ISSN: 0975-3583,0976-2833 VOL 01, ISSUE 02, 2010

Recent Trends of Mergers and Acquisition Law in India- An analytical studies

Komal,

Research scholar, faculty of law, M.D University Rohtak.

Introduction

Mergers and acquisitions are a general term that describes the consolidation of companies or assets through various types of financial transactions, including mergers, acquisitions, consolidations, tender offers, purchase of assets, and management acquisitions. The term Mergers and Acquisitions also refers to the desks at financial institutions that deal in such activity. The terms “mergers” and “acquisitions” are often used interchangeably, but they differ in meaning. In an acquisition, one company purchases another outright. A merger is the combination of two firms, which subsequently form a new legal entity under the banner of one corporate name. A company can be objectively valued by studying comparable companies in an industry and using metrics. One plus one makes three: This equation is the special alchemy of a merger or an acquisition. The key principle behind buying a company is to create shareholder value; over and above that of the sum of the two companies. Two companies together are more valuable than two separate companies. At least that’s the reasoning behind Merger & Acquisition this rationale is particularly alluring to companies when times are tough. Strong companies will act to buy other companies to create a more competitive, cost-efficient company. The companies will come together hoping to gain a greater market share or to achieve greater efficiency. Because of these potential benefits, target companies will often agree to be purchased when they know they cannot survive alone.

When analyzing Investment decisions, we did not consider in any detail the largest investment decisions that most firms make, i.e., their acquisitions of other firms. Boeing’s largest investment of the last 2 decade was not a new commercial aircraft

ISSN: 0975-3583,0976-2833 VOL 01, ISSUE 02, 2010

but its acquisition of Mc Donnell Douglas in 1996. At the time of the acquisition, Boeing's Manager was optimistic about the merger, claiming that it would create substantial value for the stock holders of both firms. Acquisitions seem to offer firms a shortcut to their strategic objectives, but the process has its costs. In this chapter, we are going to discuss the value of these acquisition in last few year and prospective growth of the merger and acquisition in future.

Following the liberalization and deregulation of Indian economy in 1991, organizations are passing through a phase of change as never witnessed before. The new 1991 business environment has provided. As economic reform opened up a whole lot challenges in domestic as well as international sphere. Indian organization to become global organizations though acquisition and expansion plans. However, it has opened Indian markets to global players. In this two-way traffic, even successful organizations are facing challenges from both, domestic competitors as well as foreign competitors, to remain ahead of competitors, business leaders need to have a global vision, be proactive, able to take calculated risk and initiate and manage acquisition and consolidation process smoothly. Further the chapter discusses trends of acquisitions and mergers by companies and recommends strategies to be followed to make acquisition and merger process a success.

- **Why Mergers and acquisitions in India?**

The factors responsible for making the mergers and acquisition deals favourable in India are:

1) Dynamic government policies.

2) Corporate investments in Industry.

3) Economic stability.

4) Ready to experiment attitude of Indian Industrials.

ISSN: 0975-3583,0976-2833 VOL 01, ISSUE 02, 2010

- **Merger and Acquisition creating Global organization**

Above mentioned examples show the trend and popularity of merger and acquisition as an easy route for achieving growth and becoming global organization. No doubt merger and acquisition, if planned and executed properly can provide great opportunity of growth, cost saving, technology up gradation and capturing market beyond the boundaries. However, success of merger and acquisition will depend on the ability of management / business leader to critically analyze opportunities available considering geopolitical issue, technical issue, cultural issues and above all human issues.

It is inherent desire and need for every business to grow, and the best way to growth is to adopt a course of takeover and merger. This gives an organization an instant growth. Considering its advantages, the Indian companies seems to be in great hurry to achieve rapid growth through merger and acquisition. However, all takeovers do not meet the required expectation Sahara-Jet Airways is a living example of the same case. Such a failure only leads to pain and confusion to management and its employees. Reason for such failure is due to poor homework for acquisition and at times the negotiators are excited to conclude the deal in a hurry.[1] But there is no two acquisitions are same. Each and every situation is unique and presents its own set of problems and potential solutions. So, ever deal requires individual approach. There is economical environment, Geopolitical environment, impact of terrorism on that region, economical health of the company, availability of resources at appropriate cost including manpower etc. all disowned as under.

The Economical Environment:

A business leader while planning merger or acquisition must give due consideration to the type of market economy. It is much easier to do business in a country where resources are owned and controlled by private sector (Market economy) as compared to a chantry where it is controlled by the Government. (Command

---

[1] Kharbanda O.P. & Stallwerthy (1988). *Takeover, Acquisitions and Merger-Strategies for Rescuing Companies in Distron*, Landon, Kogan Pvt. Ltd.

ISSN: 0975-3583,0976-2833 VOL 01, ISSUE 02, 2010

Economy). However, due consideration must be given to reforms initiated by various governments to liberalize their economy.[2]

Political Environment:

A stable legal and political system is always preferred as it gives long term stability to the business History of unstable government, always increases the risk factor and business in such a country should be avoided. A leader must have a clear understanding of geopolitical situation of the region where the targeted company is located. However, at times the countries with record of unstable Govt. do provide great opportunities and a leader can afford to take calculated risk to grab the opportunity.

Impact of Global Terrorism:

Terrorism has added a new dimension, which directly or indirectly affects the conduct of business. At times, terrorism even affects the control of Govt. on national economy and resources. We have living examples of Afghanistan and Iraq where no business leader would like to sink his investment. Terrorism has even affected the functioning of big global companies. Following the terrorist attack on September 11, 2001, Boeing company (The Chicago based Aerospace company) laid off Thoosana & US workers because of uncertainty over customer order [3] Similar risk was felt by General Electric in the summer of 2002, when India and Pakistan nearly went to war due to terrorist activities sponsored by Pakistan, General Electric has invested more than $ 80 million in Bangalore (India) for creating largest research center outside U.S.A war between India and Pakistan would have greatly hampered their business.

Work Culture:

The work culture of an organization is greatly influenced by the national work culture, which effect the functioning of local Government and bureaucracy. This also includes level of corruption, which an organization is likely to face during the

[2] Stephen P.Robbins & Mary Caulter (2005). *Merger and Acquisition Creating Global Organization*, Practice Hall of India Pvt. Ltd. New Delhi, Pg.87.
[3] Holmes.S, "Boeing High Speed Flight." *Business Week*, 12 Aug. 2002, Pg.74/75.

ISSN: 0975-3583,0976-2833 VOL 01, ISSUE 02, 2010

process of takeover and later on for smooth conduct of the business. It is not possible to impose work culture of home organization fully. Research works have highlighted that work culture of country has direct bearing n the work culture of an organization. For example, German employees at an IBM facility in Munich will be influenced more by German culture than by IBM culture.

Based on the above-mentioned consideration, targeted companies should be identified and short-listed and put up to Board of Directors for their consideration. Once the proposal is accepted in principle, the further process can be initiated.

Trends of Merger and Acquisition in India

Mergers and acquisitions are not totally new to the Indian economy. In the past also companies used the takeover strategy to expand their business. The trends of Merger & Acquisition in India have also been diverse across the various years the immediate effects of section in Indian economy. In 1988 number of takeovers was 15, which have now grown to 115, foreign acquisition in the first three quarters of 2006 with total value of $7.4 billion.[4] This is a huge increase as compared to the previous year.

Year 2007 can be called as year of mergers and acquisitions for India. Tremendous amount is flowing in to India on back of opening of growing economy, high liquidity levels and continued reforms introduced by Indian Government to attract foreign investor. Everyday there is a new combination being announced and Indian firms are making a substantial headway.

Recent trends in mergers and Acquisition:

Till recent past, the incidence of Indian entrepreneurs acquiring foreign enterprises was not so common. The situation has undergone a sea change in last couple of years Acquisition of foreign companies by the Indian business has been the latest trend in Indian corporate sector. There are different factor that played their parts in facilitating the Merger & Acquisition in India. favourable Govt. policies, buoyancy in economy, additional liquidity in corporate sector and dynamic attitude of Indian

[4] Httb://Indianmba.com/facultycolumn/fc632.

ISSN: 0975-3583,0976-2833 VOL 01, ISSUE 02, 2010

entrepreneurs are the key factor behind the changing trends of Merger & Acquisitions in India.

The Indian IT & 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 & Acquisition Activities in India.

Sectors like pharmaceuticals, IT, ITES, telecommunications, steel, construction, etc. have proved their worth in the international scenario and the rising participation of Indian firms in signing Merger & Acquisition deals has further triggered in India. Merger and Acquisition in India are on the rise, volume of merger and acquisition in India in 2007 have grows 2-fold from 2006 and four times compared to 2005.

India has emerged as one of the top countries with respect to merger and acquisition deals. In 2007, the first 2 months alone accounted for merger and acquisition deals worth $40 billion in India. The estimated figure for the entire year protected a total for more than $100 billion worth of mergers and acquisitions in India.

Sector wise, large volume of mergers and acquisitions in India has occurred in finance, telecom, finance, construction materials, automotive and metals. In 2005 finance topped the list with 20% of total value of mergers and acquisition in India taking place in sector. Telecom 16% while FMCG and construction material for 13% and 10% respectively.

In banking sector important merger takes place included IDBI (Industrial development bank of India) and its own subsidiary IDBI bank. The deal was worth $174.6 million (Rs.7.6 billion), another important merger was that of between centurion bank and bank of Punjab worth $ 82.1 million (Rs.3.6 billion) this merger led to creation of centurion bank of Punjab with 235 branches in different region of India.

In telecom sector, an increase of stakes by singed from 26.96% to 32.8% in Bharti telecom was worth $252 million. In foods and FMCG Shaw Wallace and company

ISSN: 0975-3583,0976-2833 VOL 01, ISSUE 02, 2010

acquired united Breweries Group owned by Vijay Mallya, this was the big deal of about $ 371.6 million.[5] Shaw Wallace Company started on 1889 in Calcutta. In 1987 came under Jumbo group lead by M.R. Chabaria i.e., big group in UAE. This group is diversified group with business of beverages, Tyres, Gelatine, Agrichem, Tanneries and electronics. Shaw Wallace comprise its business in

- Liquor division
- Beer division
- Wine division
- International business.
- Traditional business.

After demise of M.R. Chabaria, Mrs. Vidya Chabaria became chairperson of group, their daughter Komal Chabaria became executive director of Indian flagship of Shaw Wallace and Co. (SWC). The $ 2 billion group's operation include Shaw Wallace Co. Ltd., Falcon tyres, Dunlop India Ltd., Hindustan Dorr-Oliver, Mather & Platt, Gordon Woodroffe and New Video Ltd.,

U.B. group – The UB (United Breweries) founded by Thomas Leishman in 1915. It started its business with manufacturing of beer. Vittal Mallya became first Indian Director of U.B. group in 1947. In 1983 Vijay Mallya's son of Vittal Mallya became chairman of the group. In 1988 group acquire Berger paints, group divested paint business in 1996. Now UB group has following divisions.

- Beverage, Alcohol
- Pharmaceutical
- Media

---

[5] Economy watch.com/mergers-acquisition / India.

ISSN: 0975-3583,0976-2833 VOL 01, ISSUE 02, 2010

- International trading
- Fertilizer.
- Research and development.
- Aviation.

JSW Steel and Ispat Deal:

In December 2010 Sajjan Jindal controlled JSW steel is bailing out the beleaguered Ispat Industries by picking up a majority stake of 41% in the company, which is owned by Pramod Mittal and Vinod Mittal, the younger siblings of Lakshmi Nivas Mittal of Arcelor Mittal.

As part of the deal, Ispat, which is to be renamed JSW Ispat steel, will issue 108.66 crore equity shares on preferential basis of Rs.19.85 per share for a consideration of Rs. 2,157 crores.

The deal, which has an enterprise value of $3 billion, will not only make Jindal back to the profit path after its debt of Rs.7500 crore is refinanced and Rs. 3,100 crore injected in to the company as capital expenditure.

Reckitt-Benkiser acquires Paras Pharma for Rs.3260 crore. With this deal, UK headquartered household, health and personal care major has edged out Indian companies such as Emami, Dabur also in race to buy the Ahmedabad based FMCG firm. Again in Dec. 2010 Tata Chemical Ltd., UK Subsidiary Brunner Mond group has signed an agreement to acquire 100% of British salt Ltd., a leading salt manufacturer in UK for $93 million in deal that will ensure a steady source f raw material and also give it a toe hold in UK food and industrial sold market. The Tata group of which Tata chemicals is a part, has had a successful track record of acquisition UK. In the late 1990s, Tata tea acquired Tetley. More recently. Tata steel acquired Corus, Tata Motor, Jaguar, Land Rovers.[6]

[6] *Hindu Business Line,* Dec.13, 2010.

ISSN: 0975-3583,0976-2833 VOL 01, ISSUE 02, 2010

Recent Merger and Acquisitions deals in India

Indian Industry saw a spurt in outbound Merger and Acquisition in 2010 driving home the point that Indian company are keen to make up for lost time. The biggest transaction was Airtel's $ 10.7 billion acquisition of Zain Africa to explore new markets. The total Merger and Acquisition in year 2010 was close to $ 50 billion mark across 623 transactions inching towards the bench mark year of 2007.

- Tata steel acquired 100% stake in Corus Group on January 30, 2007. It was an all-cash deal which cumulatively amounted to $ 12.2 billion.
- Vodafone purchased administering interest of 67% owned by Hutch–Essar for a total worth of $ 11.1 billion on February 11, 2007.
- India Aluminium and cooper giant Hindalco Industries purchased Canada based from Novelis Inc in Feb. 2007. The total worth of deal was $6 billion, transaction of $ 5,982 million.
- In May 2007, Suzlon Energy obtained the Germany based wind turbine producer Repower. The 10th largest in India the deal amounted to $1.7 billion.
- Daewoo Electronics Corp. acquired by Videocon involved $729 million in 2007.
- HPCL acquired Kenya Petroleum Refinery Ltd. $500 million deal in 2007.
- VSNL acquired Teleglobe through a deal of $239 million.
- Indian pharma industry registered its first biggest in 2008 M & A deal through the acquisition of Japanese pharmaceutical company Daiichi Sankyo by Indian major Ranbaxy for $ 4.5 billion.

ISSN: 0975-3583,0976-2833 VOL 01, ISSUE 02, 2010

- Dr. Reddy labs acquired Beta Pharma through a deal worth $597 million.
- In November 2008 NTT Docomo the Japan based telecom firm acquired 26% stake in Tata Teleservices for USD 2.7 billion.
- India's financial Industry saw the merging of two prominent banks – HDFC bank and centurion bank of Punjab. The deal took place in Feb. 2008 for $2.4 billion.
- Tata Motors acquired Jaguar and land Rover brands from ford Motor in March 2008. The deal amounted to $2.3 billion.
- The oil and Natural Gas Corp purchased imperial Energy PIC in January 2009. The deal amounted to $2.8 billion and was considered as one of the biggest takeovers after 96.80% of London based companies shareholders acknowledged the buyout proposal.
- 2009 saw acquisition Asarco LLC by Sterlite Industries united for $1.8 billion making it 9th biggest even Merger & Acquisition agreement involving 9n Indian company.
- Mahindra and Mahindra acquired 90% stake in German company Schoneweiss.
- RSM Ambit based at Mumbai acquired Price Water House Coopers.

In last couple of years back, the news about Indian companies have acquired American entities rare, however the scenario takes a sudden change. Nowadays news of Indian companies acquiring of foreign business are most common.

ISSN: 0975-3583,0976-2833 VOL 01, ISSUE 02, 2010

Top 10 acquisition made by India Companies:[7]

Acquirer	Target company	Country targeted	Deal value ($ml)	Industry
Tata steel	Corus Group Plc	UK	12,000	Steel
Hindalco	Novelis	Canada	5,982	Steel
Videocon	Daewoo Electronics. Corp.	Korea	729	Electronics.
Dr. Reddy Labs	Betapharm	Germany	597	Pharmaceutical
Suzlon Energy	Hansen Group	Belgium	565	Energy
HPCL	Kenya petroleum Refinery Ltd.	Kenya	500	Oil and gas
Ranbaxy Labs	Terapia SA	Romania	324	Pharmaceuticals
Tata Steel	Natsteel	Singapore	293	Steel
Videocon VSNL	Thomson SA Teleglobe	France Grads	290 239	Electronics Telecom.

Future scenario of Mergers and Acquisitions Trend

Experts in the field believe that there are significant numbers of mergers and acquisitions happening in the Industry today, especially in business where value-addition is a norm. Many meaningful, similar companies are taking step forward to

[7] www.The changing fact of Indian business Trak.in.businessblog

ISSN: 0975-3583,0976-2833 VOL 01, ISSUE 02, 2010

merger and acquisitions now, unlike in earlier times, when mergers and acquisitions were restricted only to bigger companies. Merger and acquisitions have this gained greater degree of visibility now.

Globalization, deregulation, and privatization have caused the market to become hyper – competitive. It is imperative for companies to bring cast competitiveness, speed and operational efficiencies to scale up the business.

The western market has seen this phase and several Merger & Acquisition have taken place or are in pipeline. Similar market consolidation and rising number of Merger & Acquisition will take place in two to five years, when market will be more and more global and mature, says an Industry expert.

The number of acquisitions might be goes high in year 2011. The race for acquiring companies outside is being fuelled by India's hunger for resources as the country tries to regain its 8-9% growth rate. In March 2010 Essar acquired U.S. based Trinity Coal for $600 million to feed its steel units in America. In December, Lanco acquired Griffin coal Minning in Australia and RIL acquired equity interest in three share gas assets in U.S. After a tumultous few years, IT companies are expected to head out again in search for new technologies and new markets for product / platform extension. While ravenous Indian corporate head out for resources, between in Indian growth story would continue to throng the Indian Merger and Acquisition flea market and the most attractive shop among all is expected to be the pharma companies. Piramal–Abott and Reckitt Benkiser – Paras deals have raised the hopes of the player in this highly fragmented field on the domestic Merger & Acquisition front, 2010 was again a significant year. Pharmaceuticals would again be the focus here along with telecom and banking.

Bharti Airtel – Set to Merge with South African Conterpan MTN US $23 billion According to agreement Bharati Airtel would obtain 49% stake in MTN & south African telecom major would acquire 36% of stake in Bharti Airtel. Most Indian Software Companies sit on huge cash reserves and use them to acquire multiple

ISSN: 0975-3583,0976-2833 VOL 01, ISSUE 02, 2010

foreign companies for strategic reasons like access to overseas markets, niche vertical markets and acquiring domain expertise and capabilities.

In summary, consolidations will happen. Acquisitions will grow. Indian companies will acquire overseas companies Foreign Companies will buy out Indian companies and players – focus on building offshore capabilities. And solution providers will be right ahead in the queue of all this acquisition and getting acquired business.

Riding high on a booming domestic economy, India's growth curve is on the ascendant. Pharmaceutical, information technology, automotive component and textile companies, are on an acquisition binge in Europe sparking speculation that India is getting aggressive in carving out a presence in Europe. Inbound and outbound mergers and acquisitions have increased dramatically. According to Investment bankers, Merger and acquisition (Merger & Acquisition) deals in India will cross $ 5 billion this year,

Industry reports forecast that there will be continued acceleration of out bound transactions from India in sector such as automotive, textiles and pharmaceuticals. Inbound investments in infrastructure, real estate, retail and logistics have started emerging India's Merger & Acquisition environment is vibrant due to positive regulatory mechanisms globally accepted business process and a robust and optimistic investment climate.

Merger and Acquisition gives a clear idea about the movements of the market not only product market or labour market, but also the money market gets influenced by these Merger and Acquisition trends. Not only market of particular industry but world market gets influenced from these trends. All over the world in developed and developing nations, record number of Merger and Acquisition deals took place.

Conclusion:

To conclude, Merger refers to the process of combination of two companies, where by a new companies formed. The benefits of Merger the circumstances and reasons for every merger are different and these circumstances impact the way the deal is

ISSN: 0975-3583,0976-2833 VOL 01, ISSUE 02, 2010

dealt, approached, managed and executed. However, the success of mergers depends on how well the deal makers can integrate two companies while maintaining day – to day operations. Each deal has its own flips which are influenced by various extraneous factors such as human capital component and the leadership. Much of it depends on the company’s leadership and the ability to retain people who are key to companies ongoing success. It is important, that both the parties should be clear in them in as to the motive of such acquisition i.e., there should be censusad – idiom. Merger & Acquisition can increase value of company, cost efficiency and market share there some losses to exist it may lead to discomfort in industries, it may lead to diseconomies, secondly clashes of culture between different type of businesses can occur reducing the effectiveness of integration.

Profits, intellectual property, costumer base are peripheral or central to the acquiring company, the motive will determine the risk profile of such M & A. Generally, before the onset of any deal, due diligence is conducted so as to gauze the risks involved, the quantum of assets and liabilities that the acquired etc. Therefore, merging a company can be both boon and bane for that company.