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MERGERS AND ACQUISITIONS IN INDIA – AS A TOOL OF CORPORATE RESTRUCTURING ISSUES AND CHALLENGES.

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The practice of mergers and acquisitions has grown significantly in recent years in the corporate world. The reformation of major trade organizations frequently takes merger and acquisition procedures into consideration. Governmental organizations in India started the idea of business restructuring through merger and acquisition. This article aims to analyze broadly the mergers and acquisitions occurring in Indian businesses and to identify the problems and difficulties faced during the merger and acquisition process. The majority of businesses in India have turned to merging through M&A activities due to the rising competition among domestic enterprises on the national and worldwide marketplaces. The majority of business in today's markets have as their primary goal generating worldwide consumer interference and profiting from it. Global Consumer Interference can be achieved by working together in businesses with other existing or starting enterprises both domestically and abroad. Due to the increased implementation of deregulation, privatization, globalization, and liberalization (LPG) policies in the majority of the world's countries, M&A activity as a peripheral expansion strategy has increased. M&As have evolved into a comprehensive tool for diversifying creation portfolios, entering emerging markets, gaining knowledge, increasing access to research and development, and gaining access to the assets that enable businesses to compete on a global basis.

Merger refers to the permutation of two or more business entities into a single business entity, one of which continues to operate while the other ceases to do business. All of the shares, liabilities, and assets of the disbanded firm or companies are acquired by the current company. The quenched company is typically the seller and the current firm is typically the buyer. The major goals of mergers are to increase market share, lower operating costs, expand into new regions, connect common operations, increase benefits, and all of these objectives might result in profits for the firm's shareholders. Shares of the new company are distributed to current owners of the two new companies after a merger. Contrary to consolidation, merger results in the abolition of the merging companies, and the remaining corporation takes on all of their rights, obligations, and advantages¹. It is a method by which businesses combine the ownership of assets that were previously lawfully held by various authorities.

¹<https://www.investopedia.com/trms/m/mergersandacquisitions.asp>

ACQUISITION

An acquisition typically refers to a major business company acquiring a smaller firm. Acquisition is the accomplishment of all or a portion of the business's assets. The growth of an acquired firm is done in order to assemble the strengths and weaknesses of the acquiring company. A merger is similar to an acquisition, but it specifically refers to the merging of the interests of the two companies to create a stronger, separate company². The end result is an industry that develops profitably than typical organic expansion would allow. An acquisition is the taking over of one business by another business where no new business is created.

DIFFERENCE BETWEEN MERGER AND ACQUISITION

Acquisition and Merger are synonyms for "to unite." The term "merger" refers to the joining of two or more corporations to form a new firm, which may be done through a merger or incorporation process. In business strategy, an acquisition or merger is referred to as a takeover since it involves one company controlling another. Both involve corporate restructuring, with one firm having an impact on the other, and decisions are typically made when the financial system is collapsing or when profit margins are declining.

MERITS AND DEMERITS OF MERGERS AND ACQUISITIONS

M&A are two long term business strategies used to direct, control, or oversee how a firm operates. The premium offered to induce acceptance of the M&A offers far more than the rate of shares, shareholders who are selling their company profit from the M&A. Businesses typically engage in M&A to combine their control and control over the markets.

- Synergy is created when two entities come together and have sufficient influence to enhance trade recital, financial growth, and overall shareholder value over time.
- Competitive Advantage: The new company's combined resources aid in acquiring and preserving a competitive edge in the market.
- Cost effectiveness: As a result of the merger, the company's purchasing power grows, making it easier to negotiate for large orders.
- Tax Benefits: Financial remuneration may stimulate mergers and encourage businesses to fully utilize tax shelters, strengthen their financial management, and utilize alternative tax benefits.

²<https://www.edupristine.com/blog/mergers-acquisitions>

DEMERITS OF MERGERS AND ACQUISITIONS

Combining two businesses that operate similarly may suggest replication and increased corporate expertise, both of which may need layoffs. The company will experience various difficulties as a result of internal conflicts and frictions that may arise among the combined companies' employees. M&A deals may limit your options for flexibility³Change is harsh if a competing company creates rebellion and requires resources with sophisticated features. Killing of experienced workers, excluding those working in the control post. Given that this loss implies a loss of business knowledge, it is predictable.

REGULATORY FRAME WORK OF MERGERS AND ACQUISITIONS

In India, multiple regulatory frameworks control M&A activity. The goal of this legislation is to make the M&A process more transparent in order to safeguard shareholders' interests. Since 19 91, India's economy has experienced a dramatic shift in the authoritarian economic environment, which has increased the market for commercial control, which is defined by M&A and other type s of corporate reformation. An effort has been made to gauge how the authoritarian framework interacts with M&A activities⁴.It is also often asserted that the legislative environment for mergers and acquisitions (M&A) contributes to the simplicity of this conversion in the Indian business zone.

THE COMPANIES ACT 2013.

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The basic and most important piece of legislation that controls every company registered in India is the Companies Act. All corporate transactions, including mergers and acquisitions, must adhere to the 2013 Companies Act's requirements. Despite the fact that the term "merger" is not defined by the act, laws governing offers of arrangement or compromise made by a firm, its shareholder and its creditors for the purposes of reconstruction, amalgamation, and combination transactions are comprehensively covered. Sections 230 to 234 of Chapter XV (Companies, Arrangements and Amalgamations) contain the general law governing M&As.

Sec 230: Power to compromise or make arrangements with creditors and members
Sec 231: power of Tribunal to enforce compromise and arrangement

Sec 232: Mergers and amalgamation of companies.

Sec 233: Merger and amalgamation of certain companies.

Sec 234: Merger and amalgamation of companies with foreign companies

COMPETITION ACT 2002

³<https://corporatefinanceinstitute.com/resource/knowledge/deals/merger/>

⁴<http://www.legalserviceindia.com/article/1463-Laws-Regulating-Mergers-&-Acquisition-&-Acquisition-in-India.html>

"In India, the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP), which was the first statute to take effect on June 1, 1970, predated The Competition Act, 2002. The MRTP Act was regarded as India's first piece of law addressing competition in commercial practices⁵. Economic reforms in 1991 led to the realization that some MRTP Act provisions were not favorable to private investment and that others were insufficiently effective when anticompetitive actions were first initiated in light of the expanding economic liberalization. It was established with the intention of preventing financial control decisions from causing widespread harm, allowing for the management of monopolies, restricting trade, and protecting consumer interests. It also aims to prevent the process of the economic system from leading to the concentration of financial power in the hands of a small number of individuals and to make the rule of dominance possible.

SECURITIES LAWS

The SEBI's rules and recommendations govern the securities traded in Indian markets. In accordance with the "**Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulation, 2018**," M&A transactions are also governed by SEBI. The government launched a new economic strategy in the 1990s that include liberalization, privatization, and globalization; as a result, the Indian economy grew, which in turn created a highly competitive business environment globally. This in turn inspired many other companies to restructure their corporate structures and implement new corporate strategies that included tools like M&A, takeovers, etc. The largest board in India, SEBI, was created in 1992 and is located in Bombay. It is responsible for overseeing the securities market in India. The primary goals of SEBI are to protect investors' investments in the securities market and to support the securities market's logical expansion. In order to control takeovers that involved the method of keeping track with the acquirer of acquiring widely held shares in another corporation, SEBI enacted the "SEBI (substantial Acquisition of Shares and Takeover) Regulations, 1994" to ensure that the process of capture would proceed in a just as reasonable manner.

FOREIGN EXCHANGE MANAGEMENT ACT 1999

According to FEMA Guidelines, any transaction that tries to resemble a cross border merger will be regarded as RBI-approved ("as required by Rule 25A of the Organizations Merger Rules").⁶ According to the Foreign Exchange Management Act Guidelines, the managing executive or full-time chief and member secretary of the company or companies involved in such a cross-border merger must also set up a testament responsibility to ensure compliance with the FEMA Guidelines along with the submission made to the relevant National Company Law Tribunal (NCLT) in accordance with said unification. According to the Organizations (Compromise, Arrangement and Amalgamation) Rules, 2016 and the Organizations Demonstration, 2013, a cross border merger is defined as "any merger, amalgamation, or course of action between an Indian organization and an overseas organization." Despite the fact that the FEMA Guidelines intend to encompass fractious

⁵<https://www.emerald.com/insight/content/doi/10.1108/IJLMA-03-2015-0013/full/html?SkipTrackings=true>

⁶[https://www.pwc.in/assets/pdfs/news-alert-tax/2018pwc_news_alert_26_march_2018_fema_cross_border\)_merger.pdf](https://www.pwc.in/assets/pdfs/news-alert-tax/2018pwc_news_alert_26_march_2018_fema_cross_border)_merger.pdf)

outsirt "merger, amalgamation or course of action" (which would include demergers), Section 234 of the Companies Act and Rule 25A of the Companies Merger Rules, which regulate cross fringe combination, only make passing references to "mergers and amalgamation" without providing any specific notice of "arrangement."

INCOME TAX ACT 1961

According to the Income Tax Act, a "amalgamation" is defined as the joining of at least two organizations into one, or the merging of at least one company with another. The ITA also stipulates that for a merger to qualify as a "amalgamation" under the Income Tax Act, the following circumstances must be guaranteed by the merger's legality:

1. All of the assets of the merging companies become the property of the new company;
2. The combined company's liabilities include all of the liabilities of the merging entities;
3. Investors in the merged organization are those who put up at least 75% of the estimated value of the components of the merging organization.

Mergers and Acquisitions Concerns and Problems

There are several things that need to be taken care of before organizing an M&A exchange. While evaluating an exchange, the receiving organization and the objective organization should take the following into account. You are a global company and India is not on your map, and then you have missed the cross border mergers and acquisitions, are suitable and more prevalent feature of the Indian corporate landscape, the Prime Minister of India, Dr. Manmohan Singh, said in rresponse to growing new fiscal modification policy. When an Indian corporation considers an acquisition or merger, it wants to confirm that all the prerequisites and risks are covered in order for such a merger or acquisition to succeed. The speed and scope of global consensus have increased, which has increased the overall sequence of concerns.

ISSUES INVOLVED

1. Deal Structure:

When structuring an exchange, there are three options: (a) buying stocks, (b) trading resources, and (c) merging companies. The object's acquirers have contested legitimate security and consideration at every chance. It is crucial to recognize and address material difficulties while putting in place a precise organizational structure. The following are some

Crucial considerations when making a deal: (a) transferability of obligations, (b) requirements for gaining governmental consent, (c) investor support, and (d) charge consequences.

2. Earn-outs and Escrows

The letter of intent should clearly state any potential of payment of the price tag in an exchange, with multiple escrows and several acquire outs. Escrows are used to provide a buyer with a reaction in the event that the representations and assurances made by the target are broken or else before the occurrence of other event⁷ Escrows are a standard practice in merger and acquisition transactions, but their terms are flexible.

3. Representations and Warranties:

It is expected by the acquirer that the whole understanding will include detailed descriptions of and assurances from the target for matters such as power, capitalization, licensed innovation, charge, fiscal reports, consistency with ERISA and related agreements. The purpose and objectives advice must carefully review these representations because errors might quickly result in claims f or repayment from the buyer. As the objectives' "protective strategy," the revelation plans which reflect exceptional cases on the route to the portrayals should be as detailed as is reasonably possible.

4. Object Identification.

In every M&A swap, object repayment engagements are intensely haggled. The purpose to facilitate the type of reimbursement matters will be apex at the escrow total is one of the main questions that needs to be resolved. In some instances, the escrow may settle all issues.

5. Timing Problems –

Before engaging in any exchange, groups should assess long-term leading issues as soon time permits. For instance, the gatherings should complete a probe to establish whether the Hart-Scott- Rodino recording was determined and requested to be done, and if so, when such documenting will be accomplished (at times it is documented later than the letter of goal is imple mented yet is frequently documented upon the implementation of authoritative understanding). Despite the 30day waiver up period being able to be delayed. Choosing whether any outsider notification or assents (as further described above) will be required is a potential next step, as is determining the process by which such notification or assents will be prepared.

⁷<http://www.legalserviceindia.com/legal/article-2827-casse-laws-related-to-mergers-and-acquisitions-of-banking-companies>

Problems encountered

1. Working in a Global Environment-

Mergers and acquisitions are typically and primarily carried out between businesses with headquarters in several nations. This makes it more difficult to transfer practices since managers typically believe their expertise is the greatest and applies to everyone, forgetting that other cultures have different performance motivators.

2. Language Disparity

The main obstacle is employee communication. When such disparate organizations come together, the employees tend to prevent them from mingling because the amalgamated companies are for various countries and speak different languages. To effectively implement communication amongst workforces, employees from various cultures must first receive proper instruction in other languages.

3. Strategic Planning:

Before agreements are reached on deals, HR professionals are sometimes underutilized in the evaluation of target firms. In the event that they are excluded from the development of an M&A process and the early ability and culture screening, they should play catch-up later on to address problems that would have been avoided had they been involved initially.

4. Planning Integration –

Ensuring that the new corporate entity is not impacted by the M&A activity, which closely monitor employee performance to make sure that client needs are still being satisfied. Planning and running the integration should start as soon as is possible before the deal closes.

CONCLUSION

In the modern commercial environment, the processes of mergers and acquisitions have substantially improved. This process is carefully established in support of remodeling the business relations. In India, the administration authorities have considered and are undergoing mergers and acquisitions. By agreeing to merger and acquisition agreements, certain illustrious fund related groups made the crucial steps necessary to rebuild India's commercial sector. Numerous issues have arisen as a result of the Indian economy's transition since 1991 in both domestic and international circles. The Indian association has been prompted by the intense competition in the global market to seek mergers and acquisitions as a crucially important outcome. The merger and acquisition process in India has undergone numerous changes over the years. The immediate effects of the mergers and acquisition have also varied across the various sectors of the Indian financial system. Up until recently, it was uncommon for Indian business enterprises to engage in foreign ventures. Performances in mergers and acquisitions are keen for the means position in a company's expansion. The real development and maintenance of M&A

reimbursement for the long term growth plan. The effectiveness of M&A may theoretically depend on the Board's plan, the flexibility of the intervention era, and the interests of the parties, but if they are well equipped with the intention to complete mergers and acquisitions efficiently, they might achieve their goals.