VOLUME 3 | ISSUE 1

INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

AMALGAMATION OF COMPANIES

- Siddheshwar Ashok Kashid[1]

ABSTRACT

Simply put, mergers and acquisitions are two different names for the same activity. The MRTP Act of 1969 reformed how company mergers were regulated and rewarded. Previously, only a small fraction of businesses ever joined forces. Companies that are insolvent or lack the cash to operate independently face an existential threat if they merge with other businesses through an amalgamation. For companies to survive in the business world, mergers and acquisitions are often the only viable option. Through these transactions, companies are able to pool their resources in order to acquire cash, eliminate competition, save tax, increase shareholder value, diversify risk, and spur expansion. Since disputes are inevitable given the scope of most firms' operations and the varied interests of its employees and other stakeholders, many businesses eventually merge with or are acquired by others, or undergo some other form of internal reorganisation. Stakeholders confront a number of challenges when two companies join forces. The operation of the business should go off without a hitch. In order to stay in business, many companies have merged into one. The purpose of this study is to examine the amalgamation process and identify areas for improvement. Companies that choose to merge with one another may incur additional tax obligations.

Key words: Amalgamation, Insolvency, Combination, Share capital, Share holder.

1) INTRODUCTION

[1] LL.M Candidate at Shri. Navalmal Firodia Law College, Pune.

Amalgamation is the process of merging or absorbing one company into another to produce a new, larger company. The combined entities will replace the original corporations that were merged. The resulting corporation is endowed with the assets, rights, and powers, and is obligated to fulfil the commitments, of both the original corporations and the merged entity.

When two or more companies join forces, it's called an amalgamation. In contrast to a merger, a company's existence is terminated upon an amalgamation. To hold the merged assets and liabilities of the two companies, a new entity is formed. Companies in the same industry, or those with sufficiently similar operations, are natural candidates for merger and/or amalgamation. When businesses join forces, they can increase their scope of operations and the variety of goods and services they offer to customers. A larger company is formed when two or more corporations combine into one, hence the term "amalgamation." In most cases of mergers and acquisitions, the larger company acquires the smaller one, making the resulting entity larger.

2) TYPES OF AMALGAMATION:-

i. Amalgamation by sale of shares:-

In this type shares are sold and registered in the name of thepurchasing company. The selling shareholders receive either compensation or share in acquiring company.

ii. Amalgamation by sale of undertaking:-

Amalgamation of two or more companies and that under the scheme the whole or any part of the undertaking, property or liabilities of any company is to be transferred to another company

iii. Amalgamation by sale and dissolution:-

It is concerned by the tribunal in connection with voluntary winding up of 2 company. The tribunal can order dissolution of a company without winding up.

iv. Amalgamation by scheme of arrangement:-.

Chapter v of the companies Act provides Power to the companies to apply for sanction of the Tribunal for arrangement, compromise of amalgamation.[2]

3) POWER OF ALGAMATION:-

Memorandum of incorporation should grant authority to merge. If necessary, additions can be made by revising the memorandum. A company's financial stability is irrelevant to whether or not it should implement a programme. a corporation that meets the criteria for winding up under this Act. means not just an insolvent company but also any company that has registered under the Act, as all such companies are subject to the winding up procedures of the Act.

4) AMALGAMATION OF CERTAIN COMPANIES (SMALL AND HOLDING AND SUBIDIARY COMPANIES) (SEC-233):-

This provision is intended to make it easier to combine smaller firms, holding corporations and their fully owned subsidiaries, or any other prescribed groups of organisations into a single entity.

Both the transferor company or companies and the transferee company must comply with the following conditions before the facility can be used:

a) They must give 30 days' notice of the proposed scheme to the jurisdiction in which the registered offices of the companies are located or to any persons who will be affected by the scheme.
b) The firms take any objections or rejections into account at their general meeting, and the scheme is accepted if ninety percent of the entire number of shares are held in favour of it.
c) Each company merging has submitted a declaration of solvency to the registrar in the jurisdiction where its principal place of business is located.
d) The scheme is authorised at a meeting covered by the company by giving notice of 21 days along with the scheme to its creditors, with the majority representing nine-tenths in value of

[2]Avtar Singh, *Company Law*592(Eastern book company)16th edition 2015.

the creditors or class of them of respective firms. The scheme also needs to be approved in writing by a majority of the members.[3]

5) AMALGAMATION OF COMPANY WITH FOREIGN COMPANY:-

Schemes of amalgamation between businesses registered under the Act and companies established under the jurisdiction of such nations as may be notified by the Central Government from time to time must be governed by the provisions of Chapter 15 of the Act, specifically Sections 230 through 240.

A company that is registered under the Act may merge with another company established under the Act or with a company that is registered under the RBI if the Central Government makes the necessary rules. The scheme to be drafted for the purpose of such an amalgamation may provide for payment of consideration for shareholders of the amalgamating firm in cash or in depositary receipts.

Any corporation that was not formed in India is considered a foreign firm even if it maintains an office in the country.

6) AMALGAMATION OF BANKING COMPANIES:-

Bank mergers are governed by a comprehensive self-contained code included in Section 44-A of the Banking Regulation Act of 1949. The RBI has the authority to approve a scheme for the merger of banking businesses under section 44-A, and it can also evaluate the value of dissenting shareholders' shares and order that they be paid out at market value if they vote against the scheme.

For instance 1) The merging of the United Bank with the Oriental Bank of Commerce to form the Punjab National Bank.

2) The Syndicate Bank was merged into the Canara Bank.

7) AMALGAMATION IN PUBLIC INTEREST:-

[3] Avatar Singh, *Company Law*, 603(Eastern book company)16th edition 2015.

The Central Government may, by order published in the Official Gazette, legislate for the amalgamation of two or more corporations into a single firm if it determines that such an action is necessary in the public interest.

Government order may specify that the merged corporation has a certain constitution, assets, powers, rights, interests, authorities, and privileges, as well as certain responsibilities and liabilities. Furthermore, the order may include provisions that are consequential, incidental, or additional.

As nearly as possible, the rights and interests of every member and creditor of each firm before to the amalgamation will be preserved in the resulting entity. On the other hand, he will be entitled to compensation if his rights in the combined firm are smaller. Compensation will be assessed by a government-prescribed authority, and paid by the resulting corporation.

The Central Government must provide each company with a draught of the proposed order of amalgamation before issuing the final order.

This is required so that these businesses cannot submit their concerns and recommendations. The government shall set the time limit for filing objections, which shall not be less than two months. When the government receives such feedback, it may decide to make changes to the proposed order.

Copies of each such order must be submitted to the House and Senate as soon as practicable.[4]

8) REGISTRATION OF OFFERS OF SCHEMES INVOLVING TRANSFER OF SHARES:-

Any scheme or contract involving a transfer of shares under Section 237 must comply with the following conditions:

a) the circular containing such offer and recommendation by directors to members to accept such offers must be accompanied by such information in such manner as may be prescribed;

[4]Avatar Singh, *Company Law,* 609(Eastern book company)16th edition 2015.

b) a statement by the transferee company disclosing the steps it has taken to ensure that necessary cash will be available must be made; and

c) every such circular must be presented to the Registrar for registration.

If a statement does not contain the required information or lays forth information in a manner likely to provide false impression, the registrar may refuse to register the statement for reasons to be noted in writing. Within 30 days, the registrar must notify the parties of the rejection. The registrar's denial order might be challenged before the tribunal. A director might be fined anywhere from Rs 25,000 to Rs 5,00,000 if he or she distributes an unregistered circular..[5]

9) PRESERVATION OF BOOKS AND PAPERS OF AMALGAMTED COMPANY:

The books and papers of a company cannot be sold or otherwise disposed of without the approval of the Central Government if that company has been merged into or acquired by another company pursuant to any of the foregoing provisions of the Act. Before providing such approval, the government may select someone to review the company's books and records to look for evidence of illegal activity in the company's promotion, founding, management of its affairs, mergers, or acquisitions of shares.

10) HOW AMALGAMATION IS DIFFERENT FROM MERGER:-

The two corporations being merged do not exist as separate legal entities, making Amalgamation distinct from Merger. When two companies merge into one, their assets and debts become the responsibility of the new entity.

- The difference between amalgamation and merger is subtle, but both lead to the combination of many enterprises.
- Amalgamation is a form of consolidation that often occurs during a merger.
- A new company is formed when two or more businesses merge. A merger, on the other hand, is a process of consolidation in which the end result could be a brand-new corporation or an existing one.

[5] Avatar Singh, *Company Law*, 610(Eastern book company)16th edition 2015.

- A merger involves at least two entities, but the Amalgamation process necessitates three.
- In an amalgamation, both companies are of roughly the same size, but in a merger, the absorbing company is typically larger than the one it swallows.
- In an amalgamation, all assets and obligations are taken on by a new company rather than being written off by the old ones. In a merger, the assets and liabilities of the company being absorbed are combined with those of the acquiring company.
- In the event of a merger, the shareholders of the absorbed firm are allocated shares of the absorbing company. In an Amalgamation, the current companies' shareholders receive equity in the newly formed company.

11) RIGHTS OF STAKEHOLDER:-

a) Record the amount of investors shareholding in companies records.
b) The shareholder has the right to have the Share ownership registered or to transfer the ownership and rights through a power of attorney or a special Authorization defined by the company for the matter.
c) Receive the declared share of the dividends distributed receive a share in the companies assets in case of liquidation.
d) Elect board of directors members.
e) Participate in companies general assembly and vote on decisions unless the subject of vote is related to the shareholders interest.
f) Receive information and data relating to companies activities, its operational strategy and investment strategy on a periodic basis.