ARTICLE

Finding the Right Fit: The Synergistic Side of Corporate Structuring

Corporate Structuring is among the most consequential strategic decisions an enterprise can make. In India, these decisions occur within the sophisticated legal framework established by the Companies Act, 2013 — legislation that fundamentally transformed Indian company law; introduced the National Company Law Tribunal, codified related-party transaction governance, mandated consolidated financial statements, and created the fast-track and cross-border merger frameworks. This article examines the synergistic dimensions of corporate structuring — the holding-subsidiary relationship (Section 2(46) and 2(87)), inter-corporate investments (Section 186), related party governance (Section 188), mergers and amalgamations (Sections 230–234), class action protections (Section 245), and the independent director framework (Schedule IV). Through the lens of India's leading corporate groups, landmark NCLT decisions, and the broader regulatory ecosystem of SEBI and RBI, the article demonstrates that structure, when aligned with both business strategy and legal intent, generates competitive synergy that no standalone entity can replicate.

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INTRODUCTION

In boardrooms across India, executives confront a deceptively simple question: How should we organise ourselves? The answer carries profound strategic, operational, and legal implications.

Corporate structuring

The deliberate design of legal entities, divisions, reporting lines, subsidiaries, joint ventures, and governance mechanisms — is not merely an administrative exercise. It is a strategic instrument that, when deployed intelligently, generates synergy; the powerful phenomenon whereby a well-aligned organisation achieves outcomes that its individual units could never accomplish in isolation.

In India, this strategic question is inseparable from the Companies Act, 2013 (hereinafter 'the Act'). Enacted by Parliament and progressively brought into force from April 2014 onwards, the Act fundamentally transformed the legal landscape for corporate structuring.

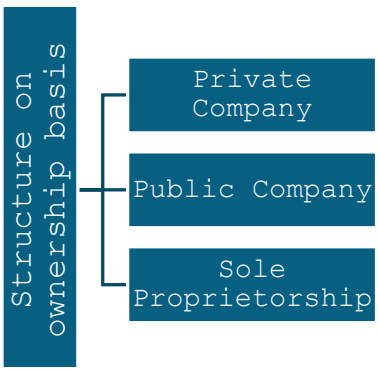
This article examines how the key structural provisions of the Companies Act, 2013 — read alongside SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 , RBI's foreign exchange framework, and the Income Tax Act, 1961 restructuring provisions — define the legal parameters of synergistic corporate design. It draws on landmark NCLT decisions, Supreme Court judgments, regulatory guidance, and corporate case studies to demonstrate that structure, when properly aligned with legal architecture and business strategy, becomes an enduring source of competitive advantage.

DEFINING CORPORATE STRUCTURE UNDER THE COMPANIES ACT, 2013

- **Types of Companies and their Structural Implications**

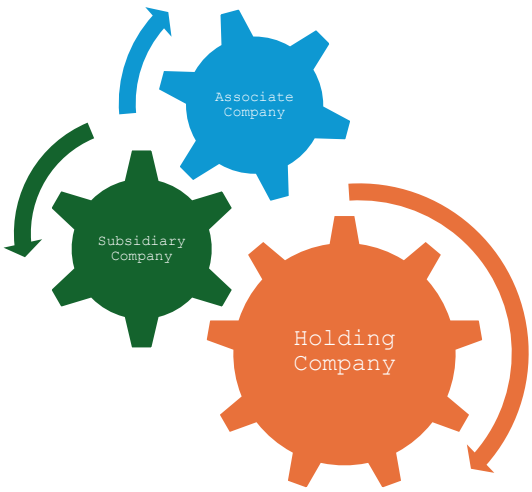
The Act retained and refined the fundamental classification of companies established by its predecessor. Under Section 3, companies may be formed as public or private companies limited by shares, limited by guarantee, or unlimited in liability. The Act introduced a new category; the One Person Company (OPC) under Section 2(62) — extending the structural toolkit available to Indian entrepreneurs.

A critical structural innovation under the Act is the concept of the 'small company' {Section 2(85)} — a private company below specified thresholds of paid-up capital and turnover which is eligible for the fast-track merger route under Section 233. This provision, examined in detail below, substantially reduces the time and cost of structural reorganisation for smaller enterprises, enabling more agile responses to strategic imperatives.



- **The Holding and Subsidiary Relationship**

  The architectural foundation of Indian corporate groups under the Act is the holding-subsidiary relationship.



  The definition represented a significant evolution from the erstwhile Companies Act, 1956. By explicitly including control through management agreements and voting arrangements; not just by board composition or shareholding — the Act acknowledged the sophisticated contractual mechanisms through which modern corporate groups exercise structural authority. A holding company could now be identified not merely by its equity stake but by the full range of instruments through which it shapes subsidiary decisions.

  Crucially, the Act introduced a restriction on layers of subsidiaries under Section 2(87) read with the Companies (Restriction on Number of Layers) Rules, 2017. This provision intended to curb the circular holding structures and multi-layered opacity that characterised some pre-2013 corporate groups; fundamentally altered the structural design space for Indian conglomerates, requiring genuine rationalisation of group architectures.

- **Associate Companies [Section 2(6)]**

  The associate company concept has significant governance and accounting implications. Associates must be accounted for using the equity method in consolidated financial statements under Ind AS 28, making their performance visible to investors in the parent's financial statements. Transactions with associates qualify as related-party transactions under Section 188, requiring disclosure and approval. And the independent director requirements applicable to the listed holding company extend their governance reach into associate relationships through audit committee oversight.

SYNERGY: THE STRATEGIC LOGIC OF STRUCTURAL CHOICE

Synergy in corporate structuring refers to the incremental value created when the combined architecture of a group achieves outcomes — financial, operational, or strategic; that individual entities could not accomplish independently. Under the Act, the legal framework both enables and disciplines the pursuit of synergy, creating a governed space within which structural creativity can flourish.

Cost synergies are perhaps the most tangible. A holding company may establish shared service entities — providing legal, finance, IT, HR, and compliance functions to group subsidiaries — under formal intra-group service agreements. The Income Tax and transfer pricing framework requires these arrangements to be at arm's length, but within that constraint, they can deliver significant economies of scale. The framework under the Act for inter-corporate transactions and related-party transactions governs how these arrangements must be structured and approved.

Revenue synergies emerge when group companies share customer relationships, distribution networks, or brand equity to generate growth that neither could achieve alone. The Tata group's deployment of the Tata brand across automotive, steel, IT, hospitality, and financial services — each entity benefiting from collective brand credibility while contributing to its value — represents India's most sustained example of structural revenue synergy. The holding company's governance oversight (through nominee directors on subsidiary boards, as enabled by Section 166 and the Articles of Association) ensures that brand usage remains consistent and value-accretive.

Capability synergies — the most strategically potent; arise when group companies access complementary skills, technology, or data through structural relationships. The provisions under the Act for intra-group arrangements, technology licensing, and secondment of personnel provide the legal scaffolding for such capability sharing, while the NCLT-supervised merger framework (Sections 230–232) enables more permanent structural integration when the strategic case warrants it.

INTER-CORPORATE INVESTMENTS AND FINANCIAL SYNERGY

Section 186 of the Act governs loans, guarantees, securities, and investments made by a company to or in another body corporate. It is the primary statutory framework regulating the financial flows through which group synergy is enabled and funded. The provision replaced the more limited Section 372A of the erstwhile Companies Act, 1956 with a significantly more comprehensive and governance-intensive regime.

Under Section 186(2), a company may not directly or indirectly give any loan or guarantee, provide any security, or make any investment exceeding sixty percent of its paid-up share capital, free reserves, and securities

premium account, or one hundred percent of its free reserves and securities premium account, whichever is more — without prior approval by special resolution of its shareholders. This threshold, while restrictive for heavily capitalised groups, reflects Parliament's intent to ensure that significant inter-corporate financial commitments receive appropriate stakeholder scrutiny.

The provision carves out exceptions of considerable structural importance. Section 186(11) exempts ***banking companies, insurance companies, housing finance companies, and non-banking financial companies*** from several of its requirements, recognising the inherently financial nature of their operations.

Loans made by a holding company to its wholly-owned subsidiary and guarantees given or securities provided by a holding company in respect of loans made to its wholly-owned subsidiary are exempt from the approval requirement under Section 186(3) — an exemption that significantly facilitates intra-group treasury management and financial synergy within wholly-owned structures.

The practical import of Section 186 for group structuring is substantial. It creates a governance filter — board approval as a minimum, shareholder approval beyond the threshold — that disciplines the deployment of group financial resources. Companies must maintain a register of investments and loans under Section 186(9), ensuring transparency of intra-group financial flows that was frequently absent under the predecessor framework.

RELATED PARTY TRANSACTIONS (SECTION 188) AND THE GOVERNANCE OF INTRA-GROUP SYNERGY

Among the most consequential governance innovations of the Act is the enhanced framework for related party transactions (RPTs) under Section 188. RPTs between a company and its directors, key managerial personnel, subsidiaries, associates, or other related parties — are the primary mechanisms through which corporate groups operationalise synergy. They are also the primary avenue through which synergy can be converted into value extraction at the expense of minority shareholders.

Section 188 requires prior board approval (and, above prescribed thresholds, shareholder approval by special resolution with related parties abstaining from voting) for a wide range of transactions including sale, purchase, or supply of goods or materials, selling or buying property, leasing property, availing or rendering services, appointment to offices of profit, underwriting subscriptions, and related party loans (subject to Section 186). The SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 extend and strengthen these requirements for listed companies, requiring audit committee approval for all RPTs and shareholder approval for material RPTs above specified thresholds.

The governance architecture around RPTs represents the central answer of the Act, to the tension between synergy and exploitation. By requiring independent director oversight (through the audit committee under Section 177), shareholder voice (through the special resolution requirement for material RPTs), and comprehensive disclosure (in financial statements, board reports, and stock exchange filings), the framework creates a multi-layered check on the use of intra-group transactions. A transaction that is genuinely synergistic should be able to withstand this scrutiny; one that primarily serves promoter interests at minority expense should not.

In practice, the RPT framework has had significant consequences for Indian group structures. Groups that previously managed intra-group transactions informally have been compelled to formalise them, obtain proper approvals, and document arm's-length justifications. This formalisation, while increasing compliance costs, has also strengthened the institutional credibility of intra-group arrangements, making them more defensible to regulators, auditors, and minority investors.

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MERGERS AND AMALGAMATIONS (SECTIONS 230–234)

- **The NCLT Framework (Sections 230–232)**

Sections 230 to 232 of the Act establish the comprehensive framework for compromises, arrangements, and amalgamations — the statutory architecture for structural consolidation and reorganisation in Indian corporate life. The most significant procedural change from the erstwhile Companies Act, 1956 framework is the transfer of jurisdiction from the High Courts to the National Company Law Tribunal (NCLT), established under Section 408 of the Act. This specialisation has, over time, created a dedicated judicial expertise in corporate restructuring matters.

Under Section 230, a company, its creditors, or its members may apply to the NCLT for sanction of a compromise or arrangement. The NCLT may call meetings of creditors and/or members, and if three-fourths in value of those present and voting agree to the scheme, the NCLT may sanction it, making it binding on all creditors and members. Section 231 gives the NCLT broad powers to supervise and enforce the implementation of sanctioned schemes. Section 232 specifically addresses mergers and amalgamations — the transfer of the undertaking, property, and

liabilities of a transferor company to a transferee — and empowers the NCLT to make all ancillary orders necessary to give effect to the scheme without requiring individual conveyances for transferred assets.

The Act introduced important new safeguards in the merger process that reflect its enhanced minority protection philosophy. Section 230(3) read with rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 (the CAA Rules 2016) requires that the scheme disclose how the compromise or arrangement will effect on material interest or Directors, Key Managerial Personnel (KMP), shareholders, creditors, debenture holders/ trustees etc. Section 247 mandates valuation by a registered valuer; a new professional category created by the Act — ensuring that exchange ratios in mergers are supported by independent, credentialed valuation rather than purely promoter-determined assessments. These provisions directly address the information asymmetry that historically allowed promoters to design merger terms that were superficially compliant but substantively extractive.

- **Fast-Track Mergers (Section 233)**

  One of the most practically significant structural innovations of the Act is the fast-track merger route under Section 233. Applicable to mergers between two or more small companies, mergers between a holding company and its wholly-owned subsidiary, and such other classes of companies as may be prescribed, the fast-track route eliminates the requirement for NCLT approval. Instead, the merger is sanctioned by the respective Registrars of Companies (ROC) after the requisite filings and objection period — a process that can be completed in a fraction of the time required for the standard NCLT route.

  The strategic significance of Section 233 for synergistic structuring cannot be overstated. Holding companies seeking to absorb wholly-owned subsidiaries — to rationalise group structures, eliminate dormant entities, or consolidate overlapping operations; can now do so with dramatically reduced time and cost. A merger that previously required twelve to eighteen months of court proceedings can be completed in three to four months through the ROC route. This agility is itself a structural competitive advantage; the ability to rapidly reconfigure group architecture in response to strategic developments.

- **Cross-Border Mergers (Section 234)**

  Section 234 of the Act, read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the Reserve Bank of India's Cross Border Merger Regulations, 2018, created the framework for cross-border mergers for the first time in Indian legal history. Both inbound mergers (where a foreign company merges into an Indian company, with the Indian company as the surviving entity) and outbound mergers (where an Indian company merges into a foreign company in a specified jurisdiction, with the foreign company surviving) are now legally permissible.

  The structural synergies enabled by cross-border mergers are significant. Indian companies with overseas subsidiaries can now achieve full legal integration of those subsidiaries — eliminating duplicative governance, consolidated group treasury management, and unified brand and operational management — in a single corporate structure rather than through the contractual approximations previously required. Equally, foreign multinationals seeking deeper India integration can merge their Indian subsidiary directly into the parent, achieving capital efficiency and governance simplicity that the previous framework did not permit.

  The RBI's approval requirements for outbound mergers — including ensuring that Indian shareholders receive fair value, that the surviving foreign entity is in a FATF-compliant jurisdiction, and that applicable foreign exchange regulations are satisfied; add regulatory layers that require careful advance planning. But the availability of the route at all represents a structural opportunity that sophisticated Indian and multinational corporate groups have begun to deploy with increasing frequency.

CORPORATE GOVERNANCE AS STRUCTURAL ENABLER

- **Independent Directors and the Audit Committee (149, 177, and Schedule IV)**

  The Act substantially strengthened the corporate governance framework applicable to Indian companies, with particular emphasis on independent directors and board-level committee oversight. Section 149 requires that prescribed companies (including listed companies and companies above specified size thresholds) have at least one-third of their board as independent directors. Schedule IV — the Code for Independent Directors — establishes detailed duties and responsibilities for independent directors, including the duty to 'safeguard the interests of all stakeholders, particularly the minority shareholders.'

  For group structures, independent directors perform a critical governance function. On the board of a listed holding company, they provide oversight of the group's strategy and financial performance, scrutinise related-party transactions (through their membership of the audit committee under Section 177), and represent minority shareholder interests against potential promoter overreach. On the boards of listed subsidiaries, they provide analogous protections— ensuring that the board of the subsidiary considers the independent interests of the subsidiary and not merely the holding company's preferences.

The audit committee under Section 177 is the institutional centrepiece of this oversight architecture. Comprising at least three directors, the majority of whom must be independent, the audit committee reviews financial statements, oversees the internal audit process, approves related-party transactions, evaluates internal financial controls, and interacts with statutory auditors. For group companies, the audit committee is the primary governance mechanism through which intra-group transactions are scrutinised and either approved on arm's-length terms or rejected.

- **Key Managerial Personnel and Structural Accountability**

  The Act introduced the concept of 'Key Managerial Personnel' (KMP) under Section 2(51), comprising the Chief Executive Officer (or Managing Director/ Manager), the Company Secretary, and the Chief Financial Officer etc. This framework, absent from the erstwhile Companies Act, 1956, created specific accountability for the senior executives responsible for day-to-day management — a structural acknowledgement that corporate groups require identifiable, accountable leadership beyond the board.

  The KMP framework has structural implications for group companies. Each material subsidiary must have its own KMPs, with their own fiduciary and professional responsibilities. The KMPs of a holding company cannot simply discharge the governance obligations of a subsidiary by fiat; each entity's management must be genuinely responsive to that entity's board and stakeholders. This requirement for genuine management substance at each level of the group structure reinforces the legal separateness of entities and disciplines against the use of subsidiary form without subsidiary substance.

DEMERGERS, STRUCTURAL UNBUNDLING, AND THE INCOME TAX FRAMEWORK

The strategic mirror image of merger is demerger; the structural recognition that certain businesses generate more value as independent entities than as components of a larger whole. The Act addresses demergers through the broad scheme of arrangement framework in Sections 230–232, which is sufficiently flexible to encompass any restructuring that transfers identified undertakings from one company to another, with consideration being issued by the transferee company to shareholders of the transferor.

The Income Tax Act, 1961 governs the tax treatment of demergers through Sections 2(19AA), 47(vib), 72A, and related provisions. A transaction qualifies as a tax-neutral demerger if all assets and liabilities of the demerged undertaking transfer to the resulting company at book value, the resulting company issues shares to all shareholders of the demerged company proportionately, and the demerged company continues as a going concern in respect of the remaining undertaking. Meeting these conditions requires careful advance structural planning — a discipline that integrates legal, tax, and financial advisory inputs.

The demerger route has been used with considerable sophistication by Indian corporate groups seeking to unlock the value embedded in conglomerate structures. When conglomerate discount — the phenomenon whereby the market values a diversified group at less than the sum of its focused parts — is material, demerger into separately listed entities allows each business to be valued by specialist investors on its own merits. The resulting structural configuration — multiple focused, independently governed entities — may generate more total market value than the preceding integrated structure, while enabling each entity to pursue its sector-specific synergies more aggressively.

STRUCTURAL AGILITY AND THE DYNAMIC ORGANISATION

Perhaps the most important evolution in corporate structuring thinking under the Act regime is the shift from viewing structure as a static legal design to treating it as a dynamic strategic capability. The combination of the fast-track merger route (Section 233), the NCLT's expedited processing of straightforward arrangements (Section 230), the clear regulatory framework for cross-border mergers (Section 234), and the RBI's streamlined approvals for restructuring has made structural reconfiguration significantly more accessible than it was under the erstwhile Companies Act, 1956.

Indian corporate groups that previously tolerated sub-optimal structures because the cost and time of restructuring were prohibitive now have genuine alternatives. A holding company can absorb an underperforming wholly-owned subsidiary within months. A business division that has achieved sufficient scale can be demerged and listed as an independent entity on a compressed timeline. Two related companies can be merged to eliminate redundancy without the multi-year High Court process that previously applied.

The regulatory direction is clearly towards further agility. The Ministry of Corporate Affairs and SEBI have repeatedly signalled their intent to streamline restructuring processes, reduce processing timelines, and extend the fast-track route to additional categories. Companies that build structural flexibility into their governance — clear decision rights, modular

entity design, simplified intra-group arrangements that can be unwound without litigation — are better positioned to exploit these opportunities than those whose structures have grown organically into rigidly interconnected webs.

The Insolvency and Bankruptcy Code, 2016 (IBC) adds a further dimension to structural agility. By providing a time-bound, creditor-controlled resolution process for corporate insolvency, the IBC has facilitated the acquisition and structural integration of distressed assets at market-appropriate values — creating M&A opportunities that the prior framework's protracted winding-up proceedings made practically unavailable. Acquirers who understand the IBC process as a structural opportunity have used resolution plan acquisitions to build group positions in strategic sectors with remarkable efficiency.

LANDMARK CASES UNDER THE COMPANIES ACT, 2013 FRAMEWORK

The NCLT and appellate courts have developed a growing body of jurisprudence under the Act that illuminates how structural decisions are evaluated by India's specialist corporate judiciary. A selection of landmark decisions provides concrete illustration of the synergy principles examined in this article.

In the matter of Reliance Jio Infocomm Ltd. merger with Reliance Industries Ltd. (NCLT Mumbai, 2019), the Tribunal sanctioned a complex scheme of arrangement involving the merger of a wholly-owned subsidiary into its parent, rationalising the group's telecom holding structure. The Tribunal confirmed the application of Section 232 and validated the registered valuer's report under Section 247, establishing the methodology for valuation-supported exchange ratios in intra-group mergers.

In HDFC Ltd. and HDFC Bank Ltd. merger (NCLT Mumbai, 2023) — one of India's largest-ever corporate mergers — the Tribunal's process demonstrated the full sophistication of the Section 230–232 framework. The scheme required coordinated approvals from RBI, SEBI, IRDAI, NHB, and the NCLT simultaneously, illustrating the multi-regulatory complexity of structural decisions in regulated industries. The merger created a structurally integrated financial services group with combined synergies in capital deployment, distribution, and customer cross-sell that neither entity could have achieved independently.

These proceedings collectively establish that governance framework of the Act is not merely aspirational — it is actively enforced, with real consequences for structural decisions that prioritise promoter interests over stakeholder protection.

CONCLUSION

Finding the right structural fit in contemporary India is an exercise that simultaneously spans strategic intent, operational design, and sophisticated navigation of the Act's comprehensive legal framework. The Act with its revolutionised holding-subsidiary definitions, enhanced related-party transaction governance, NCLT-supervised merger processes, fast-track amalgamation routes, cross-border merger framework, mandatory consolidation requirements, and minority protection mechanisms provides both the toolkit and the guardrails for synergistic corporate structuring.

In this environment, the synergistic case for corporate structuring is also the legally sound case. Structures that create genuine value by enabling capability combination, facilitating efficient capital allocation, supporting strategic focus, and protecting all stakeholders' interests — are the ones that will receive regulatory sanction, attract minority investor confidence, and deliver sustainable competitive advantage. Finding the right fit, in the era of the Act, means finding the structure where legal integrity and strategic synergy are not in tension but in alignment — and in that alignment lies India's corporate future.

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