Present Scenario of Mergers and Acquisitions in India: In Perspective of Companies Law

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Introduction

The process of mergers and acquisitions has gained substantial importance in today's corporate world. This process is extensively used for restructuring the business organizations. In India, the concept of mergers and acquisitions was initiated by the government bodies. Some well-known financial organizations also took the necessary initiatives to restructure the corporate sector of India by adopting the mergers and acquisitions policies. The Indian economic reform since 1991 has opened up a whole lot of challenges both in the domestic and international spheres. The increased competition in the global market has prompted the Indian companies to go for mergers and acquisitions as an important strategic choice. The trends of mergers and acquisitions in India have changed over the years. The immediate effects of the mergers and acquisitions have also been diverse across the various sectors of the Indian economy. Till recent past, the incidence of Indian entrepreneurs acquiring foreign enterprises was not so common. The situation has undergone a sea change in the last couple of years. Acquisition of foreign companies by the Indian businesses has been the latest trend in the Indian corporate sector. The Indian IT and ITES sectors have already proved their potential in the global market. The other Indian sectors are also following the same trend. The increased participation of the Indian companies in the global corporate sector has further facilitated the merger and acquisition activities in India. The various factors that played their parts in facilitating the mergers and acquisitions in India are favorable government policies, buoyancy in economy, additional liquidity in the corporate sector, and dynamic attitudes of the Indian entrepreneurs are the key factors behind the changing trends of mergers and acquisitions in India. Even though mergers and acquisitions (Hereinafter referred as M&A) have been an important element of corporate strategy all over the globe for several decades, research on M&As has not been able to provide conclusive evidence on whether

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they enhance efficiency or destroy wealth. There is thus an ongoing global debate on the effects of M&As on firms. This article seeks to explore the trends and progress in M&As India

Overview of M&A Under Companies Act

M&A have been a part of the business world for centuries. In today's dynamic economic environment, companies are often faced with decisions concerning these actions - after all, the job of management is to maximize shareholder value. Through mergers and acquisitions, a company can develop a competitive advantage and ultimately increase shareholder value. The said terms to a layman may seem alike but in legal/ corporate terminology, they can be distinguished from each other.

Merger: A full joining together of two previously separate corporations. A true merger in the legal sense occurs when both businesses dissolve and fold their assets and liabilities into a newly created third entity. This entails the creation of a new corporation.

Acquisition: Taking possession of another business. Also called a takeover or buyout. It may be share purchase (the buyer buys the shares of the target company from the shareholders of the target company. The buyer will take on the company with all its assets and liabilities.) or asset purchase (buyer buys the assets of the target company from the target company) In simple terms, A merger involves the mutual decision of two companies to combine and become one entity; it can be seen as a decision made by two "equals", whereas an acquisition or takeover on the other hand, is characterized the purchase of a smaller company by a much larger one. This combination of "unequals" can produce the same benefits as a merger, but it does not necessarily have to be a mutual decision. A typical merger, in other words, involves two relatively equal companies, which combine to become one legal entity with the goal of producing a company that is worth more than the sum of its parts. In a merger of two corporations, the shareholders usually have their shares in the old company exchanged for an equal number of shares in the merged entity. In an acquisition, the acquiring firm usually offers a cash price per share to the target firm’s shareholders or the acquiring firm's share's to the shareholders of the target firm according to a specified conversion ratio. Either way, the purchasing company essentially finances the purchase of the target company, buying it outright for its shareholders

Joint Venture: Two or more businesses joining together under a contractual agreement to conduct a specific business enterprise with both parties sharing profits and losses. The venture is for one specific project only, rather than for a continuing business relationship as in a strategic alliance.

Strategic Alliance: A partnership with another business in which you combine efforts in a business effort involving anything from getting a better price for goods by buying in bulk together to seeking business together with each of you providing part of the product. The basic idea behind alliances is to minimize risk while maximizing your leverage.

Partnership: A business in which two or more individuals who carry on a continuing business for profit as co-owners. Legally, a partnership is regarded as a group of individuals rather than as a single entity, although each of the partners file their share of the profits on their individual tax returns. Many mergers are in truth acquisitions. One business actually buys another and incorporates it into its own business model. Because of this misuse of the term merger, many statistics on mergers are presented for the combined M&A that are occurring. This gives a broader and more accurate view of the merger market

Objectives of M &A

The main objective of Merger & Acquisition transaction is as follows:

- Proper utilization of all available resources.
- To prevent exploitation of unutilized and underutilized assets and resources.
- Forming a strong human base.
- Reducing tax burden.
- Improving profits.
- Achieving savings in monitoring costs.

Legal Procedures for Merger and Amalgamations

Sections 390 to 394 of the Companies Act 1956 (the "Merger Provisions") and Section 230 to 234 of Companies Act 2013(hereinafter referred CA) govern mergers and schemes of arrangements between a company, its shareholders. That the provisions of CA 2013 have been notified, the implementation of the same remains to be tested. The currently applicable Merger Provisions are in fact worded so widely, that they would provide for and regulate all kinds of corporate restructuring that a company can possibly undertake, such as mergers, amalgamations, demergers, spin-off/hive off, and every other

compromise, settlement, agreement or arrangement between a company and its members and/or its creditors. Since a merger essentially involves an arrangement between the merging companies and their respective shareholders, each of the companies proposing to merge with the other(s) must make an application to the Company Court having jurisdiction over such company for calling meetings of its respective shareholders and or creditors. The Court may then order a meeting of the creditors or shareholders of the company. If the majority in number representing 3/4th in value of the creditors and shareholders present and voting at such meeting agrees to the merger, then the merger, if sanctioned by the Court, is binding on all creditors/shareholders of the company. The Merger Provisions constitute a comprehensive code in themselves, and under these provisions Courts have full power to sanction any alterations in the corporate structure of a company. For example, in ordinary circumstances a company must seek the approval of the Court for effecting a reduction of its share capital. However, if a reduction of share capital forms part of the corporate restructuring proposed by the company under the Merger Provisions, then the Court has the power to approve and sanction such reduction in share capital and separate proceedings for reduction of share capital would not be necessary. Sections 230 to 234 of CA 2013 recognize and permit a merger/reconstruction where a foreign company merges into an Indian company. The Merger Provisions do permit an Indian company to merge into a foreign company under the merger provisions under Section 234 of the CA 2013.[2]

Motives behind M&A

These motives are considered to add shareholder value. This generally refers to a method in which the average cost per unit is decreased through increased production, since fixed costs are shared over an increased number of goods. In a layman's language, more the products, more is the bargaining power. This is possible only when the companies merge/ combine/ acquired, as the same can often obliterate duplicate departments or operation, thereby lowering the cost of the company relative to theoretically the same revenue stream, thus increasing profit. It also provides varied pool of resources of both the combining companies along with a larger share in the market, wherein the resources can be exercised. This motive assumes that the company will be absorbing the major competitor and thus increase its power to set prices and improved market reach and industry visibility - Companies buy companies to reach new markets and grow revenues and earnings. A merge may expand two

[2] Companies Act 2013.

companies' marketing and distribution, giving them new sales opportunities. A merger can also improve a company's standing in the investment community: bigger firms often have an easier time raising capital than smaller ones.

Advantages of M&A

The general advantage behind mergers and acquisition is that it provides a productive platform for the companies to grow, though much of it depends on the way the deal is implemented. It is a way to increase market penetration in a particular area with the help of an established base.

Conclusion

In real terms, the rationale behind mergers and acquisitions is that the two companies are more valuable, profitable than individual companies and that the shareholder value is also over and above that of the sum of the two companies. Despite negative studies and resistance from the economists, M&A's continue to be an important tool behind growth of a company. Reason being, the expansion is not limited by internal resources, no drain on working capital - can use exchange of stocks, is attractive as tax benefit and above all can consolidate industry - increase firm's market power. With the FDI policies becoming more liberalized, Mergers, Acquisitions and alliance talks are heating up in India and are growing with an ever increasing cadence. They are no more limited to one particular type of business. The list of past and anticipated mergers covers every size and variety of business -- mergers are on the increase over the whole marketplace, providing platforms for the small companies being acquired by bigger ones. The basic reason behind mergers and acquisitions is that organizations merge and form a single entity to achieve economies of scale, widen their reach, acquire strategic skills, and gain competitive advantage. In simple terminology, mergers are considered as an important tool by companies for purpose of expanding their operation and increasing their profits, which in façade depends on the kind of companies being merged. Indian markets have witnessed burgeoning trend in mergers which may be due to business consolidation by large industrial houses, consolidation of business by multinationals operating in India, increasing competition against imports and acquisition activities. Therefore, it is ripe time for business houses and corporates to watch the Indian market and grab the opportunity.