Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2026 – ISSN 2582-7820

Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

Cross-Border Mergers in India: A Gateway to Global Expansion or a Regulatory Maze

Samhitha Marpu[a]

[a]Presidency University, Karnataka, India

Received 11 June 2026; *Accepted* 11 July 2026; *Published* 14 July 2026

Globalisation has pushed Indian companies towards cross-border consolidations, and the legislation has responded by introducing Section 234 of the Companies Act, 2013, read along with Rule 25A of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016, and the Foreign Exchange Management (Cross-Border Merger) Regulations, 2018. These instruments collectively regulate both inbound mergers, where a foreign company merges into an Indian company, and outbound mergers, where an Indian company merges into a foreign company. This has put aside the asymmetry that existed prior in the Companies Act, 1956. This paper examines whether this framework has, in practice, succeeded in facilitating cross- border mergers, or whether operational and regulatory hurdles continue to limit its effectiveness. This paper adopts a doctrinal method; it traces the evolution of the law, analyses the opportunities the framework creates and identifies the persistent challenges such as the multiplicity of regulators, a restrictive jurisdiction test, valuation divergence and tax uncertainty for outbound transactions. The paper also argues that while the 2024 fast-track amendment marks meaningful progress, India's cross-border merger framework remains a qualified success that calls for further procedural simplifications.

Keywords: *cross-border mergers, reverse flipping, company.*

INTRODUCTION

The last few decades have witnessed Indian companies move from being the recipients of foreign capital to active participation in global consolidation. Cross-border mergers are the combination of two companies incorporated in different countries into a single surviving entity; this shift has been driven by globalisation, under which multinational enterprises increasingly look beyond domestic markets for growth, technology, and competitive scale. These cross-border mergers have become one of the principal instruments through which this consolidation occurs, offering a complete alternative to standalone acquisitions or joint ventures.

For most of independent India's company law history, this instrument was only partially available. Before the amendment of the Companies Act 2013, the Companies Act 1956 only permitted a foreign company to merge into an Indian company, but did not allow the reverse, the merger of an Indian company into a foreign one.[1] Previously, the definition of a "transferee company" was confined to the companies registered in India. This asymmetry resulted in Indian companies having no statutory route open to them if and when they seek to consolidate its overseeing operations into a single foreign entity, and ultimately, they would have to rely on alternative structures such as share acquisitions.

The Companies Act 2013 sought to correct this asymmetry through Section 234,[2] which was notified by the Ministry of Corporate Affairs with effect from 13th April 2017, read together with Rule 25A of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.[3] Through this, for the first time, Indian law has recognised both inbound mergers and outbound mergers, subject to the prior approval of the Reserve Bank of India. This framework took a complete stance in the following year when the Reserve Bank notified the Foreign Exchange Management (Cross Border Merger) Regulations, 2018,[4] addressing exchange dimensions of such transactions.

[1] Companies Act 1956, s 394(4)(B)
[2] 'Sec. 234 notified: Merger or Amalgamation of Company with Foreign Company' (*Tax Guru*, 13 April 2017) <https://taxguru.in/company-law/sec-234-notified-merger-amalgamation-company-foreign-company.html> accessed 05 June 2026
[3] Companies (Compromises, Arrangements and Amalgamations) Rules 2016
[4] Companies Act 2013, s 234

Nearly a decade after the implementation of these frameworks, however, the statutory recognition has not automatically been translated into smooth implementation. Companies continue to encounter a layered approval architecture, a narrow jurisdictional gateway for outbound transactions and unresolved questions of valuation and taxation. Therefore, this paper deals with the critical question as to whether India's legal framework has successfully facilitated cross-border mergers, or whether operational and regulatory challenges continue to hinder their effectiveness, examining the concept and evolution of such mergers, the present legal framework, the opportunities it creates, and the principal operational challenges.

WHAT EXACTLY ARE CROSS-BORDER MERGERS?

In its truest sense, a merger in its simplest form means the combination of two or more companies such that one company loses its existence and is absorbed into another. The company that loses its entire existence is known as the transferor, while the company that comes out living and which forms into an entirely new existence is known as the transferee. Ultimately, the transferee is the one who continues to hold all the assets, liabilities and undertakings of the combined entity.

Indian Law distinguishes between two types of mergers –

Inbound Mergers: An inbound merger occurs when a foreign company merges into an Indian company. In this type of merger, the Indian company will survive and act as the resultant entity. These kinds of mergers allow the foreign entity to establish its roots in the country without feeling the need to deal with the complexities of establishing a new subsidiary or developing a new presence from the root level.[5]

Outbound Mergers: Outbound mergers are the transactions where the foreign entity will be the surviving organisation. This route is used when an Indian group wishes to relocate its corporate domicile overseas or consolidate group operations under a single foreign holding entity.

[5] Vraj Kasana, 'A STUDY OF CROSS-BORDER MERGERS' (2025) 3(1) International Journal of Legal Affairs and Exploration <https://ijlae.com/wp-content/uploads/2025/05/A-STUDY-OF-CROSS-BORDER-MERGERS-By-Viraj-Kasana.pdf> accessed 10 June 2026

The major difference between a cross-border merger and an ordinary domestic merger is not confined only to geographical layering but also the legal architecture it is governed by. A purely domestic merger is predominantly governed by the Companies Act, 2013 and is generally sanctioned by the tribunal or the regional director.[6] While a cross-border merger additionally engages exchange control law under the Foreign Exchange Management Act, 1999, the Company Securities Law of the foreign jurisdiction, and potentially the Tax and Competition Law of both countries. This is why cross-border mergers are strategically valuable yet at the same time operationally demanding.

These cross-border mergers are important because they allow companies from different countries to come together as one organisation. This enables them to enter new markets, share technology and intellectual property and also combine their manufacturing and business operations more effectively. This is different from acquisitions or joint ventures, where the companies usually remain separate and connected through contracts or shareholding arrangements; a merger creates a single integrated entity.

EVOLUTION OF THE LEGAL FRAMEWORK IN INDIA

Under the Companies' Act of 1956, the merger provisions under Section 394, a "transferee company" was strictly confined to a company incorporated in India. An Indian company can be acquired by, or merged into, a foreign company Indian subsidiary, but could never be merged or incorporated into a company abroad. This asymmetry was widely criticised and was proven to be inconsistent with the post 1991 liberalization[7] of the Indian economy, under which Indian companies were increasingly investing and operating overseas but unfortunately lacked the merger mechanism to validate those operations.

The Companies Act, 2013, was then drafted against this background with an explicit aim of modernising the structure of the Indian company law and aligning its principles with the international practice. Section 234 in the Companies Act was included in Chapter XV alongside the general provisions on Compromises, Arrangements and Amalgamations in sections 230 to 233, but remained dormant until the Ministry of Corporate Affairs notified it

[6] Priyanka, 'Fast Track Merger Procedure and Rules under Companies Act, 2013' (*Tax Guru*, 10 June 2026) <https://taxguru.in/company-law/fast-track-merger-procedure-rules-companies-act-2013.html> accessed 10 June 2026

[7] Umakanth Varottil, 'The Evolution of Corporate Law in Post-Liberalisation India: From Transplant to Autochthony' (2015) NUS - Centre for Law & Business Working Paper No. 15/01

on 13th April 2017, simultaneously inserting rule 25A into the Companies (Compromises, Arrangements and Amalgamation) Rules 2016.[8]

LEGAL FRAMEWORK GOVERNING THE CROSS-BORDER MERGERS

Under the Companies Act 2013, Section 234(1) provides that the general provisions of Chapter XV apply, with necessary modifications, to a scheme of merger under this section, except where any other law provides otherwise.[9] This means that the procedural backbone of a cross-border merger will follow the same path as a domestic merger under Sections 230 to 233, but is subject to additional conditions that Section 234 introduces.

Section 234(2) of the Act imposes two such conditions. First, the merger requires the prior approval of the Reserve Bank of India. Second, the foreign company involved must be incorporated in a jurisdiction notified by the central government in consultation with the Reserve Bank.[10]

Rule 25A of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, created a distinction between inbound and outbound mergers. While a foreign company may merge with an Indian company upon receiving prior approval from the Reserve Bank of India. An Indian company may merge with a foreign company only if the foreign entity is incorporated in a jurisdiction satisfying the requirements prescribed under Annexure B.[11] These also include IOSCO or SEBI cooperation requirements, membership of the Bank for International Settlements, and compliance with FATF standards. The approach reflects India's attempt to facilitate corporate mobility while simultaneously guarding against regulatory arbitrage and money laundering risks.

The contribution by the Reserve Bank arrived a year later, with the Foreign Exchange Management (Cross Border Merger) Regulations. 2018,[12] notified on 20th March 2018. These regulations address matters outside the Companies Act. Such as the treatment of assets and liabilities held outside India post-merger, components like how the existing borrowings and guarantees are to be serviced.

[8] Companies (Compromises, Arrangements And Amalgamations) Rules 2016, r 25A
[9] Companies Act 2013, s 234(1)
[10] *Ibid* s 234(2)
[11] Companies (Compromises, Arrangements And Amalgamations) Rules 2016
[12] Foreign Exchange Managements (Cross Border Merger) Regulations 2018

The framework regulating the cross-border mergers received a significant boost in April 2024 when the Ministry of Corporate Affairs amended Rule 25A to extend the fast-track merger mechanism under Section 233 of the Companies Act 2013 to certain inbound cross-mergers.[13] Before these amendments, cross-border mergers generally required approval from the National Company Law Tribunal (NCLT). The amendment now permits a foreign holding company to merge with its wholly owned Indian subsidiary through the fast-track route, enabling approval by the regional director instead of the tribunal. This reform has been widely known as reverse flipping.

Additionally, where a proposed merger satisfies the asset or turnover thresholds prescribed under the Competition Act, 2002, prior notification to the Competition Commission of India remains mandatory.[14] Consequently, while recent reforms have streamlined certain categories of cross-border mergers. They have not diluted the regulatory safeguards designed to protect competition, investors, creditors and the broader public interest.

OPPORTUNITIES CREATED BY CROSS-BORDER MERGERS

Cross-border mergers offer Indian companies a unique mechanism to integrate operations across jurisdictions through a single entity. Unlike acquisitions, joint ventures or subsidiary structures, which often leave businesses connected through contractual arrangements or shareholding relationships, a merger enables the consolidation of assets, liabilities, management and operations under one corporate framework.[15]

Another significant advantage of cross-border mergers lies in their ability to facilitate technological and managerial advancement. Through a merger, a company may acquire valuable intellectual property, specialised technical expertise, research capabilities or managerial know-how that can be directly integrated into its operations. Such integration is often more efficient than licensing arrangements, which may be costly and subject to contractual limitations. Furthermore, the resultant entity can benefit from economies of scale by streamlining procurement, manufacturing, distribution and administrative functions across different markets.

---

[13] Dhanush Prabha, 'Cross Border Fast Track Mergers Under Companies Act 2026' (*IncorpX*, 11 April 2026) <https://www.incorpx.io/guide/cross-border-fast-track-mergers-companies-act> accessed 09 June 2026
[14] Competition Act 2002, ss 5-6
[15] Companies Act 2013, ss 230-234

These mergers also contribute to risk diversification. Companies whose revenue streams are concentrated within a jurisdiction which inevitable is inevitably vulnerable to local economic losses, regulatory changes or political instability; these cross-border mergers can distribute such risks and reduce their dependence on a single market. Additionally, a larger and geographically diversified entity is often better positioned to compete in international markets and attract global investors.

It is pertinent to note that the commercial demand for a comprehensive cross-border merger framework existed long before Section 234 of the Companies Act, 2013 was brought into force. A notable example of the same is Tata Steel's global presence and manufacturing capabilities, but has to be structured as an acquisition because Indian law at that time did not provide a statutory mechanism for cross-border mergers.[16]

Similarly, Daiichi Sankyo's acquisition of Ranbaxy Laboratories in 2008 illustrated the increasing prevalence of cross-border corporate consolidation involving Indian companies.[17] These transactions highlighted the need for a legal framework that would permit true corporate integration rather than reliance on acquisition-based structures.

A more contemporary example can be found in the growing trend of "reverse flipping", whereby Indian founded startups that had earlier incorporated holding companies abroad seek to relocate their corporate domicile back to India. The Ministry of Corporate Affairs 2024 amendment to Rule 25A, permitting certain inbound mergers through the fast-track mechanism under section 233, reflects the government's recognition of this commercial reality and its intention to facilitate corporate restructuring while retaining oversight.

OPERATIONAL AND REGULATORY CHALLENGES

Despite the opportunities presented by Section 234 in the Companies Act, the practical implementation of cross-border mergers remains considerably more complex than normal domestic mergers. One of the most significant challenges arises from the multiplicity of regulatory approvals involved. Depending on the nature of the transaction, a merger may require approval from the National Company Law Tribunal (NCLT), the Reserve Bank of

[16] Prerna Mehndiratta, 'Cross Border Merger - Tax Aspects' (*TaxGuru*, 09 May 2017) <https://taxguru.in/income-tax/crossborder-mergers-tax-aspects.html> accessed 09 June 2026
[17] 'Ranbaxy And Daiichi Sankyo Successfully Complete Landmark Deal' (*Daiichi Sankyo*, 07 November 2008) <https://www.daiichisankyo.com/media/press_release/detail/index_3918.html> accessed 09 June 2026

India (RBI), the Competition Commission of India (CCI), sector-specific regulators and tax authorities in multiple jurisdictions. Since each authority operates according to its own procedures and timelines, delays at any stage can substantially prolong the completion of the transaction.[18]

A second challenge stems from the jurisdictional limitations imposed under Rule 25A and Annexure B of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. While these requirements are intended to prevent money laundering and financial misconduct, they often restrict outbound mergers to jurisdictions that satisfy prescribed regulatory standards. Including cooperation with securities regulators and compliance with international money laundering norms.[19] Consequently, companies may be unable to utilise the merger route even where legitimate commercial reasons exist.

Another practical difficulty is the valuation. The merger schemes require valuation by a registered valuer under Indian law. However, the financial statement by the foreign company might be prepared in accordance with the International Financial Reporting Standards (IFRS). This asymmetry may make it difficult to determine a fair exchange ratio for shareholders.[20]

Another debated aspect of cross-border mergers is taxation. Section 2(1B) of the Income Tax Act, 1961 grants tax-neutral treatment to qualifying amalgamations, particularly where the resultant company is an Indian entity/while this framework generally accommodates inbound mergers, uncertainty persists in relation to outbound mergers where the resultant company is incorporated outside India. In such cases, questions frequently arise regarding capital gains taxation, transfer pricing implications and the availability of exemptions that would ordinarily apply to domestic amalgamations.[21]

The limitations to the statutory framework were in fact highlighted in Re Sun Pharmaceutical Industries Ltd, where the Ahmedabad bench of the NCLT considered whether Section 234 could be extended to permit a cross-border demerger. The tribunal observed that Section 234 specifically refers to mergers and amalgamations and does not explicitly include demergers.

---

[18] Companies Act 2013, ss 230-234; Competition Act 2002, ss 5-6
[19] Companies (Comprmises, Arrangements And Amalgamations) Rules 2016, r 25A and Annexure B
[20] Foreign Exchange Management (Cross Border Merger) Regulations 2018
[21] Income Tax Act 1961, s 2(1B)

Consequently, the proposed restructuring was held to fall outside the scope of the provision.[22] The decision demonstrates that while the law facilitates certain cross-border restructuring, its application remains confined to the precise contours of the statutory framework.

Although the 2024 amendments, introducing a fast-track route for certain inbound mergers, represent a significant step toward procedural efficiency, the majority of cross-border mergers continue to face a layering of architectural legal frameworks. The challenge for policymakers, therefore, lies not in reducing regulatory oversight but in achieving an appropriate balance between facilitating legitimate business restructuring and preserving the safeguards necessary to protect investors, creditors, employees and the public interest in the broader point of view.

SUGGESTIONS AND WAY FORWARD

While the introduction of Section 234 and the accompanying regulatory framework act as a significant step towards facilitating cross-border mergers, certain reforms can ultimately improve the practical efficiency of the process without compromising the regulatory safeguards. The most immediate reform would be the creation of a coordinated or single window approval mechanism through which the Ministry of Corporate Affairs, the Reserve Bank of India and the Competition Commission of India could examine the merger proposals. Concurrently, rather than through separate and often sequential processes. Such a system would reduce delays and compliance costs, maintaining the substantive scrutiny necessary for complex transactions.[23]

A second area for reform concerns the scope of the fast-track mechanism introduced through the 2024 amendments to Rule 25A. While this amendment showcases a development, the fast-track route could be extended to other categories of low-risk inbound mergers where concerns relating to shareholders' protection, creditor interests and regulatory compliance are minimal. Such an approach would enable the National Company Law Tribunal to focus

[22] Shinoj Koshy and Mayank Labh, 'The Sun Pharma Orders: NCLT Confounds The Law On Cross-Border Demergers?' (*Mondaq*, 21 January 2020) <https://www.mondaq.com/india/corporate-and-company-law/885502/the-sun-pharma-orders-nclt-confounds-the-law-on-cross-border-demergers> accessed 09 June 2026

[23] Companies Act 2013, ss 230-234; Competition Act 2002, ss 5-6

its resources on more complex transactions while accelerating routine restructuring exercises.

Finally, a much greater certainty is also required in relation to valuation and taxation. Comprehensive guidance notes jointly issued by the MCA, RBI and Central Board of Direct Taxes could assist the companies in reconciling valuation methodologies and determining the appropriate treatment of such assets.

Collectively, these reforms would not dilute regulatory oversight; rather, they would enhance the efficiency, predictability and commercial viability of India's cross-border merger framework while preserving the safeguards necessary to protect investors, creditors and employees.

CONCLUSION

Cross-border mergers represent an important step in India's journey towards greater integration with global markets. Through Section 234 of the Companies Act, 2013, Rule 25A and the FEMA regulations, 2018, the law now provides a structured mechanism for both inbound and outbound mergers, a facility that was absent under the Companies Act, 1956. The 2024 fast-track amendment further reflects the legislature's willingness to adapt the framework to evolving commercial realities.

However, the effectiveness of the regime is constrained by procedural complexity, jurisdictional restrictions and valuation and taxation uncertainties. While these safeguards serve legitimate regulatory objectives, greater procedural efficiency and legal clarity are necessary to ensure that cross-border mergers are not merely permissible in theory but commercially viable in practice. Ultimately, India's success as a destination for international corporate restructuring will depend on its ability to balance robust regulation with ease of implementation.