SUPREMO AMICUS

INDIA'S FIRST AI INTEGRATED LAW JOURNAL

Peer Reviewed, Refereed and Open access Journal

- Available in 331+ International Libraries
- Indexed at 32 Databases

ISSN NO. 2456-9704
Volume 10 Issue 3
www.supremoamicus.org

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HARMONIZING CONFLICT OF CSR LAWS: INBOUND VS. OUTBOUND MERGERS

By *Kritika Gupta*
Advocate, *Bar Council of Delhi*
LL.M. (Corporate Law), GGSIPU

By *Anjali*
Advocate, *Bar Council of Delhi*
LL.M. (Corporate Law), GGSIPU

Abstract
India holds a unique place among corporate jurisdictions worldwide, being the first one where CSR expenditure becomes statutory through Section 135 of the CA, 2013. Although India's CSR regime has undergone significant legislative modifications in 2019, 2020, and 2021, an understudied angle in this respect includes the effects of cross-border M&A on the functioning of CSR laws. In the situation when a foreign company acquires or merges into the Indian company; the outbound and inbound mergers respectively, their respective CSR liabilities come in conflict with each other due to a different jurisdiction. The objective of this paper is to perform doctrinal and comparative research on the issues related to applicability, continuation, and contestation of the mandatory CSR obligations in outbound and inbound merger cases. The questions of CSR liability succession, management of unspent amounts and pending CSR projects, cross-border regulatory control, and resultant regulatory void will be analyzed against legislative acts, rulings of the NCLT, RBI and SEBI rules, as well as policies from other countries, such as the United Kingdom, the European Union, and Delaware. The findings reveal that only legislative changes to include a mandatory disclosure and succession of CSR liability in cross-border merger agreements

Keywords: Corporate Social Responsibility, Section 135, Cross Border Mergers, Inbound Merger, Outbound Merger, Companies Act 2013, National Company Law Tribunal, Foreign Exchange Management Act, Regulatory Harmonization.

I. INTRODUCTION

The Indian statutory CSR regime, set out in Sections 135 of the CA, 2013[1], marks a radical departure from the prevailing model of global corporate governance in terms of the regulation of business practices, whereby the practice of CSR is no longer viewed as a moral exercise but is seen as a legal duty imposed by the government to be enforced. The statutory CSR regime is enacted through the Companies (Corporate Social Responsibility Policy) Rules, 2014[2], with guidance from the National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business[3]. The CSR regime obligates the relevant companies, which have a net worth of Rs. 500 crore or above, or income of Rs. 1,000 crore or above, or net profits of Rs. 5 crore or above, to allocate two percent of the average net profits for the preceding three years to CSR projects[4].

The theory behind this obligation is based on three conflicting views of the firm as propounded by Carroll's pyramid of corporate social obligations[5], Friedman's doctrine of shareholder supremacy[6], and

[1] The Companies Act, 2013, Act No. 18 of 2013, Sec 135.
[2] Companies (Corporate Social Responsibility Policy) Rules, 2014, Rule 2(1)(b), G.S.R. 129(E).
[3] Indian Institute of Corporate Affairs, National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business (2011), available at: https://www.nfcg.in/pdf/national_voluntary_guidelines2011.pdf (last visited 10 March 2026).
[4] The Companies Act, 2013, Act No. 18 of 2013, Sec 135(5).
[5] Archie B. Carroll, "A Three-Dimensional Conceptual Model of Corporate Performance" (1979) 4(4) Academy of Management Review 497, available at https://www.jstor.org/stable/257850 (last visited 10 march 2026).
[6] Milton Friedman, "The Social Responsibility of Business Is to Increase Its Profits", New York Times Magazine (13 September 1970), 122-126, available

Freeman's stakeholder[7] view. However, Indian law, through its embrace of compulsory CSR, has adopted a stakeholder view of the firm, that the firm does not only have obligations to its shareholders but also to the community, environment, and the larger public. But this philosophical stance faces an organizational hurdle when firms indulge in cross-border mergers since the jurisdiction of CSR is essentially national in nature, while mergers are becoming transnational.

Indian cross-border mergers are controlled under Sections 234 of the CA, 2013[8] in conjunction with Rule 25A of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016[9], Cross Border Merger Regulations under Foreign Exchange Management, 2018 made by the Reserve Bank of India[10], and the Foreign Exchange Management Act, 1999[11]. The legal framework provides for two separate situations, namely (a) inbound merger where a foreign company merges with an Indian company, leading to the Indian company as the survivor, and (b) outbound merger where an Indian company merges with a foreign company, leaving the foreign company as the survivor. This leads to two separate sets of CSR law conflicts that have not been adequately analyzed.

In terms of the law on CSR, inbound and outbound mergers have entirely contrasting situations. In inbound mergers, the surviving entity of India will take charge of a foreign entity whose CSR practices and policy structure may be foreign to the Indian statute. It would be necessary to understand whether the assets and income from the foreign company become part of the CSR calculation for the surviving Indian company, and in what ways the surviving Indian company's CSR responsibilities are adjusted. Outbound mergers will involve a more serious situation where the Indian entity, including its CSR committee, ongoing CSR initiatives, unused funds, and liabilities related to CSR, cease to be an Indian legal entity by merging with a foreign corporation operating in a country that does not mandate CSR.

II. INDIA'S CSR LEGAL FRAMEWORK: AN OVERVIEW

2.1 Legislative Architecture and Thresholds

The section 135(1) of the CA, 2013[12] mandates the formation of a hierarchical liability. Any corporation that meets the criteria of any one of the three financial parameters—net worth equal to or exceeding Rs. 500 crores; turnover equal to or exceeding Rs. 1,000 crores; and net profit equal to or exceeding Rs. 5 crores must constitute a Corporate Social Responsibility Committee of the board of directors. This committee consists of at least three directors, out of which there must be an independent director.

A legislative interpretation of what CSR encompasses can be found in Schedule VII of the Act[13], which states a set of 11 permissible areas where a company can operate under CSR, such as eradicating hunger and poverty; promoting education, sustainability, women

at:https://www.scirp.org/reference/referencespapers?referenceid=1209106 (last visited 10 march 2026).

[7] R. Edward Freeman, Strategic Management: A Stakeholder Approach (Pitman 1984), available at: https://www.researchgate.net/publication/228320877_A_Stakeholder_Approach_to_Strategic_Management (last visited 10 march 2026).

[8] The Companies Act, 2013, Act No. 18 of 2013, Sec 234.

[9] Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, Rule 25A, G.S.R. 1183(E) (inserted in 2017).

[10] Reserve Bank of India Notification No. FEMA.389/2018-RB, Dated: 20 march, 2018, Available at: https://www.enforcementdirectorate.gov.in/media/fema/33b1f6d3-4157-46ce-9d79-9d88e0246d5f_Foreign%20Exchange%20Management%20(Cross%20Border%20Merger)%20Regulations,%202018_0.pdf (last visited 12 march 2026).

[11] Foreign Exchange Management Act, 1999, Act No. 42 of 1999, Sec 6.

[12] The Companies Act, 2013, Act No. 18 of 2013, Sec 135(1).

[13] The Companies Act, 2013, Act No. 18 of 2013, Schedule VII.

empowerment, and heritage; and supporting rural development. In order to provide flexibility on reporting activities, the Ministry of Corporate Affairs had released a clarification in its circular[14] that the Schedule VII could be read generously to capture the essence of the activities.

It is important to note that under Rule 4(6)[15], CSR activities must be performed within India, which automatically leads to the formation of a geographical restriction when applying the concept of cross-border mergers, where the surviving company is not based in India.

2.2 The Mandatory Spend Requirement and Carry-Forward Mechanism

The Two Percent Spend Rule as provided under Section 135(5)[16] is based on the net profits made as determined under Section 198 of the Act during the last three financial years. Failure by a firm to make the required spends necessitates an explanation of the failure by the company to spend within the annual Board's report. It was initially "comply-or-explain," but now is punishment-oriented under the Companies (Amendment) Act, 2019[17].

According to Section 135(6), introduced by the Companies (Amendment) Act, 2020[18], companies may transfer unutilized CSR funds to the next financial year for projects extending beyond one financial year, provided these funds have been placed in a separate account within thirty days from the close of the financial year. As per Section 135(7), which has been added through the Companies (Amendment) Act, 2019[19], in case of any failure on the part of a company to utilize the CSR fund and failure to adhere to the carry-forward policy, a penalty of twice the required amount or Rupees One crore, whichever is less, will have to be paid.

Additional compliance requirements under the Amendment Rules of 2021 include obligatory preparation of an action plan every year laying down details of CSR projects, funds required, and methods of implementation[20], undertaking of impact assessment by third parties for CSR projects costing more than one crore rupees per annum[21], and filing of reports in Form CSR-2[22].

2.3 Governance Infrastructure and Enforcement

Section 135 and the Rules have established the CSR governance framework comprising the internal monitoring mechanism (CSR Committee), the annual reporting mechanism (CSR Annual Report & Form CSR-2), the financial control mechanism (unspent CSR fund and carry-forward mechanism), and the external monitoring mechanism (impact assessment by third parties and MCA oversight)[23].

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[14] MCA General Circular No. 21/2014, dated 18 June 2014, available at: https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTM3NzE=&docCategory=Circulars&type=open (last visited 12 march 2026).

[15] Companies (Corporate Social Responsibility Policy) Rules, 2014, Rule 4(6), G.S.R. 129(E) (as amended 2021)

[16] Companies (Amendment) Act, 2017 (inserting Sec 135(5) on net profits), Companies Act, 2013, Act No. 18 of 2013, Sec 135(5).

[17] Companies (Amendment) Act, 2019 (inserting Sec 135(7) on penal provisions), Companies Act, 2013, Act No. 18 of 2013, Sec 135(7).

[18] Companies (Amendment) Act, 2020, Act No. 22 of 2020, Sec 135(6).

[19] The Companies Act, 2013, Act No. 18 of 2013, Sec 135(7) (as amended by Companies (Amendment) Act, 2019)

[20] Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021, G.S.R. 40(E).

[21] Companies (Corporate Social Responsibility Policy) Rules, 2014, Rule 8(3)(b), G.S.R. 129(E) (as amended by Companies (Amendment) Act, 2021).

[22] Companies (Corporate Social Responsibility Policy) Rules, 2014, Rule 9 (as amended by Companies (Amendment) Act, 2021), G.S.R. 129(E).

[23] MCA General Circular No. 14/2021, available at: https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MzU0NzM=&docCategory=Circulars&type=open (last visited 21 march 2026).

The enforcement process has been greatly enhanced. According to the MCA Annual Report for 2022-23, 1,549 corporations did not comply with the obligation to spend on CSR activities, and notices were served under Sections 135(7) and 450 of the Act[24]. The National Guidelines on Responsible Business Conduct (NGRBC) 2019[25], a substitute for the NVGs, offer a wider scope of guidelines for responsible business behavior based on nine guiding principles, which are derived from the OECD Guidelines for Multinational Enterprises and UN Guiding Principles on Business and Human Rights. The above-mentioned guidelines, even though non-binding, shape the interpretation of the duty to carry out CSR in the judicial process of the NCLT.

III. REGULATORY FRAMEWORK FOR CROSS-BORDER MERGERS IN INDIA

3.1 Statutory Framework: Section 234 and Rule 25A

The section 234 of the CA, 2013[26], added through the Companies (Amendment) Act, 2017, gives the statutory permission to carry out cross-border merger for the very first time in the history of Indian company laws. Before this section, cross-border merger was not possible under any circumstances. The section 234(1) permits Indian companies to merge with foreign companies which have been incorporated in the territories as declared by the Central Government. Section 234(2) also permits the merger between foreign companies with Indian companies with the permission of the Reserve Bank of India, subject to the conditions specified in Rule 25A.

As per Rule 25A of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016[27], introduced in 2017, a sharp definitional demarcation exists between these two categories. These include "Inbound merger" (foreign company merges with Indian company and the Indian company becomes the resulting entity), and "Outbound merger" (Indian company merges with foreign company and the resulting entity is the foreign company).

Jurisdiction of the NCLT to give sanction to the scheme is in accordance with Sections 230 to 232 of the Act[28]. The scheme should meet procedural requirements such as notice to the concerned creditors, shareholders, and other concerned authorities; approval meeting for the scheme; and sanction by the NCLT. For cross-border schemes, there are certain other procedural requirements like approval by the concerned foreign court/authority, RBI sanction, and compliance of FEMA.

3.2 FEMA and RBI Regulatory Framework

Under FEMA, 1999, two courses have been prescribed for conducting cross-border mergers in terms of foreign exchange management. First, it is the "deemed approval course," which applies to those transactions that comply with all the conditions laid down under the Foreign Exchange Management (Cross Border Merger) Regulations, 2018[29]. Then there is another "prior approval course," wherein RBI's prior approval will need to be taken for those transactions that do not comply with all the conditions.

However, in cases of outbound mergers, the RBI FAQs state that the pending compliances of the transferor Indian company under the Indian law need

[24] MCA Annual Report 2022–23, available at: https://www.mca.gov.in/bin/dms/getdocument?mds=vi4no2trNl9lpIKgvqFroA%253D%253D&type=open (last visited 21 march 2026).
[25] National Guidelines on Responsible Business Conduct (NGRBC), Indian Institute of Corporate Affairs (2019), available at: https://iica.nic.in/images/National-Guidelines-on-Responsible%20Business%20Conduct.pdf (last visited 21 march 2026).
[26] The Companies Act, 2013, Act No. 18 of 2013, Sec 234.
[27] Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, Rule 25A(2) & (3), G.S.R. 1183(E)
[28] The Companies Act, 2013, Act No. 18 of 2013, Sec 230, Sec 231, Sec 232.
[29] Supra Note 10, at 3.

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to be sorted out through the scheme itself and additionally the foreign company formed in consequence must comply with Indian laws to the extent they are relevant to them. This is because the important issue which emerges here is whether the issue of CSR compliance, specifically unspent CSR, constitutes such "pending Indian regulatory compliance" as mentioned above.

However, in the context of outbound mergers, the RBI FAQs[30] state that the pending Indian regulatory compliances of the transferor Indian company must be sorted out through the scheme itself, and the foreign company so created must follow Indian laws insofar as they apply to them. The important issue which arises here is whether CSR compliance and unspent CSR amounts fall under the definition of "pending Indian regulatory compliance".

3.3 SEBI, Competition, and Tax Dimensions

For all companies that conduct cross-border mergers, stock exchanges' prior approval is necessary according to Listing Regulations of the SEBI under regulation 37[31]. Further, the pre-filing requirements prescribed by the 2021 circular[32] on Schemes of Arrangement impose certain conditions for the mergers to proceed. According to the Competition Act, 2002[33], prior approval of the CCI is mandatory for all combinations meeting the financial thresholds prescribed by the act, without exception.

Under Section 2(1B) of the IT Act, 1961[34], the concept of "amalgamation" is defined, which, in turn, determines if the merger would qualify for capital gains and depreciation benefits. Most importantly, where an outbound merger is concerned, all unresolved issues with regard to the pending taxes, including CSR expenditure as per Section 35AC[35], have to be dealt with before the scheme takes effect.

As is evident from the above discussion, there are several regulatory frameworks operating simultaneously with the CSR regime, i.e., the Companies Act, FEMA, SEBI regulations, the Competition Act, and the Income Tax Act. However, there does not appear to be any regulatory framework that has taken into consideration such cross-border mergers and their impact on the CSR framework in India.

IV. CSR CONFLICTS IN INBOUND MERGERS

4.1 Definitional Scope: Which Entity's CSR Obligations Survive?

With respect to an inbound merger, the foreign entity (transferor) will come to an end, while the Indian entity (resultant entity) will succeed in taking over all its assets, liabilities, employments, and other activities. The general principle of corporate succession in mergers as per Section 232 of the CA, 2013[36] provides that the property, rights, powers, liabilities, and duties of the transferor company shall vest in the resultant entity. The point to ponder is that CSR obligations, which are public law obligations and not private law liabilities, will also be considered as succeeding, and will the new Indian resultant entity

30 Reserve Bank of India, "Introduction of Legal Entity Identifier for Cross-border Transactions" Frequently Asked Questions on Cross-Border Mergers, Dated 7 Feb 2023, Available at: https://www.rbi.org.in/commonman/english/Scripts/FAQs.aspx?Id=3412 (last visited 25 march 2026).

31 Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, Regulation 37.

32 SEBI Circular SEBI/HO/CFD/DIL1/CIR/P/2021/13 (Streamlining Schemes of Arrangement), dated 19 January 2021, Available at: https://www.sebi.gov.in/legal/circulars/jan-2021/relaxations-relating-to-procedural-matters-issues-and-listing_48812.html (last visited 26 March 2026).

33 Competition Act, 2002, Act No. 12 of 2003, Sec 5, Sec 6.

34 Income Tax Act. 1961, Act No. 43 of 1961, Sec 2(1B).

35 Income Tax Act. 1961, Act No. 43 of 1961, Sec 35AC.

36 The Companies Act, 2013, Act No. 18 of 2013, Sec 232.

recalculate its CSR liability on the basis of the absorbed foreign entity's numbers?

The MCA's FAQ[37] on CSR has made it clear, without mentioning anything specific about cross-border mergers, that CSR obligations of amalgamated companies do not get extinguished post-merger. The FAQ, although pertaining to domestic mergers, expresses the broad policy of India on CSR obligations after mergers. The specific method of calculation, however, still remains untouched.

4.2 Recalibration of CSR Thresholds and Spend Obligations

However, the application of the three-year average net profit rule in Section 135(5) poses a specific mathematical problem for inbound mergers. In order to determine the CSR expense requirement for the financial year during which the inbound merger takes place, as well as in future years, the surviving Indian company shall have to factor in the combined financial picture. Two questions may be formulated here: (i) whether the profits of the foreign transferor company, absorbed by the surviving Indian company, should be taken into account in the calculation; and (ii) how the three-year computation period should be determined when the resultant entity does not have enough history in terms of its combined operations.

By way of an analogy, while the successor company acquires the past financial record of the amalgamating company with respect to the carry-forward of losses and depreciation under Section 2(1B) of the Income Tax Act, it is contended that the calculation of the CSR should take into account the financial history of both the merging companies from the date of commencement of the scheme. The distinction between the two lies in the fact that succession in taxation is legislatively recognized, while it is not the case with CSR.

The additional challenge is posed by the territory constraint imposed by Rule 4(6), under which CSR activity is restricted only to India. In a situation where the foreign transferor does not carry out any activity in India at all, there could be a conflict arising due to the expanded scale of operations of the Indian firm, but with limited CSR activity territory.

4.3 Ongoing CSR Projects and Foreign Entity Practices

The transferor foreign company might undertake various social responsibility initiatives, social responsibilities, or charitable programmes in its domestic jurisdiction. However, such projects will not be classified as 'CSR activities' under Schedule VII of the CA, 2013. Consequently, such CSR activities undertaken by the transferor foreign company cannot be considered as CSR expenditure of the resultant Indian company after the merger. Such double compliance issues arise because the Indian company needs to comply with the CSR obligations despite the legacy social responsibilities of the foreign company not falling under the ambit of Indian CSR legislation.
On the other hand, the existing CSR projects of the Indian company may have an expiry period of more than a year. They would also have been implemented in collaboration with various implementing agencies. Therefore, such CSR projects could be dependent on continuity of funding post-merger. The 2021 Amendment Rules stipulate that a company must make an annual plan for CSR activities for a minimum period of three years, and there is a requirement of impact assessment of the CSR projects.

4.4 NCLT Scheme Approval and CSR Disclosure Requirements

The interest of the employees and other interested parties needs to be addressed in the scheme report under Section 232(3)(h)[38], among others. There is judicial precedents from NCLT requiring schemes to

[37] Ministry of Corporate Affairs, General Circular 14/2021 Frequently Asked Questions on Corporate Social Responsibility, Dated: 25 August 2021, E-file no.CSR-05/01/2021-CSR-MCA, Available at: https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MzU0NzM=&docCategory=Circulars&type=open (last visited 27 march 2026).

[38] The Companies Act, 2013, Act No. 18 of 2013, Sec 232(3)(h).

specify how pending regulatory requirements will continue after the merger[39]. There is, however, no set template or disclosure required for CSR obligations under cross-border merger schemes.

The absence of mandatory CSR impact disclosure results in an imbalance in disclosure requirement between shareholders and creditors on one hand and the companies proposing cross-border mergers on the other. According to Section 232, shareholders and creditors deciding on a particular scheme must be well informed about the implications of such a merger. If CSR obligations, which influence financial performance, reputation, and regulatory requirements of the company, are undisclosed, informed consent will be undermined.

4.5 The CSR Committee and Governance Continuity

The second governance issue relates to the continuity of the CSR Committee. Under Section 135(2), the CSR Committee shall consist of at least one independent director. In the context of an inbound merger, when a foreign entity merges with an Indian entity, there will be a restructuring of the Board and its Committees. If the restructuring results in non-compliance with the independence criterion of the CSR Committee, it will lead to non-compliance with the CSR Act from the date of the merger.

Additionally, the foreign directors who join the board post-merger may not be aware of the CSR regulatory regime, Schedule VII activities, and NGRBC guidelines. This governance deficiency must be remedied by the NCLT when it approves the cross-border merger scheme by incorporating a condition requiring the reconstitution of the CSR Committee within a specified time frame under Section 135(2).

V. CSR CONFLICTS IN OUTBOUND MERGERS

5.1 Structural Analysis: The Disappearing Indian Entity

An even more structurally complicated case exists with respect to the CSR obligations when the outbound merger is considered from the perspective of CSR law. Under an outbound merger, the Indian company (transferor) gets amalgamated with the foreign company (resultant entity), while the latter survives the process as the continuing legal person. The former does not survive anymore, as all the assets, liabilities, rights, and obligations of the transferor vest in the resultant entity, which is registered in the foreign jurisdiction under the foreign law.

In terms of the CSR obligations of the transferor company before the merger, there can be considered the following categories: (a) CSR amount which remains unspent for the financial year of the merger; (b) any amount available in the unspent CSR account in accordance with Section 135(6); (c) multi-year CSR projects; (d) pending impact assessments; and (e) penalties which accrued because of the previous failure to comply with CSR law.

5.2 Fate of Unspent CSR Amounts in Outbound Mergers

The unspent CSR account as per Section 135(6) is an account that is required to be held by the Indian company with any bank within thirty days of completion of the financial year wherein unspent amounts for on-going projects need to be paid into the account. The problem here is that the unspent CSR account as per Section 135(6) needs to be transferred to the resultant foreign entity since there is no longer an Indian company after the effective date of the outbound merger. However, it needs to be noted that the foreign company does not come within the ambit

[39] National Company Law Tribunal (NCLT), Ahmedabad Bench, In re: Zydus Cadila Healthcare Ltd.,CP(CAA) No. 05/NCLT/AHM/2020 in CA (CAA) No. 09/2020, Available at: https://www.zyduslife.com/public/pdf/financial/Order%20Approving%20the%20Scheme.pdf (last visited 29 March 2026).

of Section 135(1) of the Act which states that it would apply to "every company".

This is because the unutilized portion of CSR is considered to be an ordinary liability of the foreign company, which can be used for any business purpose, since it was originally kept as trust money by the Indian company for use in CSR. This is contrary to the spirit of Section 135 of the Act, where the government had intended that the corporate profits should contribute to community well-being. However, the power given to the Central Government under Section 135(9) of the Act[40] cannot be exercised against foreign corporations not registered in India.

This regulatory loophole can be plugged using two different methods. Firstly, the conditions of Scheme under Section 232 could include mandatory transfer of unspent CSR amounts to the Prime Minister's National Relief Fund, National Foundation for CSR or any other fund specified in Schedule VII, which should be made a condition precedent for approving such outbound scheme by NCLT. Secondly, an amendment could be brought to Rule 25A, making it a prerequisite that no outbound merger can be approved till the time the unspent CSR liability of the Indian company is cleared.

5.3 Ongoing CSR Projects and Beneficiary Communities

Multisession CSR undertakings that include constructing school facilities, health centers, water sanitization infrastructure, and skill training programs establish a commitment not only towards the CSR statutory framework but also towards the beneficiary community involved. Rule 4 of the CSR Rules, amended in 2021, stipulates that CSR projects must have clear objectives and timelines. When an Indian firm undertaking such projects undergoes an outbound merger to become part of a foreign organization, their future becomes uncertain.

Contractual obligations arise out of agreements between parties and are automatically transferred to the successor firm post-merger and enforceable by the other party to the contract. However, most CSR projects have commitments that arise from internal corporate resolutions, memorandums of understanding (MoU), and approved corporate action plans. These are commitments made within the organization and do not constitute any legal right that a beneficiary community holds against an Indian company. The discontinuation of such ongoing CSR projects after an outbound merger may constitute a community injury for which there is no remedy under current law.

The possible legislation solution to the problem could consist in making scheme disclosure provide for: (i) a list of all CSR projects in progress; (ii) the amount of funds allocated for their implementation, as well as the amount that was actually distributed; (iii) the time period and target of the project; and (iv) how to implement them after the merger, either by the resultant company located in a foreign jurisdiction, implementing agencies, or by means of creating a CSR trust[41].

5.4 Extraterritorial Application of Section 135

A critical issue raised by outbound mergers is whether Section 135 of the Companies Act applies extraterritorially to the resultant foreign company in relation to the Indian operations and profits absorbed from the Indian transferor. The general rule of international law is that obligations of corporations arise in accordance with the lex incorporationis[42]. Nevertheless, there have been instances in which

[40] The Companies Act, 2013, Sec 135(9) (as inserted by Companies (Amendment) Act, 2020).
[41] Directive (EU) 2019/2121 of the European Parliament, Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02019L2121-20191212 (last visited 1 April 2026).
[42] Surya Deva and David Bilchitz (eds), Human Rights Obligations of Business: Beyond the Corporate Responsibility to Respect? Available at: https://www.academia.edu/127283633/Human_rights_obligations_of_business_beyond_corporate_responsibility_to_respect (last visited 1 April2026).

Indian courts have accepted that obligations may be imposed by Indian law on foreign corporations for their operations in India.

The requirement of compliance with the relevant Indian statutes, including the FEMA, is implied under Section 234(2) of the Act, together with Rule 25A (3) of the Rules. In fact, the RBI FAQ[43] relating to cross-border mergers explicitly mentions that the resultant foreign company must comply with Indian laws. However, no definition of "Indian laws" is provided, and it remains an unanswered legal question what the scope of Section 135 in relation to foreign resultant entities might be. It is respectfully argued that the reading of Section 135 in light of the principles of the NGRBC and the UN Guiding Principles on Business and Human Rights[44] would justify the applicability of the obligations in the context of outbound mergers.

5.5 Penalty Liability and Officer Responsibility

Under Section 135(7), the liability arises against the "company" and "every officer of the company who is in default." In case of an outward merger, the Indian company ceases to exist as a separate legal person. The officers of the defunct Indian company, who could now be officers of the resultant foreign company, can reasonably contend that any personal liability for non-compliance with CSR obligations that existed at the time of the merger ceased when the legal person itself ceased to exist. It is true that such a case would have to be argued by the officers of the foreign company in India.

In comparison to the approach adopted by the NCLT[45] during the process of insolvency proceedings, wherein the liabilities of the corporate debtor have not been found to abate automatically in the course of such proceedings and instead have to be addressed in the resolution plan, it is respectfully contended that the CSR penalty proceedings, being an outstanding proceeding, are not abated by the merger but rather transferred to the foreign entity as per the scheme of arrangement.

VI. COMPARATIVE PERSPECTIVES

6.1 The United Kingdom: Enlightened Shareholder Value and Scheme Continuity

The UK corporate governance regime, based on the Companies Act 2006, follows an approach of "enlightened shareholder value" under Section 172, where directors are expected to consider the consequences of their decisions in the long term, the interests of the employees, the community, and the environment[46]. In contrast to India, the UK has no mandatory CSR expenditure requirement but follows a more transparent approach with disclosures in the Strategic Report and the UK Corporate Governance Code.

For cross-border mergers, the governing legislation is the Cross-Border Mergers Regulations 2007 (implementing the EU Cross-Border Mergers Directive), which remains part of domestic legislation following Brexit. The Regulations contain comprehensive provisions regarding the rights of employees, such as works councils, and information requirements, which, by analogy, may show how the community/stakeholder obligations could be incorporated into the cross-border mergers approval process. Since there is no mandatory CSR obligation in the UK, CSR-related issues in cross-border mergers

[43] Supra Note 10, at 3.

[44] UN Guiding Principles on Business and Human Rights (UNGPs) (2011), Chapter II, Page 13-16, Available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf (last visited 2 April 2026).

[45] National Company Law Tribunal (NCLT), Mumbai Bench, In re: Videocon Industries Ltd., IA 196 of 2021 in CP (IB) 02/MB/C-II/2018, Order dated 8 June 2021, Available at: https://ibbi.gov.in/uploads/order/2021-06-15-144621-neg4w-1021c47865d77c62dea326ce261a7241.pdf (Last visited 2 April 2026).

[46] UK Companies Act 2006, Sec 172, Sec 895–901, Available at: https://www.legislation.gov.uk/ukpga/2006/46/pdfs/ukpga_20060046_en.pdf .

cannot be considered mandatory but will be resolved through due diligence and other factors.

The example of the UK can be applied in a way that may help India regarding its own problems in the same area, namely the issue of including conditions of the scheme as a means of dealing with the stakeholders' liabilities arising from a merger. Courts in the UK have always accepted such conditions included in the scheme and regarded them as being linked to business liabilities in terms of succession.

6.2 The European Union: Employee Protection and Social Continuity

As amended by Directive 2019/2121, the EU Cross-Border Mergers Directive provides an integrated approach to the regulation of cross-border mergers in the EU Single Market. An important aspect of this regulation is the requirement to guarantee employee rights to participate in the new company and to be informed regarding those, similar to the previous rights employees enjoyed in their former companies. Under Directive 2019/2121, the plan of the merger needs to contain information about the rules concerning employee information and consultation, the consequences for employment, and significant changes in relation to employment.

A non-mandatory European CSR framework, based on the European Commission's CSR Communication of 2011 and the Corporate Sustainability Reporting Directive, creates additional disclosure requirements applicable to the surviving firm after the merger. As of 2022, the Corporate Sustainability Reporting Directive (CSRD) obligates large companies incorporated in the EU to disclose their social, environmental, and governance activities, including community involvement. For cross-border mergers where one of the companies involved is from the EU, the surviving company will remain obligated to comply with this rule.

This is because, in the case of the EU, the approach taken would offer an excellent example for India regarding how the law should be formulated, as opposed to basing it solely on the idea of vesting. In this case, while making amendments to Rule 25A, the law can require that there should be a CSR Impact Statement in the scheme of arrangement that shows what would happen to all CSR obligations of the company within India.

6.3 Delaware: Statutory Vesting and Fiduciary Continuity

Under the DGCL, Section 259[47] states that on the consummation of a merger, all assets, rights, privileges, powers, liabilities, and duties of each corporation party to the merger shall become those of the surviving corporation. The universal principle of merger in which the property interests in one company pass into another forms the basis of the merger laws in common law jurisdictions. Since there is no federal CSR mandatory system in the US, the issue of CSR succession does not arise in the same manner as in India. However, the case of In re Caremark International Inc[48] in Delaware elucidates on the matter.

The court ruled that directors owe their shareholders a duty to establish adequate control systems to monitor corporate compliance. As such, the directors of the surviving corporation after a merger must fulfill their fiduciary duty to ensure that all the regulatory requirements of the constituent corporations, including any that may be required by foreign law, are complied with.

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[47] Delaware General Corporation Law, Sec 259(a), Available at: https://delcode.delaware.gov/title8/c001/sc09/index.html .

[48] In re Caremark International Inc. Derivative Litigation, 698 A.2d 959 (1996), Court of Chancery of Delaware, New Castle County, available at: https://www.law.upenn.edu/live/files/6824-in-re-caremark-intern-inc-derivative-litigationpdf (last visited 5 April 2026).

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The Business Roundtable's "Statement on the Purpose of a Corporation" of 2019[49], which has been endorsed by 181 CEOs of leading US corporations, is devoted to the idea of generating value for all stakeholders, consumers, employees, suppliers, communities, and stockholders. Although it is non-legally binding, it reflects the course in which the discussion on corporate governance will be heading worldwide, thereby underlining the need to fulfill social responsibilities.

6.4 Lessons for India

The lessons from the comparative study are numerous. Firstly, the UK and EU practices prove the feasibility of adopting a provision on stakeholder protection in the merger scheme. Secondly, the vesting doctrine of Delaware State together with the case law on fiduciary duties makes a solid ground for recognizing the transmissibility of corporate social responsibility obligations. Finally, the OECD Guidelines for Multinational Enterprises[50] and UN Guiding Principles on Business and Human Rights present an international normative foundation for extraterritorial recognition of CSR obligations of foreign resultant companies.

VII. CRITICAL ANALYSIS AND PROPOSED REFORMS

7.1 The Regulatory Vacuum: An Assessment

This regulatory gap becomes apparent in light of the analysis presented in the preceding sections of the paper in relation to the regulatory framework in India concerning CSR and cross-border merger laws. First, there is the legislative void. No provision exists that addresses the issue of the relationship between CSR responsibilities and cross-border mergers within Section 135, Section 234, Rule 25A, or the FEMA Regulations. Second, there is institutional separation. In this case, the regulation of CSR is carried out by the MCA while cross-border mergers fall under the purview of the NCLT, MCA, RBI, SEBI, and competition authorities, who lack any cooperation in regard to the regulation of CSR activities. Third, there are limits in definition.

India's cross-border M&A transactions have grown in numbers and complexity. Foreign direct investments into the country have come from the United States, the UK, Japan, and Singapore, while the Indian conglomerates have made notable acquisitions in the Americas and Europe. The Standing Committee on Finance[51] has proposed more strict enforcement of CSR regulations, yet without any specific mention of cross-border mergers.

7.2 The Stakeholder Rights Deficit

One important implication of the regulatory gap is the infringement of stakeholders' rights. Beneficiary communities who enjoy the CSR activities cannot seek the help of any statute for contesting the merger plan based on the justification that the merger plan will bring about the cessation of the ongoing CSR project. Employees of the agency that implements CSR have no similar legal right to participate like the employees in the EU in cross-border merger plans. It can be said that this issue forms a serious lacuna in India's law regarding stakeholders' rights when one takes into consideration India's stand in respect of stakeholder theory as prescribed under Section 135.

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[49] Business Roundtable, Statement on the Purpose of a Corporation (19 August 2019), available at: https://opportunity.businessroundtable.org/ourcommitment/ (last visited 5 April 2026).

[50] OECD Guidelines for Multinational Enterprises (2011, updated 2023), Chapter IV (Human Rights), Chapter VI (Environment), Available at: https://www.oecd.org/content/dam/oecd/en/publications/reports/2023/06/oecd-guidelines-for-multinational-enterprises-on-responsible-business-conduct_a0b49990/81f92357-en.pdf (last visited 5 April 2026).

[51] Standing Committee on Finance, 21st Report, Available at: https://sansad.in/getFile/lsscommittee/Finance/18_Finance_21.pdf?source=loksabhadocs (Last visited 6 April 2026).

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According to experts, the mandatory nature of the CSR activity in India means that the companies recognize that they have certain responsibilities other than towards their shareholders. Thus, the companies in India conform to the stakeholder theory of Freeman and multi-dimensional model of Carroll. If the above statement holds true, it stands to reason that the merger process should also recognize these responsibilities, which the existing law fails to do.

On the one hand, Naniwadekar & Varottil[52] have shown that the Indian directors' duties framework has steadily been infused with the idea of stakeholder interests, while according to authors like Sjåfjell[53], the concept of shareholder primacy continues to stand out as the key impediment to sustainable corporate governance. This issue becomes particularly pronounced when considering the situation in cross-border mergers where there is a clash of shareholder and community interests.

7.3 Proposed Legislative Reforms

7.3.1 Amendment to Rule 25A: Mandatory CSR Impact Statement

Rule 25A of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 needs to be modified such that every petition seeking approval for cross-border merger schemes must be accompanied by an obligatory "CSR Impact Statement," which includes information about: (a) CSR commitments undertaken by each constituent Indian company in the last three financial years; (b) amount of unutilized CSR funds at the time of merger implementation; (c) progress and status of all existing CSR initiatives; (d) approach towards the future of ongoing CSR activities; and (e) utilization of unspent CSR funds.

7.3.2 Amendment to Section 232: CSR Vesting Clause

The section 232 of the Companies Act needs to be amended so that the CSR obligations come within the purview of the obligations that vest in the resultant company on account of the merger. The amendment would require a new subsection to provide that the CSR obligations, which include both spent and unspent amounts, as well as any penalties imposed, of the transferor company become vested in the resultant company once the merger becomes effective.

7.3.3 Amendment to Section 234: Outbound Merger CSR Pre-Conditions

It is suggested that Section 234 be amended such that NCLT approval cannot be granted for an outbound merger if the transferring Indian company does not have:

(a) fulfilled any outstanding obligations relating to the amount to be spent on CSR activities, either through spending the money or depositing the amount into a fund mentioned in Schedule VII; and

(b) ensured proper provision for continuation of completion of all the long-term projects undertaken under the CSR activities through either the resulting foreign company or an independent agency with a corpus fund.

7.3.4 Inter-Regulatory Coordination: A CSR Compliance Certificate

Since cross-border mergers involve multiple agencies in the regulatory process, a "Certificate of CSR Compliance," which can be granted by the MCA after verifying the CSR Impact Statement, must be made a compulsory pre-requisite for seeking NCLT approval for cross-border merger proposals. Such a requirement will necessitate coordination between the NCLT,

[52] Mihir Naniwadekar and Umakanth Varottil, " The Stakeholder Approach Towards Directors' Duties Under Indian Company Law: A Comparative Analysis" (2016) NUS Working Paper 2016/006 NUS Centre for Law & Business Working Paper 16/03, Available at: https://law.nus.edu.sg/wp-content/uploads/2020/04/006_2016_Umakanth.pdf (Last visited 10 April 2026).

[53] Beate Sjåfjell and others, "Shareholder Primacy: The Main Barrier to Sustainable Companies", Cambridge University Press, 2015, Available at: https://ssrn.com/abstract=2664544 (last visited 10 April 2026).

MCA, RBI, and SEBI, and help ensure that CSR compliance is not overshadowed by other commercial considerations in the approval process.

7.3.5 CSR Due Diligence Standards for Cross-Border M&A

Organizations like the Confederation of Indian Industry[54] have pushed for due diligence norms in relation to CSR in mergers and acquisitions. The MCA may formulate such guidelines mandating that in any cross-border merger transaction, the legal due diligence report would need to incorporate a CSR compliance audit, considering the following aspects: (i) computation of CSR obligations; (ii) compliance record; (iii) current obligations; and (iv) projects. Such guidelines could refer to the GRI Standards on CSR reporting[55] and the OECD Guidelines for Multinational Enterprises.

7.4 Judicial Interpretation: The Role of NCLT

In the absence of any legislative changes, the NCLT would have an important part to play in building up the jurisprudence of CSR succession in cross-border M&A transactions. The Tribunal's power under Section 232 to grant approval to schemes with conditions attached, and its practice of making compliance conditions part of the merger scheme, offers the potential to make CSR succession provisions mandatory in cross-border mergers through judicial activism even in the absence of statutory provisions mandating the same.

7.5 The SEBI Dimension: ESG Disclosures and Listed Companies

In the case of listed entities, since the SEBI's BRSR regime (Regulation 34(2)(f) of the Listing Regulations)[56], which compels the top 1000 listed entities on the basis of market capitalisation to disclose on ESG and CSR expenses, impacts on communities and social programmes, can be used as a model in the case of cross-border mergers involving listed companies, a new "CSR Merger Disclosure" could become part of the process and disclose the CSR aspects of the intended merger.

The Kotak Committee[57] on Corporate Governance had suggested more comprehensive disclosure regarding ESG and CSR requirements for listed companies. For purposes of assessing any issues arising out of CSR in the context of cross-border M&A, the SEBI's Circular on Schemes of Arrangements could be modified to mandate the inclusion of a CSR disclosure akin to the BRSR regime in the scheme itself.

VIII. CONCLUSION

In this respect, India’s mandatory CSR scheme, conceived from the legislative intent to use corporate means to promote social benefit, finds itself at a frontier which its legislators did not foresee when designing the provisions namely, international mergers and acquisitions. The clash between the territoriality of Section 135 of the Companies Act and the international nature of modern M&A transactions leads to regulation conflicts which are not just about technicalities; rather, they involve the very issue whether a corporate entity's social responsibility survives the death of the corporation and the crossing of borders.

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[54] Confederation of Indian Industry (CII) “Globally Competitive India: Partnerships for Sustainable and Inclusive Growth”, Available at: https://www.cii.in/pdf/AR_2025_New.pdf (Last visited 11 April2026).

[55] Global Reporting Initiative (GRI) Standards, Available at: https://www.globalreporting.org/media/nmmnwfsm/gri-policymakers-guide.pdf (last visited 12 April 2026).

[56] SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, Regulation 34(2)(f).

[57] Securities and Exchange Board of India, Report of the Committee on Corporate Governance (Kotak Committee Report, 2017), Available at: https://www.sebi.gov.in/reports/reports/oct-2017/report-of-the-committee-on-corporate-governance_36177.html (last visited 13 April 2026).

This paper has established that these conflicts are indeed real and significant. With respect to inbound M&As, there is no provision addressing the adjustment of CSR limits, the CSR committee's continuity during the transition, or foreign CSR entity culture integration. In outbound M&As, when it is the Indian corporate that is subsumed within another entity, the challenges are more serious: the risk of commercialization of remaining CSR funds, the termination of ongoing CSR activities, and the extinguishment of CSR penalty lawsuits.

In comparing the UK, EU, and Delaware approaches, it becomes evident that more advanced legal systems have created devices, including scheme conditions, employee protection requirements, and fiduciary law doctrine, which help deal with social obligations' transfer in mergers. While India remains the only country requiring companies by law to incur spending on CSR activities, India happens to be the most in need and the least prepared to do so.

It is these deficiencies that the suggested reforms attempt to cure, without creating excessive barriers for genuine business activities. Such innovations include a mandatory CSR impact statement in Rule 25A, CSR transfer provisions in Section 232, CSR prerequisites to outbound mergers in Section 234, an interdepartmental CSR compliance certificate, and ESG merger disclosure under the authority of SEBI. These regulations follow the idea, widely supported in various stakeholder, CSR, and comparative corporate governance literature, that corporate responsibilities are never extinguished in a merger process but only transferred.

Here lies the core of the issue: upon the merging of the two corporate entities, the social contracts associated with them become merged as well. The community which receives benefits from the CSR initiatives of the Indian corporation – the construction of school buildings, digging of wells, and support of livelihoods – had not agreed to the merging agreement, and they remain stakeholders in every sense of the word, whose claim to fulfillment of the obligations toward them must not be nullified by NCLT rulings or FEMA regulations.

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