VOLUME 4 | ISSUE 2

INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

THE LEGAL IMPLICATIONS OF CORPORATE MERGERS AND ACQUISITIONS ACTIVITIES

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Abstract

Mergers and acquisitions (M&A) provide a vivid image of the corporate landscape, in which businesses dance between partnership and conquest. These powerful transactions rearrange the deck, changing market dynamics and industries while also leaving a path of opportunity and risk. M&A is essentially the amalgamation of businesses through financial agreements. A two-step dance consisting of mergers, in which two corporations join forces to form a new company, and acquisitions, in which one entity swallows another, absorbing its assets or activities. Whether motivated by a desire to increase market share, get access to synergistic technologies, or just the ruthless quest of domination, these transactions have far-reaching consequences. On the plus side, M&A may unearth a treasure trove of advantages. Cost savings and operational efficiency can be realized through economies of scale and pooled resources. Diversification across markets or product lines can help to reduce risk and weather economic storms. Access to people, technology, and client bases may help to promote innovation and success. In a word, mergers and acquisitions may be a powerful driver for wealth creation, not just for the firms involved, but potentially for the whole industry and even the economy.

Finally, the success of an M&A transaction is dependent on a careful mix of strategy, execution, and a deep knowledge of the risks involved. While the allure of expansion and synergy is apparent, navigating the complicated tango of mergers and acquisitions takes careful analysis, diligent preparation, and a fair dose of prudence. Only then can these corporate mergers and acquisitions become a harmonic dance, resulting in a more robust and vibrant business environment.

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Introduction

Mergers and acquisitions (M&A) are like complicated chess games conducted on the business battlefield. Understanding the various forms of M&A and their underlying reasons is analogous to interpreting each player's movements, exposing their plans and probable results. The key Legal Frameworks of Merger & Acquisition Activities in India:

The Companies Act of 2013: This is the foundational legislation for mergers and acquisitions, providing processes for mergers, amalgamations, acquisitions, and demergers. It oversees shareholding patterns, shareholder approvals, valuation procedures, and the preservation of minority shareholder interests.

The Competition Commission of India (CCI) Act, 2002: Anti-competitive behaviors and monopolies are targeted. M&As that surpass specific criteria require CCI clearance to ensure that the transaction does not impair market competition.

Securities and Exchange Board of India (SEBI) Regulations: govern disclosure obligations, investor protection, and fair market practices for listed businesses involved in mergers and acquisitions.

Foreign Direct Investment (FDI) Regulations: Outline permitted industries, investment limits, and approval procedures for foreign investments in Indian enterprises.

Mergers:

A voluntary arrangement that merges two current businesses into one new one. Mergers are frequently used to broaden a company's reach, grow into new markets, or acquire market share. Now, here Mergers can be structured in a number of different ways, based on the relationship between the two companies involved in a deal :

Horizontal Mergers: A horizontal merger occurs when organizations tangoing in the same industry decide to waltz together. This strategic partnership intends to become a dominating market leader by aligning market shares and magnifying economies of scale. Consider two fashion businesses merging to provide clients with a larger wardrobe while drowning out their competitors' labels. Imagine two nearby kingdoms constantly battling over land and resources. They decide to end the fight by joining forces and building a single, mighty empire. This is the essence of a horizontal merger, in which rival firms in the same industry join together to control

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the market, decrease costs, and wield more influence. Consider two grocery businesses merging to become the town's one-stop shop.

Vertical Mergers: A vertical merger connects enterprises at different levels of the supply chain ladder. This strategic alliance intends to simplify processes and safeguard critical resources, giving the newly created corporation complete control over the melody from raw materials to completed goods. Consider a coffee behemoth purchasing a coffee farm to ensure a seamless and sustainable mix from bean to cup. Consider a talented blacksmith who is relying on untrustworthy iron sources. He purchases a neighboring iron mine to assure a consistent supply of high-quality resources. A vertical merger occurs when a corporation merges several levels of its supply chain, acquiring control over crucial resources and simplifying operations. Consider a clothes manufacturer purchasing a cotton plantation in order to secure raw supplies and reduce manufacturing expenses.

Congeneric Mergers: Companies in related industries can achieve harmony through a congeneric merger, even if they are not identical twins. This strategic alliance broadens their product portfolio, allowing them to provide consumers with a more comprehensive menu of options. Consider a sports equipment maker collaborating with a fitness app developer to create a unified exercise environment that includes everything from equipment to instruction. Two kingdoms decide to merge their forces, each excelling in a distinct facet of battle. Swordsmen and archers, formerly enemies, now battle alongside one another, providing a more diversified and deadly army. This is similar to a congeneric merger, in which firms from similar industries join together to broaden their product portfolio and provide clients with a broader selection of options. A fitness tracker firm acquiring a clothing producer is an excellent example.

Conglomerate Mergers: A conglomerate merger occurs when two worlds clash. This strategic collaboration strives to diversify portfolios, reduce risk, and uncover unforeseen synergies. Consider a media conglomerate combining with a technological behemoth to create an engaging tale that spans screens and platforms. Consider two empires, one that rules the land and the other that rules the oceans. They form a strategic partnership and build a broad, diverse empire, expanding their power across several areas. This is the core of a conglomerate merger: two wholly unrelated firms join forces to diversify their assets, limit risk, and capitalize on latent synergies. Consider a tech titan acquiring a physical retail chain to diversify its revenue sources and get access to a new consumer base.

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Mergers may also be distinguished by following two financing methods, each with its own ramifications for investors.

Purchase Mergers: As the name implies, this type of merger happens when a certain company buys another. The acquisition is accomplished in cash or through the issuance of a debt instrument. The sale is taxable, which attracts acquiring corporations that benefit from the tax breaks. Acquired assets can be written up to the actual purchase price, and the difference between the book value and the purchase price can be depreciated yearly, decreasing the acquiring company's tax liability.

Consolidation Mergers: This merger creates a completely new firm, and both companies are purchased and amalgamated under the new corporation. The tax implications are identical to those of a purchase merger.

Acquisitions:

A popular type of M&A, where one company buys another and transfers ownership.

Hostile Takeover: When an undesired suitor enters the picture, a hostile takeover begins. In this dramatic act, the target business employs legal and financial strategies to fend off the acquirer's unrelenting pursuit, determined to remain an independent star on the corporate stage. Consider a conventional publishing business battling off a hostile takeover attempt by a digital media behemoth, preserving its editorial independence and literary history. Imagine a crafty ruler who, jealous of his neighbor's bountiful territories, stages a surprise attack and seizes possession. This is a hostile takeover, in which the target firm fights back against the acquirer's advances, including legal and financial methods to retain independence. Consider a media corporation pursuing a hostile takeover of a competing news network in order to gain market dominance.

Friendly Acquisition: Acquisitions are not always forceful takeovers. In a friendly acquisition, the target firm accepts the acquirer's offer after being influenced by promises of improved market access, access to resources, and the opportunity to learn from seasoned maestros. Consider a promising AI business being purchased by a big behemoth, getting access to huge computer capacity and worldwide reach to scale its breakthroughs. Two war-weary countries discuss a peaceful union. In search of safety and wealth, the smaller kingdom decides to be absorbed by the larger one. This is a friendly acquisition, in which the target firm accepts the acquirer's offer freely, frequently driven by greater market access, access to resources, and managerial skills.

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Consider the acquisition of a tiny biotech firm by a pharmaceutical behemoth in order to obtain access to its distribution network and clinical trial experience.

Consolidation:

The act or process of uniting two or more corporations by dissolving existing ones and creating a single new corporation.

Forward Consolidation: Forward consolidation takes center stage when industry dispersion gives way to consolidation. Smaller businesses band together to establish a united organization with stronger market strength and economies of scale. Consider smaller banks uniting to compete with national behemoths by providing a larger variety of financial services to their areas. Consider a battlefield strewn with armies battling to retain their footing. To confront a greater foe, these smaller armies combine to form a single, cohesive army. Forward consolidation occurs when smaller firms in an industry join to become a bigger, more competitive organization, which is generally driven by rising industry concentration and economies of scale. Consider a merger of many regional banks to compete with national financial organizations.

Backward Consolidation: Backward consolidation allows suppliers and distributors to join the consolidation parade. This strategic relationship allows them to negotiate from a position of strength with larger competitors, affecting prices and directing their own fate inside the supply chain. Consider farmer's cooperatives teaming together to deal with supermarket chains in order to ensure fair rates for their produce. Consider a group of farmers who, tired of being exploited by greedy middlemen, band together to control the flow of their produce. This is an example of reverse consolidation, in which suppliers and distributors join together to strengthen negotiating leverage against larger manufacturers and retailers, acquiring a larger market share and influencing price. Consider dairy producers creating a cooperative to jointly bargain higher milk pricing.

Reason for Mergers and Acquisition

Expand performance

The reason for mergers and acquisitions is to perform better in the market as the two combined companies' performance are more than two individual companies. It may be due to cost reduction or higher revenues.

Higher growth

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Growth through merger and acquisition that is inorganic growth through merger and acquisition is a quicker way to achieve revenues for a company than usual organic growth. A company can get the benefit of getting the latest capabilities by merger and acquisition without spending on developing them internally.

Stronger market power

In horizontal merger companies can obtain a high market and also the power to influence power to influence prices. Vertical merger also helps in market power as the companies will control the supply chain without any disturbance in supply.

How Acquisition are Financed

A corporation can purchase another firm using cash, shares, debt assumption, or a combination of the three. In smaller transactions, it is also usual for one business to purchase all of the assets of another. Company X acquires all of Company Y's assets for cash, leaving Company Y with only cash (and any debt, if any). Of course, Company Y becomes a shell and will ultimately liquidate or expand into other markets.

A reverse merger is another type of purchase arrangement that allows a private firm to become publicly traded in a very short amount of time. Reverse mergers occur when a private corporation with promising prospects and a strong desire for finance acquires a publicly traded shell company with no actual business activities and little assets. The private firm reverses its merger with the public company, and the two companies combine to form an entirely new public corporation with marketable shares.

Valuation Conundrum in M&A

When businesses begin on the transformative path of mergers and acquisitions, identifying the fair and correct value of the merging/acquired firms becomes a critical stage act. This delicate dance between shareholder protection and tax consequences is dependent on sound valuation procedures, but the possibility of disagreements lurks in the midst of the complicated choreography. The Companies Act outlines a framework for valuation, but the technique of choosing and the interpretation of financial subtleties offer fertile ground for arguments.

The Companies Act grants flexibility in choosing the valuation method, and a diverse toolkit lies at the fingertips of dealmakers. Each method brings its own strengths and weaknesses, demanding careful consideration:

Price-to-Earnings Ratio (P/E Ratio): A price-to-earnings ratio (P/E ratio) is used by an acquiring business to make an offer that is a multiple of the target company's earnings.

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Examining the P/E multiples for all stocks in the same industry group will provide the acquiring business with strong insight for the target's P/E multiple.

Enterprise-Value-to-Sales Ratio (EV/Sales): The purchasing corporation uses an enterprise-value-to-sales ratio (EV/sales) to make an offer as a multiple of revenues while keeping in mind the price-to-sales (P/S ratio) of competing companies in the industry.

Discounted Cash Flow (DCF): A discounted cash flow (DFC) analysis, a major valuation method in Mergers and Acquisition, calculates a company's present value based on its expected future cash flows. Forecasted free cash flows (net income + depreciation/amortization (capital expenditures) change in working capital) are discounted to present value using the company's WACC. To be sure, DCF is difficult to master, but few tools can compete with it.

Replacement Cost: Acquisitions are sometimes predicated on the cost of replacing the target firm. Assume that the worth of a corporation is simply the sum of its equipment and personnel expenses. The purchasing corporation may almost command the target to sell at that price, or it will build a competitor at the same price.

Naturally, assembling strong management, acquiring land, and purchasing the necessary equipment takes time. This approach of determining a price makes little sense in a service business when the essential assets (people and ideas) are difficult to evaluate and grow.

Getting Through the Minefield of Disputes

Despite the Companies Act's guiding hand, the valuation step can nonetheless devolve into a maze of disagreements. Dissonance is frequently caused by:

Dueling Approaches: Naturally, the buyer and seller may tango to the beat of different valuation methodologies or insert alternative assumptions into the computations, resulting in contradictory estimates of the target company's value.

The Intangible Enigma: Intellectual property, brand awareness, and goodwill are all intangible assets that may make a firm shine. Giving these abstract notions a numerical value might provoke heated discussion.

Market Volatility: Like an unpredictable weather system, the financial markets may unleash abrupt storms of change, rapidly rendering once-accurate values outdated.

Hidden Liabilities: Hidden debts or unanticipated legal claims can substantially affect the underlying worth of the organization, turning the valuation procedure into a risky excavation.

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The valuation crisis stretches beyond the immediate merger and acquisition process, casting a shadow on tax ramifications. Different valuation methodologies might result in different tax liabilities for both parties, adding another degree of complication to the situation. Furthermore, regulatory agencies may enforce unique valuation standards for listed firms or industries, necessitating further subtlety and compliance.

Finally, picking the best valuation approach is analogous to selecting the best tool for the work. Understanding the benefits and disadvantages of each strategy, predicting possible obstacles, and applying proactive mitigation techniques are critical for businesses to confidently traverse the valuation maze. Companies may unleash the entire potential of M&A by assuring justice and accuracy, increasing value for stakeholders and driving themselves towards a future of shared prosperity.

Pre-Transaction Considerations:

Due Diligence: Due diligence process is a thorough examination or audit of a firm that is frequently performed prior to a financial transaction, such as a merger or purchase. The goal of business due diligence is to guarantee that each choice made about the firm in issue is educated, enhancing your prospects of creating value in an M&A deal.

A merger or acquisition is the most significant corporate transaction that any company will undertake.

Due diligence helps businesses to enter into these agreements with confidence.

It may bring substantial value for the buyer by uncovering the target firm's flaws (or red flags) as well as opportunities that the target company was previously unaware of.

Challenges of Due Diligence: Gaining an in-depth grasp of an organization can be a highly specialized procedure that is beyond the capabilities of most people without prior expertise in the sector. There are other problems, however the following are generally among the most often encountered:

Not knowing what question to ask: It is critical to know what the issues are and what the issues are and what diligence questions must be asked in order to adequately examine them.

Slowness of execution: Requesting documents or information from sellers can take time, typically delaying the transaction’s closure.

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Lack of Communication: Due diligence is sometimes regarded as a bother by sellers, even willing ones, resulting in irritation, poor communication, and even tension.

Lack of expertise: There is a considerable probability you will need to employ someone to help with at least some aspects of the due diligence process (for example, an IP expert).

Cost challenges: Due diligence may be costly, taking months and requiring substantial specialized hours, leading many people to believe that they can take corners.

Due Diligence Process Steps, Policies and Procedure

1. Evaluate Goals of the Project: As with any project, the first stage is to define company goals. This helps you identify the resources and information you will need, and ultimately ensure alignment with the firm's overall plan. This entails introspective inquiries about what you need to gain from this inquiry.
2. Analyze of Business Financials: This stage consists of a thorough audit of financial documents. It assures that the papers shown in the Confidentiality Information Memorandum (CIM) were not falsified. It also aids in assessing the company's health, assessing overall financial performance and stability, and detecting and red flags.

Some of the Items inspected here include:

- Balance sheets and income statements.
- Inventory schedules
- Future forecasts and projections
- Revenue, profit, and growth trends
- Stock history and options
- Short and long-term debts
- Tax forms and documents
- Valuation multiples and ratios in comparison to competitors and industry benchmarks

The detailed financial due diligence checklist could be found here.

3. Thorough Inspection of Documents: This process begins with a two-way interaction between buyer and seller. The buyer requests relevant papers for audit, interviews or surveys with the seller, and site visits.

The seller's responsiveness and organization are critical to expediting this procedure. Otherwise, it may make the buyer's experience difficult.

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The buyer then evaluates the information gathered to guarantee correct business operations as well as legal and environmental compliances. This is the most important aspect of the due diligence procedure.

Overall, the buyer acquires a greater grasp of the company as a whole and can more accurately assess long-term worth.

4. Business Plan and Model Analysis: Here, the buyer focuses on the target company's business strategy and model. This is done to determine viability and how well the firm's model would merge with theirs.
5. Final Offering Formation: Individuals and teams cooperate to discuss and assess their results after gathering and analyzing information and documents. Analysts use the data they acquire to undertake valuation procedures and processes. This validates the ultimate monetary amount you are willing to offer during the discussion.
6. Risk Management: Risk Management is looking at the target company holistically and forecasting risks that may be associated with the transaction.

Deal Structure:

A Merger and Acquisition deal structure is a legally binding agreement between parties in a merger or acquisition (M&A) that describes both parties' rights and duties. It specifies what each merger or acquisition partner is entitled to and what each is required to accomplish under the agreement. Simply described, a deal structure is the terms and circumstances of a merger and acquisition.

Mergers and acquisitions include the joining (synergizing) of two commercial entities to become one for economic, social, or other objectives. A merger or purchase is only feasible if both parties agree. An M&A transaction structure refers to the agreed-upon parameters under which these firms are ready to merge.

Deal structuring is a component of the merger and acquisition process; it is one of the phases that must be completed in a merger or acquisition. It is the process of prioritizing the goals of a merger or acquisition and ensuring that the top priorities of all parties involved are met, while also taking into account the weight of risk that each party must carry. To begin the contract structuring process, all parties involved must state:

- Their stance on the negotiation;
- Observable latent risks and how they could be managed;

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- How much risk they can tolerate; and
- Conditions under which negotiations may be canceled.

Because of the numerous aspects to consider, developing a suitable M&A transaction structure may be highly hard and difficult. These elements include preferred funding methods, corporate control, a company plan, market circumstances, antitrust legislation, accounting procedures, and so on. Using the correct financial, investment, and legal guidance can help to simplify the process.

Different deal structures of tax implication are stock swaps, asset acquisition.

Stock Swap: A stock swap is the exchange of one equity-based asset for another, and it is frequently used to fund merger and acquisition. A stock swap happens when shareholders exchange their ownership of the target business's shares for shares of the acquiring company. Each company share must be appropriately evaluated during a stock swap in order to calculate a fair swap ratio between the two shares. As a cost-cutting measure, a certain number of shares of one farm are exchanged for shares of another. Stock swap also occurs in employee stock ownership plans (ESOPs), when employees exchange previously vested shares for extra stock options. It is important to distinguish a stock swap from an equity swap, which is similar to an interest rate swap but instead of one leg being the "fixed" side, it is based on the return of an equity index.

Stock swaps can be the full consideration paid in a merger and acquisition (M&A) transaction; they can be part of an M&A transaction together with a cash payment to target business owners; or they can be calculated for both acquirer and target for a newly created entity. A stock-for-stock transaction occurs when the stock of an acquiring firm is exchanged for the stock of the acquired company at a preset rate. Typically, a stock-for-stock deal is used to complete only a portion of a merger, with the remainder of the expenditures paid by cash or other payment methods.

Example of a Stock Swap: In 2017, the Dow Chemical Company ("Dow") and E.I. du Pont de Nemours & Company ("DuPont") closed a merger where Dow shareholders received a swap ratio of 1.00 share of DowDuPont (the combined entity) for each Dow share, and DuPont shareholders received a swap ratio of 1.282 shares of DowDuPont for each DuPont share.

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Asset Acquisition: In an asset acquisition, the buyer purchases the selling company's assets. If the selling business chooses a cash transaction, an asset purchase is generally the optimal deal structure. The buyer selects which assets to purchase.

Advantage of an asset acquisition:

- The buyer can decide which assets to buy from the seller and which not to.
- The selling company continues as a corporate entity after the sale, containing the remaining unsold assets and liabilities.

Disadvantage of an asset acquisition:

- The buyer may not be able to acquire non transferable assets, e.g., goodwill.
- An asset acquisition may lead to high-impact tax costs for both the seller and the buyer.
- It may also take more time to close the deal, compared to other deal structures.

Procedure of merger through NCLT are as follows :

Authorisation of Articles of Association

The first step for this process, is that theTransferor and transferee of the company shall be authorized by their respective articles of association for the merger. If they are not authorized to do so then their AOA must be altered first.

Drafting the scheme of merger

This means preparation of draft between the transferor company and the transferee company.

Calling of Board meeting

This means to send notice which is not less than seven days before the date of meeting according to section(173) of Companies Act, 2013

Board Meeting

1 To hold a board meeting of both the transferor and transferee company.

2 This means to pass resolution to amalgamate with another company

3 This means to consider draft of scheme of merger

Cross Border Merger

Cross Border M&A transaction refers to merger and acquisitions, amalgamation and restructuring between an Indian company and a foreign company; this is permitted by the Companies Act under the provision of section 234.

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The ITA Act recognises the forms of M&A activities-Amalgamation, Demerger or spin offs, Asset purchase, transfer of shares. According to section 45 of the ITA Act if any restructuring involves the transfer of capital asset for a resident or for a non-resident, the capital gains arising from such transfer of capital asset.

The ITA Act provides certain tax benefits in the case of demerger if the resulting company is an Indian company, the transfer of capital assets by the demerged company will be exempted from tax.

Cross border merger results in the transfer of control and authority in operating the merged or acquired company.

Benefits of cross border mergers &Acquisition :

- It helps in expansion of market
- Geographic and industrial diversification
- It helps in avoiding entry barriers and industry consolidation
- It helps in foreign exchange earning and accelerating growth
- It helps to increase customer base & competitive advantage

Thus cross border merger are governed by the following laws in India such as the companies Act 2013, SEBI (Sustainable Acquisition of shares and Takeovers) regulations, 2011, Foreign exchange Management (Cross Border Merger) Regulations 2018, Competition Act 2002, Insolvency and Bankruptcy Code 2016., Income Tax Act, 1961, The Department of Industrial Policy and Promotion (DIPP), Transfer of Property Act, 1882, Indian Stamp Act, 1899.

Types of Cross border merger

Inbound M&A

In this type of merger the foreign company merges with or acquires an Indian company

Outbound M&A

In this type of merger Indian company merger with or acquires a foreign company

Case study

Jet-Ethihad cross border deal: In 2013, Etihad Airways and Jet Airways completed a cross-border merger and purchase. Etihad Airways, located in Abu Dhabi, United Arab Emirates, paid $379 million for a 24% share in Jet Airways, an Indian airline. This acquisition was notable since

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it was the first time a foreign airline invested in an Indian airline after India's government loosened its FDI requirements in the aviation sector.[2]

The agreement was also considered as a significant boost for Jet Airways, which was struggling financially at the time, because it gave the airline access to Etihad Airways' worldwide network and resources. Instead of a full purchase, the arrangement was arranged as a strategic collaboration between the two airlines. Jet Airways kept its name, management staff, and board of directors, but Etihad Airways received a seat on the board and some governance powers.

The transaction, however, was not without criticism. Some Indian lawmakers and industry professionals denounced the agreement, arguing that it would result in job losses and violated Indian aviation rules. The Indian government was also pushed to reconsider its FDI rules in the aviation sector. Despite these reservations, the Etihad Airways-Jet Airways merger was allowed and implemented by Indian regulators. Jet Airways did see some financial improvement in the years after the merger, with Etihad Airways' investment assisting the airline in expanding its worldwide reach and improving its services.

However, due to escalating financial troubles, including unpaid debts and rising fuel prices, jet Airways was forced to ground all of its planes and halt operations in 2019. Since then, the airline has been in insolvency procedures, and its future remains unknown.

Overall, the Etihad Airways-Jet Airways transaction exemplifies the potential and risks that can arise in cross-border mergers and acquisitions, particularly in the aviation sector. While such transactions might bring access to new markets and resources, they can also present regulatory, political, and financial dangers.

Fastrack Merger

This type of Merger takes place between two or more small companies or between Holding and subsidiary companies. Companies between which fast track merger schemes can be entered between small company and small company and Holding company and wholly subsidiary company Thus Fast track merger provides for the provision that allows certain classes of companies to undergo merger process in a simplified and expedited timeline.

[2]Rajat Sethi et al., Defining Control: A Study of the Jet-Etihad Case Defining Control: A Study of the Jet-Etihad Case DEFINING CONTROL: A STUDY OF THE JET-ETIHAD CASE, 27 National Law School of India Review.

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Fast track merger offered under section 233 of the Companies Act, 2013 simplified procedure for merger, no judicial approval, It provides separate procedures for certain types of companies which would enable them to expand, form filling required also significantly reduced, There is no requirement to apply to the National Company Law Tribunal. There is no requirement to get a special audit conducted for the transferor, It is less cost intensive and less time consuming, There is no requirement for the issue of public advertisements announcing the merger.

The draft scheme of fastrack merger requires the approval of the board of directors of both the companies 90% of shareholders in number and 90% of creditors in value, the central government (power delegated to regional director).

The mandatory requirement for fast track merger

The scheme should be filed with the Jurisdictional Registrar of Companies(ROC) as well as with the Official liquidator. Convening a meeting of the members and creditors for the obtaining of approval. The meeting of creditors can be avoided if they provide their consent in writing.

Another important requirement of a declaration of solvency by both of the involved companies.

The Fast track merger process facilitated the process by removing the requirements such as thath is there is no requirement to submit auditors certificate, the need for filing of scheme before the National Company Law Tribunal(NCLT). The estimated period for fast-track merger must be allotted to 90-100 days.

How does a Merger Affect Shareholders?

A merger occurs when two businesses join to form a single firm. Public firms frequently merge with the stated purpose of boosting shareholder value, whether by growing market share or entering new industry categories. Unlike an acquisition, a merger might result in the formation of a whole new company from the combining entities.

A merger often brings together two firms of nearly equal size. An acquisition is the purchase of a firm by a larger corporation. Mergers sometimes entail the exchange of shares rather than cash. Dow Chemical, for example, merged with polymers producer DuPont to become DowDuPont (DWDP) in August 2017 by exchanging Dow and DuPont shares for those in the combined business.

The impact of a merger announcement on the stock price will vary depending on the terms of the transaction as well as market estimates of the transaction's worth and likelihood of completion.

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If the merger is to be completed by the exchange of shares, the exchange ratio determines whether one of the firms receives a premium above its share price prior to the announcement of the agreement. Shares of that firm may rise, but the growth may be restricted if the share price of its merger partner falls, diminishing the original premium.

To reduce the danger of such degradation, the conditions of some mergers may contain a collar agreement that increases the exchange ratio if the price of the stock to be exchanged falls below a specific threshold. Such collars restrict one company's downside at the expense of its merger partner and that company's stockholders, although they are less typical in mergers of equals or near-equals.

Minority shareholders

In case of a company there are majority and minority shareholders, generally the rights of minority shareholders are negligible and they are easily overridden by the majority shareholders. In the case of a squeeze out merger the minority shareholders are adversely affected.

A transaction in which the acquiring party that is the controlling shareholders acquires 100% shares of the firm which is to be acquired thus leaving the minority shareholders with not providing their opinion in that matter thus resulting in squeeze-out. This type of transaction raises concern for the minority shareholders as the controlling shareholders can easily manipulate the transaction for their advantage because of their majority shareholding.

Since profit maximization is the objective of a company the shareholders revenue is the ultimate aim of the company. This objective of profit maximization can not be obtained in a way which violates certain legislation so profit maximization can not be taken in consideration as an argument in minority shareholders. Section 236 of the companies Act 2013 that lays down the procedure which is to be followed for the purchase of shares of minority shareholding also the act does provide protection to minority shareholders.

Case law

The Foss v. Harbottle Case: The theory that serves as the cornerstone for minority shareholder rights is taken from the well-known case of Foss vs. Harbottle (1843)[3]. The House of Lords determined the matter in 1843. The board of directors is elected by the majority of shareholders at the general body meeting to administer the company's business; in actuality, the majority had

[3]The Foss v. Harbottle (1843) 2 Hare 461

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the upper hand in every decision, while the minority had no say in any of the company's choices and was treated stepmotherly. Following an appeal by minority stakeholders against this persecution, the court ruled that the court should not intervene in the company's internal affairs unless there is a substantial infringement of the concept of natural justice with concern to the minority shareholders. In this way the case had become an important turning point in the protection of the rights of the majority in corporate operations. However, the exceptions to the norm established in Foss v. Harbottle have proven to be a lifeline for minorities' rights.

Tata Consultancy Service Limited v. Cyrus investment Pvt. Ltd. &Ors[4]: In this infamous case law, a resolution approved by the Board of Tata Sons (majority shareholders) ousted one Mr. Cyrus Mistry (Minority shareholder) from the post of non-executive director and leadership in several Tata groups. Mr. Mistry, who owned 18.36% of Tata Son, accused the Board of oppression and prejudice and filed a complaint with the Tribunal under Sections 241, 242, and 243 of the Companies Act, 2013. In this petition, he sought nearly 21 remedies, including his reinstatement as Executive Director and the declaration of Tata Sons as a public limited company. The matter was sent back and forth between the NCLT and NCLAT, with the NCLAT ultimately ruling in favor of Mr. Mistry. Tata filed an appeal with the Supreme Court, which not only rejected the order of NCLAT but also questioned its powers in passing those orders.

Key observations made by Supreme Court:

1. Since shareholders are not automatically entitled to a seat on the company's board, they must engage into contractual arrangements to ensure proper representation on the board.
2. There is a clear distinction between small and minority stockholders. Minority shareholders are not entitled to proportionate representation.
3. Removal from a company's board of directors is not a sufficient grounds to seek redress unless it entails clear-cut tyranny or prejudices the members' interests.
4. Minority shareholders cannot request for the corporation to be dissolved just because they lack faith in one another.
5. The court can only examine previous or present conduct when resolving a matter under Section 241. A Section 241 complaint cannot be used to investigate a potential future breach of the company's Articles of Incorporation.

[4]Tata Consultancy Service Limited v. Cyrus investment Pvt. Ltd. & Ors., (2021) 9 SCC 449,

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Delhi Gymkhana Club Limited Vs. Union of India[5]: In this case, the Government of India filed a complaint for oppression and mismanagement under Section 241(2).

The word 'public interest' cannot be understood to imply all Indian citizens. It would be sufficient if the rights, security, economic well-being, health, and safety of even a small part of society - such as applicants seeking membership in the category of common citizen - were compromised.

Post-Merger Integration: Challenges and Solutions

Mergers and acquisitions (M&A) are becoming more common in India's corporate world, promising development and innovation. The actual measure of success, however, is the smooth implementation of post-merger integration (PMI). In the evolving landscape of India's equity capital markets, this essay examines the difficulties and strategic solutions linked with PMI.

Cultural Integration: Navigating the Clash of Organizational Cultures

The collision of corporate cultures is one of the most underappreciated yet significant difficulties in PMI. Harmonizing multiple work cultures is essential for creating a cohesive and synergistic atmosphere. This culture barrier may be bridged by encouraging open communication and developing a shared goal from the start.

Regulatory Hurdles: the Complexities of Compliance

Navigating India's complex regulatory framework needs close attention. Expert advice from an experienced merchant banker in India may help ensure compliance while streamlining the financial structure of merging firms.

Operational Alignment: Integrating Systems and Processes

Integration of diverse systems and processes is a major problem. Using technology and strong integration methods may help to simplify processes, improve efficiency, and remove redundancies, resulting in a smooth transition.

Talent Retention: Retaining Key Contributors

Employees frequently express fear about M&A uncertainties. Implementing a well-planned retention strategy that focuses on career development and open communication can help to reduce talent drain and assure continuity.

Financial Optimization: Balancing Equity Capital Markets

[5] Delhi Gymkhana Club Limited Vs. Union of India, (2009) ILR 5 Delhi 625

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Aligning financial systems and improving resource use need accuracy. Using a qualified merchant banker, such as HDFC Bank, Kotak Mahindra Bank, and others, makes it easier to navigate financial complexities, assuring an ideal capital structure for long-term success.

Customer Continuity: Retaining Customer Trust

During changes, customer retention is critical. A customer-centric attitude, open communication, and the use of feedback are critical in comforting and maintaining customers.

5 biggest mergers & acquisition in India

Mergers and acquisitions (M&A) are critical in defining every country's business environment, and India is no different. Several big M&A transactions have occurred throughout the years, altering sectors, strengthening market positions, and driving corporations to new heights. Here, we look at the five greatest M&A transactions in India that have had a long-term influence on the corporate environment.

1. **Vodafone-Idea Merger (2018)**: The Vodafone-Idea merger, one of the most major acquisitions in the Indian telecom market, combined two key telecom firms to establish Vodafone Idea Limited. The deal, valued at around $23 billion, aims to unite Vodafone India with Idea Cellular's market reach and resources. This consolidation established a powerful participant in the highly competitive Indian telecom sector at the time.
2. **Walmart-Flipkart Acquisition (2018)**: Walmart has purchased a controlling share in Flipkart, one of India's top e-commerce businesses, in a historic move. The acquisition represented Walmart's debut into the Indian market, with a $16 billion valuation. The agreement allowed Walmart to enter India's expanding e-commerce market while using Flipkart's large consumer base and supply chain infrastructure.
3. **Tata Steel-Corus Acquisition(2007)**: Tata Steel's acquisition of Corus, a large European steel maker, is one of the few examples of an Indian corporation purchasing a Western powerhouse. It is one of the largest outbound purchases ever made by an Indian corporation. This purchase, at around $12 billion, catapulted Tata Steel into the ranks of global steel titans. Tata Steel gained access to new markets, innovative technology, and a greater worldwide footprint as a result of the acquisition.
4. **Hindalco-Novelis Acquisition (2007)**: With its acquisition of Novelis, a top competitor in aluminum rolled products, Hindalco Industries, an Indian aluminum company, made a big presence on the world scene. Hindalco has access to Novelis' experience, worldwide client base,

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and innovative technology as part of the $6 billion transaction. This purchase strengthened Hindalco's position as a global aluminum player and provided new chances for expansion.

5. **Reliance Industries-Future Group Acquisition (2020)**: Mukesh Ambani's Reliance Industries made news when it acquired Future Group's retail, wholesale, and logistics divisions. The $3.4 billion transaction strengthened Reliance's position in the retail sector, allowing it to extend its footprint across the country. This strategic decision increased Reliance's retail footprint and competitiveness in the changing Indian retail industry.

Merger and Acquisition in different sector

Banking sector

The international and national banks are mostly occupied by merger and acquisition. Merger and acquisition in the banking sector are mostly recognised in the countries all over the world. This is done in the banking division because to obtain remuneration in economics of magnitude. The main aim of M&A in the banking region is to obtain repayment of economic scales. It helps banks to attain major development in their operations and curtail their charge to a significance with the help of M&A.

In **Bank of Madura Shareholders Welfare Association v Governor, Reserve Bank of India, and Others**[6], The Respondent no. 2 announced an extraordinary general meeting for amalgamation to Banks. Hence, Petition was filed for postponement of an extraordinary general meeting of shareholders for considering a scheme of amalgamation between Petitioner's Bank and ICICI Bank Ltd.

Whether or not to approve a scheme of merger proposed by banking corporations with ultimate authority vested in the RBI. The court ruled that the petitioner organization had failed to present any letter proving that any shareholder had complained about being denied access to records.

Companies planned to combine were banking firms, and given the nature and extent of the banking transaction, which entailed a significant amount of secret information, the nomination of chartered accountants of the transferee-bank could not be blamed.

The HC refused to recognize that the petitioner association had not put out a case for an investigation into the merger scheme proposed by the boards of directors of transferor-bank and transferee-bank. However, it was up to shareholders to accept or reject the scheme of

[6] Bank of Madura Shareholders Welfare Association v Governor, Reserve Bank of India, and Others, MANU/TN/0773/2001

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amalgamation, and after the required majority shareholders of transferor - bank had accepted and authorized the plan of amalgamation, the option of ordering an HC investigation into the scheme of amalgamation did not arise.

As a result, when the petitioner association failed to establish a prima facie case for admitting the petition, the issue of accepting the petition was not raised. While considering the scheme of merger of Petitioner's Bank with ICICI Bank Ltd, the expressions expressed in the judgment would not bind the RBI. As a result, the petitioner had not shown a case for HC intervention, and the court declined to admit the petition and notify the respondents.

Telecom Sector

This industry, that is the telecommunication industry is one of the quickly developing industries as the number of M&A in the telecom sector is increasing drastically. This type of industry deals with different forms of communication medium like mobile phone, internet & broadband service. The M&A in the telecommunication industry are referred to as horizontal merger as the entities which go for M&A are operating in the same industry that is the telecommunication industry. The main aim of this type of merger is to attain competitiveness in the field of telecommunication.

Conclusion

Merger and Acquisition helps to combine two business entities into one single entity. Through merger and Acquisition the entity can increase its market share as the companies merge as the new company gains a large market share and thus gets ahead in business. With the help of merger and acquisition companies can easily achieve economies of scale as bulk buying of raw materials can result in cost reduction. Merger and acquisition helps to avoid duplication and eliminate competition thus resulting in reduced prices for the customers. In conclusion, the legal environment of mergers and acquisitions is a complex tapestry weaved with several threads. Recognizing and resolving these legal factors at every level, from early discussions to post-merger integration, is the key to maximizing M&A activity while limiting risks and guaranteeing a successful end.

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