the expectations of the shareholders.

In addition to ensuring that all the shareholders are treated equally and equitably, it is necessary for the corporate governance structure to also take responsibility for managing potential conflicts of interest which could arise out of the mergers or acquisitions. This is particularly important when the majority

[11] Rohit, J. K., & Tenguriya, Y. S. (2023). Structuring of Merger and Acquisition in Company Law. *Indian J. Integrated Rsch. L.*, *3*, 1.

shareholders are directly involved in the transactions of mergers or acquisitions. In such situations, it is necessary to safeguard the interests of the minority shareholders who aren't involved in the transaction process as much as majority shareholders. Auditors can help in ensuring that the transaction is fairly dealt with according to all the shareholders.

6. Potential Risks to the Minority Shareholders

Despite all the statutory protections that have been offered to the minority shareholders under the Companies Act, 2013, and the additional corporate governance safeguards, they are still prone to several risks. After the company acquires another company, or mergers with, the minority shareholders might find themselves receiving a lower price for their shares when compared to the majority shareholders. This problem might arise if the terms of the merger and acquisition deal is skewed in favour of the majority shareholders, especially in the cases where the majority shareholders were the ones negotiating the terms of the deal, and have done so in a way that it is beneficial for them, without considering the financial effect it would have on the minority shareholders.

In some cases, the minority shareholders might end up being "squeezed out" of the company. As a result of the merger or acquisition deal, the minority shareholders might be forced to sell their shares to the other company which acquires the targeting company. The minority shareholders might not even have a say in the price at which it would be sold to the acquiring company. If this price set by them is not fair and equivalent to the market value of the shares at that given moment, the minority shareholders might be put in a situation where they feel like they have no other option but to accept an unfavourable buyout offer.

Minority shareholders who previously had a few rights when it came to the decision-making process of the company, might end up having losing all of their voting rights in the merger or acquisition process. This could be specifically concerning if the acquiring company has a different vision and plan. It could potentially end up diminishing the minority shareholder's role within the company.

Organisational changes, like the sift in the culture of the company, the strategy followed and the day-to-day operations are the result of the mergers and acquisitions. Usually, after the M&A process, the company will take a new direction. In such a situation, the minority shareholder might end up being dissatisfied if their interests and concerns were not properly addressed during the negotiation phase.

7. The Importance of Fairness and Equity

The primary aim of a well-conducted merger or acquisition should be to create value for all of the stakeholders involved, and additionally and more importantly, it should also ensure that the minority

shareholders should be treated equally. Treating all the shareholders fairly and equally during the process of merger or acquisition is very crucial in maintaining their trust and confidence. Dissatisfaction on the part of the minority shareholders might lead to legal challenges or even financial penalties for the company that is involved. Thus, it is highly essential to make sure that the minority shareholders feel included in the whole process.[12]

In some cases, minority shareholder activism might arise when a group of investors believe that their interests have been insufficiently represented. This activism can take in the form or legal action, public campaigns, or the collective action taken by the minority shareholders to block or renegotiate the terms of the M&A deal. While this situation could be very disruptive, it highlights the importance of keeping the minority shareholders informed and involved.

8. Conclusion

To conclude, it is highly essential to protect the interests of both minority and majority shareholders, as they are at the heart of every merger and acquisition. The success of any M&A transaction is directly related to the ability to increase value and deliver financial benefits to the shareholders. However, in order for a M&A transaction to be this successful, it is necessary to adequately protect the rights of the minority shareholders, treat them fairly and involve them in all of the decision-making process or at least keep them informed. Majority shareholders, who have significant control during the M&A process, have the responsibility to ensure that the whole process is transparent, equitable and compliant with all the legal frameworks that protect minority interests.

The fairness that has to be ensured during an M&A transaction is not only a matter of the financial benefit that comes as an outcome, but also one of corporate governance, legal integrity and ethical responsibility. Ensuring the protection of minority shareholder interests during M&A transactions, promotes a healthy corporate environment, safeguards legal disputes from arising, and fosters a sense of long-term trust in the corporate governance system.

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[12] Beena, P. L. (2000). An analysis of mergers in the private corporate sector in India.