VOLUME 4 | ISSUE 3 **FEBRUARY 2024** **ISSN: 2582-7340**

VOLUME 4 | ISSUE 3

INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

M&A IN SOLAR INDUSTRY UNDER INDIAN LAW

-Ashish Suri[1] & Dr Amit Dhall[2]

Introduction

India's corporate sector has undergone a sea change during the last two and a half decades. The first wave of this sea change occurred during the early 1990s when the Indian economy moved from being a closed one to an open one by adopting the new industrialization policy in favor of Liberalisation, Privatization and Globalization. The MNCs over the world were eyeing India as a huge market and hence a lot of multinationals stepped into the country to establish their businesses. They brought in the needed technology, expertise, standards, employment and development. But at the same time it increased competition for the domestic firms and forced them to better themselves.[3] It was this period that marked the beginning of amalgamations between companies, more popularly known as Mergers and Acquisitions (M&A). For multinationals it was an easier route to enter into the country and for Indian firms it was one of the key strategies to survive and expand. Slowly and gradually, the trend of M&As took pace. To the extent that Indian companies took over some of the corporate giants overseas.And todaythere arehundreds of deals happeningin India every year. But as the thesis aims to answer three broad aspects: the financial consequences of these mergers and acquisitions deals as compared to their peer companies, the impact on market returns of these deals and the impact of macroeconomic factors on the fate of these deals; the thesis as an introductory part would like showcase the scenario of Mergers and Acquisitions in India during the study period. This introduction thus helps in understanding the trend of mergers and acquisitions in India in terms of numbers, value, sectors wise penetration of mergers and acquisitions, the cross border scenario and the

[1] Law Student, Amity law school, Amity University
[2] Faculty of law, Amity law school, Amity University
[3]Acampora, J. (2016). *Excelcampus-Functions-Calculate Percentage Change for Negative NumbersinExcel*.

©2024 International Journal of Advanced Legal Research

present status of such deals in India.

In the current scenario of highly competitive globalised markets, it is detrimental for organizations to be dormant and sit on their laurels. Organisations today need to be much more strategic in their decisions as compared to the same twenty five years back. Thus organizations constantly need to re-invent and re-construct themselves to meet the demands of the ever growing market and to satisfy a more powerful group of stakeholders. Corporate restructuring in general and Mergers and Acquisition (M&A) in particular have given the required pace to organizations to develop and expand. Countries like U.S and U.K have passed four–five waves of mergers and acquisitions, while developing countries like India are witnessing probably the first wave of mergers and acquisitions. This chapter looks in detail the trend of M&As in India in the two decades post liberalisation period which is the period of studyand also looks at the scenario there after till date. Before that it throws a brief light on what mergers and acquisitions are all about and how they are a part of the broader concept of corporate restructuring.[4]

Before beginning with the trend of M&A in India, it is important to build a little conceptual framework regarding mergers and acquisitions. Firstly, it needs to be understood that mergers and acquisitions are a part of the broad purview of corporate restructuring. ***Corporate restructuring*** stands for partially dismantling or otherwise reorganizing a company to makeit more efficient or otherwise more profitable. This re-structuring can be internal or external to the organization. ***Internal restructuring*** involves in making changes internal to the organization like changing the organization structure, changing employee policy, changing theworkingconditionsandsystems, etc. While ***externalre-structuring*** includesmergers and acquisitions, takeover, capital restructuring, creditor restructuring, hive-off/spin-off, slump sale, etc. Among the same, mergers and acquisitions have been more popular.[5]

[4]Ackert, L. F., & Hunter, W. C. (1995). Rational expectations and security analysts' earnings forecasts. *Financial Review*, *30*(3), 427-443.

[5]Agarwal, M., &Bhattacharjea, A. (2006). Mergers in India, A response to RegulatoryStocks. *Emerging*

©2024 International Journal of Advanced Legal Research

A ***merger*** is a strategy where two or more companies agree to combine their operations.Once the merger happens, one companysurvives while other loses its corporate identity. The surviving company acquires all the assets and liabilities of the merging company. It either loses its identity or is rechristened. The laws in India use the term amalgamations formergers. When a merger happens between two companies that are in to same product or service, it is known as ***horizontal merger***. When merger happens between companies at different points in the value chain, for e.g. manufacturer and distributer, it is known as a ***vertical merger***. Thus it involves either forward integration (manufacturing firm acquiringthe distributing firm) or backward integration (distributing firm acquiring the manufacturing firm).Mergers can also be ***conglomerate or diagonal*** where the two firms belonging to different business merge together. That is the acquiring firm goes for a diversification strategy. ***Acquisition*** is an attempt made by a firm to gain majority stake in another firm. Once the acquisition is complete, the acquiring firm becomes the legal owner and controller of the business of the target firm. Thus it is a purchase of one firm by the other. Theacquiring firm pays for the net assets, goodwill and brand name of the company bought.[6]

1.1Merger and Acquisition Trends in India Post Two Decades of Liberalisation:

India is one of the emerging economies in the world today, but the same was not true twenty years back. The seeds of this development were sowed in the year 1992, when the country adopted the new industrial policy in favor of Liberalisation, Privatisation and Globalization. Thus the economy moved from a closed one to an open one. This lead to a massivechangein the operating structures of Indian corporates. Now they had to compete not only with their Indian counter-parts but also with major MNCs which had started entering the Indian economy. Among the many strategies, which corporates used for survival and development, mergers and acquisitions played a significant role. For domestic firms it was a strategy for meeting the competition while for MNCs it was one

---

Markets Finance and Trade , *42*(3), 46-65.

[6]Agarwal, M., &Bhattacharjea, A. (2006). Mergers in India, A response to RegulatoryStocks. *Emerging Markets Finance and Trade* , *42*(3), 46-65.

©2024 International Journal of Advanced Legal Research

easy way of entering into Indian Markets. Thus it was during this period after liberalisation that M&A activity in India took pace. Before this period mergers and acquisitions were not so popular. As the Indian economydeveloped year by year, more and more merger deals began to undertake in various sectors of the economy. And today, Indian companies are acquiring firms abroad which are three to four times their size. This section of the chapter takes an over all look at the trend of M&Asin Indiain thelast twenty years. It triesto examinethetrend ofM&A activity, is it an increasing one or decreasing one, which years did M&A activity peaked and what does the trend speak about the economy at large.[7]

Many ***significant deals*** have taken place during the last two decades which deserve a special mention. Among ***the top deals in 2001***, were the merger between ICICI bank and ICICI, Grasim's buyout of 10% stake in L&T and Sterlite Industries buying 51% stake in Balco.The biggest merger in the Indian merger history occurred in ***2002***, when intra-group consolidation of Reliance Industries and Reliance Petroleum Ltd. took place. In ***2005***, the telecom sector accounted for one third share of all merger deals in terms of value. Largedeals in this sector included Essar group's acquisition of BPL communications, Vodafone's investment in Bharti's Tele ventures, Maxis's group acquisition of Aircel and VSNL's acquisition of Teleglobe International Holdings. In ***2006***, IT and ITES were clear leader asfar as deal value was concerned. This sector garnered $2.9 billion worth of deals. In ***2007***, telecom sector dominated theand overtook IT sectorin terms ofnumber ofdeals. Thelargest deal of the sector was Vodafone's acquisition of Hutchinson Essar. The Indian financial sector continued to attract overseas investments with occupying 15% of merger deals invalue and 19% in terms of number of deals. the largest deal in the sector was $ 646 million investment in ICICIFinancial Services and the$ 644 million in HDFC ltd. thelargest deal of the year in India was byTata steel acquiringAnglo Dutch giant Corus which made Tata steal the 6th largest steel maker in the world. The same year saw some important mergers in the aviation sector, Jet airways overtook Sahara Airline, Kingfisher Airlines acquired

[7]Agrawal, A., Jaffe, J. F., & Mandelker, G. N. (1992). The post-merger performance of acquiring firms: a re-examination of an anomaly. *The Journal of finance*, *47*(4), 1605-1621.

©2024 International Journal of Advanced Legal Research

significant stake in Deccan Aviation Indian Airlines and Air India decided to merge.

1.2Cross Border M&As in India

Globalization and technological advancement in transport and communication have made cross border mergers and acquisitions a popular tool for expansion and capturing foreign markets. Indian firms have done a credible job in terms of merging and acquiring foreign firms. In the first decade of the 21st century, some of the years have even witnessed more cross-borderdealsthandomesticdeals. CrossborderdealsbyIndian corporateshave actually played a big role in putting India in the top slot of economically advanced countries. According to one of the Thompson Financial Reports, India stood 13th in the list of world acquirers in terms of number of foreign firms acquired. India saw maximum cross border mergers during the second half of the first decade of 21st century.

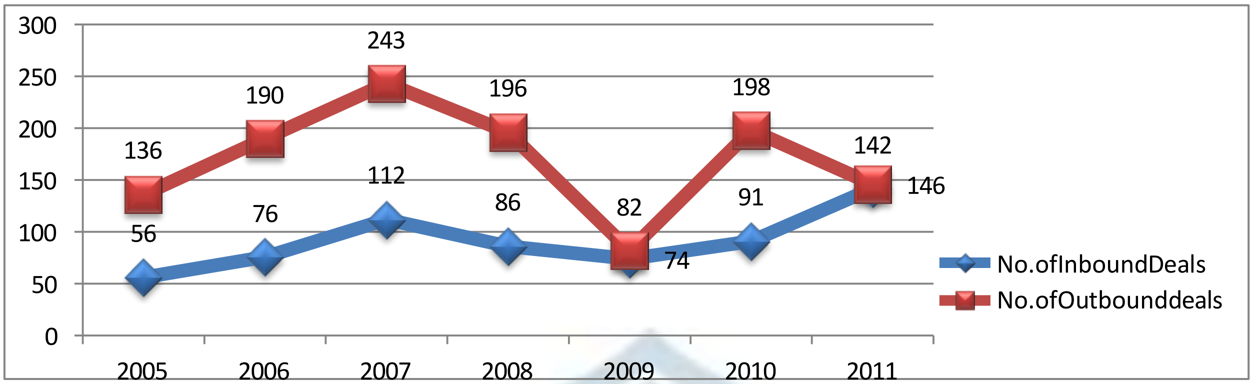
Table-1.5: Number and value of Cross Border Deals in India (2005-2011)

Year	No. of Inbound Deals	No. of Outbound Deals	Total	ValueofInbound Deals	ValueofOutbound Deals
2005	56	136	192	5173.93(US$million)	4298.52(US$million)
2006	76	190	266	5399.75(US$million)	9914.15(US$million)
2007	112	243	355	15500.95(US$million)	32759.04(US$million)
2008	86	196	282	12.55(US$billion)	13.19(US$billion)
2009	74	82	156	3.88(US$billion)	1.38(US$billion)
2010	91	198	289	8.96(US$billion)	22.5(US$billion)
2011	142	146	288	28.73(US$billion)	10.84(US$billion)

Source: Based on data collected from Grand Thornton-Annual Deal Tracker Issues(2007-2010)

Figure-1.13:Number of Cross Border Deals in India (2005-2011)

©2024 International Journal of Advanced Legal Research



Certain highlighting facts about cross border M&A in India:

- According to Mckinsey data, by 2005, India emerged as one of the top three markets in Asia, with total deals estimated to have crossed the $20 billion mark, against $10 billion in 2004.
- During the period of 2007, cross border M&As increased significantly. The value of cross border outbound mergers increased from $4298.52 million in 2005 to $9914.15 million in 2006, an increase of 130%.
- The total outbound deals have outnumbered the total inbound deals throughout. Thus clearly indicating India's preference towards mergers and acquisitions as an effective tool for going global and capturing global markets.
- The biggest portion of Indian M&A activities has been in Europe and America, indicating India's confidence in investing in developed countries.
- In 2007, 243 deals worth $33billion saw massive growth of 300% over the previous year.
- The average deal size increased from $58 million dollars in 2006 to $150 million in 2007.
- In 2010, inbound M&As accounted for 18% and outbound M&As accounted for 45% of total M&A deals. Inbound Deal values in 2010 rose by 131% over 2009. While outbound deal value rose 6 times more in 2010 as compared to 2009.
- In2011, crossborderM&Ashiftedfocusfromoutboundtoinbound.Thismightbein the backdrop of fear over economic dynamics of European region and its impact globally and

©2024 International Journal of Advanced Legal Research

also the also the domestic market growth of India. Both these reasons might have made India a safer bet and lead to a trend reversal.

Indian companies are targeting different countries for different sectors globally. For Pharma and Auto components, Europe is a major destination. Metal and mineral sector are being targeted in the Asian-Pacific region. IT, ITES and telecom sector acquisitions happen morein US markets. Over all, the sectors dominating cross border deals are IT, financial and banking services and pharmaceuticals. A host of mid and small cap companies in industries ranging from textiles, consumer durables, FMCG, energy, automobiles and components and IT are participating more in outbound deals. Thus, almost all sectors are active in crossborder acquisitions but IT sector lead other sectors in acquisition deals during 2007 and the period around it. In 2010-2011, it is the energy and power sector which dominated both inbound and outbound sector. There is a rising appetite for Indian power companies to move abroad for capturing more markets on account of domestic scarcity of power. Also foreign companies want to explore the oil and gas sector in India.

Some of the significant cross border deals over the years deserve a special mention. The first prominentcrossborderdealwasundertakenbyTatagroup'sTataTea,whenitacquired UK's famous brand Tetley tea for $ 430 million in 2001. This sort of the marked the beginning of cross border deals in India. Other companies from Tata group have also made significant acquisitions. In 2007, Tata Steel acquired Corus, the steel giant of UK ($12.2 billion) and Tata Motors acquired Jaguar Land Rover car makers ($2.3 billion). Recently Tata-tele services and NTT-DoCoMo also took place for $ 2.7 billion. Thus Tata group has continuously acquired massive foreign companies in varied sectors.

Apart from the above mentioned deals, there were a lot more significant cross-border deals done by India in the last few years:

Table-1.6:Someof thelargestoutbounddealsby India

Acquirer	Target	Sector	Country	Value
Hindalco	Novelis	Aluminum	US	$ 3331 million
SuzlonEnergy	RepowerSystems	Energy	Germany	$ 1794 million
BhartiAirtel	Zain	Telecom	South Africa	$ 10700 million

©2024 International Journal of Advanced Legal Research

Mahindraand Mahindra	SsangyongMotor CompanyLimited	Automobiles	South Korea	$ 463 million
ONGC	ImperialEnergy	Energy	Russia	$2.8 billion
FortisHealthcare (India) Ltd	Fortis Healthcare InternationalPteLtd	Healthcare	Singapore	
GVKPower	HancockCoal	Power	Australia	1.26 billion dollars
Adani	AbbotPointPort	Ports	Australia	1.9billion dollars
Reliance	BP	Energy	UK	7.2billion dollars

Source:AsianCorrespondent,2009;Track,2011

1.3Current Trends of Mergers and Acquisitions in India

The Indian corporate sector has witnessed tremendous growth in M&As during the post two decades after liberalisation, both in terms of value as well as volume. The growth period is varied as well as interesting. The volume of M&A deals has increased from mere 12 deals in 1992 to a total of 3441 deals during 1992-2012. The highest number of deals was observed in the year 2001 and it was 307 and the least number of deals in the year 1993 when it was only 8. The value of M&As increased 7 times in the year 2005 compared the year 1998. As far as number is concerned the service sector and manufacturing sector are at par in terms of number of M&A deals. Under manufacturing, the sectors which have undertaken considerable amount of mergers are mainly chemicals, food and beverages and textiles. Cross Border M&As have also played significant role in the last seven to eight years. The development of growth of M&As have faced three phases 1992-2000, 2001-2007, and 2008 onwards. The last phase is still going on and slowed down in terms of number of deals after the peak of 2007. New sectors like energy and power are now occupying merger and acquisition

©2024 International Journal of Advanced Legal Research

space in the crossover market.[8]

The above conclusions are as per the data collected and analysed for the study period. It is said dwelling in the past without having an outlook of the current scenario is history studied in waste. Hence this section quotes different studies that highlight the current scenario that is the post 2012 period.

CONCLUSION

Concluding a comprehensive analysis of mergers, acquisitions, and private equity within the Indian solar industry demands a nuanced understanding of the multifaceted dynamics at play. Through a triangulated approach encompassing economic, legal, and environmental perspectives, this study has shed light on the intricate interplay of factors shaping the industry's trajectory. As evidenced by the substantial growth witnessed in recent years, the Indian solar sector holds immense promise as a key player in the global renewable energy landscape. However, its journey is not devoid of challenges, with regulatory frameworks, market dynamics, and technological advancements posing both opportunities and obstacles. Against this backdrop, the role of mergers, acquisitions, and private equity has emerged as a critical catalyst for driving innovation, scaling operations, and navigating the complex terrain of the solar market.

From an economic standpoint, the influx of mergers, acquisitions, and private equity investments has infused the Indian solar industry with much-needed capital, fostering a conducive environment for expansion and diversification. The strategic alliances formed through M&A activities have enabled companies to leverage synergies, consolidate market share, and achieve economies of scale, thereby enhancing their competitiveness in an increasingly crowded marketplace. Moreover, private equity injections have provided startups and emerging players with the financial backing required to commercialize innovative technologies, penetrate untapped market segments, and withstand the volatility inherent in the renewable energy sector. By facilitating access to

[8]Alexandridis, G., Petmezas, D., & Travlos, N. G. (2010). Gains from mergers and acquisitions around the world: New evidence. *Financial Management*, *39*(4), 1671-1695.

©2024 International Journal of Advanced Legal Research

capital, M&A transactions and private equity investments have played a pivotal role in catalyzing the Indian solar industry's growth trajectory, paving the way for sustained development and long-term sustainability.

However, alongside the economic benefits, it is imperative to acknowledge the legal and regulatory complexities that accompany mergers, acquisitions, and private equity transactions within the Indian solar sector. As the industry continues to evolve, regulatory frameworks governing foreign investment, competition, and environmental compliance have become increasingly stringent, posing significant compliance challenges for market participants. Navigating this intricate regulatory landscape necessitates a thorough understanding of applicable laws, meticulous due diligence, and proactive engagement with regulatory authorities. Failure to adhere to regulatory requirements can not only jeopardize the success of M&A transactions but also expose companies to legal liabilities and reputational risks. Thus, while M&A and private equity offer promising avenues for growth and value creation, stakeholders must tread cautiously and ensure compliance with all legal and regulatory obligations to mitigate potential risks and safeguard their interests.

Furthermore, in light of growing concerns surrounding environmental sustainability and climate change, the Indian solar industry is under heightened scrutiny to adopt environmentally responsible practices and mitigate its carbon footprint. In this context, M&A transactions and private equity investments present an opportunity to drive sustainability initiatives, enhance energy efficiency, and promote renewable energy adoption on a broader scale. By integrating environmental considerations into investment decisions, stakeholders can not only align their business strategies with global sustainability goals but also unlock new avenues for value creation and differentiation. Additionally, the consolidation of resources and expertise through M&A activities enables companies to optimize their operations, minimize waste, and leverage renewable energy technologies to achieve cost efficiencies while reducing their environmental impact. As the world transitions towards a low-carbon economy, the Indian solar industry stands poised to emerge as a frontrunner in driving sustainable

©2024 International Journal of Advanced Legal Research

development, with M&A and private equity serving as enablers of this transformative journey.

REFERENCES

Abhishek Raghuvamshi, Anvitha Raghuvamshi (2014) Determinants of shareholdersgainsinacquisition:AnempiricalstudyintheIndiancorporatesector.*IndianJournalofFinance*.Feb-2014,pp-37-48

AcharyaRam.C(2000)TheImpactofmergersandacquisitionsonfirm'sprofitability – A casestudy ofCanadian firms. *Journal of Finance*.Vol.4,pp-1605-1621

Aiello&Watkins(2001)Thefineartoffriendlyacquisition.*Mergersandacquisitions-HarvardBusinessReviews*.pp-23-43

AndreasKeller(2010).Competition effectsofmerger;An eventstudy ofGermanelectricitymarket.*Elsevier-EnergyPolicy*.Vol.38,pp-5264-5271.

AngelikaKedzierska–Szczepaniak(2008)FinancialAspectsofMergers&AcquisitionsofcompaniesquotedontheWarsaw StockExchange;deanperspectiveforEuropeanprogrammesince2008.*DissertationReport,Gdansk University*.

Appelbaum et.al (2001) Atonomy of merger: Behaviour of organisational factors andprocessthroughoutthepre-during-poststages.*ManagementDecision*

Ashutosh Kumar Sinha (2007) Acquisitions by emerging market firms in developedmarkets: some evidence from Indian mergers and acquisitions in developed countries.*Asia–Pacificregion*.pp-46-61

BigyanPrakash Verma, PranabNaji,Santhosh Nair(2013)Mergers &Acquisitionsand their impact on corporate value: pre &post – merger analysis of indian banks.*IndianJournalofFinance*.Vol.7,Issue.2

C.Ranganathan,QingxionaMa(2001).Dowebmergerscreatevalue?AnexaminationofM&Aof internetfirms.pp-642-646

CasperFlugt(2009)Shareholderswealtheffectsofmergersandacquisitions-AnempiricalinvestigationofshorttermperformanceintheEuropeanmarket.*Dissertation.DepartmentofBusinessFinance*.UniversityofAarhus.Denmark

©2024 International Journal of Advanced Legal Research

ChristianTuch&NoelO'Sullivan(2007)Theimpactofacquisitionsonfirmperformance:Areviewoftheevidence.InternationalJournalofManagement

©2024 International Journal of Advanced Legal Research