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Competition Commission of India

NATIONAL CONFERENCE

MERGERS & ACQUISITIONS:
LEGAL & MANAGERIAL REVIEW

27th April, 2019

Chief Guest
Dhanendra Kumar IAS
Former Chairman CCI

DME Law School
DME Management School

NOIDA MANAGEMENT ASSOCIATION

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The objectives of the Act are sought to be achieved through the Competition Commission of India (CCI), which has been established by the Central Government with effect from 14th October 2003. CCI consists of a Chairperson and 6 Members appointed by the Central Government. Competition Commission of India (CCI) is a statutory body of the Government of India responsible for enforcing The Competition Act, 2002 throughout India and to prevent activities that have an appreciable adverse effect on competition in India. Established in 2003, it became fully functional in May 2009 with Dhanendra Kumar as its first Chairman. CCI prevents practices having adverse effect on competition, promotes and sustains competition in markets, protects the interests of consumers and ensures freedom of trade carried on by other participants in markets in India. The Commission is also required to give opinion on competition issues on a reference received from a statutory authority established under any law and to undertake competition advocacy, create public awareness and impart training on competition issues.

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Founded in 1989, Noida Management Association (NMA) is a non-profit autonomous professional body registered under the societies Registration Act. It owes its origin largely to the initiative and foresight of a few prominent industrialists, Noida authority and professional managers of Noida/ Greater Noida, who realizing the need of a professional association for exchange of views and experiences among managers formed this Association. NMA is affiliated to All India Management Association. It has already drawn a very positive response from many leading industries and professionals in Noida and Greater Noida. NMA also administers awards to innovative management practices. NMA is founded on the belief that good management helps to achieve social objectives through the best use of men, materials, machines, time and money with maximum satisfaction to the participants in the joint endeavor NMA is devoted to the cause of promoting professional management and the dissemination of management principles and practices. It is our endeavor to make it one of the prominent local management associations providing a wide range of services to its members, and thus furthering its contribution to the society.

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Conference Aim and Theme

The Conference aims at discussing the legal & managerial aspects of Mergers & Acquisitions (M & A) in the present scenario. It will provide an opportunity to participants to exchange their respective viewpoints and perspectives in order to suggest mechanisms to smoothen M & A in the face of present-day fierce competitive environment. The conference focuses on the legal as well as managerial aspects of M&A along with the recent trends in M&A. It also caters to emerging issues like reverse mergers and M&A's in international context.

The conference has so far seen contributions from various universities across India like NLU (Bangalore), Christ University (Bangalore), NLU (Assam), IP University, Vivekananda Institute of Professional Studies (Delhi), IGNOU, University of Petroleum and Energy Studies (Dehradun) and Himachal University along with several Institutes from West Bengal, Pune, Ghaziabad, Noida and Greater Noida.

The research papers encompass relevant themes including legal and managerial issues of M&A, case studies, economic impact of M&A, reverse mergers, de-mergers and strategic aspects of M&A. The present conference aims at achieving substantial interaction on these relevant issues related with M&A and hopes that the fresh ideas coming through this platform make a significant addition in the body of knowledge.

Organising Committee

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Research Papers

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ECONOMIC VALUE ADDITION BY MERGERS – A REALITY OR JUST A PLACEBO?

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ABSTRACT

Mergers and Acquisitions have been areas of interest, both to academicians as well as practitioners. The promise of value creation is colossal which reasons out ~USD 5Trillion M&A activity globally in the year 2015despite a high failure rate of such business combinations. Given this risk and reward equation, it becomes all the more important to critically study if any causal relationship exists between mergers and performance improvement for acquiring firms.Panel Regression has been used to analysea sample of largest mergers between 2000 and 2014 in India from three fundamental sectors namely steel, agriculture products, and pharmaceutical. Acquiring firms' performance is measured by Return on Invested Capital (ROIC), Weighted Average Cost of Capital (WACC) and Economic Value Addition (EVA). The study is based on eleven years data for each firm, including merger year and five years pre-and-post-merger period, which is a sufficiently long period for sustainable performance evaluation. The results indicate that acquiring firms'performance improves considerably in the years after the merger. It is found that post-merger performance is also significantly influenced by lagged performance and lagged Debt/Equity ratio. The study shall be extended to other industries and economies.

Keywords: Economic Value Addition, Mergers, Leverage, Performance improvement

INTRODUCTION

Mergers and Acquisitions have been areas of interest, both to academicians as well as practitioners. The promise of value creation is colossal which reasons out ~USD 5Trillion M&A activity globally in the year 2015 despite a high failure rate of such business combinations. Given this risk and reward equation, it becomes all the more important to critically study if any causal relationship exists between mergers and performance improvement for acquiring firms. Performance improvement of the acquiring firmbecause of M&A can be judged on various parameters which can be broadly divided into three categories namely accounting based, cash flow based and value addition based. Accounting based parameters like Return on Equity or Return on Assets are easy to calculate but do not take into consideration the change in risk of the acquiring firm post-merger. Cash flow based parameters like free cash flow to the firm (FCFF) and free cash flow to equity (FCFE) arealso unilateral and thus suffers from the same limitation. Value-added parameters, like Economic Value Addition, are more comprehensive parameters which takes into account the reward in form of return on invested capital (ROIC) as well as the risk quotient in form of cost of capital (WACC) in the calculation.

Net Debt and Shareholders' funds have been summed up as Invested Capital at the beginning of the year which is used to divide NOPAT to obtain ROIC in percentage term. For a weighted average cost of capital, cost of debt has been calculated as yearly finance cost divided by the average level of debt in the opening and closing balance sheets. Capital Asset Pricing Model (CAPM) has been used for the cost of equity for which yearly Sensex performance has been taken as market return. Monthly stock return and its sensitivity have been used to calculate stock beta. 10-year g-sec yield in India has been taken as the risk-free rate. EVA has been calculated by subtracting percentage WACC from percentage ROIC.

The study examines if mergers are one of the reasons for performance improvement of acquiring firms by analyzing the data over eleven years including the merger year and five years on either side of it. This time period is long enough for the initial euphoria of the mergerto settle, post-merger integration issues to get resolved and for capital markets to get used to this news. The study also tries to establish a causal relationship between performance improvement by acquiring a firm with respect to debt-to-equity and lagged debt-to-equity.

LITERATURE REVIEW

The studies pertaining to performance evaluation of firms have used various financial parameters like accrual-based accounting ratios, cash flows and economic value added. The studies using panel regression as a tool for statistical analysis were also scrutinized.

Ravenscraft and Scherer (1989) tested whether mergers result in economies of scale or scope. Their study of 2,732 lines of business for the years 1975-77 did not find any improvement in the post-merger operating performance.

Healy, Palepu, and Ruback (1992) analyzed the sample of the 50 largest mergers in the US, completed between 1979 and mid-1984. An increase in the post-merger operating cash flow returns vis-à-vis the firms' industries were observed due to the enhancement of asset productivity post-merger.

Sharma and Ho (2002) analyzed a sample of 36 Australian acquisitions occurred during 1986-1991. The study found that on the basis of accrual and cash flow performance measures, corporate acquisitions did not lead to significant post-acquisition improvements.

Rahman and Limmack (2004) analyzeda sample of Malaysian mergers over the period 1988 to 1992 and concluded that operating cash flow performance for combined firms improved significantly.

Sood and Kaur (2004) analyzed the financial ratios of a sample of 20 companies targeted during the financial year 1997-98 and found thedeterioration in performance.

Kumar and Rajib (2007) examined the 57 large mergers that occurred during 1995-2002. The results based on cash flow deflated by the book value of assets/sales shows that corporate performance improved after mergers. Cash flow deflated by the market value of assets indicates no improvement after mergers.

Ramakrishnan (2008) tested 87 mergers He concluded that merging firms in India performed better financially after the merger, as compared to their performance in the pre-merger period.

Mann and Kohli (2008) empirically evaluated forced mergers and market-driven mergers. Market reaction has been positive for market-driven mergers and negative for forced mergers.

Sinha and Kaushik (2010) examined mergers and acquisition in the financial sector and found that acquiring firms were able to generate higher cash flows because of cost cutting and greater market power.

Singh and Mogla (2010) examined the profitability 153 listed merged companies. The results reveal that profitability declined in 55% of companies, and only 29% of companies could improve their profitability.

Yook (2004) examined the post-acquisition performance of acquiring firms using EVA. This study found that acquiring a firm's industry adjusted EVA is slightly improved but when the premium paid is taken into account EVA shows a decline in the post-acquisition period.

Arellano & Bond (1991) proposed the Generalized Methods of Moment (GMM). They applied the simulations to compare the estimation output of OLS, WG and first difference GMM and they found that while OLS & WG estimator shows the large upward bias the first difference GMM estimator shows very small finite sample downward bias.

Stephen Bond (working paper 2002) analyzed the econometric methods for panel data which is dynamic in nature. The researcher has used two examples to explain that GMM estimators are more appropriate to estimate single equation, autoregressive models with a large number of cross sections with a relatively small number of time periods.

Bianconi M. et al (2014)applied dynamic panel regression and treatment effect analysis to evaluate the impact of M&A on the firm's value. A sample of 65000 firms from Communication, Technology, Energy and Utility sector was used for the period of 2000 to 2010. They concluded that the results of treatment effect show that M&A results into a decrease in value of enterprise multiple in long-term. This decrease is caused by a relatively large increase in earnings than the firm's value. In short run, the impact of M&A on firm's value was found to be more in all the four sectors.

The studies based on accounting measures have shown mixed results while cash flow measurebased studies have shown the improvement in the performance of the merged entity.

RESEARCH GAPS

i. It is observed that not much research work has been conducted which has used dynamic panel regression to evaluate the performance of merged entities

ii. It is found that very few studies have used EVA as a performance measure

Research Objectives

i. The aim of this study is to analyzewhether Economic Value Added of merged entity is impacted by merger among other factors like debt/equity, lagged debt/equity and lagged performance using the dynamic panel data analysis methodology.

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ii. To analyze whether the impact of these independent variables on EVA is driven by a change in ROIC or change in WACC or both.

RESEARCH METHODOLOGY

i. Sample Details

It is a sample with five qualifications. Firstly, for the study, only business combinations that are in the (legal) form of mergers have been considered where the target firm cease to exist and there is one firm post-merger.Secondly, the analysis has been done for sectors namely Agriculture Products, Steel or Pharmaceutical. This is a working paper; the study shall be extended to other industries and economies.Thirdly, mergers within the business groups have not been included in the sample. Fourthly, only domestic public companies have been considered for which data availability is not a challenge. Finally, acquiring firms which have undertaken more than one merger have also been excluded.

ii. Data Analysis Methodology

The financial performance of acquiring firm has been analyzed for 5 years pre & post-merger. Therefore we have data of 11 years for each of these 19 sample firms resulting in 209 observations. Thus our data for this study is in the form of panel data which has a cross-section as well as time series element.

DYNAMIC PANEL MODEL (DPD)

The performance (dependent variable) is measured in terms of ROIC, WACC, and EVA in percentage terms. Lagged value of the dependent variable is used as a regressor to measure its impact on the dependent variable because the performance of each year is expected to be influenced by past performance.When the dependent variable is expected to be auto regressive the application of Dynamic Panel Model with GMM method is expected to provide better analysis. Impact of debt is also measured on acquiring firm performance because debt is expected to have a disciplinary impact on the management of acquiring the firm.

The merger has been considered as a treatment given to the firm. Therefore the performance of post-merger years has been considered as treated performance while the performance prior to merger years has been considered as untreated performance. Therefore a dummy variable has been created and termed as, "Treat". This dummy variable has been assigned the value of 1 for merger year and post-merger years (6th to 11th year) while for rest of the period 0 value has been assigned to a dummy variable.

The output from financial analysis has been analyzed in three steps. In the firststep,the objective was to find out the factors impacting the acquiring firm EVA (in percentage term). The regressors were lagged EVA, Debt/Equity ratio, the 1st lagged value of Debt/Equity and merger as a treatment dummy.In the secondstep,analysis is done to find whether ROIC is significantly impacted by previous year ROIC, Debt/Equity ratio, the 1stlagged value of Debt/Equity or by merger as a treatment.In the third step impact of previous year WACC, Debt/Equity ratio, the 1st lagged value of Debt/Equity and of the merger as a treatment was evaluated on acquiring firm WACC.It can be inferred by combining the analysis of all three steps, whether a merger as a treatment dummy impacts the EVA of acquiring the firm. In case it impacts EVA then how it has impacted both the components of EVA.

DATA ANALYSIS AND FINDINGS

Dynamic Panel Model with 1st Difference Transformation

We evaluated each of the performance measures, ROIC, WACC,and EVA separately. The impact of 1st lag of dependent variable, debt/equity ratio, the 1st lagged value of Debt/Equity and merger as a treatment has been analyzed with the help of dynamic panel regression/GMM method on our dependent variables. In order to eliminate the fixed effect, we have applied first difference transformation on our variables. We have selected 2nd to the 6th lag of the dependent variable as an instrument. The following equations were estimated:

$$\Delta EVA_t = \beta1 * \Delta EVA_{t-1} + \beta2 * \Delta Debt/Equity + \beta3 * \Delta Debt/Equity_{t-1} + \beta4 * \Delta Treat + \epsilon_{it}$$

$$\Delta ROICt = \beta1 * \Delta ROIC_{t-1} + \beta2 * \Delta Debt/Equity + \beta3 * \Delta Debt/Equity_{t-1} + \beta4 * \Delta Treat + \epsilon_{it}$$

$$\Delta WACC_t = \beta1 * \Delta WACC_{t-1} + \beta2 * \Delta Debt/Equity + \beta3 * \Delta Debt/Equity_{t-1} + \beta4 * \Delta Treat + \epsilon_{it}$$

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Table-1: Estimation Output for EVA

Dependent Variable: EVA
Method: Panel Generalized Method of Moments
Transformation: First Differences
Date: 09/08/18 Time: 20:45
Sample: 1 209
Periods included: 9
Cross-sections included: 19
Total panel (balanced) observations: 171
White period instrument weighting matrix
White period standard errors & covariance (no d.f. correction)
Instrument specification: @DYN(EVA,-2,-6)
Constant added to instrument list

Variable	Coefficient	Std. Error	t-Statistic	Prob.
EVA(-1)	-0.197910	0.006164	-32.10981	0.0000
DEBT_EQUITY01	0.017437	0.006821	2.556248	0.0115
DEBT_EQUITY01(-1)	-0.084806	0.009048	-9.372772	0.0000
TREAT	10.05996	1.152643	8.727738	0.0000

Effects Specification

Cross-section fixed (first differences)

Mean dependent var	-0.486968	S.D. dependent var	29.70361
S.E. of regression	27.33042	Sum squared resid	124741.0
J-statistic	14.84015	Instrument rank	19
Prob(J-statistic)	0.462992		

The result shows that EVA is significantly influenced negatively by the 1st lag of EVA ($p<0.01$i.e. at a 99% confidence level) but its coefficient isonly 0.19%.EVA is also significantly influenced negatively by the 1st lag of Debt/Equity ($p<0.01$), while Debt/Equity of current year has a significant positive influence ($p<0.01$) on EVA but the coefficients of both are small.

The treat dummy for merger also has a significant positive impact ($p<0.01$) on the EVA of sample firms. The coefficient of treat dummy is high and shows that EVA of sample firms for the treated period (in merger year and post-merger years) is 10% more in comparison to the untreated period (pre-merger years).

DISCUSSION AND CONCLUSION

The analysis of ROIC show that ROIC of sample firm is significantly influenced positively ($p<0.01$) by the 1st lag of ROIC and Debt/Equity, while 1st lag of Debt/Equity and Merger as a treatment has a significant negative influence($p<0.01$) on ROIC.

The analysis of WACC shows that WACC in the treated period (merger year & post-merger years) is 9.0% less than the WACC in the untreated period (pre-merger years).This is depicted by a coefficient of "treat" dummy used for the merger. This impact is found to be significant at a 99% confidence interval ($p<0.01$). WACC is also significantly influenced by lagged WACC, debt/equity and lagged debt/equity. However, the coefficients of all these variables are relatively small.

The study shows EVA of sample firms for the treated period (in merger year and post-merger years) is 10% more in comparison to the untreated period (pre-merger years) and this result is significant at 99% confidence level.The increase in EVA of merged firms is a manifestation of reduction of WACC caused by mergers. Though the merger as a treatment has influenced ROIC negatively but the reduction in WACC,by 9%, because of the merger is much more pronounced.

Our results are in line with Bianconi M. et al (2014)**,** Yook (2004) Healy, P M; Palepu, K G and Ruback, R S (1992), Rahman and Limmack (2004), Kumar and Rajib (2007), Ramakrishnan, K. (2008), Sinha and Kaushik (2010) which indicates the improvement in performance in post-merger period.However, the impact of the merger as per this study is relatively large in comparison to similar studies. The results of this study are different from Ravenscraft and Scherer (1989), Sharma, D.S., and Ho, J. (2002),Sood and Kaur (2004), Yook(2004),Singh and Mogla (2010) which indicate no improvement in the performance of merged entities.

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MERGERS AND ACQUISITIONS OF BANKS IN INDIA: A CASE STUDY OF VIJAYA, DENA AND BANK OF BARODA

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ABSTRACT
To keep the head high in globalized economy one has to follow the path of growth, which contains various challenges and issues; one has to overpower these challenges and issues to become a success story. The purpose of the present paper is to explore various motives of merger in Indian banking industry. Cleaning of the balance sheet and minimizing NPAs could be possible objective of the latest merger of Vijaya, Dena and Bank of Baroda announced by the government. The strategy that the government has adopted is merging one weak bank with its stronger counterparts. While two banks crisscross one another in geographical space, the third becomes strategically significant being based in the south. The success of this merger, according to analysts, is crucial for future such attempts. It will provide efficiencies of scale and help improve the quality of corporate governance for the banks. The merger will enable the government to pay closer operational attention to the enlarged institution. In 1991, Narasimham Committee suggested that India should have fewer but stronger PSBs. Aligning the distribution of professionals in the merged bank and handling of human resources. The quantum of Gross NPA (GNPA) cannot change and will still have to be addressed. Without addressing the governance issues in the banks, merging two or three public sector banks may not change the architecture. Unless there is a change in the operating structures, mergers will may not deliver the desired results in the end. Merged entity will require capital support from the government; otherwise, such a merger would not improve their capitalization profile. The merger will yield the desired results if these banks rationalized their branches, looked to reduce costs and handled people issues well. RBI should continue to give banking licences for more small finance banks as well as universal banks along with bank mergers.

Keywords: Banking Sector, Mergers, Public Sector, Private Sector, NPA

INTRODUCTION
For the Indian financial sector organizations, one of the strategies to face the intense competition could be, to consolidate through the process of mergers and acquisitions. India is slowly but surely moving from a regime of 'large number of small banks' to 'small number of large banks' and ‘larger the bank, higher its competitiveness and better prospects of survival’ appears to be the mantra for success.

Bank of Baroda, Vijaya Bank and Dena Bank are established institutions serving the nation and the society at large, with a legacy of 80 – 100 years. The combined synergy of the three banks is aimed at deepening the relationship with the customers by offering wider range of products & services, enhanced network of branches, ATMs and a different banking experience. The synergy is aimed at creating a contemporary banking entity that’s truly Indian at Heart and Global in Scale. This process of amalgamation promises to leverage the specific skills of each bank and imbibe their best practices. This mega entity has the ability to do more and reach further to fulfil customers with world-class offerings backed by robust processes. The power of 3 became an organic thought for campaign and it came effortlessly from the intent and purpose of dynamic amalgamation. The articulation for it then became an evocative campaign line “Ab Saath Hain Teen, Behtar Se Behtareen” which takes inspiration from the fact that the whole is always bigger than the sum of its parts. That when three great institutions come together, things will go from better to the best. With the Union Cabinet approving one of the first tripartite mergers in the public banking sector on January 2, 2019, Bank of Baroda will become the third largest lender in the country and second largest public-sector bank. The amalgamation emphasizes on consolidating and integrating smaller banks with bigger banks. The tripartite amalgamation reflects the government's focus towards consolidation and strengthening of public-sector banking and also to deal with the raising problematic issues like non-performing assets (NPAs) and default of loans. The amalgamation will be made effective by way of share swapping pursuant to which Bank of Baroda will issue shares to the existing shareholders of Vijaya Bank and Dena Bank. As per the share exchange ratio approved in relation to the merger, the Bank of Baroda will issue 110 shares of Rs 2 each for every 1000 shares of Dena Bank and 402 shares of Rs 2 each for every 1000 shares of Vijaya Bank.

The primary objective of this merger is to improve and to retain the customer base, provide better customer service, reducing the level of NPAs, consolidating the public-sector banking and enabling the merged entity to compete at global banking level. Further, such massive consolidation is also expected to reduce the lending cost, the number of NPAs and increase the merged bank's operational stability and profitability. The central government had, previously in 2017 as well, merged six banks into State Bank of India, making it the largest banking conglomerate. Post-consolidation, Bank of Baroda will have business of around Rs 15.4 trillion and advances and deposits market share of 6.9% and 7.4%, respectively. Further, considering the regional widespread presence of Vijaya Banka and Dena Bank, the Bank of Baroda will have pan India presence. Amongst all the highlights, the deal is also likely to face certain hurdles in relation to its implementation process, employee retention etc. Continuity of employees has always been a crucial issue at the time of structuring as well as implementation of a merger. In the present case, post-merger, Bank of Baroda shall become an employer of over 90,000 employees working across 9,500 branches throughout the country.

Further, it will also have to integrate data of more than 100 million customers as well. With such mammoth task at hand, the implementation phase of the merger may pose, for some, initial teething issues for the merged bank and the government.

As per the approved plan, after the commencement of the amalgamation scheme, the boards of Vijaya Bank and Dena Bank will stand dissolved. "Any whole-time director, including the managing director, of the Vijaya Bank and Dena Bank, shall cease to hold office and shall be entitled to receive salary and allowances in lieu of the notice in accordance with the applicable law," the BoB statement said. The entire share capital of Vijaya Bank and Dena Bank, without any further act, deed or instrument, will stand cancelled, it said, adding that the shares of both these banks will also stand delisted from stock exchanges.

REVIEW OF LITERATURE

There are many variables, which have been considered as significant factor in managing Mergers and Acquisitions effectively. Communication is an unavoidable factor and effective communication can be of utmost importance for management to deal with the individual employee reactions to the merger, and the anxiety and stress levels following a merger.

Rhoades (1998) summarized nine case studies, by nine authors, on the efficiency effects of bank mergers. The mergers selected for study were ones that seemed relatively likely to yield efficiency gains. That is, they involved relatively large banks generally with substantial market overlap, and most occurred during the early 1990s when efficiency was getting a lot of attention in banking. All nine of the mergers resulted in significant cost cutting in line with pre-merger projections. Four of the nine mergers were clearly successful in improving cost efficiency but five were not.

Appelbaum, Gandell, Yortis, Proper, and Jobin (2000) examined the multiple organizational factors, which directly affect a merger as well as the merger process. They studied the issue of stress, which is an outcome of M&A within uncertain environment and reported high level of stress. Moreover, they evolved the five major sections such as communications, corporate culture, change, stress, and managing/strategy.

Schuler and Jackson (2001) proposed proposed a three-stage model of mergers and acquisitions that systematically identified several human resources issues and activities. Numerous examples were offered to illustrate the issues and activities in each of the three stages. The article concluded with a description of the role and importance of the HR department and leader has its presence in business environment, in order to get competitive advantage the acquirer must consider the HR perspective to bring effectiveness in a deal of a merger.

Kadapakkam & Krishnamurthy (2008) studied M&A as value creation, efficiency improvements as explanations for synergies and produced evidence that suggests mergers generate gains by improving resource allocation rather than by reducing tax payments of increasing the market power of the combined firm.

DeYoung, Evanoff & Molyneux (2009) have found in their study that the changes in deregulation, allowed commercial banks and other financial services firms to expand through mergers and acquisition into geographic markets and product markets.

Panwar (2011) studied ongoing merger trends in Indian banking from the viewpoint of two important stakeholders of a banking firm- stockholders and managers. The findings shows that the trend of consolidation in Indian banking industry has so far been limited mainly to restructuring of weak banks and harmonization of banks and financial institutions. Voluntary mergers demonstrating market dynamics are very few. She concluded that Indian financial system requires very large banks to absorb various risks emanating from operating in domestic and global environments.

OBJECTIVE OF STUDY

The present study mainly focuses on Mergers of Vijaya, Dena and BoB and further tries to:

1. Identify the possible motives and rationale behind merger
2. Identify the Challenges ahead for Integration

MOTIVES AND RATIONALE FOR MERGERS

Market Leadership

The merger can enhance value for shareholders of both companies through the amalgamated entity's access to greater number of market resources. With addition to market share a company can afford to control the price in better manner with a consequent increase in profitability.

Growth and Diversification

Companies that desire rapid growth in size or market share or diversification in the range of their products may find that a merger can be used to fulfill the objective instead of going through the volume consuming process of internal growth or diversification. The firm may achieve the same objective in a short period by merging with an existing firm. In addition, such a strategy is often less costly than the alternative of developing the necessary production capability and capacity.

Synergy

Implies a situation where the combined firm is more valuable than the sum of the individual combining firms. It refers to benefits other than those related to economies of scale. Operating economies are one form of synergy benefits.

Risk

Managing Bankruptcy and organizational risks, recent studies have established that if merger and acquisitions in banks if allowed in a controlled manner would significantly reduce the bankruptcy risk of the merged entity. Obviously, mergers would also provide these benefits to banks in India reducing their bankruptcy concerns.

Economies of Scale

With the help of mergers and acquisitions in the banking sector, the banks can achieve significant growth in their operations and minimize their expenses to a considerable extent. Another important advantage behind this kind of merger is that in this process, competition is reduced because merger eliminates competitors from the banking industry.

Economies of Scope

An ability to grow products and segments and an opportunity to cross sell would enhance revenue. This could also result in more geographic growth.

Strategic Integration

Considering the complementary nature of the businesses of the concerned companies, in terms of their commercial strengths, geographic profiles and site integration, the amalgamated entity may be able to conduct operations in the most cost efficient manner. The merger an also enable maximum utilization of various infrastructural and manufacturing assets, including utilities and other site facilities.

Benefits from Mergers in case some Banks in India:

After clearly understanding the motives and rationale for merger, we studied the mergers of 17 banks in India. In this analysis, we can identify following benefits of mergers to the all participants.

- Sick banks survived after merger.
- Enhanced branch network geographically.
- Larger customer base (rural reach).
- Increased market share.
- Attainment of infrastructure.

Emerging Issues in M&As

Growth is an ongoing process that reflects various issues pertaining to the various dimensions of business. Mergers in any industry are prerequisite for growth but it surely affects the customers,

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employees, shareholders and all concerned departments. There are studies, which reveal significant relationships between mergers and constituents of business. In our study, we find following emerging issues that are required more attention by researchers in order to successfully implement merger.

Employees' Perception

There is an evidence of employees' agitation and strike resultant of merger of the Bank of Rajasthan Ltd. into ICICI Bank Ltd. Empirical studies are conducted to know the perception of banking services in the wake of bank mergers. **George & Hegde (2004)** reported a case for the delicate aspect of employees' attitudes, their satisfaction and motivation, which are posited as prerequisites for customer satisfaction, which is, again necessary for the competitive sustenance of the organization.

Schneider, Parkington and Buxton (1980) conducted research on some boundary-spanning theory and on some practical realities. Assumptions underlying the use of perception-based diagnoses were also explained. Results revealed some strong relationships between employee perceptions of branch practices and procedures in relation to service and customer perceptions of service practices and quality. Schneider and Bowen (1985) found a significant relationship between branch employees' perceptions of organizational human resources practices and branch customers' attitudes about service.

Mylonakis (2006b) has examined in his article that how bank employees perceive bank' M&As and how it is expected to affect their personal and professional career. The result showed that bank employees feel personally threatened by mergers and acquisitions, which are not considered to be justified and necessary entrepreneurial activities conducive to enhanced, quality banking services.

Wickramasinghe & Chandana (2009) took views of 109 employees of two banks of Sri Lanka, which had undergone an extension merger and a collaborative merger and reported that the type of the merger affects employee perceptions and employees are less satisfied in the collaborative merger than in the extension merger. Further findings revealed that age, gender, and marital status influence the perceptions of the respondents and among those, age is the most influential.

Branch Size

According to **Mylonakis (2006a),** an important parameter in the relationship between the number of branches and employment is branch size. He has used most well-known indicators for the evaluation of staff efficiency in banking sector *i.e.* operating revenue per employee, personnel expenses per employee and pre-tax profits to personnel expenses. He observed that operating revenue either fall or remains stable, administrative expenses per employee increase for every examined bank and pre-tax profits to personnel expenses indicator showed how many euros are gained by the bank for every euro spent in staff payroll.

Customer Perception

Sureshchandar, Rajendran, & Anantharaman (2002) have used factor analysis approach to determine customer-perceived service quality in banking industry. They have brought to light some of the critical determinants of service quality that have been overlooked in the literature & proposed a comprehensive model & an instrument framework for measuring customer perceived service quality.

Hossain & Leo (2009) conducted an analytical study to measure customer perception on service quality in retail banking in Qatar and covered 18 parameters with sample size of 120, chosen on a convenient basis from 4 banks. They have used five-point Likert scale to conclude the results that customer's perception is high test in the tangibles area and lowest in the competence area.

Communication

Nikandrou, Papalexandris and Bourantas (2000) explored a number of variables that bear an impact on managerial trustworthiness, for example frequent communication before and after acquisition, and the already existing qualities of employee relations seem to play the most important role. Therefore, a carefully planned, employee-centered communication programme, together with a good level of employee relations, seem to form the basis for a successful outcome as far as employee relations in the face of mergers and acquisitions is concerned. Literature shows that communication also plays vital role in the success of a merger. **Appelbaum, Gandell, Yortis, Proper & Jobin (2000)** concludes that communications throughout the M&A process plays a crucial role in its eventual success. Providing clear, consistent, factual sympathetic and up-to-date information in various ways will increase the cooping abilities of employees, which will in turn increase their productivity. This increased productivity will positively affect firm's performance and create sustained competitive advantage by achieving the projected strategic fit and synergies.

Change Management Strategies

Kavanagh (2006) conducted longitudinal study that examined mergers between three large multi-site public-sector organizations. Both qualitative and quantitative methods of analysis were used to examine the effect of leadership and change management strategies on acceptance of cultural change by individuals occurred due to merger. Findings indicate that in many cases the change that occurs as a result of a merger is imposed on the leaders themselves. In this respect, the success of a merger depends on individual's perceptions about the manner in which the process is handled and the direction in which the culture is moved.

Human Resource Management

Researchers in some articles also raise issues related to human resource management. **Bryson, (2003)** reviewed the literature around managing HRM risk in a merger. He found that poor merger results are often attributed to HRM and organizational problems, and that several factors related to maintaining workforce stability are identified as important in managing HRM risk. **Schraeder and Self (2003)** found that organizational culture is one factor as a potential catalyst to M&A success.

Chew and Sharma (2005) examined the effectiveness of human resource management (HRM) and organizational culture on financial performance of Singapore-based companies involved in mergers and acquisition activities. They used the method of content analysis to collect information on cultural values and HRM effectiveness, using Kabanoff's content analysis. Culture profiles were then assigned to organizations in the sample following the results from cluster analysis. Various financial ratios were used to measure organizational performance. Finally, regression analysis was performed to test various hypotheses. The key finding of the study suggests that organizations with elite and potential leader, when complemented by human resource effectiveness, had a better financial performance as compared to other organizations. At the end, it was concluded that to achieve better financial results by undertaking merger and acquisition activities organizations need to have elite or leadership value profile.

Other Issues

There are evidences in literature that media plays an important role in shaping the social context for mergers and acquisition. **Schneider and Dunbar (1992). Schweiger and DeNisi (1991)** suggest that it is the uncertainty that creates stress for employees rather than the actual changes associated with the merger.

Communication and a transparent change process are important. Leaders need to be competent and trained in the process of transforming organizations to ensure that individuals within the organization accept the changes prompted by a merger.

Challenges from Vijaya, Dena and BoB Merger

- Integration of technology platforms and cultures of these organizations.
- For the banking system as a whole, things cannot change as the capital remains unchanged.
- Bank of Baroda is the largest among the three and will take a hit on its asset quality.
- Rationalization of physical infrastructure.
- Customer retention.
- Aligning the distribution of professionals in the merged bank and handling of human resources.

Positives from Vijaya, Dena and BoB Merger

- Capital will be higher when merged together and will give a feeling of a stronger bank.
- Large banks with larger lending capacity.
- It will provide efficiencies of scale and help improve the quality of corporate governance for the banks.
- The merged entity will have a market share of about 6.8 per cent by loans, according to data as of March 2018, making it the third largest bank in the system, Moody's said.
- Improvement in operational efficiency.

- Cost of funds for the merged entity is expected to come down.
- Bigger banks can attract more Current Account, Savings Account (CASA) deposits.
- Banks will have the capacity to raise resources without depending on the State exchequer. Improve the capacity of the banking system to absorb shocks that the markets may cause to it.

CONCLUSION

Merger is the useful tool for growth and expansion in Indian Banking Sector. It is helpful for survival of weak banks by merging into larger bank. The competition is intense and irrespective of the challenge from the multinational players, domestic banks - both public and private are also seen rigorous in their pursuit of gaining competitive edge by acquiring or merging with potential opportunities as present today. Public Sector Banks in India are highly fragmented, especially in comparison with other key economies. The merger will enable the government to pay closer operational attention to the enlarged institution, as is the case with SBI. The sustainable development and good financial performance of Financial Institutions are key for development of economy. It is also essential to protect the financial system and depositors' money. The problem of Non Performing Assets is alarming which is reducing the profitability of banks that in long rum could result in banking crisis. A good banking system will build capacity to meet credit demand and sustain economic growth. In 1991, Narasimham Committee suggested that India should have fewer but stronger PSBs. Merger of Vijaya, Dena and Bank of Baroda could result in cleaning of the balance sheet and minimizing NPAs that could be a possible objective of the merger announced by the government. This merger could also result in challenges like aligning the distribution of professionals in the merged bank and handling of human resources. As issues on seniority are structured and important in a public sector set-up, ensuring that there is harmony would be a challenge. The other challenge is customer retention. RBI should continue to give banking licences for more small finance banks as well as universal banks along with bank mergers. The merger will yield the desired results if these banks rationalized their branches, looked to reduce costs and handled people issues well.

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MERGER AND AMALGAMATION IN INDIAN BANKING SECTOR: A STRATEGIC ALLIANCE

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ABSTRACT
A relatively new dimension in the Indian banking industry is accelerated through mergers and acquisitions, the very famous and exciting terms in the Banking world which means Blending or merging of two or more undertaking which is existing in the market into one new identity, it means that both will lose their separate different identities and will start functioning together for common profits. It enables banks to achieve a global status and shower greater value to the stakeholders. A substantial number of global and national banks everywhere throughout the world are occupied with merger and acquisition exercises. One of the foremost goals behind the mergers and amalgamation in the banking segment is to gain profit from economies of scale. Various reports in the media on the Indian Banking Industry have been accruing on various topics. Primary objective of this research article is to lay emphasis on implications and issues which may arise at time of merger or amalgamations.

INTRODUCTION

The banking system is a three tier system. These are the scheduled commercial banks; the regional rural banks operating in rural areas but not covered by the scheduled banks; and Cooperative and special purpose rural banks. Commercial banks are categorized as scheduled And non-scheduled banks, but for the purpose of assessment of performance of banks, the Reserve Bank of India categories them as public sector banks, old private sector banks, new Private sector banks and foreign banks.

In the past, mergers were initiated by regulators to protect the interest of depositors of weak banks. But it is now expected that market led mergers may gain momentum in the coming years. The smaller banks with firm financials as well as the large ones with weak income statements would be the obvious targets for the larger and better run banks. The pressures on capital structure in particular are expected to trigger a phase of consolidation in the banking industry and the pace would be swifter than we can conceive today.

Wide networks of banks are prevalent in India in both rural and urban areas. Many of large Indian nationalized banks and financial institutions form a part of public sector. Apex banking institution of India is the Reserve Bank of India (RBI). Term banking company has been defined under the Banking Regulation Act[1], which defines it as a company which transacts the business of banking in any state of India. The word banking has been defined under the same Act as the accepting for the purpose of lending or investment, or deposits of money from the public repayable on demand or otherwise and withdraw able by cheque, draft order or otherwise[2]. Banks attract savings from the people and thus encourage the investment in industrialization trade and commerce[3].

Merger and Amalgamation: Reports of Committees on Banks

The reports of three committees appointed by the RBI are relevant in relation to the restructuring of Banks. These were: Report of the Narasimham Committee on Banking Sector Reforms, Report of the Working Group for Harmonizing the Role and Operations of DFIs and Banks, and the Report of the Working Group on Restructuring of Weak Public Sector Banks. These three reports reveal the idea of the trends and future of Bank restructuring in India.

1. Narasimham Committee

In December 1997, the Narasimham committee on banking sector reform was setup. The committee was tasked to progressively review implementation of the banking reforms to further strengthen the financial institutions of India since 19924. It focused on issues like size of banks and capital adequacy ratio among other things[5]. M.

[1] 1949

[2] Section 5(c), The Banking Regulation Act, 1949

[3] Ibid

[4] Sudha Mahalingam, Frontline Vol. 15: No. 10 :: May 09 - 22, 1998. Retrieved 21st March 2019

[5] Gaurav Akrani, Narasimham Committee Report 1991 1998 – Recommendations. Retrieved 21st March 2019

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Narasimham, Chairman, submitted the report of the Committee on Banking Sector Reforms (Committee-II) to the Finance Minister Yashwant Sinha in April 1998. The Committee submitted its report on 23 April, 1998 with the following suggestions[1]:

- Merger with strong banks, but not with the weak.
- Two or three banks with international orientation, eight to 10 national banks and a large number of local banks.
- Rehabilitate weak banks with the introduction of narrow banking
- Confine small, local banks to States or a cluster of Districts.
- Review the RBI Act, the Banking Regulation Act, the Nationalization Act and the State Bank of India Act.
- Speed up computerization of public sector banks.
- Review the recruitment procedures, training and remuneration policies of PSU banks.
- De-politicization of appointments of the bank CEOs and professionalization of the bank Boards.
- Strengthen the legal framework to accelerate credit recovery.
- Increase capital adequacy to match the enhanced banking risk.
- Budgetary support non-viable for recapitalization.

2. Khan Group

Under the chairmanship of IDBI chairman, Shri. S.H. Khan, RBI set Khan Committee in December 1997. It was setup to review the role and structure of the Developmental Financial Institutions and the Commercial Banks in the emerging environment and to recommend measures to achieve coordination and harmonization of Lending policies of financial institutions before they move towards Universal Banking.

- Some of the recommendations of this Group are given below[2]:
- A progressive move towards universal banking and the development of an enabling regulatory framework for the purpose.
- A full banking license may be eventually granted to DFIs. In the interim, DFIs may be permitted to have a banking subsidiary (with holdings up to 100 per cent), while the DFIs themselves may continue to play their existing role.
- The appropriate corporate structure of universal banking should be an internal management/shareholder decision and should not be imposed by the regulator.
- Management and shareholders of banks and DFIs should be permitted to explore and enter into gainful mergers.
- The RBI/Government should provide an appropriate level of financial support in case DFIs are required to assume any developmental obligations.

3. Verma Group

The Reserve Bank of India set up a Working Group on Restructuring Weak Public Sector Banks, under the Chairmanship of Shri M.S. Verma, former Chairman, State Bank of India, to suggest the measures for revival of weak Public Sector Banks. The group went deep into the issue and analyzed the problem fully and made specific suggestions. This group also identified some core principles for incorporation into the future restructuring strategies for weak banks.

Mergers and Amalgamations in Banks

India banking definitely has a history of consolidation of several banking institutions right from the British era. Several small co-operative banks have also been swallowed up in the process of mergers and amalgamations by

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[1] Ibid

[2] Bank Mergers and Acquisitions', http://www.egyankosh.ac.in/handle/123456789/9039. (last accessed on 21st March 2019)

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some of the leading public sector banks in the country. The first attempt towards merger and amalgamation within the lineup of the public sector banks was made by the merger of NBI with PNB in the year 1993.

According to the Company's Act, 2013, the term amalgamation[1] *includes 'absorption'. Thus a merger or amalgamation may take any of the two forms:*

1) Merger or amalgamation through absorption: 'Absorption' refers to combination of two or more firms into an existing company. In a merger through absorption all companies except one go into the liquidation and lose their separate identities.

2) Merger or amalgamation through consolidation: Where a new company is altogether formed by combination of two or more companies, it is known as consolidation. In this form of merger, all existing companies go into liquidation and form a new company with a different entity. The entity of consolidating corporations is lost and their assets and liabilities are taken over by a new corporation or a company.

Till the mid-1990s, mergers and acquisitions have not been common in developing countries. But, hopefully in future we will find mergers and acquisitions in the Indian banking industry will be the order of the day[2].

Mergers and acquisitions encourage banks to gain global reach and better synergy and allow large banks to acquire the stressed assets of weaker banks. Mergers in India between weak or unviable banks grow faster so that the weak banks could be reformed providing continuity of employment with the working force, utilization of the assets blocked up in the weak or unviable banks and adding constructively to the prosperity of the nation through increased flow of funds.

A combination of two companies, allowing only one to survive is called merger, while amalgamation is a situation where two or more companies or banks join hands and combine to form a new company or bank[3].

The benefits of such merger and amalgamation include:

Revival of a sick company or bank on its merger with a healthy counterpart. If such a merger is of a healthy company or banking company referred to in section 5(c) of the Act4 with a specified bank, the healthy company or bank is benefited through relaxation of carry forward and set off of accumulated loss and unabsorbed depreciation under s.72-A of the Income Tax Act[5],

When some healthy companies combine one or more sick companies under any scheme approved by the BIFR, they may be benefited through the provisions of SICA[6]. In the banking sector, important mergers and acquisitions in India in recent years include the merger between IDBI and its own subsidiary IDBI Bank. The deal was worth $ 174.6 million. Another important merger was that between Centurion Bank and Bank of Punjab. Worth $82.1 million, this merger led to the creation of the Centurion Bank of Punjab with 235 branches in different regions of India, another merger was HDFC bank and Centurion Bank of Punjab.

Some of the past merged banks are Nedungadi Bank Ltd. with Punjab National Bank, Grindlay Bank merged with Standard Charted Bank, Bank of Madura with ICICI Bank, Times Bank with HDFC Bank, and Global Trust Bank merged with Oriental Bank of Commerce.

On the other hand, around the late 1990s mergers among private banks in India also commenced, for a variety of reasons such as for enhancing financial strength for improving the share in the growing retail business and for securing relatively long regional presence. Important examples, mergers were mooted by the merging banks[7].

Mergers also took place among the Indian Banks with the public sector banks in recent years. Prominent examples of this phenomenon were the mergers of Banaras State Bank with the Bank of Baroda in 2002, and

[1] Section 232(8) Explanation (ii)

[2] Ibid

[3] M.L. Tannan, Tannan's Banking Law and Practice in India at p. 2318

[4] Banking Regulation Act, 1949

[5] 1961

[6] Sick Industrial Companies (Special Provisions) Act, 1985

[7] Ibid

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the Global trust Bank with the Oriental Bank of Commerce in 2004. All these mergers were initiated by the authorities essentially to presence stability.

PSB consolidation was a sensational topic in 2008-09. Mooted by the then Finance Minister P Chidambaram, the issue did not get the required thrust after he left the Ministry[1].

The emerging scenario is also turning favorable to the process of consolidation. Mounting pressures to issue new bank licenses, which will induce enhanced competition from foreign banks getting full bank licenses, and entry of a new set of private sector banks, will also precipitate the PSB consolidation[2].

The Reserve Bank (RBI) has already set the process of new licenses in motion by approving the Dutch banking major Rabobank's application for a full banking license[3].

Various committees appointed by the Government of India and The Reserve Bank of India have studied in detail the aspects of consolidation through the process of mergers[4].

Banking experts believe that a merger with a 'right' bank can help a bank increase its net worth and hence its capital adequacy. This is particularly relevant in the context of the proposed revised rules of the Basle Committee on Banking Supervision aimed at keeping bank capital standards with the increased sophistication in the financial services industry.

In the case of private sector banks, where the promoters are required compulsorily to dilute their stake to the stipulated 40%, merger can be quite useful to take care of the mandatory requirement. This apart, mergers would also expand the business opportunities for both the banks.

The Competition Commission of India will approve M&A (Mergers and Acquisitions) in banks except in the case of banks that are under trouble. In such cases, the RBI will have the final authority[5].

CONCLUSION

Banks are an integral element of the economy of a country. They act as a back bone of the country upon which economic development of that nation depends[6]. It is not necessary to have banks more in number but to have banks large in size to operate efficiently. Large Banks can operate globally. Large Banks would be in a position to take advantage of efficiencies of scale than in smaller Banks. Banks are the blood and life of the new economy, so there is need to develop the Banking system of a country[7]. To have larger banks, there is need to have mergers or amalgamations of Banks.

Imagine there are three banks in country Bank X, Y and Z. Bank X uses modern technology and Bank Y has more skilled employees. If these two banks get merged these two will work more efficiently than Bank Z. In light of above statement, State Bank of India after being merged is now ranked among 60 of the world in the list of 1000 banks, so if many other banks are merged they can also be able to rank among world's top banks[8].

The global incentives for mergers and Indian incentives vary to great degree. While at the global level, we see mergers for the purpose of consolidation, increasing size and increasing the very scope of the bank, in India we see that most mergers are for the purpose of bailing banks out. This underlines the very basic difference of the nature of the financial sector between Indian and the developed nations.

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[1] R.N. Pradeep, Public Sector Bank: Consolidate Now: The Hindu

[2] Ibid

[3] Ibid

[4] Jayshree Bose, Bank Merger: The Indian Scenario, pg 171

[5] Indian legal impetus', Sigh and associates advocates and solicitors, VOL. V, Issue XII December (2012) retrieved from http://singhassociates.in/UploadImg/NewsImages/Vol%20V%20Issue%20XII.pdf (last accessed on 20th March, 2016)

[6] R.K. Sharma, Structure of Commerce, p. 126 (2007)

[7] V.N.Nigam and A. Banerjee, Economics Applications, p. 169 (2005)

[8] I. Satyanarayan, SBI will merge an associate bank by end September, Businessline, The Hindu, August 12, 2013 available at www.businessline.com (last accessed on 26th March 2016)

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Mergers and amalgamations are considered as corporate events which helps an organization to create synergy and provide sustainable competitive advantage, but, simultaneously these sorts of corporate events also have the potential to create severe personal trauma and stress which can result in psychological, behavioural, health, performance, and survival problems for both the individuals and companies, whether it is a bank or a non-banking financial corporation, involved in it.

The banking industry has been undergoing major Mergers and Amalgamations in the recent years, with a number of global players emerging through successive M&A in all sectors including banking. The present study indicates that the pre and post- Mergers, Amalgamation and Acquisitions of selected banks in India have no greater changes in profitability ratio; a few banks are satisfactory during the study period. The study highlights that even after ten years of merger; the firms couldn't improve their performance. Similar decline in performance is observed matching firms. Thus, the decline in the performance of merging firms cannot be attributed to merger alone. But in future, there are strong prospects of improvements in profitability[1].

Domestic mergers are beneficial in case of competition in the market and Cross-Border mergers are beneficial for increasing the revenue and profits and attracting the customers. Thus pre-determined priorities need to be established to achieve the targets. Banks should merge with their competitive banks only to maintain the same status and share the management. It also helps in expanding of the reach and also geographical operation.

But from the point of view of the society, too many mergers should not be there because it reduces the options. CCI's regulation of Merger and Amalgamation therefore intends to keep an eye on the banks that they should not merge for the only motive of gaining profits at the cost of the customers through illegal or unauthorized practices.

Though consolidation in the public sector banking segment, which accounts for about 75% of the assets of the banking system, is still a work in progress, there are enabling legal provisions for the purpose in the respective statutes of the public sector banks. With aim to keep supporting the growth and strengthening the Indian financial sector, RBI acting as the chief regulator and supervisor, will continue to play such role in order to ensure stability of the system.

[1] Dr.Smita Meena, Dr.Pushpender Kumar, Mergers and Acquisitions Prospects: Indian Banks Study, International Journal of Recent Research in Commerce Economics and Management, Vol. 1, Issue 3, pp: (10-17),

A STUDY ON MERGERS & ACQUISITIONS: A LITERATURE REVIEW

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ABSTRACT
Mergers and acquisitions are common and, in some cases, must for a company to survive in today's global competitive world. They are essential for the upliftment of the company and for the nation’s economy as a whole. However the process of merger and acquisition is not that easy, especially post merger phase where a lot of effort has to be put in by both; the management and employee for the success of the same. Also the cultural clash that exists can act as a threat which must be timely identified, acknowledged and rectified. Here an important point to mention is the fact why generally most of the companies go for merger or acquisition. The only factor behind this is the growth, expansion or synergies. People who act as assets to the organization are either ignored or even if involved, then at very lower level.

In this paper we will discuss various factors that lead to the circumstances that support the formation of mergers and acquisition. This paper provides an overview of the various factors involved in mergers and acquisitions and includes a discussion of the pros and cons of mergers and acquisitions activity. The study will also include the pre and post effect of merger and acquisition on the business along with the employees.

We will also study the observations of some studies conducted on mergers and acquisition in the past by great researchers. We hope that this paper has some usefulness and generates interest within potential researchers.

Keywords: Merger, Acquisition, Investors, Competitive strategies, Synergy of M&A, Challenges.

1. INTRODUCTION
In today’s world of globalization, no nation can survive without being competitive into the market. With ever changing market scenario, competition, globalization and customer preferences; the demand for competitive companies with better marketing strategies, products and services has evolved. With this view, in our current paper we will throw light on the emergence of Merger and Acquisition and its impact on the nation’s industrial and economic growth. We will also scrutinize the pros and cons of Mergers and Acquisition in the upliftment of investors, consumers, and society as a whole.

Nowadays Mergers and Acquisitions are frequent actions in organizations. The terminology like merger, acquisition and take-over are normally used interchangeably in strategic management literature, though there is significant difference between them. A merger is an agreement where two existing companies unite into one new company. In this, generally two entities of relatively equal stature come together and take the best of each company. Whereas an acquisition involves a much easier process of fitting one smaller company into the existing acquiring firm. Thus mergers and acquisition leads to restructuring of organization. Restructuring usually involves major organizational change such as shift in corporate strategies to meet increased competition or changed market conditions.

2. LITERATURE REVIEW
A review of the literature is "a systematic, explicit and reproducible method to identify, evaluate and synthesize the existing body of complete and registered works produced by researchers, academics and professionals". It is an evaluation of a research that addresses a research question.

In this paper we will throw light on the various fundamental concepts associated with our empirical study and observation which will take our study a step ahead.

2.1 LITERATURE REVIEW ON MERGERS
When two firms, generally of almost same size agrees to join together as a single new entity leaving behind the separate entity then it is termed as Merger. Under this, new company stocks are issued and the previous stocks of both separate companies are surrendered. This situation is generally referred as “Merger of equals”.

2.1.1 TYPES OF MERGERS
Here we will discuss the types of merger on the basis of business structure. They are explained as below –

a) **Horizontal merger** – It is the merger of two companies who are in direct competition with each other and share the same industry, product lines and markets.

b) **Vertical merger** – It is a merger between companies that are sharing the same supply chain. Eg- a supplier and a company.

c) **Product extension merger** – It is the merger of two companies that are selling different but related products in the same market.

d) **Market extension merger** – It is the merger of two companies that sell same product but in different markets.

e) **Conglomerate merger** – It is the merger of two such companies who have no common areas of business or related activities.

2.1.2 BENEFITS OF MERGERS

The mergers are always well planned and strategically implemented. They are meant to create value for the company. Below mentioned are few benefits of the same –

a) **Expansion of market** – With the merger, the market reach of the company increases and it can capture larger no. of customers resulting in generating new sales opportunities and simultaneously improving revenue and earnings. Merger is also highly beneficial for those unproductive or least productive companies who are running in loss and are about to retire.

b) **Acquiring new technology** – A company can only survive if it's enough competitive to stay into the market with staying focused on its technological development and its application. Mergers provide the platform for the companies to combine their technological progress and reap greater value by sharing knowledge and technology.

c) **Improves company's performance** – When the companies go for merger, they tend to reduce the existence of competition by joining hands and thus leading to generation of higher revenue and profit. Also with the new management, the strategies can be designed to control wastage of resources, thus improving the operations and improving the company's performance in totality.

Thus we can notice that mergers are beneficial to the business and nation as a whole. However an important consideration into it is the requirement of proper planning, analysis and final execution.

2.2 LITERATURE REVIEW ON ACQUISITIONS

When one company purchases most or all the shares of the other company in order to take control then it is termed as acquisition. Thus in other words acquisition refers to acquiring more than 50% ownership in the target company.

There are various factors that contribute towards the situation of acquisition. Few among them being expanding market share, increasing synergy, to achieve economies of scale, new niche offerings, brand name and so on. This will also ensure entering into such a market which already have strong customer base.

2.2.1 BENEFITS OF ACQUISITION

Acquiring a company is profitable in various circumstances. The benefits associated with are discussed below-

a) **Increased market share** – Through acquisition the market share of the company increases which simultaneously reduces the market share of the competitor. Acquisition is certainly good for those smaller companies who have innovative products but finds it difficult to be accessible to the entire potential market.

b) **New resources and market areas** – Acquisition can provide an opportunity to the company to gain competency and resources that it did not hold earlier and thus immediate access to a new market. This will help them to generate rapid increase in revenue and if planned strategically, can also contribute in long term financial status of the company.

c) **Access to capital and experts** – When smaller companies are acquired by bigger one, then their access to capital and experts automatically improves. With this improved ability, they can certainly take the business to a new height if are passionate for it.

3. M&A PROCESS

It is a combination of activities through proper planning, evaluation and implementation of strategies and a series of negotiation. It all starts with – what business do we do? What is its scope? How to increase market share? etc. Below mentioned is the figure depicting the M&A process-

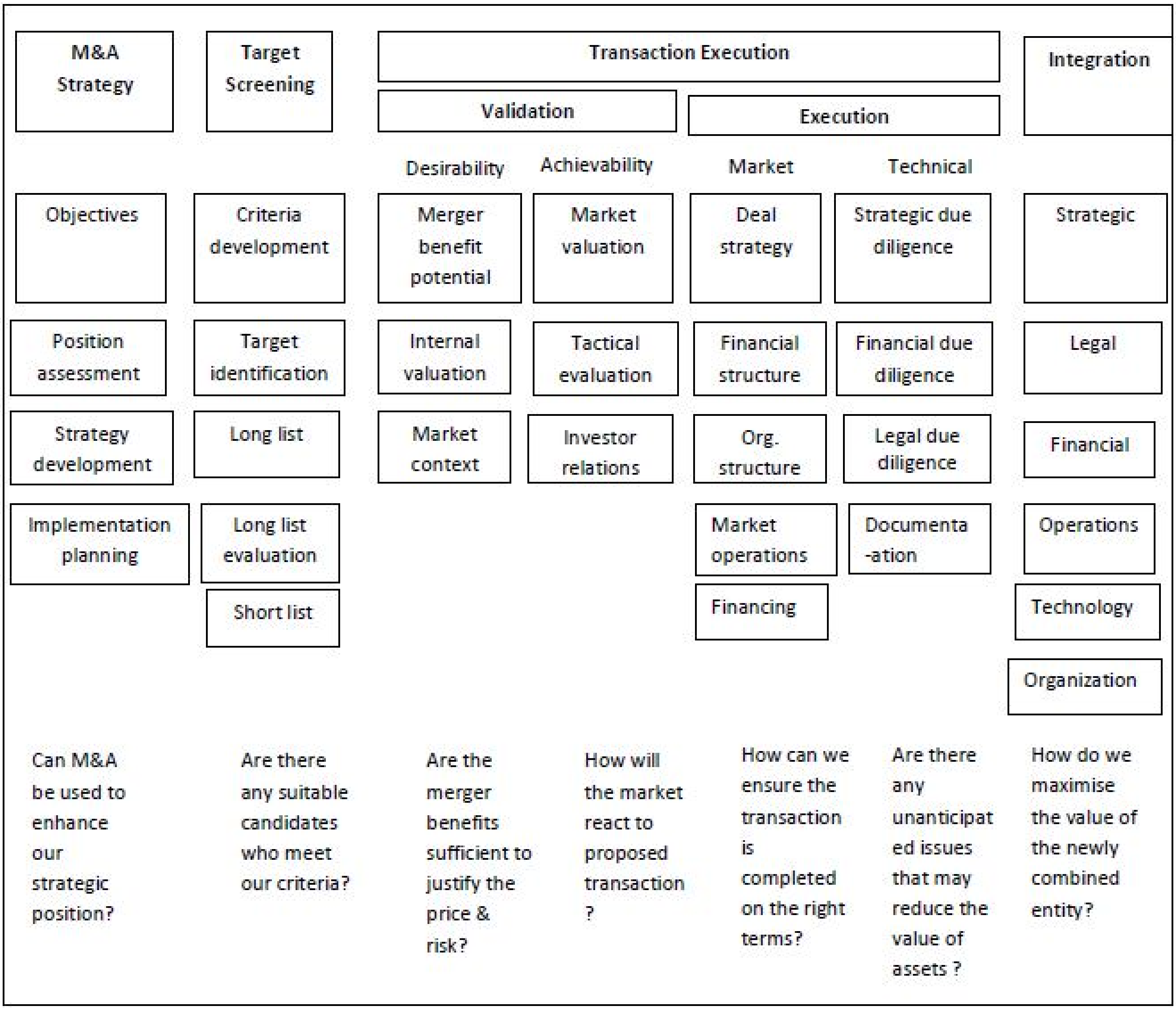

Figure-1: M&A process

Thus we find that M&A process is a systematized process which involves great efforts and support of experts to make the venture success.

4. CHALLENGES ASSOCIATED WITH MERGERS AND ACQUISITIONS:

M&A are good for the growth of the company if planned strategically. However it's not always successful and can lead to loss if certain factors are not considered through proper planning and analysis.

Below we discuss certain challenges associated with M&A –

a) **Conflicting objectives** – M&A can be challenging if the two companies involved in the process have conflicting objectives. Eg.- the main company may be looking for expanding the market whereas the acquired company may be willing to cut down the cost. Such situations if arise have to be dealt with precaution.

b) **Based on poor strategies** – When M&A are not strategically planned and experts consultation is not prioritized then it can lead to serious challenges and be more threatening than rewarding. Therefore M&A shall always look for companies that have experts advice and provide growth opportunities.

c) **Cultural clash** – Every company has its own distinct culture and ideologies. Problem usually arises when M&A occurs between companies where employees from, both the companies find huge cultural clash and thus difficult to cooperate and work together.

d) **Pressure on suppliers** - Acquisition can be tough for suppliers too. It can generate situation where it's difficult for suppliers to meet the raised demand of company in terms of supplies, services or materials. This may act as hindrance in smooth functioning or operations of the company.

e) **Brand damage** – Though M&A are fruitful to the companies but can also be challenging as it may hurt the image of new company or damage the credibility of existing brand. Thus a thorough analysis should be done before finalizing the deal, either to keep different brands separately or merge them into new.

5. CONCLUSIVE REMARKS

With the above study, now we can understand the difference between the terminology like merger and acquisition. Also have identified various elements and issues associated with pre and post merger and acquisition phases and how to deal with them strategically. Thus this paper had provided us an understanding of different explanations associated with M&A that deals with its performance.

We can certainly quote that for the economic growth and upliftment of the nation as a whole, it is essential for the domestic companies to improve their worth by providing products and services at par with the competitors and gain competitive edge. With the model of M&A, domestic firms can unite together in order to face competitive pressure. Moreover MNCs also find this as an opportunity to enter into the foreign market and extend their market share. In this paper, we also threw light on the various challenges that the companies have to face to maintain their dominancy into the market and also suggested some alternatives and situations that will help to make M&A successful for any company.

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ROLE AND SIGNIFICANCE OF DOMINANT PARTNER IN CORPORATE MERGERS

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ABSTRACT
The increasing number of merger and acquisitions, particularly cross-border business deals, has prompted a wide range of studies to understand the process of execution of such deals, and how they affect the involved firms' performance. In this study an attempt has been made to understand the role that a dominant partner plays in the newly formed organization after the corporate decision of merger of multiple enterprises. The role of the dominant partner in such a corporate setup shall be analyzed from dimensions like fosteringaccess to competitive position, program or service expansion, increase in operational efficiency, increased capacity and economies of scale, reducing capital expenditure and improvingfinancial position in the newly formed enterprise. The study made use of secondary data available in different forms such as books, published research material, and magazines for this purpose. The findings of the study indicated that there are specific advantages of a deal which are brought about by the acquiring firm, i.e. the dominant partner.

Keywords: Merger, acquiring firm, dominant partner, target firm, competitive advantage.

INTRODUCTION
A merger can be defined as a commonplace occurrence in the corporate sphere when two or more companies usually involved in a similar line of business decide to legally combine their businesses and operate as a single company. An acquisition, on the other hand, is the process when a sick company is acquired by a stronger and more stable company to build upon its strengths and weaknesses, and expand the existing business more strongly. The basic difference between acquisition and merger is that in the latter case, the interests of all the companies who have planned for this legalized corporate unification are also catered. Moreover, the identities of the participating companies remain undisturbed in the manner that they establish a new and single business identity for themselves. But in case of acquisitions, the company whose business is taken over usually has no existence in the new company that gets formed after the corporate process.

The purposes behind such corporate phenomena are to expand an existing business, diversify business, expand customer reach, extend company's reach, or gain greater market share (Gaughan, 2010; Rossi and Volpin, 2004). In case of mergers, all the companies merging together into a singular entity might not have equal share or status in the company that is finally formed. Thus, if a single company owns most of the shares of the new company then the company will be regarded as 'dominant partner' (van Vuuren et al., 2010).It is noteworthy to consider that these corporate phenomena of acquisitions and mergers started withthe process of rapid development of the world economy when entrepreneurs showed growing interest for discovering newer ways to grow and adapt themselves to the steeply competitive environment (Aytac and Kaya, 2016).

The history of mergers and acquisitions are divided into six waves. The first wave began in 1897 and lasted until 1904. The Second wave started in 1916 and lasted until 1929. The third wave commenced in 1965 and endedin 1969. The fourth wave lasted from 1981 to 1989.The fifth wave began in 1992, until2000. The final or the sixth wave had a span from 2003 to 2007(Malik et al., 2014). In this context, Aytac and Kaya, (2016) talk about landmark of mergers that took place in 2000s with the example of AOL taking over Time Warner with a price of $162 billionand establishing the new company by the name AOL Time Warner worth a value of $350 billion(Aytac and Kaya, 2016).

India is also one of the countries witnessing a growing number of mergers and acquisitions, particularly among large scale companies owing to growing purchasing capacity of the consumer, a vibrant workforce, promising population growth, and favorable political conditions. The table below presents few of the recent major merger and acquisition deals that have taken place in India.

Year of Merger and acquisition (M&A) deal	Companies involved	Nature of companies and details of M&A	Main motivation behind merger or acquisition
January 2018	Oil and Natural Gas Corporation (ONGC) and Hindustan Petroleum Corporation Limited (HPCL)	ONGC is country's top upstream Petroleum company and HPCL is India's No 3 refining and marketing	The Government wanted to set up an integrated end-to-end oil company. Through this deal alone

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		company. Both companies are Public sector undertakings (PSUs) and majority shareholders in Government of India. In 2018, ONGC paid INR 370 billion to buy out government's 51% stake in HPCL. The deal was finalized at an acquisition price that was 13.8% higher than HPCL's closing price on the previous day (Pengonda, 2018).	the government was able to achieve its divestment target for the fiscal year (The Economic Times, 2018).
May 2018	Tata Steel and Bhushan Steel	Both companies operate in production and marketing of steel. They are two of the leading steel producers in India as well as Asia.	Bhushan Steel owners sold out their 73% stake to Tata Steel for Rs. 32500 crores as Bhushan Steel was reeling in debt. Acquiring Bhushan Steel gave Tata Steel Rs 4000 crores in revenues and 820 crores in operating profits in the very first quarter after acquisition. For Bhushan Steel, the deal meant staving off insolvency/ bankruptcy and saving public sector banks that had lent the company significant sums of money (Mehta, 2018).
Initiated in Nov 2018 and to be completed by end 2019	Hindustan Unilever Limited (HUL) and GlaxoSmithKline Consumer Health Care (GSKCH)	HUL is India's Number one FMCG company and GSKCH India sells consumer healthcare products and is valued at Rs 31,700 crores (Raj & Ghosh, 2018). This is an all equity merger where 4.39 shares of HUL will be allotted for every share of GSKCH India.	GSKCH owns the strongest health drink brand in India- Horlicks. It also has Boost another big brand. After this merger HUL will become India's largest publicly-listed food and refreshment company Moreover it gives HUL the opportunity to foray into the health and wellness space (Raj & Ghosh, 2018).
August 2018	Walmart of USA buyout of 77% share of Flipkart India for USD 21 Billion	Walmart is among the largest corporate organisations in the world with a ranking among Top 5 in Fortune	Walmart had been struggling to get a toehold in India to take on its retail rival Amazon and buyout of

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		500 listing by revenue and market capitalization. Flipkart is India's number one ecommerce company. The deal was cracked for USD 16 billion.	Flipkart gives it an excellent opportunity to take a strong position in the ecommerce market of India. Flipkart was starting to lag behind in competition to Amazon, which is quickly gaining increasing share in the Indian ecommerce market (Roy, 2018).
August 2018	Vodafone India and Idea cellular Ltd	Vodafone, a UK-based telecom company and Idea Cellular are two of the largest companies in India's telecom service provider space. The deal between these two companies was hatched in 2018 wherein both the companies merged their operations and to buy stake in Indus Towers, a telecom tower company (Economic Times, 2018).	The merger will create India's largest cellular company and will get a 37% market share of telecom market. The combined company can fight the disruptor (Reliance Jio together).
Dec 2018	Three way merger of Bank of Baroda, Vijaya Bank and Dena bank	All the three companies are public sector banks with presence in the Indian banking industry nation-wide for over 75 years. The idea behind the merger was to consolidate the operations of three banks to make a bigger, stronger and more efficient bank with considerably improved lending ability (Rangan & Rebello, 2018)	The transaction will make the merged bank become 3rd largest bank, after State Bank of India and ICICI bank. Two strong banks- Bank of Baroda and Vijaya bank were able to give financial relief to the struggling Dena Bank.

AIM OF THE STUDY

This study aims to examine the role played by the dominant player in mergers and the significance of this status Quo.

DISCUSSION

Purpose of a merger and acquisition deal

Corporate decisions like mergers and acquisitions are taken by entrepreneurs in order to accomplish some purposes.To discuss the purpose behind mergers and acquisition deals,Arora and Kumar(2012) specially pinpoint that firms indulging in such corporate decisions aim towards seeking improved financial performance.Such corporate decisions also help in reducing the expenditures made in the category of fixed costs by removing duplicate departments or operations, reducing costs of the company relative to the same revenue stream, and increasing overall profit margin.Such mergers and acquisitions are also done with the purpose of increasing market share. This is possible through such corporate decisions because union of a number of firms result in making the newly formed entity absorb major competitors of the market. This eventually generates an

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opportunity for it to increase its market power to set the prices of its products or services. The scholars further suggest that the idea of cross selling also encourage entities to opt for mergers and acquisition deals because it helps in expanding business line of enterprises. For example, such corporate decisions bestow a manufacturing firm with the ability to acquire and sell complementary products when it targets to cross sell through mergers and acquisitions.Moreover, mergers and acquisitions are vital corporate decisions that enable a profit making firm buy a loss making firm and use the target's loss as their advantage by reducing their tax liabilities. Dilshad(2013) states that the main purpose behind mergers and acquisitions is to achieve corporate growth by means of relocation of a firm's resources. These processes prove cardinal in accelerating the implementation of a plan that would help a company grow rapidly and globally. The scholar further states that economies of sale are among the paramount factors that encourage firms, like banks, to go for mergers and acquisitions. Through such corporate processes these firms are basically able to cut down their operating costs and reduce the branch networks and staff overheads on one hand and integrating of information technology and risk management systems on the other. In addition to these, the scholars also talk about the intentions of the firms to achieve positive synergies by enabling them to enter into markets that are potential but have not been accessed yet due to various resource based and technological shortcomings.In discussing the basic reason that inspires firms to go for corporate decisions like mergers and acquisitions, Malik et al. (2014)suggest that these processes are a very convenient option for the small and less profit making organizations for surviving in the emerging market in a scenario where they individually do not have the capacity or resources to meet the demands of the market adequately. Such decisions also prove effectual for some firms in entering into a new and potential market or a new business arena which might not have been possible otherwise. Sometimes mergers and acquisitions alsowork as strategies for some firms to work in collaboration with other companies in marketprofitably which might not be possible otherwise if such firms work alone in such markets.Such decisions are also considered as strategies for decreasing their related expenses like operating costs as these processes increase the return on equity and shareholders' wealth.When companies think of expanding their business beyond the periphery of their country, mergers and acquisitions serve as their most reliable alternative. Jallow et al.(2017) directly emphasize on the financial performance as the major reason that make firms take decisions in favour of mergers and acquisitions. The scholars further elaborate that such corporate decisions are taken by firms because they have positive impact on return on assets of these companies. Some firms also undertake such decisions because they aspire positive changes on their return on equity. Similarly, firms that aspire to increase their earnings per share and net profit margin also go in favour of these corporate decisions like mergers and acquisitions.

Role of the dominant partner in merger

The role played by the dominant partner in merger has been analyzed by different scholars from different dimensions. In describing the significance of the role of the dominant partner in a merger, Elgar(2001) suggests that many a time it is upon this dominant partner to decide the final shape of the merged firm.Thus, situations like these make it prominent that the identity of the newly formed organization is mostly formed in lines with the identity of the dominant partner.This process has a corresponding influence on employee motivation and employee productivity as well. Here the scholar further suggests that in most of the cases the employees present in the dominant organization are more skilled and professionally competent.Hence, when the merger takes place and the newly formed firm develops an identity that is almost similar to that of the dominant partner, the employees do not find it much complicated to adapt to this new organization.As a result, their sense of belongingness towards this new firm also remains intact which in turn has a positive effect on their motivation, productivity, loyalty and sense of continuity towards the new organization.

Undy (2008) suggests that the dominant partner plays a major role in initiating the process of expansion of the business base of the organization. In elaborating on this suggestion, the scholar suggests that in majority of cases of mergers it is the absolute discretion of the dominant partner to decide the projected territorial coverage that the newly formed firm shall have.Following such expansions, the dominant partners also take the responsibility of making the most effective recruitment activities so that it yields real gains to the newly formed company in the form of greater productivity and professional quality of services.

In talking about the role of dominant partner in a merger, Cooper and Finkelstein(2012) state that the dominant organization majorly rules the organizational policies and create a sense among the other partners that they have to follow certain professional characteristics in order to become a part of the newly formed organization. Thus, while the employees belonging to the dominant organization consider themselves a part of the new organization, the employees of other partner organizations develop a sense that they are outsiders and have to adjust to the new ambience of the newly formed organization.Eventually, it creates a scope for internal criticism within the organization from which the new organization is able to identify its strengths, weaknesses, opportunities and threats.This in turn works a lot in strengthening the competitiveness of the new firm as it could develop strategies to overcome its weaknesses, counter its threats and work further towards boosting its strengths so that it is able to grab lucrative opportunities faster than its competitors.

While discussing the role of a dominant partner in an organizational merger, Markovits(2014) indicates that the dominant organization brings along with it its enhanced market share. Thus, in the post-merger phase, this market share of the dominant partner is passed on to the newly formed firm which then gets further added to the total market shares of all other merged partners. What finally is the yieldof the process is that the dominant partner contributes towards strengthening the business base of the newly formed firm in the market.The scholar further adds that as the dominant partner is usually potentially stronger than the other partners who are involved in the process, so the newly formed firm gains in the form of emphatic brand recognition in the market, with a greater financial strength.

CONCLUSION

The main purposes of initiating a merger or acquisition deal include business expansion, access to extended customer base, gaining greater competitive edge, expanding business line, and so on.This study identified a number of tasks performed by a dominant firm in a merger deal some of which include elements of competitive edge like greater territorial access of the business, stronger financial base, more resources, greater market share and greater customer reach among others which are thenpassed on to the newly formed organization. Eventually, the newly formed organization emerges as a strong one in respect of its financial stability, customer base and overall competitiveness. Mergers have become an increasingly common phenomenon, especially in case of cross-border businesses, due to these competitive advantages. However the role of the dominant partner is not restricted to the aforesaid purposes. In addition to the wide range of benefits brought about by the dominant firm, it must also ensure that the merger process is a smooth one by taking care of the needs of the target firm, such as those related to the combination situation like cultural similarity, friendliness of the deal, power differentials, as well as integration process needs such as job security, rewards of employees, autonomy, and cultural tolerance. A separate study on the role of the target firm in mergers would benefit in this regard.

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MERGERS & ACQUISITIONS – TOOLS OF CORPORATE RESTRUCTURING

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ABSTRACT

In this rapidly changing world, businesses are facing unprecedented turmoil in global markets. Severe competition, rapid technological changes and rising stock market unpredictability have increased the burden of managers to deliver higher performance & value for their shareholders. Corporate Restructuring facilitates thousands of organizations to re-establish their competitive advantage and respond more quickly and successfully to fresh opportunities and unexpected challenges. Corporate restructuring has become a buzzword at the economic downturn. Although, restructuring is a generic word for any changes in the company, it is generally associated with fiscal plight. With the increasing competition & globalization, restructuring activities are taking place at a much larger scale. Businesses, in their pursuit for growth, engage in a broad range of restructuring activities. Mergers & acquisitions are the most in style means of corporate restructuring and play a significant role towards the external growth of a corporation. From the sight of the buyer, merger & acquisition represent expansion and from the perspective of the seller it represents a change of ownership. Mergers & acquisitions have become a common phenomenon in recent times. Companies have actively involved in mergers & acquisitions domestically as well as globally. Further, improved competition in the global market has prompted the corporate to go global for mergers & acquisitions as a significant strategic choice. Mergers & acquisitions have become a major force in the changing environment and are the most effective method of corporate restructuring. This paper will deal with the concept of corporate restructuring, its need, the process of corporate restructuring through merger & acquisitions and their relevance.

Keywords: Corporate restructuring, Merger, Acquisitions

ARTICLE

The Darwinian Theory - *'Survival of the fittest'* has been the order of the society and applies equally to the corporate sector. The corporate in their endeavor for survival have to be fit in order to sustain the competition and retain their identity else they will be washed away in today's ever changing business scenario. In today's business environment, the only constant is change. Businesses that refuse to change with time face the risk of becoming obsolete. Businesses seek to diversify into new areas to increase sales, optimize their capacity, and conversely shed off divisions that do not add much value, to concentrate on core competencies instead. All such initiatives require restructuring. Restructuring, literally means to rearrange, rebuild, reorganize or change. When such restructuring is done in context to a corporate, it is referred to as corporate restructuring.

Corporate restructuring is a corporate action taken to significantly modify the structure or the operations of the corporation. This usually takes place when a corporation is facing significant problems and is in economic jeopardy. It is essential to eliminate all the fiscal troubles and improve the performance of the company. Due to globalization, companies nowadays are facing unprecedented turmoil. Rapid technological changes and severe global competition is a threat to the survival of the corporate and hence they are overburdened by these rapid advancements. In such a scenario the company may go in either for expansion of its activities and operations or for downsizing and getting rid of their non performing operations. Corporate restructuring paves the way for this and has become a buzzword at the economic downturns. Corporate restructuring facilitates the organizations to re-establish their competitive advantage and respond more quickly and effectively to new opportunities and unforeseen challenges. It has had an equally profound impact on the many more thousands of suppliers, customers, and competitors that do business with restructured firms.

Although restructuring is a generic word for any change in the company, it is generally associated with financial troubles. Companies in their pursuit of growth, engage in a broad range of restructuring activities. Actions taken to expand or contract its asset or financial structure are referred to as corporate restructuring activities. Often, corporate restructuring is referred to the ways to reduce the size of the corporation and make it small. It is essential to eliminate all the monetary troubles and improve the performance of the corporation.

CONCEPT OF CORPORATE RESTRUCTURING

Corporate Restructuring is the process of changing the composition of a firm's one or more business portfolios in order to have a more profitable enterprise. Simply, reorganizing the structure of the organization to fetch more profits from its operations or is best suited to the present situation. These corporate restructuring activities can be divided into two broad categories as under -

1. *Financial Restructuring*: It refers to the actions taken by the firm to alter its entire debt and equity structure. The firm may change the equity pattern, cross-holding pattern, debt-servicing schedule and the equity holdings.

2. *Organizational Restructuring*: It involves altering the organizational structure by reducing the hierarchical levels, downsizing the employees, redesigning job positions & changing the reporting relationships.

MERGERS & ACQUISITIONS

Corporate restructuring is a broad umbrella that covers a variety of things; mergers & acquisitions being one such variety. Such restructuring is a common strategy in the development of capitalist economies, whether in the form of mergers or acquisitions, through which the companies involved, can achieve some kind of market, financial or technical advantage. Every company has the prime objective to grow profitably. The profitable growth for the companies can be possible internally as well as externally. The internal growth can be achieved either through the process of introducing or developing new products or by expanding or by enlarging the capacity of existing products or sustained improvement in sales. External growth can be achieved by acquisition of existing business entities. Mergers & Acquisitions are quite important forms of external growth.

Mergers & acquisitions have become a common phenomenon in recent times. Companies have been actively involved in mergers& acquisitions domestically as well as internationally. The increased competition in the global market has prompted the Companies to go global for mergers & acquisitions as an important strategic choice. Mergers & acquisitions are the strategic growth devices in the hands of more and more Companies not only to stay in the competition but also to extend their margins, market share and dominance globally.

Merger & acquisition is the route businesses take to achieve exponential and not just linear growth and therefore continues to generate interest. The Indian merger & acquisition landscape is no different. They have become an integral part of the Indian economy and daily headlines. Based on macroeconomic indicators, India is on a growth trajectory; with the merger & acquisition trend likely to continue. The Indian merger & acquisition landscape has witnessed several big ticket deals in the past few years. At a time when Indian business houses are constantly looking at inorganic growth through acquisitions of other businesses, the merger & acquisition arena appears stronger than ever before now. Recently, a lot of consolidation in the form of mergers, share and business acquisitions has been observed in telecom, cement, banking, power and insurance. Merger of Dena Bank and Vijaya Bank into Bank of Baroda is a recent example.

Mergers & acquisitions are closely related concepts although they observe differences because they are equally different processes. Mergers occur when two or more companies agree to join together to create a larger company, and acquisitions, which take place when a company buys another company.

- **Merger**

A merger is a combination of two or more entities into one; the desired effect being not just the accumulation of assets and liabilities of the distinct entities, but organization of such entity into one business. It is a combination of one company into another, whereby the transferor company loses its existence upon merger with the transferee company. Generally, in a merger, the merging entities would cease to be in existence and would merge into a single surviving entity. It may take place either as an amalgamation or absorption –

- *Amalgamation* – is the process where two or more companies dissolve their identity to form a new entity for example the amalgamation of Broke Bond and Lipton into Broke Bond Lipton India Ltd.
- *Absorption* – involves the dissolution of a company's identity into another company's identity. One company absorbs the other company to form a new larger entity. The absorbed company ceases to exist after having transferred all of their assets to the absorbing company.

Our laws envisage mergers can occur in more than one way, for example in a situation in which the assets and liabilities of a company (merging company) are vested in another company (the merged company). The merging company loses its identity and its shareholders become shareholders of the merged company. Another method could be, when the assets and liabilities of two or more companies become vested in another new company. The merging companies lose their identity. The shareholders of the merging companies become shareholders of the merged company.

TYPES OF MERGER

Mergers can be broadly classifies into three categories –

a) *Horizontal Merger* – a merger between two firms operating and competing in the same kind of business activity. The main purpose of such mergers is to obtain economies of scale of production by eliminating duplication of facilities and operations, broadening the product line, reduction in investment in working

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capital, elimination of competition, reduction in advertising cost etc. It results in decline in the quantity of firms in an industry and hence makes it easier for the industry members to join together for monopoly profits. But such mergers may enable the firm to engage in anti-competitive practices. These forms of mergers are heavily scrutinized by the Competition Commission.

b) *Vertical Merger* – a merger between firms that are in different stages of production or value chain. They are a combination of companies which are usually in a buyer-seller relationship. Vertical mergers are done mainly to expand the operations by backward or forward integration. Companies integrate vertically due to various reasons like technological economies, elimination of transaction costs, improved planning for inventory, reconciliation of divergent interests of parties etc. Anti-competitive effects have also been observed as both the motivation and the result of these mergers. Moreover, vertical integration helps a company move towards greater independence and self-sufficiency.

c) *Conglomerate Merger* – is a merger between companies engaged in, unrelated types of business activities. The basic purpose of such mergers is the utilization of economic resources. Such merger enhances the overall stability of the acquirer company and creates balance in the company's total portfolio of diverse products and production processes and thereby reduces the risk of instability in the company's cash flows. A merger with a diverse business also helps the company to foray into varied businesses without having to incur large start-up costs normally associated with a new business.

- **Acquisition**

Acquisition is the purchase by one person, of controlling interest in the share capital, or all or substantially all of the assets and/or liabilities, of the target. Acquisitions can either be in the form of share purchase, whereby controlling interest in the target is acquired, or it could be in the form of acquisition of a business undertaking. While share acquisition is an effective solution, where the acquirer seeks to acquire entire control over the target, it becomes inevitable for asset acquisition in cases where the acquirer wants to assume control of an identified business undertaking. An acquisition of a business undertaking could be effected in various manners such as demerger of a business from the target, slump sale or slump exchange. A demerger is the opposite of a merger, involving the splitting up of one entity into two or more entities. An entity which has more than one business, may decide to 'hive off' or 'spin off' one of its businesses into a new entity. In case of a typical demerger, the shareholders of the target are issued shares of the acquirer. The shareholders of the original entity would generally receive shares of the new entity. If one of the businesses of a company is financially sick and the other business is financially sound, the sick business may be demerged from the company. This facilitates in the restructuring or selling of the sick business, without affecting the property of the healthy business. Conversely, a demerger may also be undertaken for moving a lucrative business into a separate entity. A demerger may be completed through a court process under the merger provisions or contractually by way of a business transfer agreement. In case of a slump sale/exchange, cash is paid or securities are issued to the target itself and not to its shareholders.

Regulatory framework governing Merger & Acquisition

The Supreme Court in the landmark judgment of HLL – TOMCO merger has observed that, '*in this era of hypercompetitive capitalism and technological change, industrialists have realized that mergers and acquisitions are perhaps the best route to reach a size comparable to global companies so as to effectively compete with them. The harsh reality of globalization has dawned that companies which cannot compete globally must sell out as an inevitable alternative*.'

Mergers & acquisitions have become a representation of the new economic world. But they also bring with them complex issues relating to laws and regulations impacting such decision. In today's competitive business scenario every company is a possible target for an acquisition or a merger. So it becomes very essential to comprehend the regulatory framework governing merger and acquisition.

- **Companies Act, 2013**

Mergers or demergers are largely governed by sections 230-240 of the Companies Act, 2013 pursuant to which all the schemes of arrangement now require approval of the National Company Law Tribunal (NCLT) as against the High Court earlier. Procedurally, any scheme is first approved by the audit committee, the board of directors, stock exchanges (if shares are listed) and then by the shareholders/creditors of the company with a requisite majority (i.e. majority in number and 3/4th in value of shareholders/creditors voting in person, by proxy or by postal ballot). NCLT will give its final approval to the scheme after considering the observations of the Regional Director, Registrar of Companies, Official Liquidator, income tax authorities, other regulatory

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authorities (RBI, stock exchanges, SEBI, Competition Commission of India [CCI], etc.) and any other objections filed by any other stakeholder interested in or affected by the scheme.

Since a merger essentially involves an arrangement between the merging companies and their respective shareholders, each of the companies proposing to merge with the other(s) must make an application to the Tribunal for calling meetings of its respective shareholders and/or creditors. The Tribunal may then order a meeting of the creditors/shareholders of the company. In case the majority in number representing 3/4th in value of the creditors and shareholders' present and voting at such meeting agrees to the merger, then the merger, if sanctioned by the Tribunal, is binding on all creditors/shareholders of the company. The Tribunal has full power to sanction any alterations in the corporate structure of a company. For example, in ordinary circumstances a company must seek the approval of the Tribunal for effecting a reduction of its share capital. However, if a reduction of share capital forms part of the corporate restructuring proposed by the company under the merger Provisions, then the Tribunal has the power to approve and sanction such reduction in share capital and separate proceedings for reduction of share capital would not be necessary. Sections 230 to 234 of Companies Act, 2013 recognize and permit a merger/reconstruction where a foreign company merges into an Indian company. Although the merger provisions do not permit an Indian company to merge into a foreign company, the merger provisions under Section 234 of the Companies Act, 2013 do envisage this, subject to rules made by the Government of India.

- **Securities Law**

The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 restricts and regulates the acquisition of shares, voting rights and control in listed companies. Acquisition of shares or voting rights of a listed company, entitling the acquirer to exercise 25% or more of the voting rights in the target company or acquisition of control obligates the acquirer to make an offer to the remaining shareholders of the target company. The offer must be to further acquire at least 26% of the voting capital of the company. Any merger or demerger involving a listed company would require prior approval of the stock exchanges and SEBI before approaching NCLT.

- **Foreign Exchange Regulations**

Sale of equity shares involving residents and non-residents is permissible subject to RBI pricing guidelines and permissible sectoral caps. A typical merger/demerger involving any issuance of shares to a non-resident shareholder of the transferor company does not require prior RBI/government approval provided that the transferee company does not exceed the foreign exchange sectoral caps and the merger/demerger is approved by the Indian courts. Issuance of any instrument other than equity shares/compulsorily convertible preference shares/ compulsorily convertible debentures to the non-resident would require prior RBI approval as they are considered as debt.

- **Competition Act, 2002**

Any acquisition requires prior approval of Competition Commission of India, if such acquisition exceeds certain financial thresholds and is not within a common group. While evaluating an acquisition, Competition Commission would mainly scrutinize if the acquisition would lead to a dominant market position, resulting in an adverse effect on competition in the concerned sector. According to the Competition Act, the following transactions are excluded from the scope of mergers & acquisitions –

- If a receiver or liquidator or an underwriter acquires more rights in an undertaking
- All of the undertakings involved in the merger or acquisition are directly or indirectly, under the control of the same undertaking, or
- If an undertaking which carries out transaction and deals in securities for its own account or for the accounts of others, acquires control of other undertakings.

CONCLUSION

Mergers & Acquisitions have long been a popular strategy, and are increasingly common in many industries. This strategy has been employed by both large and small firms, and by established and newer firms. While popular with many executives, it is a highly complex strategy and the one that is fraught with risk. In fact, even though the strategy has been employed for several years a large number of acquisitions fail to produce the results promised. Certainly firms must make careful selections of their acquisition targets and try not to pay too high a premium. Yet if firms search for and identify targets that have complementary capabilities and put in place mechanisms that enrich their learning from the acquired firm, they are more likely to build new capabilities and enhance their own competitive position in the market. The booms in mergers & acquisitions suggest that the organizations are spending a significant amount of time and money either searching for companies to acquire or worrying about whether some other company will acquire them. Needless to say, in the context of increasing competitiveness in the market, speed is of the essence, especially in an expanding and vibrant economy like ours. A sign of corporate readiness, skill and stratagem is the ability to do such mergers & acquisitions with digital speed. E-governance could provide a helpful tool in achieving the objective of speed with provisions for online registration approvals. To sum up, mergers & acquisitions can be highly effective and successful provided that the strategy has been very carefully designed and implemented.

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INFORMATION TECHNOLOGY: A QUINTESSENTIAL TOOL FOR MERGERS & ACQUISITIONS

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ABSTRACT

Mergers and Acquisitions are a non- linear phenomenon with respect to global economic and competitive conditions. During economic crisis, many companies may consolidate through M&A routes for survival. It is predominantly used to drive growth and often used strategically in order to reposition companies in the market. It has been predicted that 2019 would witness a huge surge in global M&A and it may even go up to four trillion dollar. In 2016, India witnessed 59.7 billion the highest ever and there are tremendous opportunities for M&A in India various fields like e-commerce, health tech, logistics, machine learning and artificial intelligence etc. In this journey of integration and collaboration Information Technology is fueling the momentum of M&A activity. IT is highly innovative and dynamic in nature, it has the tendency to absorb constant changes, development and integrate people and businesses. This study will help you to understand why M&A is becoming a trend,the reasons for the failure of M&A,how IT helps giant businesses in joining hands with potential ventures for debunking successful M&A deals.

Keywords: Information Technology, M&A, Companies, Economic, Opportunities, Collaboration, Business.

INTRODUCTION

Globalization, competition and a dynamic market has brought about a significant change in the world economy and the way businesses operate. Most recently, there has been a high level of M&A deals. The year 2015 was believed to be a record with 4.7 trillion of deals followed by 3.6 trillion dollar in 2016 and 3.5 trillion in 2017and it is predicated that India may see mergers and acquisitions worth fifty billion dollar during 2018.

In order to stay competitive, many companies around the world have merged with each other with a motive to expand into new mark. In simple words, merger occurs when two organizations willingly agree to collaborate with each other by joining their available assets, liabilities, and cultural values on a relatively equal basis across different businesses and industries. In contrast, acquisitions occur when one organization buys and takes over the operations of another organization or when one firm acquires sufficient shares to increase the level of control and gain ownership of another organization. So together, Mergers and acquisitions (M&A) are said to be a good indicator of the strength of an economy and pathway to escalateconfidence in the corporate world.

With the changing landscape of disruptive technologies and the scope of digitization continues to accelerate and expand in the 21st century. IT has changed the pattern and practices of doing business. More data is being created today, than throughout preceding history in totality and which is really helping the organization in cracking successful and profitable Merging & Acquisition deals. For the purpose of this study, the terms Mergers and Acquisitions are used interchangeably because the result is the same – one company takes control over another.

LITERATURE REVIEW

Ina capitalist economy strong players dominates and small one succumb to them. This happenwhen there are economically inefficient players in the industry struggling for existence.Sometimes, united we stand is applied due to threating externalities that merge owning to political & economic reasons.

Mergers and acquisitions (M&As) continue to play an important role in shaping business activities worldwide. They have become an important business strategy to help improve organizational performance. M&A's are assumed that they help in collaboration of companies which will help in achieving greater value than a company functioning solely.

According to Bailey (2001), 30% of Global 2000 organizations were considering acquiring another firm, and some 40% of the same groups were being considered for acquisition. More recently, there have been reports which show an increase in M&A activity, likely brought about by the expanding global business economy, and increased deregulation.

M&A activities generally span months from inception to actual consummation. The entire realm of M&A activity comprises a number of stages, and is not completed with the completion of the acquisition. In fact, a major part of the M&A process is the integration that follows. In addition, many M&A failures are attributed to problems in this stage (Aiello and Watkins, 2001).

The stages which companies go through can vary based on the specific situation and the firms involved, however, there are a number of M&A phase models which have been identified from previous literature. These include the five phase approach developed by Aiello and Watkins (2001), which includes the phases of Screening Potential Deals, Reaching Initial Agreement, Conducting Due Diligence, Setting Final Terms and Achieving Closure. Another is a six-phase approach by Breindenbach (2000), which offers the phases of Strategy, Planning, Evaluation, Acquisition, Integration, and Operation. There is also a three-phase approach proposed by Haspeslagh and Jeminson (1991), encompassing Idea or Preparation, Transaction, and Generation.

The M&A activity for cross-border deals have also increased substantially in recent times, which is indicative of the strength of the global economy. Current M&A activities seem to indicate a desire for companies to grow and compete in an improving economic scenario. Corporations feel more confident about the global economy and the prospects for the future (Greenspan, 2005).

The global investment community is finding India as an attractive investment destination. The present government has open up the economy more to the foreign players by raising the caps on FDI in ways sectors and one can expect more inbound cross border M&A in days to come. India has a high cost of capital compared to the western nation. At the same time companies in the western world have lesser profitability then those of India. Therefore, it make more sense for them to acquire and efficient Indian company to add more shareholder value.

One of the very recentMega foreign acquisition happened in India is- The biggest merger that is between Vodafone and Idea. As of date, the two brands are continuing to plough their separate fields. Vodafone is continuing its efforts of wooing and keeping the more affluent urban consumers, while idea is singing the common-man- saving the planet tune. Vodafone stays as a premium brand while, idea becomes a value player. The two big players are monolithic brands straddling all segments, with no sub-brand in the horizon. And they have megabucks to spend on customer acquisition.

IT can contribute significantly to the success of these endeavors. IT can create an infrastructure that can contribute to the value of mergers and acquisitions virtually at every stage. It provides a perspective about different business and has the potential to deal with issues like semantic and execution challenges throughout the M&A integration process. Managers and Executives need to understand the power of this weapon as it can be a true tool to design strategies, value-generating aspects of the enterprise and can expect high business returns from the merger or acquisition any particular business.

RESEARCH METHODOLOGY

This study is based on secondary data. Information, facts and figures are consciously taken from internet, books, journal and magazines. And have tried to focus on the interventions that can be adapted to deal with M&A of business with the support of IT technology.

FINDINGS

- **M&A A SEIZE TO THE SYNERGY**

M&As are not undertaken without any motive; every business deal has some objectives behind it that can be financial, strategic or a combination of both. Below mentioned are some of the clear cut reason why M&A is becoming a trend in the market.

1. **Economies of scale:** It has the operating cost advantage in terms of economies of scale considered as the primary motive for such deals in several cases. The combined company can often reduce duplicate departments or operations, lowering the costs of the company relative to the same revenue stream, thus increasing profit.
2. **Synergy:** Synergy stems from better utilization of complementary resources. Mathematically, the combined value of both the firms is likely to be more than the sum of individual values of the firm.
3. **Geographical or other diversification:** This is generally done to even out the earnings results of a company, which over the longterm smoothens the stock prices, giving conservative investors more confidence in investing in the company.
4. **Increased Revenue/ Market Share:** Companies get involved in M&As for increasing their sales revenue and for greater pie of the market. Since acquiring an already existing company does not require the efforts of setting up a new firm and gives ready access to markets and customers, hence the benefit of such deals.

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5. **Tax Advantages**: Under certain specific conditions, a profit making company may acquire a loss making company if the tax laws allow for writing off the losses against its profits and allow it to carry forward as well. Companies with large accumulated losses but with scope for revival become targets for acquisition by profit making companies as these companies can save their income tax liability by setting off the losses against their own profits.

- **BARRIERS TO A SUCCESSFUL M&A DEAL**

Majority M&A fails globally because of many known and unknown reasons and India is no exception to this phenomena. Some of the common barriers which may not lead to a successful collaboration are:

1. Lack ofbasic understanding of the nuisances of the subject.
2. Ignoring the M&A grammar
3. Absence of focus growth strategy.
4. Too much hurry to make a deal and to be a headline in the media.
5. Ignoring unpleasant realities such as different company culture
6. Assuming that people will acquire and embrace the new set of code & governance immediately.
7. The scarcity of quantitative data and lack of statistical analysis due to which inference cannot be drawn.

IT - A SUPPORT SYSTEM FOR M&A

IT plays an important role in M&A activities as it takes care of multiple dimensions while cracking a business deal. It aids an organization by providing right kind of information.

1. **Support the merger:** IT provides the detailed information about the functions, structure profits and loss of an organization it provides an integrated R&D function providing better integration and accessibility to acquired suppliers/clients.
2. **Cost Saving**: IT helps in cost savings by joining the IT cost structures and many other primary expenses involved in cracking a M&A deal.
3. **Optimizes Infrastructure:** IT helps in the development of different operating models for the new entity as well as can help in revising the existing ones.
4. **Integrates Functions:** Major functions can be integrated of the acquired or merged organization through the use of IT which will help in achieving effective and efficient integration management.
5. **Improves Communications:** As it enhances the processes and comities to provide uninterrupted customer service.
6. **Provides operational visibility:** During the integration process via communications and knowledge-sharing portals IT provides a operational visibility for the merger.
7. **Integration of Operations:** IT helps to integrate and operationalize processes and systems, which can bring higher returns than simply focusing on combining two companies' systems or eliminating duplicate positions.
8. **Assuring end-user satisfaction with the integrated systems (information quality and usability).** Businesses should avoid disrupting employees or inconveniencing customers, and work to ensure corporate-wide access to accurate, useful and timely information.

CONCLUSION

In the Last Decade Mergers and Acquisitions (M&A) have received a lot of public attention as several major M&A transactions have affected many business ventures. M&A is fraught with risk but if handled correctly, can be an effective means of creating rapid growth, provided it is carried with a clear strategy and a proper integration plan. In this highly competitive world Information Technology tools are evolving rapidly and have become a key component in the M&A process. Leading acquirers are using these IT to harness the value of multiple and varied data sources and the power of advanced analytics to adapt a more offensive, growth-oriented mind-set to gain deal conviction, even in time pressured situations. In addition, leading acquirers extend the use of data and analytics from deal evaluation into the post-sign integration and post close value creation stages too.

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MERGERS AND ACQUISITIONS: A PRE AND POST FINANCIAL PERFORMANCE ANALYSIS OF THE SELECTED COMPANIES

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ABSTRACT

In this context, this paper aims at analysing the financial performance of selected companies before and after the acquisition. For this purpose, the study has focussed on a financial stability ratio, namely Debt Equity Ratio. The companies chosen for the analysis include Reliance Industries- Network 18 and Ranbaxy- Sun Pharmaceuticals Industry. The pre and post financial performance analysis has been undertaken for a period of 3 years before and after the merger and acquisition deal took place. Data from secondary sources like financial reports of the company and the website has been utilised to perform the analysis using paired samples t-test.

Keywords: Mergers and acquisitions, financial stability ratios, paired samples t-test, financial performance

1. INTRODUCTION

The primary aim of any business firm is to maximize its profit. In order to achieve this aim, various strategies are adopted by the organization. Going for 'Mergers and Acquisitions is one such strategy that helps a business firm to grow externally and gain competitive advantage. There has been a growth in the number of mergers in India over the last few decades post the introduction of economic and financial liberalization measures during the early 1990s. While the rationale of going for mergers by Indian firms has been to consolidate their positions in the light of greater competition, the mergers strategy has been utilized by the multinational corporations to ensure corporate control in the country (Basant, 2000). Merger refers to a legal activity wherein two or more organizations combine to form a single economic unit (Horne and John, 2004).

Mergers and acquisitions can lead to unfair trade practices unless regulated by the state. Regulations by the state can provide a level playing field and ensure that the competition persists. One such regulation came with the implementation of Monopolies and Restrictive Trade Policies Act (MRTPA) in 1969. This act served the role of prohibiting an acquisition that would result in the concentration of economic power that is harmful for the common good (Rao, 1998). High concentration of economic power leads to an increase in the prices of products and services and prevents technological up gradation.

Mergers and acquisitions were uncommon in the country prior to the 1991 reforms. Under the MRTP Act, the production capacities were severely restricted in India for a long period of time. Due to this, the Indian firms were small-sized and uncompetitive worldwide. Regulations by the government such as industrial licensing virtually throttled the market economy of India. The regulations resulted in the barriers to entry and exit and promoted lobbying as well as rent seeking behaviour. Rather than encouraging competition in the economy, the industrial policy prior to 1991 led to inefficient behaviour.

Capacity of the plant, the product-mix as well the location of the plant was governed by bureaucracy. Firms could not achieve economies of scale (Ray, 1992; Basant, 2000). In presence of controls and regulations, it became almost impossible to increase the capacity. Consequently, the firms preferred the option of production diversification over specialization (Siddharthan and Lal, 2003). The MRTP act and licensing regulations prevented the firms from reaping economies of scale due to restrictions on size expansion (Khanna, 1999). Efficiency and consequently growth were impacted by the controls on investment, output, foreign trade, prices, etc (Patel, 1992).

The economic reforms introduced in the country in 1991 sought to initiate corporate restructuring with the help of mergers and acquisitions. The New Industrial Policy was implemented. As a result, the licensing system was abolished. The economic reforms aimed at promoting competition and improving efficiency and growth by relaxing the controls on investment and production (Chaudhuri, 2002). Under the new system, firms were set free to decide their capacity, technology and choose their location (Basant, 2000). The MRTP act was amended. It was now possible for group companies to go for consolidation with the help of mergers. This would result in lowering of the costs (Mehta and Samanta, 1997). With the introduction of reforms aimed at liberalizing the economy, the Indian industry witnessed an expansion of capacity. The expansion occurred in light of the expectations of a quickly expanding market on account of concealed demands by the people. However, there was not sufficient participation of the lower income groups in the economy (Chandra and Shukla, 1994). Consequently, the economy witnessed a slowdown from 1996. There occurred a decline.

In light of the above points, the remainder of this paper is structured into various sections. Section 2 presents a brief review of literature. Section 3 discusses the objective of the study followed by Hypothesis in section 4. Data and methodology are presented in section 5 followed by results in section 6. Finally, section 7 concludes the study.

2. LITERATURE REVIEW

Performance of mergers has been the objective of many research studies. Their focus has been on evaluating the post merger performance so as to find out if there has been an improvement and by how much. Ravenscraft and Scherer (1989) tried to test whether the merger resulted in an increase in profits, provided the merger gave rise to economies of scale/scope. The study was undertaken for the period 1975-77. The results showed that there was no improvement in the operating performance after the merger took place. In another study undertaken by Switzer (1996), an attempt was made to evaluate the changes in operating performance after the merger occurred. It focused on 324 acquisitions that took place during 1967-87 in the U.S. The study made use of the cash flow-based method. The results pointed towards the existence of synergistic gains and improved performance in long run. Operating performance was analyzed in another study by Ghosh (2001). In this study, the author focused on the mergers that happened during 1981-95. In order to evaluate the performance, the author focused on operating cash flows, before and after the merger. The results showed an increase in the cash flows of the merged firms. The financial performance after the merger has been studied by Ramaswamy and Waegelein (2003). In this study, the authors have taken a sample of 162 firms whose mergers took place in the U.S during 1975-90. A 12.7 per cent improvement in the post-merger performance was found by the authors.

The operating performance of the firms after the takeovers has been analyzed by the researchers for U.K. In a study conducted by Manson et al. (2000), 44 takeovers that happened during 1st January, 1985 to 31st December 1987 in the U.K. were analyzed. Those firms, whose total market value after the acquisition amounted to greater than £5 million, were included in the study. Cash flow-based method of evaluating the post takeover operating performance was used. The results reveal the presence of operating gains to an extent of 2-14 per cent every year after the acquisition. The study also revealed the existence of non operating gains after the takeover.

The operating performance of the firms involved in acquisitions was looked at by Rahman and Limmack (2004). For this purpose, the study undertook a sample of 94 listed and 113 private acquiring and target companies in Malaysia, respectively. The time period of acquisitions involved was 1st January, 1998 to 31st December, 1992. The authors find that the operating cash flows of the firms improved to the extent of 3.75% every year post the merger. Moreover, the authors also find the merged firms to be utilising the resources in a more efficient manner as compared to pre-merger. The case of Taiwanese mergers was taken by Tsung-Ming and Hoshino (2000). In this paper, the authors tried to find out whether the merger resulted in the creation of value by utilizing the economies of scale. To conduct the analysis, the authors took a sample of 20 firms that took over other firms between 1987 and 1992. The study made use of both the stock market as well as the accounting based methods. The results indicated no improvement in the profitability for the firms that acquired other firms. Rather, some of the profitability indicators witnessed became worse. Leverage and debt-equity did not show any significant difference before and after the merger. There occurred a decline in the current ratio during the first year after the merger took place. In the later years as well, no significant difference could be seen. Measured by the sales growth, the results reveal the acquiring firm to have underperformed after the merger.

The impact of mergers and acquisitions on the financial performance of the banks in Pakistan has been studied by Abbas et al (2014). For the study, the authors took a sample of ten banks during the period 2006-11. The study finds no improvement in the performance of the banks after going for mergers and acquisitions. On a similar note, the performance of the Greek banking sector after the mergers and acquisitions has been looked at in the study undertaken by Liargovas and Repousis (2011). [Source: Vikalpa] With reference to the Indian economy, the impact of mergers on the profitability of the firms has been evaluated by Pawaskar (2001). For this purpose, the author has looked at 36 mergers that took place during 1992-95 in India. Analysing the data for three years pre and post merger, the results show a negative impact of merger on the profitability of the merged firms.

Drawing from the literature review, no study has focussed on analyzing the impact of acquisitions of Network 18 by Reliance Industries and Ranbaxy- Sun Pharmaceuticals Industry in India on the financial performance of the companies involved, both pre and post the merger.

3. OBJECTIVE

The present study focuses on two of the mergers that happened in India. The first acquisition studied in this paper is of Network 18 by Reliance Industries in 2014. The second acquisition discussed in this study is of

Ranbaxy Laboratories Limited by Sun Pharmaceuticals Industry in 2015. An attempt has been made to analyse the following objective in the present study:

- To study the financial performance of Reliance Industries- Network 18 and Ranbaxy- Sun Pharmaceuticals before and after the merger/acquisition.

4. HYPOTHESIS

The present study aims at testing the following null hypothesis:

- There has been no improvement in the financial performance of Reliance Industries and Sun Pharmaceuticals after the merger/acquisition.

The alternative hypothesis is stated as:

- There has been an improvement in the financial performance of Reliance Industries and Sun Pharmaceuticals after the merger/acquisition.

5. DATA AND METHODOLOGY

In order to analyze the objective of the study, the study has focused on debt-equity ratio. Debt-equity ratio is defined as the ratio of total debt to equity. Data on this ratio has been taken for three years before and after the acquisition took place. However, since the acquisition of Ranbaxy Laboratories Limited by Sun Pharmaceuticals Industry took place in the financial year 2015-16, data for only two years before and after the acquisition has been considered due to unavailability of data for the financial year 2018-19. The data regarding debt-equity ratio of Reliance Industries Limited and Sun Pharmaceuticals has been obtained from the annual reports of the company and through online source. Further, the study makes use of paired samples t-test.to test whether there has been an improvement in the financial performance of the companies after the acquisition.

6. RESULTS

Table 1 presents the descriptive statistics of debt-equity ratio for Reliance Industries Limited before and after the acquisition.

Table-1: Descriptive Statistics-Reliance Industries Limited

Descriptive Statistics					
	N	Minimum	Maximum	Mean	Std. Deviation
Pre -acquisition	3	.40	.45	.42	.026
Post-acquisition	3	.37	.42	.38	.028

Source: Author's calculations

Since the debt-equity ratio has been taken for three years before and after the acquisition, the number of observations is three, respectively. The minimum debt-equity ratio before the acquisition is 0.40 whereas the maximum is 0.45. On a similar note, the minimum debt-equity ratio after the acquisition is 0.37 and the maximum is 0.42. The average debt-equity ratio before the acquisition is 0.42 where as the average is 0.38 after the acquisition. The standard deviation stood at 0.026 and 0.028 before and after the acquisition, respectively.

After applying the paired samples t-test, the results as shown in table 2 below are obtained:

Table-2: Paired samples t-test

	Paired Differences				
	Mean	Std. Deviation	t	df	Sig (2-tailed)
Pre-acquisition Post-acquisition	.03333	.04509	1.280	2	.329

Source: Author's calculations

The paired samples t-test shows the significance or p-value of 0.329. At $\alpha = 0.05$, the p-value is greater than 0.05. Thus, the null hypothesis cannot be rejected. Therefore, it can be said that there has been no improvement in the financial performance of Reliance Industries after the merger/acquisition.

Table 3 presents the descriptive statistics of debt-equity ratio for Sun Pharmaceuticals Industry before and after the acquisition

Table-3: Descriptive Statistics- Sun Pharmaceuticals Industry

Descriptive Statistics					
	N	Minimum	Maximum	Mean	Std. Deviation
Pre –acquisition	2	.24	.33	.28	.06
Post-acquisition	2	.23	.34	.28	.07

Source: Author's calculations

Since the debt-equity ratio has been taken for two years before and after the acquisition, the number of observations is two, respectively. The minimum debt-equity ratio before the acquisition is 0.24 whereas the maximum is 0.33. On a similar note, the minimum debt-equity ratio after the acquisition is 0.23 and the maximum is 0.34. The average debt-equity ratio is 0.28 before and after the acquisition. The standard deviation stood at 0.06 and 0.07 before and after the acquisition, respectively.

After applying the paired samples t-test, the results as shown in table 4 below are obtained:

Table-4: Paired samples t-test

	Paired Differences				
	Mean	**Std. Deviation**	**T**	**df**	**Sig. (2-tailed)**
Pre-acquisition Post-acquisition	.00000	.14142	.000	1	1.000

The paired samples t-test shows the significance or p-value of 1.000. At $\alpha = 0.05$, the p-value is greater than 0.05. Thus, the null hypothesis cannot be rejected. Therefore, it can be said that there has been no improvement in the financial performance of Sun Pharmaceuticals Industry after the merger/acquisition.

To sum up, the results from the paired samples t-test indicate that the financial performance of Reliance Industries and Sun Pharmaceuticals Industry has not improved after the acquisitions.

7. CONCLUSION

The present study has aimed at studying the financial performance of companies after they went for acquisitions. The companies selected for this purpose are Reliance Industries- Network 18 and Ranbaxy- Sun Pharmaceuticals Industry. To assess the financial performance, debt-equity ratio has been considered. The time period considered for analysing the financial performance of Reliance Industries is three years before and after it acquired Network 18. For Sun Pharmaceuticals Industry, a time period of two years before and after its acquisition of Ranbaxy Laboratories Limited has been taken due to unavailability of data for the financial year 2018-19. The data for calculating the debt-equity ratio has been taken from the secondary sources. The analysis has been conducted with the help of Paired samples t-test. The results of Paired samples t-test reveal no improvement in the financial performance of Reliance Industries and Sun Pharmaceuticals Industry after they acquired Network 18 and Sun Pharmaceuticals Industry, respectively.

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A STUDY ON IMPACT OF MERGERS AND ACQUISITIONS ON MANAGEMENT

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ABSTRACT
The reason for this paper is to consider the possibility of Merger/Acquisition in detail by taking instances of certain organizations. The goal is to acknowledge out the serious issues identified with pre and post combining things with uncommon weight on the human side. Merger/Acquisition is an advancement that is clear to assume anyway debilitating to execute. 3 periods of mergers – pre merger, progress part and furthermore the post merger part have its very own gifts just as troubles, whenever took care of with right consideration cooperative energies will be pulled back anyway a touch error will ruin the full change. every administration and specialists need to applying at their very own dimension to make it a blasting one because of man is the key issue all through the entire arrangement. Post merger change part is the most troublesome one as in any association whether gigantic or minimal social conflicts exist which can happen a merger into the failure.Merger/Acquisition is a procedure that is these days imperative for business development and survival. Organizations are progressively obtaining firms to extend their business and with numerous reasons being talked about here. In the event that any organization does not receive thusly, the other major enormous organization will either not develop or be procured.

In spite of the fact that the blessing framework that is embraced by firms|the businesses} for takeover can't be accepted on the grounds that the worthy one because of the first purpose for this can be of collaborations anyway still a ton of and a great deal of organizations ar converging with one another as there is a progression of merger or procurement in the blessing period. when partnerships combine or make a set up for securing the sole issue in their brain is development or development or cooperative energies. people issue is entirely unnoticed. Possibly they're not concerned wherever or whenever concerned then at awfully lower level.

Keywords: Merger, Acquisition, Human factor, Communication, Employees, Management

INTRODUCTION
The terms merger, amalgamations, dominate and acquisitions are frequently utilized conversely to allude to a circumstance where at least two firms meet up and consolidate into one to profit the advantages of such blends and re-organizing as merger and so on., to confront the test of expanding rivalry and to accomplish collaboration in business tasks. The writing sources most every now and again recognize three periods of a merger or an obtaining procedure. Rebuilding of business is an indispensable piece of the new monetary worldview. As controls and confinements offer approach to rivalry and facilitated commerce, rebuilding and revamping become fundamental. Rebuilding as a rule includes major hierarchical change, for example, move in corporate techniques to meet expanded challenge or changed economic situations. This movement can happen inside as new interests in plant and apparatus, innovative work at item and procedure levels. It can likewise happen remotely through mergers and acquisitions (M&A) by which a firm may obtain another firm or by which joint endeavor with different firms. This rebuilding procedure has been mergers, acquisitions, takeovers, coordinated efforts, solidification, broadening and so on. Household firms have found a way to combine their situation to confront expanding aggressive weights and MNC's have accepted this open door to enter Indian corporate division. This examines effect of merger with reference to human asset angle, it has really incorporated the greater part of the critical administration subjects under contemplations into the judgment. The consequences of this investigation give generally solid help to the presence of a positive connection between worker support start to finish with representative fulfillment, inspiration and execution. Since the essential point of the investigation is to inspect the effect of any significant change like converge on the administration. Here in this investigation the authoritative execution is estimated by methods for worker execution and representative execution is estimated by their inspiration, fulfillment of workers towards the activity and the association. Experimental proof seems to help the view that human capital practices like representative investment after merger can impact the hierarchical execution and development. Associations intrigued by the development and in superior must include their representatives in basic leadership procedure to spur, fulfill and better execution of the workers. The examination gives verifications to the associations that at whatever point the workforce isn't fulfilled and roused with their occupations, execution is influenced. The end likewise proposes that after a merger occurred, the administration may almost certainly increment the dimension of duty in the association by expanding fulfillment and inspiration of representative with pay, strategies, and work conditions. Effect of mergers and acquisitions on top dimension the board may really include a "conflict of the self images". There

may be varieties in the way of life of the two associations. Under the new set up the chief might be approached to execute such arrangements or methodologies, which may not be very affirmed by him. At the point when such a circumstance emerges, the fundamental focal point of the association gets occupied and administrators become occupied either settling issues among themselves or proceeding onward. Assuming notwithstanding, the director is very much furnished with a degree or has adequate capability movement to another organization may not be troublesome by any means. Mergers and acquisitions, as authoritative advances when all is said in done, are commonly trailed by major basic and social changes, which may stimulate pressure, outrage, bewilderment, dissatisfaction, disarray and fear among faculty. Vulnerability and other negative feelings, thusly, will in general lead on to the few negative authoritative results, as brought down responsibility and efficiency, expanded disappointment and traitorousness, high turnover, initiative and power battles, harm and a general ascent in useless practices.

OBJECTIVE OF THE STUDY

Primary target of the investigation is to discover the serious issues related with pre and post consolidating circumstances where social stun emerges and workers and the board conflicts to satisfy their wants moving in two unique ways. This paper likewise break down the present preparing strategies to adapt up to the earth and the up bringing circumstances and a few options are additionally proposed to make any merger/procurement a fruitful occasion for the organization.

RESEARCH METHODOLOGY

Fifty organizations are chosen for the exploration reason. In each one of those organizations reasons of mergers and acquisitions were contemplated inside and out. Goal of both acquirer and acquiree were concentrated to discover why organizations are deciding on mergers and acquisitions. Wave of merger and procurement is skimming everywhere throughout the world including India. Out of the fifty organizations five organizations are again chosen for full scale think about. These five organizations are United Beverages and Shaw Wallace, HDFC and CBoP, Vodafone and Hutch, Federal Mogul and Goetz India and HP Compaq merger. This is a subjective report so how and why questions are taken care of as opposed to finding the no of reasons. Inside and out investigation of reasons is directed. This methodological structure is especially valuable in growing our comprehension and learning of mergers and acquisitions regarding vital arranging and the issues encompassing the due persistence process.

CONCEPT AND TYPES OF MERGER

In spite of the fact that they are regularly articulated in a similar breath and utilized as if they were synonymous, the terms merger and obtaining mean marginally extraordinary things.

1) When one organization assumes control over another and obviously settled itself as the new proprietor, the buy is called an obtaining. From a lawful perspective, the objective organization stops to exist, the purchaser "swallows" the business and the purchaser's stock keeps on being exchanged.

2) In the unadulterated feeling of the term, a merger happens when two firms, frequently of about a similar size, consent to go ahead as a solitary new organization instead of remain independently claimed and worked. This sort of activity is all the more absolutely alluded to as a "merger of equivalents". The two organizations' stocks are surrendered and new organization stock is issued in its place.

3) by and by, be that as it may, real mergers of equivalents don't occur frequently. Normally, one organization will purchase another and, as a major aspect of the arrangement's terms, basically permit the obtained firm to announce that the activity is a merger of equivalents, regardless of whether it is in fact a securing. Being purchased out frequently conveys negative implications, accordingly, by depicting the arrangement metaphorically as a merger, bargain creators and top administrators endeavor to make the takeover progressively satisfactory.

4) A buy arrangement will likewise be known as a merger when the two CEOs concur that association is to the greatest advantage of both of their organizations. Be that as it may, when the arrangement is unpleasant - that is, the point at which the objective organization does not have any desire to be acquired - it is constantly viewed as a securing.

5) Whether a buy is viewed as a merger or an obtaining truly relies upon whether the buy is cordial or unfriendly and how it is reported. As it were, the genuine distinction lies in how the buy is conveyed to and gotten by the objective organization's governing body, representatives and investors. It is very ordinary however for M&A bargain correspondences to happen in an alleged 'classification bubble' whereby data streams are confined because of secrecy understandings (Harwood, 2005).

TYPES OF MERGER

There are four sorts of merger which are according to the accompanying:

1. Level merger: It is a merger of no less than two associations that battle in a comparable industry. It is a merger with a quick contender and accordingly stretches out as the affiliation's exercises in a comparative industry. Level mergers are proposed to make significant economies of scale and result in decrease in the amount of opponents in the business. The merger of Tata Oil Mills Ltd. with the Hindustan switch Ltd. was a much merger.

2. Vertical merger: It is a merger which stumbles upon the mix of two associations which are working in a comparative industry yet at different periods of creation or course system. In case an association expect power over its supplier/producers of unrefined material, by then it may result backward consolidation of its activities. On the other hand, Forward joining may result if an association accept command over the retailer or Customer Company. Vertical merger may result in many working and money related economies. The transferee firm will get a more grounded position in the market as its age/transport chain will be more planned than that of the contenders. Vertical merger gives a way to deal with mean blend to those associations which are trying owning of all times of the age plan together with the advancing framework (i.e., from the verifying of rough material to the relating of unequivocal things).

3. Co customary Merger: In these, mergers the acquirer and target associations are associated through basic developments, age strategies or markets. The acquired association addresses an extension of item offering, exhibit individuals or advances of the getting associations. These mergers address an outward advancement by the securing association from its present course of action of business to adjoining business. The getting association surmises benefits by abuse of crucial resources androm segment into a related market having higher return than it acknowledged previously. The potential benefit by these mergers is high because these trades offer opportunities to grow around an ordinary occurrence of imperative resources.

Undeniable Background United Beverages association when gotten Shaw Wallace the association was on its broadening line. UB it is a total of different refreshments associations. After the verifying they joined under one head of United Spirits Ltd. The joined component right now asserts 12 big shot brands incredibly. . The UB Spirits Division by and by has bargains figures of 56.6 million cases, making the social event the second greatest promoter of spirits on earth. The Housing Development Finance Corporation Limited (HDFC) was among the first to get an 'on a fundamental dimension' underwriting from the Reserve Bank of India (RBI) to set up a bank in the private region, as a noteworthy part of the RBI's movement of the Indian Banking Industry in 1994. The bank was united in August 1994 for 'HDFC Bank Limited', with its selected office in Mumbai, India. HDFC Bank began undertakings as a Scheduled Commercial Bank in January 1995. Centurion Bank of Punjab was confined by the merger of Centurion Bank and Bank of Punjab, the two of which had strong retail foundations in their specific markets. On May 23, 2008, the amalgamation of Centurion Bank of Punjab with HDFC Bank was formally supported by Reserve Bank of India to complete the statutory and authoritative underwriting process. The united component will have a strong store base of around. 1,22,000 crores and net advances of around Rs. 89,000 crores. The amalgamation improved HDFC Bank the extent that extended branch sort out, geographic reach, and customer base, and a more noteworthy pool of skilled work. As indicated by the arrangement of amalgamation, financial specialists of CBoP got 1 offer of HDFC Bank for every 29 offers of CBoP. Third Combination is taken as Vodafone and Hutch Merger. Fourth blend is of Goetz India and Federal Mogul. Goetz India Founded in 1954, Goetze India began as a joint undertaking of Anil Nanda Group and FM. Goetze was the greatest neighborhood creator of chamber rings and barrels. Fifth and last merger for study is HP and Compaq merger. The association began in the year 1938 when two electrical structure proceeds onward from Stanford University called William Hewlett and David Packard started their business in a parking space in Palo Alto. In a year's time, the affiliation called Hewlett-Packard was made and persistently 1947, HP was joined. Compaq association is likewise called Compaq Computer Corporation. This was association that started itself as a PC association in the year 1982. The name of the association began from-"Comparability and Quality" The much of the time referenced human threats related to the M&A condition are recorded as seeks after

- Voluntary turnover of key people and hardships of expertise
- Job hardships
- Lowered obligation and traitorousness
- Performance drops and cut down benefit

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- Motivational issues
- Dissatisfaction, frustration, confusion and stress
- Dysfunctional lead and mischief
- People dismissing assignments
- Increased non-participation
- Health issues
- Power fights.

Merger or acquirement process contains defenselessness, precariousness, thwarted expectations and makes nonappearance of duty. While inspecting work constrain particularly, the headstrong work turnover is one of the severest human threats realized by these negative sentiments. Purposeful turnover is at its most raised at the outset times of the M&A technique. This is relied upon to the questionable and obscure situation where agents are faulty of what will happen and in which time scale the movements will work out not surprisingly. As the business is encountering brisk changes and the amount of information specialists has extended, their developmental needs are moreover continually growing. Issues may originate from for instance if the work drive and their requirements are rejected in pre-merger orchestrating, or fundamental administration in the midst of the mixing. There are diverse reasons that why issues exist or stem out before the laborers. All of those issues are inspected in detail with the why reason and far to deal with out those issues are also endeavored to find. An endorsed technique is in like manner prescribed as opposed to standard approach in order to deal with out the issues which includes various choices and recommendations for various issues.

The delegates portion move around the four areas

(a) recognizing the factors affecting the post merger blend,

(b) recognizing the challenges and openings presented by this condition, (c) perceiving the authoritative moves that can be made, and to

(d) clearing up the components between (a-c), similarly as their effect on the possible outcomes.

The accomplishment of a merger and procurement relies upon how well an association manages issues identified with its kin and social joining. Significant Human Related issues engaged with any merger or securing action begins with absence of correspondence which further proceeds onward the absence of preparing. Individuals face numerous HR related issues on account of absence of appropriate correspondence. Mergers and Acquisitions are presently moved from an idea to the genuine execution for the organizations to turn into a major monster. Hypothetically there are different terms with various implications yet essentially they are utilized conversely or as equivalent words. Different sorts of mergers like level vertical aggregate or turn around mergers fill diverse needs for which they are made. The different components which constrain any organization to gain or to be procured choose the sort of merger required for the specific organization. India has confronted an extremely quick moving pattern towards merger/obtaining. Cross-outskirt mergers are presently a typical marvel. In the event that we see the fundamental effect over the administration all the examination uncovers that mergers or obtaining is a way to get two thought processes money related or esteem expanding and administrative non esteem amplifying intentions to be satisfied. In the greater part of the cases budgetary intentions are effectively satisfied as each merger or securing is finished with legitimate arranging by the top administration individuals. They are without question or at most worried about the cash target which they understood by numerous methods either by diminishing expense or expelling work drive or by decreasing expense of purchasing of items or administrations.

Collaborations are extensively separated into three classes:

1) Universal which is commonly identified with pre bargain stage which is gotten by commonly every single merger bargain.

2) Then next is Specific Synergy which demonstrates the blend of team groups which is amid the value-based stage.

3) Then the last one is Unique Synergy which is commonly identified with the mix of complex innovations and is acknowledged just by the master merger bargains just in a very arrangement way. Mergers are isolated into four fundamental classes operational mergers which is taken to increase operational advantages from the

association. Takeover merger which is led to assume control over the wiped out or in the red organizations for their very own advantages. At that point comes to mergers of equivalents, this is a sort of merger in which conscience and social conflict happens at an abnormal state. At the latter is Transformational merger which is proposed to get change profits by one association to another. If there should be an occurrence of Hutch Vodafone this is a sort of Expansion merger in which the board has not confronted a significant part of the social issues since they have no different office in India in which they need to confront the issue of covering. Comparative occurred with the Federal Mogul and Goetri India. In the event of HDFC and Centurian and UB Group and Shaw Wallace they have confronted the issue of covering as that has obtained a different running branch. So they need to deal with every one of those issues rose due to the no of existing workers and covering of representatives and positions in the association. There are different strategies recommended for the administration likewise so they can without much of a stretch handle the issues.

MOTIVES BEHIND M&A (MERGERS AND ACQUISITIONS)

The overwhelming method of reasoning used to clarify M&A movement is that gaining firms look for improved monetary execution. The accompanying intentions are considered to improve monetary execution: Synergies: This alludes to the way that the joined organization can frequently diminish its fixed expenses by expelling copy offices or activities, bringing down the expenses of the organization with respect to a similar income stream, hence expanding net revenues. Expanded income/Increased Piece of the pie: This accept the purchaser will ingest a noteworthy contender and hence increment its market control (by catching expanded piece of the overall industry) to set costs.

Strategically pitching: For instance, a bank purchasing a stock intermediary could then pitch its financial items to the stock specialist's clients, while the agent can join the bank's clients for money market funds. Or then again, a maker can secure and sell correlative items.

Economies of Scale: For instance administrative economies have expanded the chance of administrative specialization. Another precedent is acquiring economies because of expanded request estimate and related mass purchasing limits.

Expenses: A productive organization can purchase a misfortune producer to utilize the objective's misfortune as their preference by decreasing their assessment obligation.

SUGGESTIONS FOR MAKING MERGER SUCCESSFUL

Include HR at the most punctual conceivable point and focus on tending to all issues and procedures from a "people viewpoint." HR comprehends what individuals really considers the conditions and the organization. It can turn into a decent go between the organization and the general population factor. When HR is included billows of perplexity will practically clear and the organization and individuals both are clear around each other. Build up a social appraisal that enables the two gatherings to recognize their disparities and value all that they share for all intents and purpose. This evaluation bunch situates out the purposes of contrasts from both the sides. At the point when opposite sides are not imparting straightforwardly from each other such sort of evaluation bunches help in uncovering the truth from both the sides. Both the sides can without much of a stretch clarify what they need and where are the issues. Create discussions – in all regions and at all dimensions - for sharing institutional history, vocabulary and abbreviations, formal and casual systems, the board and work styles, and the wellsprings of institutional pride. It's about difficult to build up another loyalty without grieving the loss of previous loyalties. Discussions will help in exercise the issues and discovering the different choices for the arrangements as they have an unmistakable perspective outside from the administration and the workers. Recognize desires and issues and plan a sensible procedure for tending to them. Keep in mind, the general population who carry out the responsibility consistently realize how to take care of the issues, so incorporate workers from all offices and all dimensions on the move arranging. Build up another key arrangement and brought together objectives, targets, and superseding messages that mirror the recently shaped association. Impart notwithstanding when there is not a lot to state. Quietness dissolves trust, and gossipy tidbits begin when there is an absence of data. In the event that lawful contemplations avoid early correspondence, at that point guarantee that you will share however much as could reasonably be expected when you can.

Numerous organizations have lost their key, talented individuals since they could never again trust that "the shoe to drop." Sadly, as a rule it never does, however how are individuals to know what's in store in the event that they're kept in obscurity? Correspondence of recently shaped objectives and targets helps in clearing the sentiment of doubt and disappointment among the representatives and they don't effectively think to change the shoe except if and until it is exceptionally basic and no other alternative left. Merger is the procedure which isn't effectively adequate by all. On the off chance that reasons are known to each body individuals are persuaded

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they can without much of a stretch think and acknowledge the new changes and talk about all the basis choices. Make certain that transitional groups are grown in all respects at an early stage for every vital region and layers of the association, and that colleagues are completely illustrative of the representative base. Encouraged sessions are the best since it's simpler for somebody who does not have a stake in the result to be totally centered around the procedure. In the event that in the transitional group any territory or any gathering is left and excluded than those individuals are clearly have issues which may spread like anything in the entire association. In light of social evaluation and mapping, utilize fitting work groups to consolidate offices and settle on choices in regards to little issues, (for example, what structures to utilize) and bigger techniques, (for example, how to deal with client administration). While settling on best practices and new strategies, social osmosis will be a side-effect. Clients are treated as God since they are the main survival factors through which any business can exist. So in the event of any merger or obtaining client administration ought not be influenced at all or whenever influenced in an improved way along these lines expanding the odds of involving the piece of the pie. Give administration and supervisory preparing as if it were a totally new, new business - in light of the fact that it is. For any mass progress pioneers fill in as the guide on which they can depend notwithstanding for their own reality. At the point when genuine pioneers are before them representatives fill in as association which is gainful for both administration and the workers and if, pioneers are deceiving everything may swing up to negative and can be effectively devastated. Name the progress exercises as a learning procedure for all. It is an update that new domain is being experienced and goes far to clarify the disarray and incidental disorder that will definitely be available. At whatever point there is a change it is for the advancement yet ordinarily it is misjudged. Any individual can only with significant effort acknowledge the change except if it is by all accounts advantageous for him. At whatever point a firm is involved by some other firm the acquiree needs to fill in according to the states of the acquirer. At the point when representatives accept it as a learning stage they can undoubtedly experience the progress stage and won't confront much issues while on the opposite side if a worker is pre-busy with its very own working style change will be extremely troublesome for him to acknowledge. Set up occasional re-assessments over the initial a few years that guarantee that issues will be tended to long after the new association is framed. This is for the administration just as for the representatives, on the off chance that they ceaselessly reconsider their working they can work for the improvement and can learn numerous new things while the executives can undoubtedly assess their choice. In addition they can undoubtedly put a mind the wearing down rate too.

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ROLE OF FINANCIAL ADVISORS & INVESTMENT BANKS IN MERGERS & ACQUISITIONS (M&A)

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ABSTRACT

This paper expects to comprehend the job of money related guides and speculation banks in Mergers and Acquisitions (M&A). This paper takes a glance at the job of business banks and venture banks as the money related counselors and furthermore assumes a noteworthy job in giving M&A warning administrations. M&A turned out to be progressively well known from 1960's. Venture banks are in a perfect world placed to give important M&A understanding to their customers or organizations as they come up short on the aptitude to execute these arrangements. A few specialized perspectives must be utilized by organizations, for example, discovering sharp flavoring or target organizations, correspondences with sharp flavoring or targets, acquisitions of money related data, exchange with legitimate, specialized and budgetary counsels to complete the M&A bargains. This procedure can turn out to be, can be overpowering for an organization. Venture banks discover offices, cost and money for plausible M&A bargains. M&A could be as influence buyouts by private value, the rebuilding and recapitalization of organizations, and the rearrangement of the grieved organizations. There can be opposite sides in which the consultants work: the organization which is being sold and the organization which is being obtained. The opposite sides have the diverse viewpoints and capacities. All the pivotal subjects will be additionally examined in this examination paper, appropriately the nuts and bolts, point by point data, models and references and so on. Timeframe has been taken from 1960's to 2019.

Keywords: Money related guides, Investment banks, Mergers and Acquisitions

INTRODUCTION

Meaning of Investment banks and financial advisors

Venture bank and budgetary consultants is a monetary establishment that helps people, partnerships, and governments in raising capital by fundamental or going about as the customer's operator in the issuance of securities (or both). A venture bank may likewise help organizations engaged with merger and procurement (M&A) and give subordinate administrations, for example, advertise making, exchanging of subsidiaries and value securities, and FICC administrations (fixed salary instruments, monetary standards, and commodities).Unlike business banks and retail banks, the real contrast is that the speculation banks don't accept stores as the business banks takes. The two principle works that venture bank play in M&A are known as sell side and the purchase side. The "sell side": this happens when the customer comes and state we need to sell our organization and for that we need your assistance. It includes exchanging securities for money or for different securities (for example encouraging exchanges, showcase making), or the advancement of securities (for example guaranteeing, investigate, and so on.). The "purchase side": in this the consultants as speaking to the frim which will purchase the other firm (merchant). It includes the arrangement of counsel to money related establishments worried about purchasing speculation administrations, for example, Private value reserves, shared assets, disaster protection organizations, unit trusts, and flexible investments. A venture bank can likewise be part into private and open capacities with a data obstruction which isolates the two to keep data from intersection. The private zones of the bank manage private insider data that may not be freely uncovered, while the open regions, for example, stock examination manage open data.

Significance of budgetary consultants and venture banks

We have contrasted acquisitions finished and without speculation bank counsel over the time of 1981 to 2018. We discover that the decision to utilize a speculation bank relies upon the unpredictability of the exchange, the kind of exchange (takeovers versus acquisitions of advantages), the acquirer's earlier obtaining background, and the level of broadening of the objective firm. With everyday augmentation of the aggressive weights and the moving of organizations towards globalization, organizations are connecting increasingly more in M&A movement. Numerous organizations who are hoping to grow or streamline their business are happy to utilize venture banks and money related counselors for exhortation on potential targets as well as purchasers which regularly incorporates a full valuation and prescribed strategies. The speculation bank's job in mergers and acquisitions can be categorized as one of either two basins: vender portrayal or purchaser portrayal (likewise called "target portrayal" and "acquirer portrayal"). Despite the fact that obtaining declaration returns are lower for firms utilizing venture banks, this distinction can be clarified by differencing in exchange attributes. These

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outcomes recommend that exchange costs are the primary determinant of speculation banking decision, trailed by contracting costs and Hilter kilter data costs.

In spite of the fact that acquisitions has been contemplated in much detail. In any case, the basic conviction is that Investment bank satisfy a vital capacity in the obtaining procedure. Budgetary go-betweens are authorities in data generation and handling. As counsels to the two targets and acquirers, monetary organizations use their data gathering skill to learn the booking cost of the merger counterparty, the potential for synergistic increases, just as the dangers of the exchange.

Business banks might be all around situated to offer these administrations on the off chance that they have set up loaning and other client associations with both of the gatherings to a merger. Over the span of a long haul client relationship, a business bank gets private data about an association's money streams, budgetary assets, and hazard introduction that can be helpful in evaluating the future prospects of a proposed merger. For sure, if the job of the budgetary consultant in a merger is to assemble data, at that point business banks – particularly those with earlier client connections - conceivably have a similar favorable position over venture banks in exhorting their clients. The financial writing (Chan, Greenbaum, and Thakor, 1986) for instance, recommends that data created over the span of a financial relationship might be reusable and along these lines transferable. This exchange is attainable on the grounds that while SEC guidelines and the U.S. chapter 11 code forbid the exchange of data from a venture bank backup to a related business bank auxiliary, there are no limitations on the reuse of data got over the span of a standard financial relationship (i.e., on data streams from the bank to the speculation bank)

Following a parallel writing managing endorsing exercises, we allude to a bank's capacity to activate private data about a client, and to utilize this data in providing administrations, for example, merger exhortation to the client, as the accreditation impact.

LITERATURE REVIEW

There is a writing looking at whether guides increase the value of a merger. Bowers and Miller (1990) look at the connection between a gaining company's stock returns and the decision of speculation bank to decide if first-level venture banks produce better arrangements regarding esteem creation.

They characterized the accompanying as first-level venture banks: First Boston, Goldman Sachs, Merrill Lynch, Morgan Stanley, and Salomon Brothers. They report that complete riches gains are bigger when either the objective or acquirer utilizes a first-level speculation bank. The outcomes recommend the significance of the counsel's believability (notoriety) in acquisitions.

Hunter and Walker (1990) find that merger gains relate emphatically to speculation banking charges and different intermediaries for venture financier exertion. Be that as it may, McLaughlin (1990, 1992) reports that some motivation highlights of speculation banking contracts can make irreconcilable circumstances between a venture bank and its customers, proposing the significance of a potential for an irreconcilable situation among counselors and customers in mergers and acquisitions.

Servaes and Zenner (1996) look at acquisitions that were finished in-house versus those that utilization venture bank consultants. They find that a venture bank is utilized in progressively complex exchanges with uneven data, recording the significance of the data accumulation process in mergers and acquisitions.

Expanding on the hypothetical model in James (1992), Srinivasan (1999) finds that merger warning charges incorporate a relationship premium that is reliable with the presence of exchanging costs borne by acquirers when they enlist new guides with whom they had no earlier relationship. On the off chance that merger expenses are set intensely, a clarification for this relationship premium is an accreditation impact, whereby rents are paid to keeps money with predominant data got over the span of an earlier relationship.

Srinivasan likewise finds that top level guides charge higher expenses than lower level venture banks, and that acquirers pay a relationship premium in merger expenses that is most noteworthy for top level counselors. Despite the fact that Rau (1999) finds no effect of consultants on acquirer strange returns, he demonstrates a positive connection between speculation bank piece of the overall industry and charges and arrangement finishing rates.

That is, top-level venture bank consultants make an incentive by improving the probability that the arrangement will be finished. These past examinations look at just those mergers prompted by venture banks.

THE VALUE OF MERGERS AND ACQUISITIONS

Out of the thorough exact writing on mergers and acquisitions, one, this is observational finding that objective firms will in general experience positive irregular returns upon merger declarations while acquirers post zero or negative unusual returns. In this manner, targets seem to acquire the majority of the normal merger and procurement gains.

Target picks up come from numerous sources. The corporate control theory, contemplated by Harris and Raviv (1988), Stulz (1988), Amihud, Lev, and Travlos (1990), and Franks and Mayer (1996) joins merger increases to the decrease in office costs in the market for corporate control. The market control speculation stipulates that mergers upgrade the aggressive position of the objective. Berkovitch and Narayanan (1993) discover proof of the cooperative energy intention in mergers and acquisitions. Hubbard and Palia (1999) find synergistic additions to focuses in the formation of inward capital markets inside combinations made by a program of expanding mergers and acquisitions.

Though targets must get some desire for increase so as to win the endorsement of their objective investors for any merger, those acquirer firm chiefs, who are unconstrained by weight from esteem expanding investors, may set out on acquisitions that offer no ex bet addition to investors. The administrative hazard expansion theory (Amihud and Lev 1981, Amihud and Kamin 1979, and Lloyd, Hand and Modani 1987) proposes that procuring firm chiefs embrace (esteem decreasing) mergers so as to diminish their undiversifiable human capital interest in their firm. Proof of this is appeared in Amihud, Kamin, and Ronen (1983). In the champ's revile or hubris theory, excessively hopeful acquirers overbid for targets.

For instance, Roll (1986) demonstrates that acquirers who overestimate the estimation of the objective are bound to effectively total a merger, bringing about a decrease in the acquirer's an incentive to investors.

The inquiry, unexamined before this paper, is the manner by which the decision of monetary consultant impacts the appropriation of additions among target and acquirer upon the declaration of a merger.

Based on writing survey, the exploration targets have been encircled that are talked about in the resulting segment.

RESEARCH OBJECTIVES

- To observe the job of banks as counsels to merger members
- To anlayse the impact of M&A on value of the firm

METHODOLOGY

The present paper gives a basic investigation of M&A depending on previous real life examples. It analyzes broad literature relating to comprehensively two components, the job of advisors in M&A and the adjustment in the estimation of firm due to M&A. The outline of examination has been introduced in the following segment.

ANALYSIS OF LITERATURE

This segment gives a short look at examinees directed on M&A and their individual discoveries.

Table-1.1: comprehensive summary of research related to impact of M&A on firm's value

Author name	Year	Research Objective	Methodology	Finding
Linda Allen	2001	Role of monetary guides in mergers and acquisitions	In this the creator has given the basic investigation of M&A by figuring the anomalous returns for targets and acquires.	Author discovers that the job of money related counsels in a merger is to prepare data. Business banks conceivably have a relative preferred standpoint in exhorting their financial clients when contrasted with the non-bank counsels.
JulapaJagtiani	2008	Objectives of money related counselors in M&A	In this the creator as utilized the observational information's of the organizations converges to portray the topic	By utilizing 488 mergers information creator discovers that of these inspected information 299 use at least one business banks consultants who prompt either the objective, or the acquirer, or both. The other 189 inspected mergers bargains establish our venture banks control bunch in

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				which there are no business bank consultants, and both the objective and the acquirer hirer either top level or mid-level speculation bank counselors.
Anthony Saunders	2008	Working of money related counselors in M&A	In this the creator has utilized the observational information's of the organizations mergers to portray the topic	By utilizing 488 mergers information creator discover that of these tested information 299 use at least one business banks consultants who exhortation either the objective, or the acquirer, or both. The other 189 examined mergers bargains establish our venture banks control bunch in which there are no business banks counselors, and both the objective and the acquirer hirer either top level or mid-level speculation boycott consultants.
Stavros Peristiani	2008	Role of Financial Advisors in M&A	In this the creator has given the basic examination of M&A by registering irregular rate of return, by charactering the objective and secures and explicit arrangement factors.	The creator discover that the job of money related consultants in a merger is to prepare data. Business banks have a near preferred standpoint in exhorting there bank costumers when contrasted with the non-bank counsels. In any case, the level of work which speculation bank gives to organizations is much increasingly vital as the organizations requires a great deal of data while directing the M&A and the consultants help the organizations a ton in giving the data
RohitBafna and AnanyaPratap Singh	2015	Role of commercial banks and financial banks in M&A	In this the creator has given the short writing audit of the job of speculation banks in M&A	Author discovers that dissimilar to certain territories of venture banking, business banks have dependably been permitted to contend straightforwardly with speculation banks. Banks going about as the two moneylenders and counselors face a potential irreconcilable circumstance that may alleviate or balance any confirmation impact.
Henri Servaes	1996	Role of speculation banks in Acquisitions	In this the creator has utilized distinctive kinds of the exchanges to demonstrate how the venture banks helps the companies.	Author has taken diverse exchanges and on that premise it is discovered that the organizations picks speculation banks when the securing is progressively mind boggling, have less understanding and the procurement includes the takeover of the other organization. It has additionally been discovered that the speculation banks are utilized all the more much of the time when the securing firm has insider possession

Brian Dechesare	2009	Work of the speculation banks in M&A	In this the creator has given the concise examination advising the everyday working procedure of the guides (budgetary and venture banks)	Author portrays the everyday work of speculation banks. Which depicts the full strategy of the working of the speculation banks while managing the mergers.

CONCLUSIONS

The paper examines that the association of venture banks in M&A is an extremely essential errand. All organizations who need to get a merger and need it to be effective, should take the assistance of these money related middle people. As monetary mediators are expert in data creating and preparing. With respect to the mergers the budgetary mediators accumulate all the mastery data to find out the booking cost of the merger counterparty which is required for the managing of the blending organizations. The monetary go-betweens takes all the future angles that what the market will be and so forth. Throughout the costumer's relationship the middle people all give the private data or the insider data which at once an organization requires, to realize that if the merger goes on with an organization than what will the situation of it in future. Business banks possibly have a similar favorable position in exhorting there banking clients when contrasted with the non-banking consultants (for example conventional speculation banks). We would anticipate that that entrance should data created over the span of loaning/credit relationship would upgrade the mergers counterparty's unusual return upon the declaration of merger. Specifically, the bank might be unfit to solidly transfer data about the mergers counterparty's esteem if there is worry that the bank is utilizing the merger as an approach to diminish its very own loaning presentation to the customer.

As we have taken the writing audit of the papers, in that we have discovered that mergers should be possible just by two different ways either with the assistance of the budgetary counsels or just without anyone else's input. In any case, when we ponder this paper we discover that the better way is taking the assistance of the budgetary mediators on the grounds that by taking the assistance of the middle people the odds of disappointment of mergers get diminished by 80% which is a lot. It is on the grounds that the organizations who are managing the organizations independent from anyone else are might not ready to get to all the data which a delegates can without much of a stretch give. Finally I need to reason that money relatedmiddle people assume an essential job in the working of the mergers. We can say that they are the little key to progress.

When it comes to the mergers, some merger are so successful that we can’t even remember a time when the companies are so distinct at a time. But mergers are like which fall exactly on the face of it. The newly companies which gone in a merger just got insolvent in less time, the companies’ stock drops in one night, the companies have to give compensation to their employees etc. For whatever reason, there doesn’t seems to be a magic trick to cooperate mergers. Here are inheritably higher risk, great money involve in it. Here are some of the successful and unsuccessful mergers that have taken place in the recent years (refer table 1.2).

Table-1.2: Brief outline of successful and unsuccessful mergers

S.NO	Successful Mergers	Unsuccessful Mergers
1	**Disney and Pixar:-**On Feb 25, 1997 Walt Disney and Pixar reports their joint effort. Disney has discharged all of Pixar films, however with their agreement after the arrival of 'cars'. The merger made flawless news. With the merger, the two organizations could work unreservedly and easy	**New York Central and Pennsylvania Railroads:-** On 1968, New York Central and Pennsylvania declares their cooperation. It has turned into the 6th biggest merger in the America, Penn Central. In view of the ascending of the expense of workers, government guidelines and real cost cutting the organization gets liquidation.
2	**Sirius and XM Radio:-**On July 29, 2008 Sirius and XM Radio declares their joint effort. This merger is a triumph because of number of enormous names were included and on account of the green flag given by the FCC.	**Daimler Benz and Chrysler:-**In 1998 Daimler Benz and Chrysler reports their joint effort. The assembling (Mercedes Benz Daimler Chrysler) converge with US car producer to make Daimler Chrysler for $37 billon. In any case, by 2007, Daimler Benz sold Chrysler to Cerberus Capital Management firm, for $7 billion. It is the other instance of corporate culture conflict.

3	**Exxon and Mobil:-**On 1999, Exxon and Mobil reports their mergers for $81 billon and progressed toward becoming ExxonMobil. The organization remains the most grounded pioneer in the oil showcase, with a colossal hang on the worldwide market and emotional gaining. The organization involved every one of the ten spots in the 'Main 10' Corporation Quarterly Earning and stays world biggest freely held organizations.	**Mattel and the learning organization:-**On 1999 the Mattel chose to bargain in the instruction programming segment by nearly scooping bankrupt The Learning Company. Not exactly a year the Learning Company lost $206 Million, bringing down Mattel's benefit with it. By 2000 the Mattel organization begin losing $1.5 million every day and its stock cost likewise begin dropping. Finally the Learning Company was sold and the Mattel organization compelled to pay 10% to its utilizes so as to cut expense
4	**Vodafone and Hutchison Essar:-** In 2007, the world's biggest telecom organization as far as income, Vodafone, made an entered the Indian telecom advertise by procuring a 52% stake in Hutchison Essar Ltd. Vodafone acquired the stake for about $10 billion.	**Singes and Kmart:-**Hedge-Fund financial specialist Eddie Lampert acquired both a falling flat Sears and Kmart in 2005 and combined them to turn into Sears' possessions. Continuous of this merger some accuse their concentration for delicate merchandise instead of hard products. By 2007 Lampert was named America's most noticeably bad CEO and Sears holding stays on the precarious edge of absolute disappointment.
5	**Hindalco and Novelis:-**Hindalco Industries Ltd. Is a backup of the Aditya Birla Group and Novelis is the world chief in the creation of level moved aluminum items. The Hindalco obtained the Canadian organization Novelis for $6 billion, making the joined substance the world's biggest maker on moved aluminum	**Sprint and Nextel:-**In 2005, Sprint and Nextel interchanges merger happens. These organization imagined that converging inverse finishes of the business sectors range would make one major correspondence family. Not long after the mergers, Nextel administrators and directors left the new organization by the thousand, clamming that the two societies couldn't get alone. A similar time the economy deteriorates the clients expected more and more from their specialist co-ops. Rivalries increment and because of which the Sprint/Nextel lays offs. The stock dove and the merger totally fizzles.

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NCLT AND JUDICIAL APPROACHES TO MERGERS AND ACQUISITIONS IN INDIA

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ABSTRACT
Chapter XV of the Companies Act, together with its bye-laws and notifications by various regulators, such as SEBI, forms the legal framework within which corporate entities conduct their M & A affairs in India. From a bare reading of the provisions, it becomes amply clear that the law envisages an enabling mechanism in so far that companies seek approval of the scheme internally and take it upon themselves to satisfy procedural requirements, which the National Company Law Tribunal supervises and ratifies, and then sanctions, or rejects, the scheme. This paper argues that the newly constituted Tribunal has decided cases relating to mergers & acquisitions in an inconsistent and de novo manner. This is evident from the NCLAT's disregard of the contours established by the procedural framework due to the wide discretion vested in it under the existing legal regime. Such a state of affairs has caused uncertainty in the jurisprudence of M & A transactions in India. The researcher attempts to bring out the thresholds based on judicial precedents that have created a conundrum in the legal regime governing corporate restructuring in India.

Keywords: scheme, sanction, M & A transactions, tribunals.

FUNDAMENTAL PRINCIPLES OF APPELLATE DECISION MAKING

General Framework

The purpose of appeal is to ensure that the law is uniform, impersonal, impartial, principled, and clearly elaborated. The appellate court tries to accomplish this purpose through two core functions. The first core function of an appellate court is to correct errors while the second is the exposition of new legal principles, which is achieved through creating a new principle or clarifying, extending or overruling an older principle.

Each of these functions is usually realized in two common forms of appellate proceedings: appeal *de novo* and appeal on record. In the former, there is a re-examination of all the evidence and legal arguments put forth at the original stage. In the latter, the court will enquire into nothing but the questions of law, and will not deliberate or enquire into the factual matrix that the court of first instance had independently arrived at. The remedies provided also differ, in that the court will reach a final decision in a *de novo* trial, but will merely remand or remit the case back to the trial court in the latter case, either to pronounce a new verdict or to conduct additional proceedings.

In M&A Context

In India, the law seeks to limit the Tribunal's role to oversee the compliance of procedural requirements, and then to sanction the scheme if it does not suffer from any procedural infirmity. However, the judicial authority's role is not merely to be a rubber stamp. In *Miheer H Mafatlal*, the Supreme Court spelled out the broad contours of the jurisdiction of a Company Court. Thus, apart from the verification of the requisite procedure being followed, the apex court also charged the Company Court with the added responsibility of ensuring that

1. The proposed scheme of compromise or arrangement does not violate any provisions of law,
2. That it is neither unconscionable nor contrary to public policy, and
3. That it is just, fair and reasonable from the point of view of prudent businessmen.

In essence, then, the Court is not permitted to substitute its own commercial wisdom over the majority of the class of persons affected by that particular scheme once the parameters established are found to have been met. The Court serves in a supervisory role in the exercise of its jurisdiction, and not appellate, and it must not scrutinize the scheme minutely. It is an umpire in so far that it ensures that the teams abide by the rules of the game, beyond which it leaves the teams to decide as to how to play in the best possible manner. The logic is clear: it is the parties, in the exercise of their reason, who agree between themselves to be bound by a scheme at the necessary meeting, and the court will be slow to differ from the meeting.

Even though the above rules pertain to the pre-2013 regime, the principles enunciated above apply to the Tribunal and the NCLAT. The maxim *Stare decisis et non quieta movere* mandates that a judicial forum is always bound to follow a precedent established by a superior court, and should not disturb settled points. But with a new legislation, how will staire decisis operate? Especially in commercial matters, the maxim allows men to trade and manage their affairs with certainty, without allowing the capriciousness of law to impede their industry. As successor courts, the maxim applies equally to the new fora. Thus, the framework within which the Tribunal is placed is a combination of the express framework under Chapter XV of the Act and the *Mafatlal* contours. As we shall see, what holds true in theory does not necessarily translate into practise.

INCONSISTENT DECISION MAKING BY THE APPELLATE BODY

Wiki Kids – Mafatlal Dichotomy

The decision of the NCLAT in *Wiki Kids* has given short shrift to *stare decisis*. The appeal had been preferred in response to the Tribunal's refusal to sanction a scheme of amalgamation, ostensibly due to the scheme benefiting the common promoters of the transferor and transferee companies. In the Tribunal's wisdom, public interest was not being served by the scheme sought to be sanctioned. Such a decision was handed down even after the companies had fulfilled all the procedural requirements, and the Tribunal had acknowledged such fulfillment.

The NCLAT was appraised by the appellants of the ratios in *Mafatlal* and *Hindustan Lever*. However, the cases were distinguished on facts, and rejected, even though the NCLAT held that the principles were relevant. The Tribunal's refusal to sanction was affirmed on the ground that it had enough expertise to look into the scheme of amalgamation. In other words, the ratio that emerges from the case is that a scheme is liable to be rejected if it does not serve public purpose. However, the *Hindustan Lever* judgment only called upon the authority to ensure that the scheme was not contrary to public policy, by which it meant that the principle of prudent business management test should not be violated i.e. that the scheme should not be a device to evade law. What was a negative duty has been transformed into a positive one, wherein the Tribunal is now empowered to test the scheme on the edifice of whether there is a tangible benefit accruing to the public, or not.

Thus, the NCLAT has conferred upon the Tribunal wide powers of discretion under the garb of enough expertise, which were hitherto not conceived of either by the legislature or by precedent. The contours established by *Mafatlal* stand vitiated. In doing so, considerable judicial confusion has been occasioned. The hierarchical nature of courts and the closely intertwined principle of *stare decisis* stand abrogated.

Furthermore, the creation of a new requirement to be adhered to by companies which seek M&A approval, which is over and above the explicit legislative requirements, will lead to higher costs of compliance. The requirement itself is vague, as there has been no standard or threshold defined as to what benefit must flow to the public. This again points to a rise in information costs for companies.

RITEMED – A RETURN TO COHERENCE?

While *Wiki Kids* is extraordinary in the number of problems the decision gives rise to, it is even more extraordinary that not six months later, the NCLAT, in *Ritemed*, repudiated emphatically the core issues decided in *Wiki Kids*. Herein, the Tribunal had refused sanction to a scheme of amalgamation on the ground that the shares could not be issued at premium by transferee company to the transferor, where both were unlisted, as the Act made no mention of it. As before, the procedural requirements had been met. The NCLAT overturned the Tribunal's decision, firstly, by highlighting that there exists no difference between listed and unlisted entities when it comes to issuing shares at premium as part of a scheme; in rejecting any distinction between listed/unlisted companies, the foundation of the *Wiki Kids* decision, which was based on the distinguishing of *Mafatlal* and *Hindustan Lever* from the fact scenario of *Wiki Kids* on this supposed dissimilarity, stands demolished.

Secondly, and remarkably, the NCLAT affirmed the decision in *Mafatlal* and thereby approved the contours of the jurisdiction of the Tribunal, implying that the Tribunal should not have scrutinized the specifics of the scheme if it was not violative of any provisions of law. Thus, the Tribunal should not have substituted its unfounded opinion over the commercial wisdom of the companies as to whether issuance of shares at premium was feasible or not. It should be noted that the corum in both the cases was the same.

However, the NCLAT did not explicitly overrule the conclusions reached by it in *Wiki Kids*. It is therefore doubtful if the jurisdictional limitations apply to the Tribunal, or whether the Tribunal can proceed de novo in the exercise of its jurisdiction, as *Wiki Kids* permits.Any Supreme Court guidance in such event?

CONCLUSION

Perhaps, in the first instance, the NCLAT was overzealous in the protection of the Tribunal's jurisdiction and did not recognize the significance of the *Mafatlal* limitations. If the *Wiki Kids* decision were to hold, uncertainty would be manifest in the entire M&A field. At the very least, compliance and legal costs would rise; the former, because companies would not be able to discern the exact nature of the requirements to be fulfilled, and the latter because the companies would not be able to predict with any certainty the final outcome of a particular case. Uniformity, continuity and consistency in law, on both the legislative and judicial side, are necessary for the efficiency of a legal system.

If the Tribunal does not limit itself within the proscribed contours and continues in the vein of its *Wiki Kids* decision, it will be tantamount to examining entrepreneurial activities to ferret out flaws, which is never a part of the judicial process. Discretion vested in the Tribunal is, in the Dworkinian sense, weak, in so far that the Tribunal merely interprets and applies a standard set by an external authority, which, in the M&A context, is the standard established by Chapter XV in conjunction with *Mafatlal*.

Furthermore, the rationale behind instituting a tribunal-based system was to combat increasing pendency in the earlier system and encourage expeditious disposal of M&A cases. If the *Wiki Kids* decision holds fort, such a rationale will have to beat a hasty retreat. This will impede economic progress. As Max Weber famously recognized, capitalistic progress is tied to legal certainty. Both the Tribunal and the appellate body should recognize this wisdom, especially because their domain is the corporate field. It is hoped that the *Wiki Kids* decision is rejected, either explicitly in a future decision by the NCLAT, or implicitly, by the Tribunal not deferring to it but to *Ritemed* in its decision-making. How would 'implicit' help in removal of legal uncertainty?

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SIGNIFICANCE OF BEPS PROJECT IN CROSS-BORDER MERGERS & ACQUISITIONS IN INDIA

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ABSTRACT

India's recent jump of 23 positions in Ease of Doing Business ranking by achieving 77th rank among 190 nations is an indication that current regulatory environment has become very dynamic and changing constantly at a rapid pace to propel India Inc. at par with developed nations. In this line, next expectation is that the India will be having its new direct taxes code in sync with the economic conditions of the country, prevailing international best practices, the ease in carrying out business, reduction in avenues of litigation and, above all, be a less cumbersome tax system.Over the last couple of years, the approach has been of substance over form, and aligning ourselves to international best practices, including base erosion and profit shifting (BEPS), exchange of information and country-by-country reporting.In Nov. 2015, OECD had developed an action plan endorsed by G8 and G20 governments to design a globally standardized rules to check tax avoidance practices by the MNCs so that there will be no tax base erosion.The Action Plan sets out 15 areas of work to be undertaken across a range of tax issues, including the digital economy, transfer pricing, coherence of corporate income taxation, as well as transparency, certainty and predictability of taxation. The major landmark in the BEPS project was achieved when Indiaand many developed and developing nations signed the 'Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS' (referred to as the multilateral instrument or MLI) during a signing ceremony hosted by the Organization for Economic Co-operation and Development (OECD) in Paris in 2017. However, due to the BEPS implementation at domestic tax law level and tax treaty levels, the international tax landscape is becoming increasingly complex and uncertain.

In this direction, this paper discusses the specific issues around the BEPS project and M&A transactions and deliberatesto analyze the manner by which the BEPS proposals are going to impact the tax legislative framework related to the M&A transactions in India.

Keywords: Mergers and Acquisitions, Base Erosion and Profit Shifting, OECD, MLI

INTRODUCTION

Globalization has provided the domestic economies of entire world the benefits in terms of increased trade, increased foreign investments and contributed towards the development of world GDP. Due to this capital and labour can move in unrestricted manner, shift of manufacturing bases from high cost to low cost locations, technological &telecommunication developments, removal of trade barriers, growth in IPR regime etc. has led to the cross-border activities to take place. This has led to the accelerated growth coupled with job creation and fostered innovation. All this has been achieved due to the globalization because of the pace of integration of national economies and markets in recent years in Indian context. This in turn has led to the significant impact upon the India's corporate income tax regimes. This issue was recognized by the League of Nations in 1920s that the interaction of tax systems in globalized scenario will cause double taxation having adverse effects on global economy. This paved the way for the elimination of double taxation by providing accepted international taxation laws in terms of double taxation avoidance agreements (DTAAs) which were very clear and predictable as they provide certainty to all concerned stakeholders.

However, in current scenario, the Multinational Corporations (MNCs) represent significant proportion of global GDP and increasing use of latest technologies has enabled the e-commerce market in which it has become much easier for the corporate to locate many productive activities in distant geographic locations as compared to physical location of their customers. All this has been accompanied by the practice of exploitation of tax arbitrage opportunities and the boundaries of acceptable tax planning which is encouraging the MNCs to minimize their tax burden by resorting to such aggressive tax planning.

In developing countries like India, this practice of aggressive tax planning by resorting to adopting such tax planning strategies which exploit gaps and mismatches in tax rules to make profit *disappear* for tax purposes, causes significant losses directly and indirectly viz., under-funding of investments that could have boosted economic growth and development, individual tax payers have to bear a greater share of tax burden, difficulty of competing with such MNCs due to their ability of shifting their profits across borders to reduce tax burden, hence level playing field is avoided in such a manner.

BASE EROSION AND PROFIT SHIFTING

In the backdrop of such issues, in February 2013, the OECD published a report on "Addressing Base Erosion and Profit Shifting" emphasizing the need for analyzing the issue of tax base erosion and profit shifting by MNCs. This was followed by the publishing of draft Action Plan on Base Erosion and Profit Shifting (BEPS Action Plan) in July 2013 which came to existence in October 2015. BEPS refers to tax planning strategies that exploit gaps and mismatches in tax rules to make profits 'disappear' for tax purpose or to shift profits to locations where there is little or no real activity but the taxes are low, resulting in little or no overall corporate tax being paid. Due to this tax avoidance in guise of tax planning by taking benefits of loophole in the DTAAs or other international tax laws, it was felt that BEPS is causing the integrity of the entire tax system globally. It has been noted that theproblems associated with BEPS are worsened inan Indian context due to India's heavy reliance onrevenues from corporations (including MNCs),which are in turn dependent upon international taxrules.

The Action Plan on BEPS released by the OECD has 15 Actions based on below mentioned fundamentalpillars:

1. Introducing coherence in domestic tax rules thataffect cross-border activities,

2. Reinforcing substance requirements in the existinginternational standards,

3. Improving transparency as well as certainty forbusinesses and governments.

4. Update of double tax treaties and domestic tax laws

5. Emphasis on clear alignment of taxation with locationof economic activity and value creation

Given the above, changes to the international tax framework as a result of BEPS are, by now, seen as inevitable. With India's increased participation in global trade, both as a consumer and a supplier of goods and services, these changes are likely to have a far-reaching impact on the way companies conduct their businesses and M&A is no exception. There is likelihood of impact upon M&A transactions at each step of the deal by the developments expected to emerge as a consequence of the recommendations included in the BEPSAction Plan in terms of financing, holding and repatriation, IPRs etc.

Impact of BEPS Project on M&A activities

The effect of BEPS on M&A action including India can be felt in more ways than one. For instance, in deal financing, target organizations may have utilized hybrid monetary instruments which have the qualities of both obligation and value whose dispersions are considered as expense deductible enthusiasm from the subsidiaries' point of view, and as non-assessable profits from the holding element's viewpoint. Explicit nation laws that enable citizens to select the assessment treatment of certain local and remote elements may help half breed instruments. The hybrid mismatch is a plan that abuses a distinction in the duty treatment of a substance or an instrument under the laws of at least two or more tax jurisdictions to accomplish twofold non-tax collection or long haul charge deferral. This might be finished by age of derivations without relating pay inclusions, abuse of double taxation assessment credit, production of two findings for a single borrowal or interest in routines where exemption is provided. It may be difficult to discover which nation has in certainty lost tax income, since the laws of every nation included have been followed, notwithstanding, there is a decrease of the overall tax paid by parties involved, which at last adversely affects competitiveness, economic effectiveness and reasonableness. BEPS Action 2 tends to address hybrid mismatches that have are cross-border courses of action arbitraging the conflicting tax treatment in the purviews worried so as to accomplish charge savings. The main point of Action 2 is to match tax qualities of hybrid arrangements in every jurisdiction with the end goal that duty treatment will be founded on that in the "home" jurisdiction. Accordingly, the OECD has advanced proposals for local assessment tenets to neutralize the impact of these hybrid arrangements and give prescribed changes to such treaties. Such domestic enactments have been presented by the UK and are as of now being developed in Australia. In these nations, the capacity to utilize these hybrid instruments to fund acquisitions while accomplishing a tax efficient result should be reconsidered. Another issue in such manner is interest deductions. OECD looks for best practice administered on BEPS by means of interest expense and similar payments, especially among related parties. In such manner, Under BEPS Action 4, it is seen that a substance's net interest deduction ought to be straightforwardly connected to its dimension of monetary action and has suggested a fixed proportion rule be connected dependent on a benchmark net interest/EBITDA proportion to restrain excessive deduction of tax on interest. This is enhanced by the group ration (which is like the fixed ration rule, though material in a group setting) and other focused rules. These proposals will unavoidably have an effect on internal gearing and the capital structure. Therefore, when setting out on a buying side, organizations should be progressively careful of the potential impediments in funding by way of debt in a post-BEPS world.

Another issue in BEPS Action sway is deal structuring identified with strategies around holding and exit. In obtaining structuring process, the procurement of the target corporation for the most part involves settling on a choice between domestic utilization vehicles, making an immediate acquisition by the holding organization or utilizing an intermediary group organization situated in a profitable jurisdiction. In such manner, the issue of which tax treaty, the acquiring corporation and the target corporation may get to is of real enormity. Changes are expected to emerge as an outcome of the BEPS advancements, specifically Action 6 (treaty misuse), which tends to the rejection of tax treaty benefits for oppressive structures lacking economic substance. BEPS Action 6 centers around arrangement maltreatment by looking at the motivation behind an exchange [i.e. principal purpose test (PPT) and / or limitation of benefits (LOB) test] and explicit settlement misuse rules covering certain dividend exchange transactions, dual-residents elements, and so on. Most of Asia-Pacific nations have decided not to apply the LOB test notwithstanding the PPT, with the special cases of India and Indonesia. BEPS Action 6 likewise clarifies that assessment arrangements are not proposed to make open doors for non-taxation, or diminished tax assessment, through bargain shopping and they ought to not fortuitously counteract the utilization of residential anti-abuse rules.

Towards valuation, the issues identified with future tax exposures inside the acquired corporation emerging from BEPS-driven authoritative changes may require post-transaction re-demonstrating, accordingly prompting an expansion in expenses. For instance, the execution of the proposals under Action 7 (permanent establishment) may result in the formation of an assessable nearness in a purview where the dimension of the exercises would not have been adequate to meet this threshold under the previous principles. This will directly affect the valuation of the organization to be acquired and along these lines the exchange estimating. It prescribes changes to the meaning of permanent establishment (PE) in the OECD Model Tax Convention, and addresses procedures used to abstain from having an assessable presence in a nation under expense settlements.

Activity 6 (treaty abuse) and Action 7 (permanent establishment) will turn out to be exceptionally important, particularly for private-equity players, reserves, and so forth. Expanded dimensions of substance at the reserve and holding structure level will be a key factor, the nonappearance of which may limit access to tax treaties. Corporations should reveal insight into how basic leadership and the executives capacities are completed, and show how such structures meet business reason and business method of reasoning tests. This may build the operational expenses of keeping up these structures. Further, an increasingly far reaching meaning of PE support the board exercises could trigger taxable business nearness concerns.

CONCLUSION

The global tax laws scenario is changing because of progressing usage of BEPS project as prior limited public and political consideration was given to corporate taxation however at this point because of expanding share of corporate taxes in fiscal policies of the nations, the consideration has been moved towards influencing corporations to make them understand their duties to be good corporate residents. The extensive utilization of assessment arranging structures or dodging structures taking advantages of crisscrosses in taxation laws of various nations and absence of coordination among different government divisions and tax authorities has been moved to new worldview of collaboration among tax specialists with other government offices, more prominent alert in selection of forceful tax planning structures. Presently the fate of universal taxation framework is moving towards the straightforwardness on corporate assessments through Country by Country Reporting (CbCR) and other nearby straightforwardness measures, arrangement of tax planning with business models and substance and continuous collaboration among different offices of government and so on.

Considering these are beginning of BEPS proposition, and that the degree to which every locale will grasp the proposed Action plans isn't completely known, it might be hard to determine now the precise effect of BEPS on a structure or arrangement. In the ongoing past, India has selected to present different arrangements dependent on the BEPS suggestions (for example the Country-by-Country Reporting, an Equalization demand on advanced advertisement spends, flimsy capitalization rules, etc). Also, it is normal that different zones shrouded in BEPS will be considered in detail over the coming days and could in the long run become segment of the law. While some vulnerability will be inescapable until the full slate of BEPS measures are executed, center around the core values of 'Rationality', 'Straightforwardness' and 'Substance' should enable citizens to recognize, evaluate and address potential assessment dangers.

At last, while it is in every case best for corporations to prepare themselves against the floods of authoritative changes with BEPS through early arranging and returning to techniques, they ought to understand the requirement for practical and sturdy structures, and in specific occurrences likewise be set up to acknowledge an expanded expense cost and elevated vulnerability.

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CRITICAL AREAS OF CONCERN DURING M&A IN INDIAN MARKETS: A CONTENT ANALYSIS APPROACH

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ABSTRACT

The business scenario in India has been marked by market consolidation through mergers and acquisitions in multiple industries and this trend is likely to continue in the future. Mergers and acquisitions come with their own challenges and opportunities for different stakeholders of the organization. The consumer of business news reports is also a stakeholder, he/she may be a potential employee, a current employee, or a business leader, a potential customer or current customer, etc. Coverage in media does hold influence to a certain degree on the stakeholders. Hence, the study attempts at highlighting the key areas of concerns for stakeholders to the phenomenon of mergers and acquisitions, as reported in the media. This qualitative study uses content analysis to bring to light the most critical areas of concerns during mergers and acquisitions in the Indian markets.

Keywords: Mergers, Acquisitions, Content Analysis, Qualitative research, Stakeholder Interests

INTRODUCTION

The past year has been a rollercoaster ride for Indian firms when it comes to market consolidation. India Inc. smashed its previous records and witnessed a whopping $129.4 billion worth of M&A deals in 2018, up by 77% in deal value as compared to 2017 (Dhanjal, 2019). Walmart's acquisition of Flipkart, the Vodafone-Idea merger, Tata Steel's acquisition of Bhushan Steel, HUL's acquisition of GSK's consumer nutrition brands such as Horlicks, merger of Bank of Baroda(BOB), Vijaya Bank and Dena Bank into one corporate entity of BOB are some examples of the M&A deals that kept consumers, investors, employees, scholars and experts fishing for the latest updates on the deals.

M&A deals impact people's lives, as employees, consumers or stockholders and they generate the need to make sense of what is happening to a firm during M&A and this collective sense is drawn from media texts or their reflections (Vaara & Tienari, 2002). Market speculations, unofficial accounts of employees, viral posts, public statements from company executives or lack thereof, fluctuating share prices on the stock market, experts' opinions in news and business segments, the government's statements, all constitute the reportage of the events transpiring at the firms pursuing M&A deals. These create certain images and corresponding expectations for stakeholders engaged with any firm. This study attempts at using this image so created by media reporting, to understand what are the key concerns for different stakeholders during M&A deals in Indian markets.

In a comprehensive review, the key antecedents to M&A were identified as: value creation, managerial self-interest (value destruction), environmental factors and firm characteristics (Haleblian, Devers, McNamara, Carpenter & Davison, 2009). In the review, value creation deals with market power, efficiency, resource deployment and market discipline; managerial self-interest (value destruction) considers compensation, hubris, target defence tactics; environmental factors are uncertainty, regulation, imitation, resource dependence, network ties; firm characteristics are acquisition experience, firm strategy and position.

Another study sheds light on the key features of mergers specifically in the technology domain, namely, merger participants' pursuit of related R&D activities preceding the merger, the presence of valuable technology triggering the transaction and enhanced innovation post the merger (Bena & Li, 2014). It has also been observed that M&A deals and their consequences may be influenced by the type of acquisition, industry concentration pre and post M&A, level of product differentiation and entry barriers in the market, however, the effect of M&As on different stakeholders requires further examination (Haleblian, et al., 2009). This relates directly to the objective of this study, in that, it examines the critical areas of concerns during M&A for different stakeholders. Thus, the research question for the study is as follows:

RQ. What are the critical areas of concern during M&A deals in India for different stakeholders?

METHODOLOGY

The study follows a qualitative research design, using conceptual content analysis. Conceptual content analysis is a means of establishing the presence and frequency of ideas/concepts mostly represented by a certain words or phrases in a text (Busch, et al., 2019). Thus, within the sample selected in this study, the researcher examined certain concepts related to mergers and acquisitions as represented by certain words/phrases in the articles such as the word 'synergy' being reflective of production efficiencies through the process of M&A. Emphasis was

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laid on the occurrence of the concept and the frequency of the occurrence of the concept across the total sample was also calculated.

Time Frame

Newspaper articles of "Indian Express" covered a time period of 21st March-08th April 2019.

Sample

Newspaper articles related to M&A dealings were examined in the daily "Indian Express"for articles related to mergers and/or acquisitions. From this activity, 28 articles meeting the inclusion criteria were found, i.e., (a) Containing details about M&A deals (b) Containing details of about stake sale/acquisition. Thus, these 28 articles became the sample of the study.

ANALYSIS

Since the aim of the study was to illuminate on the various critical areas of concern during M&A for various stakeholders, the content (entire article) was examined in terms of the occurrence of the concept, frequency of the concept's occurrence and reporting language (positive/negative connotations and wordings). Emergent themes were developed as data analysis was conducted, following. These themes were then grouped under overarching categories and then interpreted. These steps are in line with Mayring's (2000) inductive category development approach. Inter-rater reliability check was not done as the study was conducted by a single researcher, however, intra-rater reliability was conducted and met the acceptable limits.

FINDINGS & CONCLUSION

The broad categories that emerged were: (1) "Corporate Communications & PR" (2) "Corporate Governance" (3) "Impact on customers" (4) "Impact on the economy" (5) "Impact on employees" (6) "Impact on industry" (7) "Impact on investors" (8) "Leading and managing the M&A" (9) "Risk & Failure of M&A" and (10) "Why M&A?". The summary of the same and frequency of the occurrence of these themes is presented in Table 1.

Table 1: Categories & Frequencies

S.no	Category	Frequency
1	Corporate Communications & PR	15
2	Corporate Governance	6
3	Impact on customers	2
4	Impact on economy	4
5	Impact on employees	5
6	Impact on industry	5
7	Impact on investors	21
8	Leading and managing the M&A	3
9	Risk & failure of M&A	4
10	Why M&A?	22

(1) Corporate Communications & PR: This category emerged out of public statements made by senior executives such as CEO, MD, Chairman, etc on the M&A deal. Here is an excerpt from one of the articles –

In an official statement, Reliance Jio director Akash Ambani said, "We believe voice interactivity will be the primary mode of interaction for Digital India. We are delighted to announce this partnership, and look forward to working with the experienced team of Haptik in realizing this vision for offering greater connectivity and rich communication experiences to the over billion Indian consumers". (Press Trust of India, 2019, p.18)

Statements such as these or lack thereof are indicators of the official position of the company towards the M&A deal, they also reflect the attitude towards the other party in the deal.

(2) Corporate Governance: This category emerged out of reporting about M&A deals on regulatory requirements, compliance, approvals from competent authorities such as RBI, SEBI, CCI, etc. Here are two excerpts from the articles –

"The Competition Commission Friday said it has approved diversified group Larsen & Taubro's proposed acquisition of up to 66.15 percent stake in IT firm Mindtree Ltd." (Press Trust of India, 2019, p. 18).

"The ED…has arraigned officials of the Ministry of Civil Aviation, the National Aviation Company of India of India Limited (NACIL), Air India and unknown private persons accused. NACIL was formed to oversee the merger of Air India and Indian Airlines…The ED has alleged that Talwar received over Rs 272 crore as kickbacks for pushing several deals in the aviation sector in India." (Tiwari, 2019, pp. 3-4)

Corporate governance is crucial in M&A deals to ensure that there is transparency and fairness in all dealings, such that interests of stakeholders are balanced in the process.

(3) Impact on customers: M&A deals reporting also includes potential impact factors on the customers such as brand identification, size of offering, etc. An excerpt is given for reference from an article covering the merger of Bank of Baroda, Vijaya Bank and Dena Bank in one entity-

"Jayakumar believes successful amalgamation could come about when employees and customers identify themselves as part of BOB, which could take up to three years." (ENS Economic Bureau, 2019, p.16).

(4) Impact on the economy: This category emerged out of reporting on market consolidation statistics and the connotation of the same in the articles. M&A deals were mostly presented in a positive light except in case of L&T's hostile takeover bid for Mindtree. An excerpt is given for better understanding-

"But unlike the telecom sector, where there has been a consolidation with the merger of Idea with Vodafone, it is disturbing to see the near collapse of a marquee brand like Jet…." ("Flying Low," 2019, p. 10).

Another excerpt that reflects that market consolidation is good for the economy is – "*The value of M&A deals in February fell 34 percent to $1.24 bn dollars compared to year ago period*". ("M&A deal value down 34% in Feb," 2019, p. 14)

(5) Impact on employees: This category reflects the reporting on M&A issues that have a bearing on the employees of the entities involved in M&A deals. Organization restructuring, retirement schemes, rationalization, etc. were the common phrases observed. Here are two excerpts from an article covering the merger of Bank of Baroda, Vijaya Bank and Dena Bank in one entity –

"In a bid to accommodate more than 85000 employees within the merged entity…the bank would entail further changes to BOB's pre-merger structure, which includes moving from being a three-tier entity… However, Jayakumar doesnot deny the need for branch rationalization, indicating-There will be no closures, but there will be relocation." (ENS Economic Bureau, 2019, p. 16*)*

(6) Impact on industry: This category reflected the potential impact on the industry-composition of the industry, product offerings, innovations, etc. Here is an excerpt-

"We believe voice interactivity will be the primary mode of interaction for Digital India." (Press Trust of India, 2019, p.18).

(7) Impact on investors: This category reflected the details about share prices subject to M&A talks, changes in ownership and management control, change in leadership at the top (board re-composition). Here is an excerpt-

"*Reliance will hold about 87percent of the business with the rest being held by Haptik founders and employees through stock option grants*" (Press Trust of India, 2019, p.18).

(8) Leading and managing the M&A: This category reflected the leadership calibre of the executives managing the M&A deals and their managerial perspectives on the M&A. Excerpts are given for reference-

"The jury was unanimous in selecting Srinivas Phatak, executive director and chief financial officer, Hindustan Unilever, as CFO of the Year. Phatak oversaw one of the biggest M&A transactions by the company-the acquisition of GSK….which will give the company significant synergies." (ENS Economic Bureau, 2019, p. 17)

"Why did he (Goyal) acquire Sahara (Airlines)? Because he still wanted to be the biggest in the market after the entry of Kingfisher(Airlines)." ("Turbulence," 2019, p. 9)

(9) Risk & Failure of M&A: This category reflects an important element for all stakeholders, the risks involved in M&A and failure of M&A. Risks may be the total liabilities such as total non-performing assets after merger of banking entities and failure of M&A was exhibited by poor financial performance of the company post the M&A. The excerpts given below are indicative of the same-

"NPA figure for the combined entity stands at Rs30000 crore…BOB's NPA alone stood at Rs18000 crore" (ENS Economic Bureau, 2019, p. 16).

"it was Jet's acquisition of Air Sahara that proved to be the tipping point. The company bought Sahara airline for Rs1450 crore and converted it to a low-cost carrier under the JetLite brand……Industry insiders say this was a brazen move by Jet, an attempt to hold market leadership that cost it the comfort of liquidity on its books." ("Turbulence," 2019, p. 9)

(10) Why M&A?: M&A deals reporting covered reasons for engaging in M&A to a very large extent. These reasons may be attributed to market and competitive strategy, cost advantages of the merger, as part of dispute resolution, to achieve synergies in business processes or enhanced business offerings, to bail out a troubled (financially distressed entity), etc. Some excerpts are given below as examples-

"We were not keen to remain a regional outfit and the merger will see us as a much bigger player. The size was certainly an important factor… IBH is strong in the north and west while LVB is primarily present in south-should help the new entity…The merger will help LVB's profitability; the lender has been through a rough patch…The amalgamated entity will have total net worth of Rs19472 crore with a combined loan book of Rs123393 crore." (Salian, 2019, p. 17)

"DHFL has been facing liquidity pressure since the IL&FS crisis hit the NBFC sector…facing stress to honour its debt repayments it started raising funds and also selling its subsidiaries" (Singh, 2019, p. 15).

"Volkswagen Wednesday said it intends to merge all tree passenger vehicle (PV) entities in India…..-which will now be lead by group firm Skoda Auto as part of its new strategy for the country." ("VW Group to merge 3 PV firms in India," n.d., p. 18).

Thus, the findings have shown how the reporting in news articles creates a certain impression in the minds of the reader and this reader may be the customer, the employee, the investor, the leader or part of the regulators of the firm. Based on the above findings, the research question can be answered using the ten categories so identified. It can be assessed that the top three critical areas of concern during M&A process in India are:

(a) Why M&A? (Why are the entities dealing in M&A?): Analysis shows that majority of the articles reported on the reasons for the M&A deal- market and competitive strategy, cost advantages of the merger, as part of dispute resolution, to achieve synergies in business processes or enhanced business offerings, to bail out a troubled firm, etc. Reporting on these factors would help the reader understand why the firms involved are taking that particular decision, it may help in rationalizing the M&A deals in the minds of the stakeholders.

(b) Impact on investors (How will M&A impact the investors?): Analysis shows that the second most important reportage was related to the share prices, shareholder rights, changes in ownership and management control, change in board composition, etc. These areas directly impact the performance of the company, financial and otherwise.

(c) Corporate Communications & PR (Who's who of the firms said what?): Analysis shows this category to be the third most important category in terms on reportage. Stakeholders will be interested in learning about the official position of the firms involved in M&A dealing to make sense of and to predict the future of the firms involved. When executives of one firm are silent on a deal, that also signifies a communication to the reader, it creates uncertainty in the minds of the stakeholders.

The study adds value to the existing literature on M&A as it attempts to uncover the key areas of critical concern during M&A for different stakeholders in India using content analysis. It should provide a sufficient base for future quantitative studies, especially when examining the top concerns from an inter-disciplinary perspective. The study, however, suffers from limitations, in that, inter-rater reliability check could not be conducted and is advisable that researchers take this into account.

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CROSS BORDER MERGERS IN THE LIGHT OF PROTECTIONISM OF GOVERNMENTS AND ASPIRATION OF CORPORATES FOR GLOBALISM: A DICHOTOMY OF CHOICE AND RATIONALE FOR INDIAN CORPORATIONS

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ABSTRACT

Mergers and Acquisitions are considered to be the most efficient and intelligent choice for multi-national corporate bodies for both- sustaining in a fierce competitive world market and have a constant aggrandizement in terms for their existence in the global scenario. In the business environment of the modern world, mergers and acquisition deals have drastically increased both in terms of their number and the amount of money to be dealt with by the corporates through the same. However, at the same time, it is also recurrent for a lot of corporates to experience major implosion arising out of the deal of cross-border mergers particularly. It is alarming that, the failure of these brobdingnagians of any market creates a lot of collateral damage to all the others whether individual or body incorporated associated with the same. With respect to these, we experience government interference for both pre-combination and post-merging stages where along with giving a proper guidance to merger-aspirants, they also enact rules and regulations to protect not only those corporates going for the merger but also those who are at the risk of being on the receiving end of any probable set-back coming out of the combination. Many a times, such protectionism approaches of the states also pose an embankment before the companies wishing to go global. In the light of such a dichotomy, the instant research paper shall endeavor to find proper instances where such contradictions have been happened and shall try to find some suitable solutions to end the predicament experienced by the corporates.

Keywords: Mergers and Acquisitions, Government interference, Global markets, Problem of choice

1. PROLOGUE

"The philosophy of protectionism is philosophy of war"- Ludwig Von Mises

The global recession of 2008, a result of the world-wide financial institution crisis which immediately preceded it, has contributed to a renewed surge in national economic policy decisions supporting trade protectionism[1]. Such protectionism *"involves assisting domestic industries either by imposing barriers to foreign competitors or by subsidizing or compensating domestic industries in some other way to assist them against international competition"*[2]. Needless to say that, to some extent such protection measures are helpful for a number of sectors, corporations and common people and the same time they allow the governments to boast their confidence among the people regarding their existence as guardian for their object.

World Trade Organization (WTO) Director-General *Pascal Lamy* warns that, *"The danger today is of an incremental buildup of restrictions that could slowly strangle international trade and undercut the effectiveness of policies to boost aggregate demand and restore sustained growth globally' (Shin, 2009). Lamy further characterizes this 'new protectionism' as 'low-intensity', as most of the policy measures deployed are legal under WTO regulations and do not violate trade agreements, but nevertheless harm free trade.*" [3]

Free trade advocates are expressing increasing concern about non-tariff barriers (including broad enforcement of competition policy) arbitrarily impinging on the international flow of foreign direct investment (FDI) — specifically, cross-border mergers and acquisitions (M&A). There is a concern among many leaders of

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[1] Albert, S. & McGrath, B. 2009. United Kingdom: Overview. European Antitrust Review. Global Competition Review: The International Journal of Competition Policy and Review. Available at: *http://globalcompetitionreview.com/reviews/10/sections/42/chapters/498/united-kingdom-overview* (Last visited on 05.04.2019, 02:15PM)

[2] Annan, R., Schacter, J. & Koch, M. 2009. Amendments to the Competition Act and the Investment Canada Act

granted swift passage, 31 March [accessed 23 June 2009]. Available at: *http://www.monday.com/article.asp?article_id=772181&k=1* (Last visited on 05.04.2019, 02:35PM)

[3] Baldwin, R. & Evenett, S. eds. 2009. The Collapse of Global Trade, Murky Protectionism, and the Crisis: Recommendations for the G20. London: Centre for Economic Policy Research.

emerging economy nations of their vulnerability to anti-competitive practices from export cartels and cross-border M&A used as a tool of corporate restructuring.

It is worth highlighting that the 1980's economic policy reforms have initiated across the world, where in, the idea of *"economic deregulation, financial liberalization and national integration"* engulfed from developed economies institutions to developing countries. Consequently, a number of developing countries have noticed a significant growth in international trade and capital flows, foreign exchange reserves, technological transformation and development of local businesses, among others. On the other hand, a number of economic researchers have noticed a substantial growth in the market for inward direct investment curving from developed markets to emerging markets due to easing of foreign direct investment policies. As a result, business enterprises have gained access to wider markets with their varieties of products and services.

Thus, emerging markets, Brazil, Russia, India, China (BRIC), Indonesia, South Africa and others have become important contributors to today's global economy. For instance, the combined output of these markets have accounted for 38% of world GDP in 2010, twice its share in 1990. According to the United Nations Conference on Trade and Development (UNCTAD), the cumulative international direct investment has reached about US$1,244 billion in 2010, while a significant amount of rise is attributed to high-growth emerging markets. The Asian market was seen a severe economic crisis in 1997, which had high-minded qualms in the securities market and the collision of IT bubbles in 2000. Being influenced by the crisis experience, local firms have chosen various corporate inorganic strategies include acquisitions and alliances. we realize that there is a considerable increase in international investments, where it is being reversed from emerging markets to developed markets. This investment behavior was identified in the aftermath of the 2007-08 global financial crisis due to lower asset valuations, attractive investment and tax policies offered by the host country, and home country institutional constraints with regard to inward overseas investment.

In case of India, mergers, takeovers and other corporate restructuring activities are uncommon prior to the New Industrial Policy reforms-1991, later, they occurred due to regulatory shocks. The actual merger wave was started after 1994 where the necessity of formulating a new takeover code felt by the regulating agencies[1]. This momentum lucratively changed the business scenario from back-end mapping to front-end strategies, which also motivated consolidation activities. Eventually, global competition has prompted the Indian MNEs to choose M&A as an important strategic choice for gaining operating and financial synergies. For example, the period 2000-07 has noticed a phenomenal growth in India's outbound M&A transactions.[2]

Thus, in the light of the observations mentioned above, it can surely be understood that, there is no dearth of the number of mergers and acquisitions being taken place in India, however, the real issue to be pondered upon here is that, whether the by quoting such a number we are establishing the fact that, the corporations are having no problems in going for cross-border mergers despite having been bound by voluminous rules and regulations or there are real problems being faced by them when so ever the corporations are getting interested to go for a cross-country re-construction of companies. In the instant research paper, the aim of the researcher(s) is to endeavor finding proper instances where such antipodal instances have been happened and shall try to find some suitable solutions to end the predicament experienced by the corporates.

2. A DEEP SCAN OF CROSS-BORDER MERGERS- AN INDIAN EXPERIENCE

Indian M&A Activity has seen an exponential growth and touched a new peak in the year 2016. The year recorded a total of 1,195 announced transactions worth $69.75 billion, which was almost double compared to 2015, where 1,306 M&A deals worth $36.68 billion were recorded. Reforms and policy changes by government and its agencies along with the global interest in tapping abundant talent available in India are the driving force behind the improved buoyancy in India's economic growth prospects[3]. Merger and acquisition (M&A) activity in India is booming. In particular, the percentage of cross-border transactions has risen significantly. Flow of

[1] The first privatization occurred in 1999, when 74% of the equity of Modern Foods India Ltd. (a public sector bread-making company) was sold to Hindustan Lever, an Indian subsidiary of the Anglo-Dutch multinational Unilever. Other disinvested public sector enterprises include BALCO, Computer Maintenance Corporation, Hindustan Zinc, IPCL, Maruti Udyog, VSNL, and so forth (Ahluwalia, 2002, p. 84)

[2] Between 2000 and 2007, there were over 521 overseas acquisitions from India out of which 133 (25.5%) happened in the IT sector; and 12% of these CB-M&A deals were done by the firms that are less than five years old at the time of acquisition (Varma, 2011, p. 352)

[3] E-Book: M&A in India: Lexology Navigator Q&A Available at: *:http://www.lexology.com/library/detail.aspx?g=2b0872fc-cf86- 440d-8149-a49a42956abb* Last visited on 07.04.2019, 03:30PM.

FDI"s is greatly encouraged with enactment of new laws and tweaking of existing policies. In the IT sector phenomenal growth of cross-border transactions is recorded.

Thus, from the perspective of the amount invested for the cross-border mergers and the number of firms participated in it, we don't seem to have any problem, however, the problem lies in the fact of regulation and as has been mentioned earlier- the protectionism of the governments.

According to Feito-Ruiz and Menéndez-Requejo, *"A country's regulatory and political environment is imperative for multinational business enterprises when preparing and assessing various investment proposals referring to developing markets as a host. Previous studies in strategy, finance and international business streams suggested that foreign direct investment through acquisition mode is usually influenced by host country's institutions, legal, economic, political and cultural factors. In fact, the risk of these institutional dichotomous variables increases when a firm from developed market wants to acquire a firm in developing market"*.

Traditionally, acquisitions and takeovers are found to be uncommon in emerging markets, but the number, frequency and value of various inorganic strategies (mergers, acquisitions, joint ventures, and private equity investment) have shown a gradual rise in line with policy reforms, especially after 1991. In particular, both inward and outward investments through the acquisition route have seen a momentous growth in the aftermath of the global financial crisis due to lower valuations and easing foreign investment laws. In short, foreign M&As are found to be a risky investment strategy due to higher levels of control and influence by the host country's risk elements, namely economic, financial, political and legal enforcement.

In a recent analysis by economists, Kim and Lu, *"it is also a fact that Indian institutional laws, mechanism and governance are weak compared to advanced countries and of course, other emerging markets like China and Brazil. Further, there is no coordination between various regulatory authorizes, for example, the existence of an overlap between the CCI and the regulatory authorities leads to the possibility of contradictory decisions which will hinder future deals."*

In Khanna and Palepu (2000), the authors mentioned that countries like India are facing numerous market regulations, for example, *"the financial markets are characterized by inadequate disclosure and weak corporate governance and control … securities regulations are generally weak and their enforcement is erratic"*. Similarly, *"the nature of coalition politics in the given country, coupled with very activist judicial reviews, means that legislation is a deliberate and erratic process. Moreover, very long delays in the Indian civil procedure mean that the courts have simply been too slow to play a significant role in updating the law, and statutory changes have been slower to implement"*.

In fact, one would argue that India has become less favored or riskiest locations for investment due to information problems, imperfect contract enforcement, inability to enforce property rights, and flawed regulatory structures. For instance, Aircel-Maxis deal has been delayed by seven months due to personal involvement of the Ministry of Finance. For example, Bharti Airtel-MTN telecom deal had been failed on the account of dual listing and open offers guidelines. Vedanta-Cairn India energy deal had been delayed for immaterial causes due to open offers and involvement of state-owned enterprise.

Therefore, it can safely be said that, many a times we disregard problems when everything seems to go right and then at difficult times those minor issues comes back being giant which should not be the case of the cross-border M&A in India. Making a judgment on the basis of proposed deals and amount of investments shall be likely to be termed as erroneous in actual situation. And what is more worrisome is the fact that, the government of India, like all other governments believe that, to protect their market and as such the economy they are supposed to stick to those measures mentioned above.

3. STATE PROTECTIONISM: A CONCEPTUAL AND APPLIED SCRAPE FOR INDIAN CORPORATIONS

"Pursuing protectionism is just like locking one's self in a dark room: Wind and rain might be kept outside but so are light and air." **—** Xi Jinping

From the Indian experience, it is clear that, when states try to put the measures of protectionism, rather than clearing up the problems, it creates rather negative consequences in the market. In India, more than the conceptual dilemma, the problem was rather aggravated in terms of the rules and regulations attached with the mergers and acquisitions.

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For instance, it is pertinent to note the new notification on cross border deals from ministry of corporate affairs shows the intent of the government to put India on the global M&A hub. In the year 2017 the ministry had notified *Section 234 of Companies Act, 2013*. The new Amendment in the Rule 17 specifically focuses on the merger aspects of foreign company with an Indian firm. Rules erstwhile to the instant one, prevented Indian company merging with foreign company (*Section 394, Company Act 1956*) thereby making it impossible for merging of an Indian company to a foreign company. However certain tax provisions on merger with foreign company (which is taxable) need more clarity. The amendments of course, are welcome, however as reported by SKP Group – a leading Indian firm working with M&A deals – the amendment does not provide detailed provisions for merger or amalgamation from an implementation perspective.

Compared to all its neighbors in the region, India has adopted a quite liberal merger review regime. There is no preferential treatment to the SOEs or the Government in the Act. Public sector enterprises and Government departments are covered within the ambit of the competition law in India, unless they are performing regulatory or sovereign functions. In fact, all provincial Governments have been held to be covered within the statute where the functions were commercial and not sovereign.[1] The CCI has adopted a strictly uniform approach without discrimination between public and private sector enterprises in antitrust enforcement. The merger review regime is barely three years into enforcement in India. Notification of the merger is mandatory where certain thresholds are met. To date, the CCI has received close to 200 notifications. However, the CCI has not issued any prohibition or commitments as of yet.[2]

However, at the same time, it is pertinent to understand some practical aspects related to M&A of Indian corporations as well. Not all the regulations are company-friendly like the one mentioned above.

Under the title **"New Dawn for India's Cross Border Merger Regime"** famed group on M&A of Cyril Amarchand Mangaldas Law firms – states, *"the need vigor among deal makers for India specific M&As after the amendments were passed. It highlights the old issue of merge with a foreign company within the court sanctioned merger framework set out under Indian corporate law and its final change in April 2017, when the company law provisions that govern cross border mergers were brought into force. The Reserve Bank of India (RBI) recent issuance of draft regulations for deemed approval from the RBI for cross border mergers was very much welcomed. Now, companies in India desirous of merging with a foreign company may do so in specified jurisdictions – those eligible jurisdictions are:*

(a) those whose securities market regulator is a signatory to the Multilateral MoUs of the International Organization of Securities Commission (IOSC) or to the Bilateral MoU with the SEBI; or

(b) jurisdictions whose central bank is a member of the Bank of International Settlements; and jurisdictions not identified in the public statement of the Financial Action Task Force (FATF) for deficiencies relating to anti-money laundering or combating terrorism financing or jurisdictions without an action plan developed with the FATF to address the deficiencies. USA, China, Mauritius, and Cyprus etc. are countries that fall under the eligible jurisdiction. For any Inbound/outbound transactions – Indian foreign exchange regulations should be applied for receiving the „deemed" approval from RBI."

In various years, researchers suggested that there must be needing second-phase economic and financial reforms to strengthen the economy and financial system, and to prepare number of local firms for internationalization. Therefore, the key reforms should focus on foreign investment limits (both inward and outward), private equity laws, investment-banking for financing the mergers and so forth.

In particular, India may offer direct incentives such as, reducing tariffs and quantitative restrictions, tax benefits, and investment subsidies, to attract technological-developed MNCs for establishing sophisticated R&D facilities. In addition, political leadership will be the critical factor in implementing the second wave of economic reforms, and major efforts shall be required to eliminate (control) the culture of bribery and corruption by imposing a set of penalties and incentives. Altogether, would improve the economic freedom and

[1] Jupiter Gaming Solutions vs Govt. of Goa and Anr. CCI Case 15/2010

[2] Maharashtra State Power Generation Company Ltd. vs M/s Mahanadi Coalfields Ltd & Ors CCI Case 03/2012. To compare the uniformity of the approach, the decision of the CCI in the matter of Faridabad Industries Association vs M/s Adani Gas Limited [CCI Case 71/2012]may also be referred to.

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global competitiveness of the country that will likely persuade other countries to make investments in growing industries include education, retail, and other product-based sectors.[1]

The bottom line of any economy depends upon its policy administration and plan implementation than a policy-making, and therefore countries like India should contemplate public administration aspects including skill development.

4. PERSPECTIVES OF GLOBALIZED CORPORATES: CHALLENGES AND SOLUTIONS

The crave for "going global" is not a new phenomenon in the corporate world. In fact, it was time-immemorial when business-men used to jump into the seas to find a better place where they can establish their commercial activities and make fortunes out of it. Therefore, at times, when the corporate bodies are forced by express governmental policies or their protectionist perspectives not to go beyond the line of control put by the state, it surely becomes difficult of companies to explore overseas markets, nevertheless, that can't stop them to get along with the world trade.

4.1 After the outbreak of global financial crisis, nationalism of host countries has been increasingly distinct. Besides, cross border acquisition itself is a topic with high sense of politics, so emerging markets suffers from more serious discrimination and treatment than developed countries in cross border merger and acquisition. For the past few years, with expansion of the scale of cross border acquisition of corporations in the world, they have been suffered from more problems of foreign boycott in the process of overseas merger and acquisition. Demand on resources is the critical factor to drive the behavior of acquisition of companies both at home and abroad. Acquisitions of these resource industries and some infant industries have received high attention from the government of host countries, and administrative intervention of the government has naturally become one of the major means to prevent foreign corporations from competing with their own corporations by the means of acquisition.

4.2 Resource acquisition is one of the important targets for corporations to conduct overseas merger and acquisition and decline of resources price exactly caters to this requirement. Thus, investment of corporations in the Section of Resources has been on a continuous increase in recent years. Obviously, if the market price of resources after acquisition continues to rise, then acquisition and investment of corporations will bring generous profit returns.

4.3 Existence of economic externality requires corporations to assume corresponding social responsibility, such as protection of the environment, maintenance of natural harmony, realization of sustainable development of saving of resources, etc. In addition, host countries also pin their hope on foreign corporations which conduct overseas merger and acquisitions to bring capital, technology and talents, help them resolve the issue of employment, improve their capacity of scientific innovation and increase financial revenue of host countries.

5. EPILOGUE

Globally, most countries have enacted laws and instituted public policy processes that regulate FDI and 89.3 per cent of all FDI is in the form of cross-border M&A (United Nations, 2008). Given the global movement to increase the flow of cross-border trade and investment that culminated in the establishment of the WTO, it is reasonable to presume that the resulting reduction in tariff and non-tariff barriers has encouraged increased trade in goods and services and FDI. Empirical data supports this conclusion, as FDI rose to an all-time level of $1,833 billion in 2007, well above the previous record established in 2000[2].

Nevertheless, the apparent complexity of what constitutes a 'protectionist-barrier' to international investment and trade remains an elusive construct. When applied to cross-border M&As, legally recognized areas of national industrial policy review include competition policy, national security policy, economic competitiveness policy, and cultural policy — all areas that could be broadly interpreted to block such FDI under a non-tariff criteria of domestic protectionism.

As per the Indian situation is concerned, M&A activities are speeding up considering India's consistent track record of growth fueled by large-scale domestic consumption and attractive middle class consumers. Yet, there

[1] Pandey, A. (2012) "Policy makers need to revisit prudent approach of the 90s", June 1, *The Financial Express*, p. 12.

[2] United Nations. 2008. World Investment Report: Transnational Corporations and the Infrastructure Challenge, United Nations Conference on Trade and Development, September, New York

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is a need to ensure the regulatory framework which is well suited to attract more investments from M&A and prosper the booming economy to much higher levels. India's tax system is undergoing significant changes. Positive changes and much needed provisions were added to tax laws and framework. Tax administration's efforts to broaden the tax base, increase the tax revenues and combat the tax evasion must be continued. However, the taxation policies need to be fair and practical. There is no doubt regarding the fact that, despite a shallow, protectionist approach, cross-border mergers and acquisitions are a blooming reality for the corporate bodies and the governments. Thus, it is better to make such regulations which will have lesser dichotomies and more fructuous for all.

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POST MERGER PERFORMANCE EVALUATION: A CASE OF SUN PHARMA- RANBAXY DEAL

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ABSTRACT

Merger is considered as tools in firms restructuring. It plays a decisive role in external growth for an existing firm. Through Merger, structure of an entity in relation to assets, ownership etc. has been changed. In this paper an effort has been made to inspect performance of Sun pharmaceutical Ltd. before and after taking over Ranbaxy. Present research paper covers a period of eight years starting from 2010-11 to 2017-18. As deal between Sun pharma and Ranbaxy has been completed in the year 2015, the period 2010-11 to 2014-15 has been taken as pre-merger term and from 2015-16 to 2017-18 taken as after combination stage. Data has been collected from moneycontrol.com, annual reports and accounts of respective company. To analyze financial health, various accounting ratios related to liquidity, solvency, profitability, operating efficiency have been taken into consideration. To attain the objectives, statistical tools like mean, standard deviation, t test have been applied. Study concludes there is no improvement in financial performance following reconstruction.

Keyword: Merger, acquisitions, Liquidity, Solvency, Profitability, Operating efficiency

INTRODUCTION

A Merger can be reflected as combination of two or more companies into one. Merger and taking over are the means of corporate restructuring. In present competitive world M&A become the vital tool for external enlargement and development in operating business activities. A combination is said to occur when two or more companies combine into one company. One or more companies may merge with an existing one or they may merge to establish a spate entity. In combination, there are complete amalgamations of assets and liabilities as well as interests of stakeholders and businesses of merging companies **(Pandey 2014)**. M&A refers to changes in assets, ownership and other related alliances with a view to enhance the shareholders wealth. With the increased global competition the companies try to enter in new market with an objective to expand their position on a global scale. Reconstruction of companies has become an important phenomenon which enables companies to compete in this globalized world. It has also gained the attention of business owners in economic competition. A merger is mixture of two or more entities into one company. In this process of mixture assets and liabilities are combined with merging company. Main objective of combination is expansion and extension of concern.

Sun pharma was established in 1983 by Dilip Shanghvi having it’s headquarter in Mumbai. It is an international pharmaceutical company. It manufactures a number of branded generics in US, India and other places across world. Company has formed to serve the country at large and it became the largest pharmaceutical company by market capitalization in India. Sun Pharmaceutical has acquired 100% of Ranbaxy Laboratories for $4 billion and it became world’s fifth largest specialty generic pharma company. Ranbaxy was established in the year 1961. Combination of both pharmaceutical companies has been created to become largest specialty generic company in the world. In this background the study aims at analyzing the post-merger performance of Sun-Pharma Ltd.

LITERATURE REVIEW

Ghosh and Jain (2000) scrutinized changes of financial leverage after combination. For this purpose authors have selected sample of 239 cases of combination during 1978 through 1987 of United States. This study shows that average financial leverage has a stretch of 17% after reconstruction.

Mantravadi and Reddy (2008) investigated performance after combination of selected sectors in India. Study tried to find out impact of reconstruction on operating activities of firms which acquire other firm for a period of five years from 1999 to 2003. Outcome showed a minor variation in performance but yield part is affected by merger of banking and finance industry, pharmaceutical, textile, electric equipment companies whereas Chemical and Agri-Products have seen significant decline.

Ramakrishnan (2008) inspect whether acquisition have helped Indian firms in performing better in long run. This study revealed there is an up gradation in average operating margin of selected firms.

Kumar and Bansal (2008) observed there is insignificant improved has been found in economic health of selected companies during study period.

Kumar (2009) conducted study to assess economic performance and effect of reconstruction on it of Indian manufacturing units for four years from 1999 to 2002. This study showed there is no significant boost in economic performance after combination.

Smita (2011) analyzed impact of reconstruction through merger on financial presentation of selected Indian Industries. Present study is based on secondary data sources and covered a period from 2005-2007. All the data was collected from website of selected entities. Author observes there is insignificant reaction of reconstruction on economic health of selected companies.

Ghosh and Dutta (2014) analyzed post combination performance of 10 selected telecom sector from 2000 to 2010. This study revealed a little development in financial performance after reconstruction.

Imeokparia (2014) observed post acquisition performance has no significant impact on dividend per share, earning per share, return on assets, return on capital employed. Further asserted there is reduction in degree of global banking crisis and increase in capital base of banking sector in Nigeria after reconstruction.

Fakarudin (2014) analyzed consequences of reconstruction on revenue efficiency and potential determinants of Malaysian banks. Present study showed revenue efficiency did not improve after merger and it was further observed that market size, power and management quality have correlation with efficiency of Malaysian banks.

Singh (2015) analyzed performance of ICICI bank before and after acquisition. Present study was covered for a period from 2004 to 2014. In this study various financial ratios such as Net Profit Ratio, ROA, ROE, ROI, Return on Advances, DER, CR, QR and EPS. To analyze research, t-test has been applied. The result shows that few selected accounting ratios have significantly changed after reconstruction.

Duggal (2015) examined post combination performance of Indian Pharmaceutical Industry during period of 2000 and 2006. This study conducted to analyze consequences of mergers on operating and financial health. It was observed that there is significant impact on performance, but same was immediately after reconstruction. It was also contended that profitability has improved. Therefore, finally it is concluded there was positive impact of acquisition on operating and economic performance.

Veena and Patti (2016) observed there is no significant difference between pre-merger and after combination financial behaviour of ICICI Bank Ltd. Further, it was contended that there is no relationship between liquidity ratio, leverage ratio, profitability ratio, growth ratio performance of the bank. Finally, the study revealed that post acquisition economic performance is better than pre acquisition economic performance of selected bank during study period.

Patel (2018) examined the comparative performance before and after reconstruction of selected Indian banks during period 2003-04 to 2013-14. Study showed a negative effect of merger on Profitability Ratios, Yield on Advance and Yield on investment. Further, it has also been added that EPS, Profit per employee and Business per employee have increasing trend and growth after reconstruction. it was concluded that after reconstruction, Assets, Equity, Investment and Advances of all banks increases, but their respective yield has been decreased due to the underutilization of human resources.

OBJECTIVE OF STUDY

This study is investigates financial health before and after merger of selected company. Further, study also examines impact of reconstruction on financial health of selected company.

METHODOLOGY AND DATA COLLECTION

To explore above mentioned objective, data for this study was collected from the Moneycontrol database and Annual Reports and Accounts of selected companies in India. The data collected for a period of eight years from 2010-11 to 2017-18. To accomplish data, various accounting ratios like, Return on Capital Employed (ROCE), Return on Net Worth (RONW), Net Profit Margin (NPM), Operating Profit Margin (OPM), Gross Profit Margin (GPM), Current Ratio (CR), Liquid Ratio (LR), Debt Equity Ratio (DER), Inventory Turnover Ratio (ITR), Total Assets Turnover Ratio (TATR) have been selected. Various statistical tools like Mean, Standard Deviation and t-test have been used.

DEVELOPMENT OF HYPOTHESES

1. There is no difference in the Profitability ratios of selected company before and after merger.
2. There is no difference in the Liquidity ratios of selected company before and after merger.
3. There is no difference in the Operating efficiency ratios of selected company before and after merger

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FINDINGS AND INTERPRETATION

Table-1: Average Profitability Ratios of the selected company before and after merger

	MEAN		SD	
	PRE-MERGER	POST-MERGER	PRE-MERGER	POST-MERGER
OPM	27.77	2.296667	27.05725	8.237046
GPM	8.316667	-6.93	58.62182	6.912431
NPM	6.391667	-6.87333	57.76139	6.921765
ROCE	5.141667	0.146667	19.14089	4.052855
RONW	3.32	-2.53	22.88217	2.445138

Source: compiled from annual reports

Table 1 above indicates the average profitability ratio six years before merger and three years after merger. Selected company has an average of 27.77 Operating Profit Margin with standard deviation of 27.05 during study period before merger while in post-merger period average OPM was 2.29 and standard deviation of 8.23. In before merger period the company has an average Gross Profit Margin of 8.32 with standard deviation of 58.62; while in stage after reconstruction GPM was -6.93 with SD of 6.91. Company has an average NPM of6.39 and -6.87 during pre-merger and post-merger period respectively. The average ROCE for period before reconstruction was 5.14 and during post-merger was 0.15. Company has its average RONW as 3.32 in pre-merger and -2.53 in reconstructed periods. The above analysis states that profitability position of selected company did not improve after merger.

Table-2: t-test analysis of the Profitability Ratios

	OPM		**GPM**		**NPM**		**ROCE**		**RONW**	
	Pre-merger	*Post-merger*	*Pre-merger*	*Post-merger*	*Pre-merger*	*Post-merger*	*Pre-merger*	*Post-merger*	*Pre-merger*	*Post-merger*
Mean	27.77	2.30	8.32	-6.93	6.39	-6.87	5.14	0.15	3.32	-2.53
Variance	732.09	67.85	3436.5	47.78	3336.3	47.91	366.37	16.43	523.59	5.98
Observations	6	3	6	3	6	3	6	3	6	3
df	7		7		7		7		7	
t Stat	1.5470		0.4340		0.3832		0.4328		0.4268	
P(T<=t) two-tail	0.1658		0.6774		0.7130		0.6782		0.6823	
t Critical two-tail	2.3646		2.3646		2.3646		2.3646		2.3646	

Source: compiled from annual reports

The above table depicts the result of the t-test of the profitability ratios of the selected company during the pre and post-merger period. At the given level of significance $\alpha=0.05$, all the selected profitability ratios have $P>\alpha$, hence we reject the null hypothesis and therefore it can be concluded there is difference in mean scores of selected profitability ratios during pre-merger and post-merger period.

Table-3: Average Liquidity Ratios of the selected company before and after merger

	MEAN		SD	
	PRE-MERGER	POST-MERGER	PRE-MERGER	POST-MERGER
CR	2.963333	0.58	1.936096	0.02
QR	2.376667	0.373333	1.727491	0.015275

Source: compiled from annual reports

From the liquidity point of view the company has an average Current Ratio of 2.96 and 0.58 during pre and post-reconstruction period respectively. Standard deviation of Current Ratio was 1.93 in pre-merger stage and 0.02 in post-merger stage. The average quick ratio through pre-merger period was 2.37 with standard deviation of 1.72 while during post-merger phase average QR was 0.37 with standard deviation of 0.015. Trend of liquidity position was also not improved after reconstruction.

Table-4: t-test analysis of the Liquidity Ratios

	CR		QR	
	Pre-merger	*Post-merger*	*Pre-merger*	*Post-merger*
Mean	2.96	0.58	2.38	0.37
Variance	3.75	0.00	2.98	0.00
Observations	6	3	6	3

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df	7		7	
t Stat	2.0598		1.9405	
P(T<=t) two-tail	0.0784		0.0935	
t Critical two-tail	2.3646		2.3646	

Source: compiled from annual reports

Table 4 indicates that at the 5% level of significance the value of P is 0.07 for Current Ratio and 0.09 for Quick Ratio. That shows P< 0.05 and therefore null hypothesis is accepted. Hence it can be said that there is mean difference in selected Liquidity ratios during pre and post-merger period.

Table-5: Average Operating Efficiency Ratios of the selected company before and after merger

	MEAN		SD	
	PRE-MERGER	POST-MERGER	PRE-MERGER	POST-MERGER
DER	0.101667	0.276667	0.144833	0.056862
ITR	4.013333	3.536667	1.355901	0.19218
TATR	30.24167	22.76667	9.936952	0.545191

Source: compiled from annual reports

Table 5 above shows that average Debt Equity Ratio is 0.101 and 0.27 during the pre and post merger period respectively with standard deviation of 0.14 in pre-merger period and 0.05 in post merger period. Average Inventory Turnover Ratio is 4.01 in the pre-merger period, which declined to 3.53 in the post-merger period. The average Total Assets Turnover Ratio in the pre-merger period is 30.24 and in post-merger period are 22.76 with standard deviation of 9.93 and 0.545 respectively during pre and post-merger period. It shows that ITR and TATR have a decreasing trend after merger but Debt Equity Ratio has an increases more than two and half times after merger.

Table-6: t-test analysis of the Operating Efficiency Ratios

	DER		ITR		TATR	
	Pre-merger	*Post-merger*	*Pre-merger*	*Post-merger*	*Pre-merger*	*Post-merger*
Mean	0.101667	0.276667	4.013333	3.536667	30.24167	22.76667
Variance	0.020977	0.003233	1.838467	0.036933	98.74302	0.297233
Observations	6	3	6	3	6	3
Df	7		7		7	
t Stat	-1.96226		0.585906		1.257986	
P(T<=t) two-tail	0.090518		0.576334		0.248734	
t Critical two-tail	2.364624		2.364624		2.364624	

Source: compiled from annual reports

The result of the study shows that P value in all cases is greater than 5% level of significance, hence the null hypothesis is rejected and it can be concluded that there is difference in the operating performance of the selected company during the pre and post-merger period.

CONCLUSION

The study has been conducted to analyze the post merger performance of the selected company. From the analysis it can be concluded that profitability and Liquidity position did not improve after merger and acquisition. There is an increase in the Debt Equity Ratio after merger, but no improvement was found in Operating Efficiency performance of the selected company after merger and acquisition.

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MERGER & ACQUISITIONS (M&AS) AND FINANCIAL PERFORMANCE: A STUDY OF SELECTED INDIAN COMPANIES

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ABSTRACT
Mergers and Acquisitions (M&As) are an important business strategy that is adopted by organisations around the globe to satisfy the needs of dynamic business environment. Several Indian companies have also opted for mergers and acquisitions as a part of policy. The paper endeavours to study the impact of M&As on the financial performance of selected Indian companies. The paper envisages the impact of M&As on profitability & liquidity position of firms. Three years pre and post – merger data will be used to analyse the financial position of firm. Sample size consists of firms that have undergone M&As during 2013-2015. For accomplishing the objective, secondary data would be collected through annual audited financial statements, annual reports, official website of company, NSE, BSE etc. from 2010 – 2018. To conduct the study various ratios such as Net profit, ROCE, EPS, curret ratio, quick ratio would be used. Paired sample t test would be used on accounting ratios on SPSS to test the significance level.

Keywords: Merger, acquisitions, financial performance, accounting ratios

INTRODUCTION
Mergers & Acquisitions is a deal which effect the ownership pattern, products and services offered, assets and associations. The objective behind is to maximize shareholders' wealth and improve overall performance of organisation.

Mergers & Acquisitions happen when two or more entities join hands together for all or part of operations. A merger occurs when no company is termed as acquired or acquirer; both the companies jointly decide the management structure of the merged entity; both the companies are similar in size such that no company can dominate the other after merger. An acquisition happens when a company acquires from another company either controlling stake in company's share or a business operation along with assets.

Major difference between merger and acquisition is because of control factor. In Merger, the shareholders of both the pre-merged companies have a share of ownership in merged entity and also, the top positions of the merged company are shared by the top management of both the companies. However, in acquisition the control and management of one company passes on to another company.

In order to survive in the long run, business houses these days are focusing on maximizing shareholders' wealth as a substitute of profit maximization ideology. Maximizing shareholders' wealth can be understood as maximizing the value of shares of a firm. Mergers and Acquisitions (M&As) is one of the important business strategies adopted for maximizing the value of a firm's share. The reason for M&As being an integral part of corporate finance world is that two companies together can lead to synergy effect (creating more value) as compared to being standalone. Thus, to increase shareholder's wealth companies keep on looking for M&A opportunities.

The paper attempts to measure the impact of M&A on the long-term financial performance of the acquirer company. The paper intends to study the impact of M&A on the liquidity and profitability of the company. The study will also look in to the post-merger profitability to check whether the expected synergies have been realised or not.

REVIEW OF LITERATURE
Nasieku & Susan (2016) conducted a study in Kenya to study the impact of financial restructuring on the performance of companies on the financial front in Kenya. The study was based on resources like Resource based view theory, Life cycle theory and Static trade off- theory and vast study of already existing literature. The researcher concluded that optimum and appropriate capital structure and appropriate use of debt and equity could ensure good return to shareholders.

Abbas & Hunjra (2014) studied the impact of M&As on financial performance of banks in Pakistan. The paper was based on selected 10 banks that had opted for merger and acquisitions strategy. The study was conducted by collecting data for a period of 5 years (2006-2011) from financial statements of the banks. The study concluded an insignificant difference between pre and post-merger financial performance of the banks.

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Bushra Abdulwahab & Subhadra Ganguly (2017) analysed the M&A transactions among financial institutions that took place in Bahrain after the global financial crisis 2007-08. The paper investigates the impact of four M&A deals on financial performance of banks. The study concluded that there was no significant improvement in the financial performance of the acquirer banks after the M&A transaction.

Momodou Sailou Jallow, Massirah Masazing, Abdul Basit (2017) conducted research in United of Kingdom to study the influence of M&A deals on financial performance of corporates. 40 companies listed on London Stock Exchange LSE that were consolidated in 2011 were studied. Financial ratios were used to make a comparison between 5 years pre-merger and post-merger performance. The paper found that M&A significantly effects the financial performance of firm.

Stephen Njuguna Mboroto (2012) did a research project to determine the impact of M&A on the financial performance of petroleum firms in Kenya. The secondary data was collected for the companies that were listed on the Kenyan market and merged/acquired during 2002-2012. Financial ratios were collected and paired t test was used to conclude the insignificant impact of M&A on the overall financial performance of firm.

Agarwal & Singh (2015) analysed the impact of merger on financial performance of Kingfisher Airlines with the help of case study. Accounting ratios such as liquidity, profitability, EPS and leverage were used in the study. A paired t sample test was used to analyse the pre-merger and post- merger financial performance of the company. The conclusion states no improvement in financial performance of kingfisher airlines.

OBJECTIVES OF THE STUDY

The present endeavours to check the financial performance of M&A deals in India. The study is conducted on selected Indian companies. The objectives of the study are follows –

- To check the impact of mergers and acquisitions on Profitability of selected Indian companies.
- To study and compare the Liquidity position of selected acquirer companies.

HYPOTHESIS DEVELOPMENT

H1: Merger and acquisitions has a significant impact on profitability of selected sample.

H2: Merger and acquisitions has a significant impact on liquidity indicators of selected firms in sample.

RESEARCH METHODOLOGY

Research Design

The paper is an exploratory study which intends to study the financial position of selected companies in great depth. The study is based on a sample size of four selected companies. Research design refers to the broad framework within which a research is carried out. It contains the blueprint for collection, measurement and analysis of data.

Sample Size

Convenience and judgemental sampling technique is used to draw the samples for the paper. Judgmental sampling is a non-probability sampling technique where the sample units are selected on the basis of knowledge and professional judgement of researcher. Convenience sampling is a non-probability sampling technique where sample units are selected because of their convenient accessibility, data being easily available and proximity to the researcher. Four companies that have undergone M&A during 2013-2015 have been identified for accomplishing the objectives of the study.

1. Asian paints and ESS ESS bathroom products.
2. Reliance Industries Ltd. and Network 18 media
3. Tata Consultancy Services and Computer Management Corporation
4. Thomas Cook India Ltd. And Sterling India resorts

Data Collection

The study has been conducted by collecting secondary data from audited published annual financial statements, annual reports and various investment sites. The data was collected for for the period covering from 2012-2018. In the paper, the year in which the selected units were merged and acquired is considered as zero (0). To study the effect of M&A's on the financial performance of the company, financial ratios were determined for three years pre and post-merger and acquisition. Post-merger financial position was compared with the prior merger performance with the help of accounting ratios and statistical tools.

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Statistical Methods

The study uses the known financial ratios for analysing the implication of M&A on the financial health of the acquirer companies. Company's profitability is assessed with three financial ratios. Net Profit Ratio (NPR %), Return on Capital Employed (ROCE %) and Earning Per Share (EPS). Liquidity position is measured by Current Ratio (CR) and Quick Ratio (QR). Paired Sample "t" test was used to test whether the ratios before merger were significantly different from ratios post-merger. Data collected has been analyzed with the help of statistical software SPSS.

DATA ANALYSIS & INTERPRETATION

Pre and post-merger ratios are determined of each company selected in the sample size. Profitability and liquidity position of each firm is separately analyzed in prior and post-merger of four companies.

Table-1: Impact of M&A on Profitability

Company Name	Net Profit Ration (NP %)			Return on Capital Employed (ROCE %)			Earnings per Share (EPS)		
	Pre (Mean)	Post (Mean)	Sig.	Pre (Mean)	Post (Mean)	Sig.	Pre (Mean)	Post (Mean)	Sig.
Asian Paints	11.69	13.41	0.06	55	41.53	0.001	11.03	18.5	0.002
TCS	22.267	21.867	0.734	50.607	42.713	0.56	73.91	130.26	0.31
RIL	5.3067	9.713	0.274	11.693	13.4067	0.691	71.283	87.623	0.317
Thomas Cook India	10.62	9.25	0.915	11.34	3.103	0.51	1.463	4.7567	0.573

Source: Annual reports, investment sites and own calculations

Table-2: Impact of M&A on Liquidity

Company Name	Current Ratio			Quick Ratio		
	Pre (Mean)	Post (Mean)	Sig.	Pre (Mean)	Post (Mean)	Sig.
Asian Paints	1.309	1.66	0.11	0.7167	1.017	0.08
TCS	2.53	4.733	0.18	2.388	4.751	0.104
RIL	1.533	0.443	0.34	0.923	0.2367	0.465
Thomas Cook India	1.1327	1.12	0.931	1.1793	1.12	0.431

Source: Annual reports, investment sites and own calculations

Table 1 shows the profitability position of the firms after M&A. It shows that Net profit ratio of two firms out of four have declined significantly after M&A. It also reveals that net profit ratio of two firms has increased significantly after M&A. Return on capital employed has deteriorated for three out of four firms and for two firms ROCE declined significantly. ROCE has significantly improved after M&A only for one company out of four firms. Post-merger Earning per share has increased for all the four entities. Also, Earnings per share have significantly increased for three organisations. The study has observed that profitability position of the acquirer firm has improved after Merger and Acquisition. Hence, H1 is accepted that Merger and acquisitions had significantly impacted the profitability of companies.

Table II reveals the liquidity position of selected firms. It shows that current ratio of two companies has significantly improved and current ratio of two companies significantly declined out of four companies. Quick ratio of two companies has improved significantly after M&A. At the same time quick ratio of two companies has significantly declined. Finally, it is observed that post-merger liquidity indicators have improved for some companies. Thus, H2 is accepted that merger and acquisitions have a significant impaction on liquidity indicators of selected firms.

CONCLUSION

Companies opt for M&A in order to gain from synergy, increase in profits, competitive advantage and to explore new markets. The present study intends to analyse whether the companies are able to realise the gains expected after M&A. The paper explores the impact of M&A on the liquidity and profitability of entities that opted for M&A during 2013-2015. The analysis highlighted that profitability indicator of the selected companies have improved post-merger when a pair "t" test was conducted at a confidence level of 5%. Liquidity indicators- quick ratio, current ratio also improved of the selected samples after M&A. The findings suggested that liquidity and profitability position of the selected sample companies improved after undergoing M&A. Thus, M&A have a positive implication on the financial health of the companies.

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A STUDY ON FINANCIAL PERFORMANCE OF SELECTED INDIAN HEALTH CARE COMPANIES BEFORE AND AFTER M&A

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ABSTRACT

With rapid globalization and advancement in technology, the survival and growth of companies has become a big question. In order to survive in this ever changing economy, it has become necessary for the companies to explore the unexplored in order to sustain itself in the era of cut throat competition. Corporate restructuring has enabled most of the firms to gain a competitive advantage and respond more swiftly to the opportunities of the dynamic market. The terms merger, amalgamation, take-over and acquisitions refer to the situation or strategy where two or more firms join hands in order to face the challenges of the competition and achieve operational synergy.

One of the major reasons for a firm to enter into an M&A deal is diversification. Sometimes it so happens that a firm wishes to break the status quo and plans to start a new product line or a service base or it sees an untapped potential in some other geography and thinks of establishing a unit there in order to expand its operations. In all the above mentioned cases it is far more convenient for a firm to merge with another firm in the said geography or to acquire another firm in order to expand its scale of operation or scope of business.

It is a known fact that a business unit is established with a view to earn profits and sustain itself in order to earn more (ethically). And it is also known, in lay man terms, that the real owners of a firm are the people who have invested their money in it. It means that all the activities undertaken by a company are with a view of maximizing the wealth of the shareholders. Thus, when a firm indulges into an M&A deal, the goal is to achieve financial advantage.

The paper aims at measuring the impact of Merger and Acquisition on the financial performance of the companies in the Health Care Sector of India. In order to judge the financial performance of the firms in question, the following ratios have been studied:

1. *Earnings Per Share*
2. *Gross Margin*
3. *EBIT Margin*
4. *Return on Capital Employed*
5. *Return on Equity*

For the purpose of this paper, the above mentioned ratios have been calculated for a period of 4 years before the M&A and 4 years after the M&A of the selected units.

The study will be aimed at accepting or rejecting the following Hypothesis:

H_O: The is no significant difference between the financial performance of the firm before and after M&A

H_A: There is a significant difference between the financial performance of the firm before and after M&A.

T-test will be applied for Hypothesis testing.

INTRODUCTION

According to India Brand Equity Foundation (IBEF), the health care industry is expected to reach $372 billion by FY 2022. This rise is expected due the rising income levels, increasing health awareness, diseases and lifestyle. The hospital industry in specificis expected to reach Rs. 8.6 trillion from Rs. 4 trillion by FY 2022 showing a Compound Annual Growth Rate of 16 to 17 %. The private sector is a dominant force in Indian Health Care Sector. It accounts for more than 74% of the country’s total healthcare expenditure.

As per Invest India, A National Investment Promotion and Facilitation Agency; India is expected to rank amongst the top three healthcare markets in terms of incremental growth.

This paper aims to focus on measuring the impact of M&A on the financial performance of some players in the Health Care Industry of India.

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Merger refers to amalgamation of two or more companies, whereas acquisition refers to the take of one company by another. The main objective of any corporate strategy is wealth maximization. The idea behind mergers and acquisition is also the same. In precise, the need for mergers and acquisitions arise due to many reasons, some of which can be to attain financial synergies, to accelerate growth, to achieve economies of scale, for diversification, for increasing market share and positioning, to diversify risk, for various tax considerations, etc.

OBJECTIVE

The following are the objectives of the study:

1. To measure the impact of Mergers and Acquisitions on the financial performance of the selected firm of the Health Care Sector of India
2. To give an overview of the concept and need of Mergers & Acquisitions
3. To give an overview of the Health Care sector in India

HYPOTHESIS OF THE STUDY

The study aims at accepting or rejecting the following hypothesis:

H_O (Null Hypothesis): There is no significant difference between the financial performance of the selected companies before and after the M&A

H_A (Alternative Hypothesis): There is a significant difference between the financial performance of the selected companies before and after the M&A.

RESEARCH METHODOLOGY

The paper aims at studying the impact on the financial performance of the selected firms caused due to the M&A, for the purpose which a sample of 10 companies has been taken. The sample consists of only public companies from the Health Care sector of India. Only listed companies aretaken for this study as the financial statements of the public companies are easily available. For measuring the financial performance of the selected firms a preliminary screening of the M&A deals has been done on S&P Capital IQ database. The following filters have been applied in the screening:

1. Transaction type: Merger/Acquisition
2. Industry Classifications (Buyers/Investors): Health Care (Primary)
3. All Transactions Closed Date: [4/1/2010-3/31/2018]
4. Company Type (Buyers/Investors): Public Company
5. Geographic Locations (Buyers/Investors): India (Primary)
6. Company Status (Buyers/Investors): Operating

DATA ANALYSIS

For the purpose of analyzing the financial performance of the selected firms before and after the M&A, the following performance indicators have been taken as calculated in the database S&P Capital IQ:

1. Basic EPS
2. Gross Margin (%)
3. EBIT Margin (%)
4. Return on Capital (%)
5. Return on Equity (%)

Earnings per share (EPS) refers to the portion of profits available to the Equity Shareholders. It is calculated by subtracting the Preference dividend (if any) from the profits after interest and taxes and dividing it by the number of equity shares outstanding.

Gross Margin refers to the percentage of Gross Profit earned by the firm to its Total Revenue.

EBIT Marginis calculated by dividing the operating profit by Total Revenue. Operating Profit refers to Gross Profit minus all operating expenses and depreciation &amortization plus all operating incomes.

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Return on Capital refers to the ratio of the companies Operating Profits to its Capital Employed. It is a measure of efficiency and defines how efficiently the company's capital is being used. Capital is the sum total of the Equity, Preference and long term debts of the firm.

Return on Equity is calculated by dividing the Net Income by Shareholder's funds. This ratio provides and insight into how efficiently a firm is utilizing the funds that the shareholders have contributed in it.

This paper focuses on testing the impact of M&A on the financial performance of the selected firms. For the purpose of accepting or rejecting the Null Hypothesis t-test has been applied. The following table shows the results of the test:

Table 1

S.No.	Financial Performance Indicators	Mean	Standard Deviation	Calculated t value	Tabulated t value	Result
1	EPS	35.73		-0.760	2.353	H_o
2	Gross Margin	57.09%		-22.522	2.353	H_A
3	EBIT Margin	16.81%		0.750	2.353	H_O
4	Return on Capital	10.03%		3.887	2.353	H_A
5	Return on Equity	15.71%		0.978	2.353	H_O

To explain the table given above, 2014 was taken as the deal year i.e. the year in which the selected firms entered into an M&A deal with the target companies. The financials of the said companies have been observed for a period of 4 years preceding the M&A and 4 years succeeding the M&A.

The data pertaining to each financial performance indicator mentioned above has been extracted for the 10 selected firms in the health Care sector of India and an average has been calculated. For example, the EPS of the period ending 31st march 2010 is the average of the EPS of all the 10 selected firms for the period ending 31st March 2010.The same procedure has been followed for all the financial performance indicators used in this study. This has been done so as to facilitate the application of t-test (t test takes into use the means of different populations, it is applied when the difference between two population averages is being investigated).

The table also shows the mean and standard deviation of each financial performance indicator.

RESULT AND CONCLUSION

The calculated t value when compared with the tabulated t value gives a base for accepting or rejecting the Null Hypothesis. The tabulated t value makes use of the degree of freedom (df) and the alpha level, while the calculated t value of formula driven. Also, for comparing the two t values, the signs are ignored and only the quantum is compared in order to determine which value is greater and which is smaller.

If, calculated t value < Tabulated t value, Null Hypothesis in accepted

If, calculated t value > Tabulated t value, Null Hypothesis is rejected and Alternative hypothesis is accepted.

The following results have been drawn from the analysis:

1. The calculated t value of EPS is less than the Tabulated t value of EPS; hence Null Hypothesis has been accepted.
   This implies that there is no significant impact on the Earnings per share of the selected firms before and after the M&A deal in the year 2014.
2. The calculated t value of Gross Margin is greater than the Tabulated t value of Gross Margin; hence Null Hypothesis has been rejected and Alternative Hypothesis has been accepted.
   This implies that there is a significant impact on the Gross Margins of the selected Health Care firms before and after the M&A deal.
3. The calculated t value of EBIT Margin is less than the Tabulated t value of EBIT Margin; hence Null Hypothesis has been accepted.
   This implies that there is no significant impact on the EBIT Margins of the selected Health Care firms before and after the M&A deal.
4. The calculated t value of ROCE is greater than the Tabulated t value of ROCE; hence Null Hypothesis has been rejected and Alternative Hypothesis has been accepted.
5. This implies that there is a significant impact on the Return on Capital of the selected Health Care firms before and after the M&A deal.

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6. The calculated t value of ROE is less than the Tabulated t value of ROE; hence Null Hypothesis has been accepted.
   This implies that there is no significant impact on the Gross Margins of the selected Health Care firms before and after the M&A deal.

LIMITATIONS OF THE STUDY

The following are the limitations of the study:

1. This study focuses on the Health care sector of India; hence the results cannot be generalized to any other geography.
2. This paper takes into consideration only 10 firms from the Health Care sector which have been selected on the basis of the M&A deals in a particular year, hence the observations cannot be generalized for the entire Health Care sector.
3. This study conceptualizes only in the health Care sector, which means that the conclusions cannot be hypothesized for the entire corporate sector.

For eliminating the above mentioned limitations, further investigations in the same subject can be carried.

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REVERSE MERGER AS A METHOD OF GOING PUBLIC: ROADBLOCKS IN INDIA

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ABSTRACT

*To list a company in the equity market, the initial public offering (IPOs) is the conventional path. To Go public and offer stock in an initial public offering is a mile stone point in the life of privately owned companies. However, the process of IPO is very expensive and time consuming, involving an extensive consultation and regulation –mandated registration process. These costly and lengthy regulatory requirements, together with sluggish IPO markets and their unavailability to smaller firms, have long been reasons for private companies and their equity shareholders to look for alternatives to IPOs. This raises the question as to whether there are any other alternatives available for conventional IPOs and also whether such alternatives are as efficient as IPOs. Such alternatives include Reverse Mergers, Self filing, SPACS etc. A popular alternative is to pursue a backdoor listing, most often accomplished through a Reverse Merger. A backdoor listing (often a reverse merger) has not only allowed companies to focus more on their business and less on compliance with 'going public' rules and regulations, but also to gain access to more liquid and robust (often foreign) stock markets. In addition to the cheaper and quicker access to capital and liquidity, backdoor listings have also been employed to receive tax benefits that stem from tax loss carry-forwards in the public shell.*St the same time, *Reverse Mergers is often excessively burdened by complex listing rules and regulations. They are also equally susceptible to fraud and abuse. This raises a question as to whether such transactions should legally be allowed and can there be special rules and regulations be introduced by the policy makers and the regulators governing them. This question becomes more significant when there is a dramatic increase in the popularity of Reverse Mergers (U.S., China). In this background, the present paper shall discuss the feasibility of Reverse Mergers in India.*

"The traditional way (IPO) for a company who want to get listed is both tough and time consuming. A faster way is to buy the majority of votes in a public company and then gradually remold the organization to its own." Österlind (2007) [1]

The greater access to vast capital sources and high market growth has resulted in the rise in the number of companies going public. Earlier, when a company decided to go public, it turned to the equity share markets and issues Initial Public Offers ("IPO"). However, "*today's market volatility and economic uncertainty has caused delay in going public. Despite of busy and large IPO backlog of many companies, the market has been highly selective. In this challenging environment, only a few companies having distinguished business franchises, critical mass, high sales growth, and the ability to grow earnings faster than sale will get through the eye of the IPO needle. Especially for small enterprises, it is hard to count on the IPO market and yet, the fundamental need for capital that was formerly obtained through IPO remains. There is, however, an alternative to the traditional IPO that a private company can consider i.e. The Reverse Merger.*"[2]

DEFINITION

"A reverse merger (RM) is a technique in which a private company is acquired by a shell or defunct public company via stock swap. As a result, the private company becomes public. The main difference between an IPO and a RM is that an IPO allows going public and also allows raising capital while the RM only allows going public"[3].

In a typical reverse merger operation, one can find the following three forms:

1. A public company giving the majority (more than 51%) of its shares in exchange of acquiring a portion of the assets of a privately held company.

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[1]ÖsterlindM. (2007).*Så tar du billigasteköksvägen till börsen*.Retrieved from www.di.se

[2] Cohn, J.H. (2009).*Capital Markets Advisory Consortium, A Capital Formation Resource Powered,*retrieved from CoveView Advisors LLC,

[3] Arellano, A., Brusco,S.,(2002). Understanding Reverse Mergers: A First Approach. *Business Economics Series*, (*11)*, 1-8.

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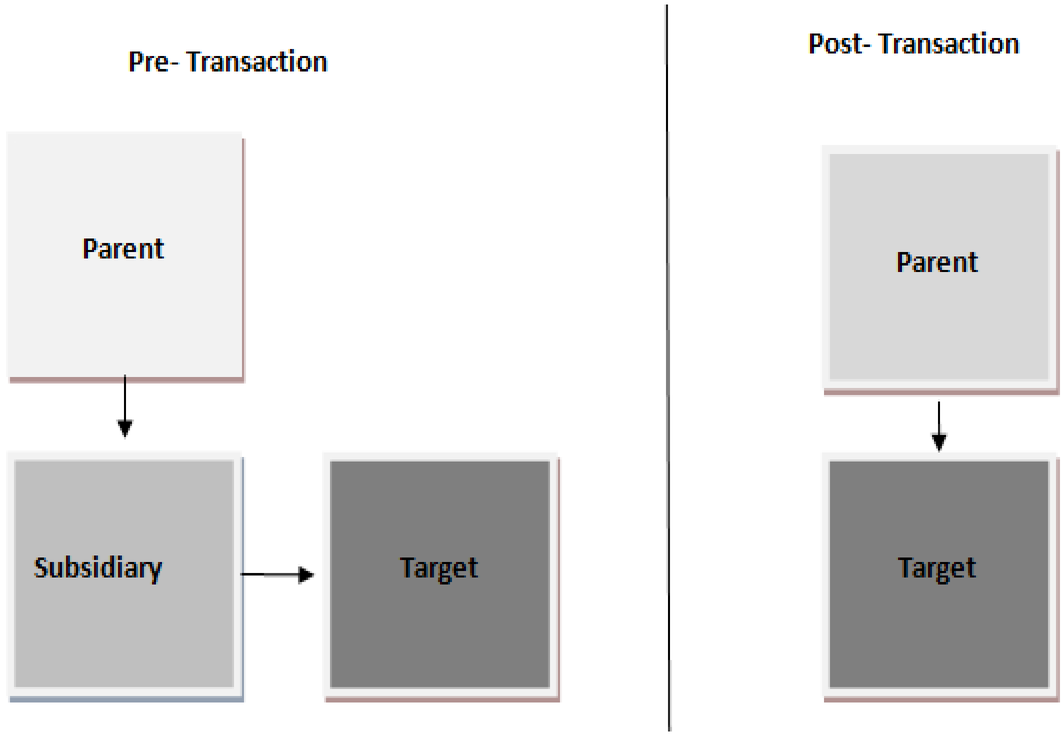
2. The private company keeps control over the public company through a stock swap when a public company
3. A public company may merge with a private company and through a stock swap, the private company keeps control over the public company.
4. A public company acquires a proportion of the shares (i.e. acquires rights over assets, liabilities and financial flows) of the private company, giving in exchange the majority (above 51%) of the shares of the public company. Then the private company becomes a subsidiary of the public company and therefore also public.

In all the above circumstances, the privately held company obtains more than 51% of the shares of the public company and turns public. Thus, "*RM is a transaction in which a private company's owners gain control of a public company (a shell) by merging it with their private company. The owners of the private company receive most of the shares of the shell (more than 50%) and control of the shell's board of directors. The transaction can be completed in as little as 3 months, and the private company then becomes a public company*"[1].



As going public through an IPO can be a time consuming process, taking almosta year, right from the first day when the company obtains an underwriter to the day the share is listed. Whereas, Reverse Merger is quicker than an IPO. Hence, here has been a phenomenal increase in companies going public through Reverse Merger. Though RM was initially perceived as a controversial transaction but recently the process has gained more acceptances in the financial market as an alternative to the traditional IPO[2].

Initially Reverse Merger transactions were consummated in order to take advantages of the loss carry forwards in the publically listed company, which provided a possibility to reduce tax payments and go public at the same time[3]. Eventually they grew as an alternative for IPOs. This trend has encouraged the private company to take the back door to the capital market and enabled the private companies to ignore the recent conditions of the market as the transaction is not depending on the demand for the company's stock.[4]

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[1]Adjei,F.,(2008).The determinants and survival of reverse mergers vs IPOs, Journal of Economics and Finance,(4),2

[2]Feldman,D., (2012).Comments on Seasoning of Reverse Merger Companies beforeup listing to National Securities Exchanges.*Harvard Business Law Review, 2,42-46*

[3] The practice was highly popular in India for the avoidance of tax purposes. The details shall be discussed in the next chapter while analyzing the legal framework for Reverse Mergers in India.

[4] IPO underwriting fees are typically millions of dollars while the cost of a public shell typically ranges from $50,000 to $800,000 depending on whether the public shell is trading or non-trading according to the Stag Financial Group, a reverse merger consultant. See http://www.stagfinancialgroup.com for details.

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REVERSE MERGER EXAMPLES

The term “Reverse Merger” dates back to the early 1950’s when Armand Hammer, a world renowned oil magnate merged a shell company with Occidental Petroleum. The other popular Reverse Mergers are [1]Blockbuster Video,Ted Turner with Rice Broadcasting which went on to become Turner Broadcasting, Rare Medium (RRRR) merged with lackluster refrigeration, Acclaim Entertainment (AKLM) merged into non-operating Tele-Communications, etc. [2]

IMPORTANCE OF REVERSE MERGERS

Revere Mergers offer ample opportunities for potential synergies to both financial markets and investors. The shareholders in the public firms can benefit from such transactions. Even in poorly performing public firms this can offer the shareholders an opportunity to increase their wealth. This gain is significant for both the shareholder and the firm as well. Further, this method gives under performing companies the possibility to go public without the high cost associated with the IPO. Through a Reverse Merger, the private firm can decrease the listing costs and the temporary uncertainties and avoid the regulatory inspections involved in the IPO. Thus, Reverse Mergers provide a substitute means of going public and may reduce some of the agency costs of distress. They do seem to involve considerable risk yet the importance of Reverse Mergers cannot be ignored in any financial market due to the rigidity related with an IPO.

WHY PRIVATE FIRMS CHOOSE RMS?

Going public via an IPO may cost heavily for a firm since it involves high underwriting fees and fixed costs through investment banks, which can only be preferred by the adequately large firms with good liquidity. But Small and young private firms may not have the required capital and sources to hire an underwriter through investment banks, hence will be more likely to go public by an RM in place of an IPO. Due to the economies of scale inherent in going public through an underwriter the small and young private firms would rather prefer Reverse Mergers than IPOs.

Studies have shown that, the performance of private firms is also investigated as a determinant of an RM. According to Singh[3] (1995), “*high growth and profitable firms are likely to have valuable growth opportunities that require investments and therefore additional capital. Hence, such firms are likely to go public and take advantage of the investment opportunities they possess. Their investment opportunities may also make such high growth firms attractive to underwriters. However, small private firms have little chance of attracting and retaining underwriters and hence may resort to RMs to go public. Thus, A company engaging in a reverse merger transaction effectively “goes public” much like in an IPO, but with less of expense and little of scrutiny”*.

REVERSE MERGERS: THE CASE OF INDIA

'Reverse merger' is a commercial term that is not found in any statute. However, in India, it is believed that Reverse Mergers predominantly has two approaches. First, Reverse Mergers are rehabilitation –oriented schemes aimed at achieving a quick corporate turnaround. Second, when an unlisted company mergers with a listed shell company in order to achieve the status of “public ’’ or “listing.’’ The later approach is in consensus with the global RM phenomenon**.** The forthcoming section will analyze and see the possibility of transacting Reverse Mergers in India from both the perspectives.

Reverse Merger as a scheme of reconstruction, revival and rehabilitation of sick companies: When RM was perused as a scheme of rehabilitation of sick companies, itwas aMerger of a healthy company with a financially weak Company. The same was regulated under SICA, 1985 (post 1994 Amendment) and the scheme was sanctioned by BIFR. This type of non-routine merger was carried for many strategic reasons especially to conserve community interest because an acquisition or amalgamation scheme approved under a BIFR is eligible for various relaxations under tax law. For the same Section 72A was introduced under the Income Tax Act, 1961 in order to encourage Reverse Mergers. It allowed the accumulated loss and allowance for depreciation of an amalgamating company to be treated as that of the amalgamated company.

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[1]Poddar, S. (2013), *Reverse Mergers & Going Public*, retrieved from http://www.bridgec.com

[2] Examples of Successful Reverse Mergers with Public Shells, (2014), retrieved from http://www.bridgec.com

[3] Singh, A. (1995). Corporate Financial Patterns in Industrializing Economies–A Comparative International Study, *IFC Technical Paper, 2*

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In addition to the tax benefits, acquisitions under SICA also exempted companies from the obligation to make a public announcement of open offer for takeover of shares and voting rights and also the acquisition of control. The biggest benefit was SEBI amended Clause 40A of the listing agreement in 2006 to make an exemption for companies in respect of which reference had been made to the BIFR for a rehabilitation scheme. This avoided the need to apply for letters of intent and industrial licenses eliminated gestation periods and made available production facilities at historical cost. This benefits facilitated companies to successfully accomplish Reverse Merger transactions. Besides, not only taking advantage of 72A f the Income Tax Act, any private company merging with a listed public sick company (shell company) could easily get listed and achieve the "public" status through seeking exemptions by SEBI from a regular listing. This served as a strong motive for many companies to merge with a sick unit as the benefit was double folded both in terms of tax savings and continuous listing exemptions.

However, in the context of erstwhile companies Act, 1956 there was no distinction between a regular merger and Reverse Merger. Under this Act, Reverse Merger was like any other amalgamation scheme carried out through the high court route via sections 391 to 394 of the 1956 Act. Nevertheless it is crucial to observe that Companies (Second Amendment) Act, 2002 brought the process of dealing with sick industries under the purview of the Companies Act. The Companies (Second Amendment) Act, 2002 established National Company Law Tribunal ("**NCLT**") with regional benches that are empowered with the powers earlier vested with BIFR.

The credit for expounding this concept with more clarity and precision goes to the Gujarat High Court which, for the first time brought out this concept in open in its scintillating judgment in *Bihari Mills Ltd., In re, ManeklalHarilal Spinning and Manufacturing Company Limited In re*[1]. In this case, all the contours of this concept were analyzed, apart from providing answers to some important questions that were relevant in the Indian context. These guidelines motivated Reverse Merger of Chemplast with Urethanes(1991), Camphor and Allied Products (CAP) with Profeel Sentinel Limited (1990), Godrej Soaps Ltd. (GSL) with Gujarat Godrej Innovative Chemicals Ltd. (1994) and Asian Cables with Wiltech India Ltd.(1994)[2]. The analysis of these studies has shown that Reverse Mergers are rehabilitation-oriented schemes adopted to achieve quick corporate turnaround. Many a times, Reverse Mergers were also coupled with the reduction in the unwieldy capital of the sick company. This capital reduction has helped in writing off the accumulated losses and other assets which are unrepresented by the share capital of the company. Thus, a capital reduction-cum-rehabilitation scheme (by way of reverse merger) was an ideal antidote for the sick company.

The sooner the merger is through, the faster is the revival of the sick company. But later the Sick Industrial Companies (Special Provisions) Act, 1985 (SICA) was repealed and replaced by Sick Industrial Companies (Special Provisions) Repeal Act, 2003andthe New Companies Act, 2013 provided a more sophisticated mechanism to regulate the scheme of revival and rehabilitation of sick companies by diluting some of the provisions ofthe earlier Act in order to plug out certain loopholes that prevailed. The coverage of thisnew law is no longer restricted to industrial companies only and the determination of the networth is no more relevant for assessing whether a company is a sick company. The erstwhileSICA was limited only to industrial companies, while the 2013 Act covers the revival andrehabilitation of all companies, irrespective of their sector. The determination of whether acompany is sick, would no longer be based on a situation where accumulated losses exceedthe net worth. Rather it would be determined on the basis whether the company is able to payits debts. In other words, the determining factor of a sick company has now been shifted tothe secured creditors or banks and financial institutions with regard to the assessment of acompany as a sick company.

Interestingly, the 2013 Act does not recognize the role of all stakeholders in the revival andrehabilitation of a sick company, and provisions predominantly revolve around securedcreditors. The fact that the 2013 Act recognizes the presence of unsecured creditors is feltonly at the time of the approval of the scheme of revival and rehabilitation in accordancewith the requirement of section 253 of the 2013**.**

Thus by providing a revival and rehabilitation option for "Amalgamation of the sickcompany with any other company, or another company's amalgamation with the sickcompany", the New Act permits Reverse Merger of a sick company with that of a healthycompany. However the scheme has to comply with the new requirements and must seekapproval by the tribunal. Therefore any scheme of revival or rehabilitation of sick companyin the

[1] (1985) 58 Comp Cas 6 (Guj).

[2]Ramanqjam,S.(2012).*Mergers Et Al: Issues, Implications and Case Law In Corporate Restructuring, (*3rd ed.), NewDelhi,India : Lexis Nexis.

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form of a Reverse Merger can continue to take the benefits of Section 72A of theIncome Tax Act provided it fulfils certain conditions as laid down under the provision.

Section 72A encourages genuineReverse Mergers. In the larger interest of the economy, the tax benefit for Reverse Mergersgiven in S. 72 is necessary. What must be ensured is that the sick unit is revived orrehabilitated by the merger. There may be chances where a Reverse Merger is followed bydemerger.Therefore there must be provision for imposing a fine that will be equivalent tothe tax benefits enjoyed as a result of the reverse merger, if it can be shown that the mergerwas solely for purposes of tax avoidance. Thus, Reverse Merger as scheme of rehabilitation of sick companies continues to operate under the Indian context; however the problem arises is with regard to the way the Reverse Merger is pursued globally and India's unprecedented position with regard to the same under the Companies Act of 2013.

MERGER OF A LISTED COMPANY INTO AN UNLISTED ONE

As per Section 232 (h) of the Companies Act, 2013, if the transferee company is an unlisted company, it shall not automatically become a listed company by merging with a listed company. It has to follow the process of listing as per SEBI (ICDR) Regulation 2009 in order to become listed. Therefore, this option of backdoor listing via Reverse Merger is no more available in India.

The 2013 Act specifically provides for the Tribunal's order to state that the merger of a listed company into an unlisted company will not ipso facto make the unlisted company listed. It will continue to be unlisted until the applicable listing regulations and SEBI guidelines in relation to allotment of shares to public shareholders are complied with. The Indian securities law prescribes strict enforcement of listing requirements by companies intending to get listed. These changes under the 2013 Act are in line with SEBI requirements (Rule 19(2)(b) of Securities Contracts (Regulations) Rules, 1957 and SEBI circular nos. CIR/CFD/DIL/5/2013 dated February 4, 2013 and CIR/CFD/DIL/8/2013 dated May 21, 2013). The 1956 Act was silent on this aspect.

Hence now Reverse Merger technique in India is theoretically permitted calling for the compliance under SEBI February and May circulars of 2013 and seek listing under ICDR regulations 2009 through private placements. The end result is, no company would opt for this technique as the benefits of Reverse Mergers are taken away through these regulatory compliances. Thus, resulting in implied prohibition of Reverse Mergers in India.

Whereas Reverse Mergers areexcessively burdened by complex listing rules and regulations in U.S., MainlandChina and Hong Kong, but not permitted in India. This raises a significant questionas to whether Indian policymakers and regulators should introduce special rules andregulations for Reverse Mergers or continue to disallow such a phenomenon in Indian Capitalmarkets. This question has become more prominent in Indian context since there is a prohibition on the same and in contrast there is a dramatic increase in the popularityof Reverse Mergers in the global capital markets. What is remarkable in this respect, is therecent global studies accepting Reverse Mergers as alternative to IPOs and the positiveregulatory reaction for the same. Though the regulatory reactions have been varied across thejurisdictions in terms of rigidity yet most of the jurisdictions (U.S., China)have been able to regulate themto a certain extent unlike India.

APPEAL FOR LEGITIMATE RECOGNITION OF REVERSE MERGERS IN INDIA

Going public through a reverse merger allows a private company to go public at a lowercost, in a shorter duration and with a less dilution in a stock over an IPO. Reverse merger deals are cheaper, faster and smarter. In light of the heavy costs of IPOs,limited access to public markets that private companies are choosing the reverse merger pathare comparatively smaller and younger with those opting for IPOs.

Because the critics say that merging with shells will also include the costs of shell, duediligence, fees and other regulatory expenses. Particularly evaluating the "cleanliness" of theshell company is of a great difficult. Another major criticism is the possibility ofmanipulation of the stock prices because most of the times the stockholders or nominees arecontrolled by the promoters of the shell. Further there is also great possibility of shellpromoters transferring unrestricted stock to the new owners and their affiliates. Howeversuch risk though inherent in every Reverse Merger transaction, the same can avoided by beingcautious in the begging while choosing the shell. If a much cleaner shell is chosen then thedifficulty of due diligence is minimized. Irrespective of the nature of the shell a minim duediligence is must in every transaction. and further, insider trading control by the promoterscan be avoided by incorporating greater corporate governance norms and restrictions on thetransferability of shares by such promoters and finally the risk of re-sale of stocks by thepromoters can be avoided by having regulations like Rule 144 of the Securities Act of U.S.which prohibits re-sale of certain stocks issued in Reverse Merger transactions.

A system combined with costs and benefits is needed today .This will ensureincreased use of Reverse Merger transactions by both domestic and foreign small-capcompanies in order to revitalize the benefits of the method. Specifically, Chinese companiesand German biotechnology companies have been availing themselves of the technique to gopublic in the U.S. with increasing numbers. However, there may still be some kinks to workout when it comes to investor protection in Reverse Merger transactions. The lesson to bederived is from the American markets, which has made public access more widely availableby exploring the Reverse Merger technique and it's potential to entice domestic issuers to gopublic in the U.S. With this Indian competitive crisis both domestically and internationallycan be partially reduced.

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CORPORATE RESTRUCTING IN INDIA THROUGH "DEMERGERS": EXAMINING THE SUFFICIENCY OF AVAILABLE LAWS IN REGULATING IT's VARIOUS ASPECTS

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ABSTRACT

In the early 21st century corporate sector witnessed the growth of corporate restructuring or Demerger and was accepted throughout the globe due to its overwhelming benefits that involves a process of wreathing corporate entities strategically operating under same line of business or other to put themselves under a single corporate umbrella with a view to create a buffer against the market cruelties and to pave the way of future growth. It was expected by De-merger to curb imprudent and colossal wastage of business opportunities and prospects the possibility of enhancing corporate control and shareholders' value. The rationale behind the corporate restructuring lies in extending the fence of ownership to survive and going ahead.

Various types of corporate restructuring may be grouped according to their nature and objectives such as – capital restructuring, organizational restructuring and technological restructuring. Corporate restructuring, though criticized as merely a rearrangement of deck chairs on the Titanic, is fueled no doubt by the globally based consultancies to reach a new height with a whole host of strategic options – expansion, contraction, corporate control and changes in ownership structure. One of the modes of contracting size is demerger. By whatever name it is called – split-up, split-off or spin-off it intends to trim size to sharpen company's core competency for growth and efficiency. In the present chapter corporate restructuring, global overview of corporate restructuring, corporate restructuring scenario in India, demerger as a mode of corporate restructuring, historical background of demerger, history of demerger in India, legal aspects of demerger in India and a preview of the research work have been introduced.

Keywords: corporate restructuration, Demergr, shareholders, company law, business goal

RESEARCH OBJECTIVE

The object of the paper would be to highlight the nature, the position that exists in other countries and to find out how it will impact our current system. Particularly the paper will focus on the reasons for adopting this business strategy and that if the government mandates it in order to curb the monopoly practices or if the company has several business lines and the management is unable to control all of them at the same time.

RESEARCH QUESTIONS

This paper would raise and attempt to answer the following questions –

- In what ways the shareholders would be benefited from the demerger?
- Whether the process of demerger under the Companies Act, 2013 is effective?
- Whether with the help of demerger, the company is able to focus on its core goal of each business which can be reflected in the increasing valuation of the company in the market?

HYPOTHESIS

Is the laws regulating Demerger in India adequate to regulate and helpful in achieving the objective by companies to boost their shareholders value in the long run and the clear perspective of the businesses which are to be operated separately ?

RESEARCH METHODOLOGY

The present study is Doctrinal; primary sources have been used extensively which includes acts, committee reports, policies of government etc. Books and Articles have been used as Secondary Sources. It has been tried that the study covers all the main aspects related to the topic. To give an overall view of the topic different sources have been taken which includes foreign reports, however Indian authors have been stressed upon.

LIMITATION

The approach is doctrinal hence the paper might lack on a practical aspect and the author is dependent on views of scholars to express her opinion.

INTRODUCTION

Corporate restructuring involves the reorganization and rearrangement of corporate affairs by the will of corporate executives to make the competition benign and to reduce business risk under fierce competitive

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environment. Companies adopt restructuring strategy they find befitting for them. [1]Various types of corporate restructuring may be grouped according to their nature and objectives such as – capital restructuring, organizational restructuring and technological restructuring. One of the modes of contracting size is demerger.[2] By whatever name it is called – split-up, split-off or spin-off it intends to trim size to sharpen company's core competency for growth and efficiency.[3]

Demerger as a concept first invented in America way back in 1920s. In India demerger as a concept became popular after the deregulation of policies happened in the 1991. Slowly demerger emerged as a favorite corporate strategy for many Indian business houses.[4] The Companies Act, 2013 appears to be opening new and simple avenues for mergers, acquisitions and restructuring operations in India. While the Act retains the old provisions, it also adds robust and progressive new ones.[5] Changes made in it are likely to have a positive impact on the manner in which corporate structuring is undertaken in India due to numerous procedural changes. The 2013 Act seeks to simplify the overall process of acquisitions, mergers and restructuring, facilitate domestic and cross-border mergers and acquisitions, and thereby, make Indian firms relatively more attractive to PE investors.[6] While some of the changes to look for at the conceptual level include merger/demerger processes, cross-border and fast track mergers between small companies and holdings, subsidiaries and provisions relating to minority shareholders' protection and exits, among others, a lot still needs to be done in terms of provision of increased clarity on some critical areas and the overall interplay of the 2013 Act with other laws.[7]

Section 2(19AA) of the Income-tax Act defines demerger as under[8]:

'Demerger' in relation to companies means the transfer, pursuant to a scheme of arrangement under section 391 to 394 of the Companies Act, 1956 by a demerged company of its one or more undertakings to the resulting company in such a manner that all the property of the undertaking, being transferred by the demerged company, immediately before the demerger, becomes the property of the resulting company by virtue of demerger; All the liabilities relatable to the undertaking, being transferred by the demerged company, immediately before the demerger, become the liabilities of the resulting company by virtue of the demerger; The property and the liabilities of the undertaking or undertakings, being transferred by the demerged company are transferred at values appearing in its books of account immediately before the demerger; The resulting company issues, in consideration of the demerger, its shares to the shareholders of the demerged company on a proportionate basis (except where the resulting company itself is a shareholder of the demerged company); The shareholders holding not less than three-fourth in value of shares in the demerged company(other than shares already held therein immediately before the demerger, or by a nominee for, the resulting company or, its subsidiary) become shareholders of the resulting company or companies by virtue of the demerger; otherwise

[1] Agrawal, A., Jeffrey, F. J. and Mandelker, G. N. (1992), "The Post-merger Performance of Acquiring Firms: A Re-examination of an Anomaly", Journal of Finance, Vol. 47, September,

[2]https://www.academia.edu/3355874/Corporate_restructuring_Reconfiguring_the_firm, https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=2ahUKEwj4gZmS773hAhXf6XMBHV0DBh0QFjABegQIABAB&url=https%3A%2F%2Fwww.academia.edu%2F3355874%2FCorporate_restructuring_Reconfiguring_the_firm&usg=AOvVaw2iqsNliR-W0-lHNpfqSe0B

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than as a result of the acquisition of the property or assets of the demerged or any undertaking thereof by the resulting company;

Demergers are of more than one type and knowns as different names which could be illustrated through the examples as given below[1]:

- Spinoff- In this type of demerger a division or a line of business of a conglomerate company end up becoming a separate entity.

For instance, company A used to operate in two lines of business viz. logistics and hospitality. If company A decides to separate all its logistics business in a separate entity, it would be called a spinoff. It needs to be noticed that both companies would exist as separate legal entities. Hence, A would still exist, and a new company B would also come into existence. The parent company would not be dissolved as a result of this separation of concerns.

- Split off - In this case, a conglomerate split its businesses into separate companies.

For instance, if company A decides to create two new companies B and C to hive off its hospitality and logistics business respectively, such an arrangement would be called a split. It needs to be noticed that company A would not continue to exist in this case.

- Equity Carve out - In this case, company A may want to sell off its logistics business to an external party. Hence, it may sell some portion of its equity stake in a subsidiary company to a third party or to a strategic investor.

In this case, A remains the same legal entity. The carved out unit B becomes part of another company i.e. it does not remain an independent unit under the aegis of the parent company.

The transfer of the undertaking is on a going concern basis. Several other regulatory changes are expected to encourage M&A activity in India.[2] The Companies Act, 2013, though has not defined but has simplified the process for a corporate reorganisation/arrangement by eliminating the High Court approval process and simplifying the procedure for arrangements between small companies, holding and subsidiary companies and other specified companies including the process of demerger.[3]

Demerger as a corporate strategy is one of several ways through which a firm may divest a division and improve its focus on its core operation.[4] A demerger results where a corporate enterprise dispossess of one or more of its business units to any other corporate body, whether existing or newly formed for the purpose.[5] The company whose division is transferred is termed as the Demerged Company and the company to which the division is transferred is termed as the Resulting Company.[6] Demerger companies often have to contract or diversify their size of operations in certain occasions such as when a division of the company is not performing up to the expectation of the stakeholders or because it no longer fits into the firm's strategic policies or give effect to rationalization or specialization in the manufacturing process or to become big and increase their profit margin.[7]

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[1] https://www.lexisnexis.com/ap/pg/indiamergersacquisitions/document/429520/5K3N-8061-DY1H-R3N1-00000-00/Legal_and_commercial_considerations_for_demergers_overview, last accessed on 22/03/2019

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EFFECTIVENESS OF THE PROCESS OF DEMERGER UNDER THE COMPANIES ACT: AN ANALYSIS

Today's financial and economic environment accelerated restructuring activities putting it on the peak of importance in the global corporate arena. Liberalization, privatization, globalization and other related words that fit to describe the recent hike in restructuring activities might lose its relevance if anyone looks back to the history. Several waves of corporate restructuring principally involving merger appeared in corporate history especially in the U.S, most of which are dominated by a particular type of merger. Demerger is the converse of a merger or acquisition. It is described as cases where part or parts of a parent company become separate legal entity through spin-off or split-off. After demerger takes place the parent company and demerged entity are still owned by the same shareholders.

Chapter XV (Section 230 to 240) of Companies Act, 2013(the Act) contains provisions on 'Compromises, Arrangements and Amalgamations', that covers compromise or arrangements, mergers and amalgamations, Corporate Debt Restructuring, demergers, fast track mergers for small companies/holding subsidiary companies, cross border mergers, takeovers, amalgamation of companies in public interest etc.,. The procedural aspects involved such as format of application to be made to National Company Law Tribunal (the Tribunal), form of notice and the procedural aspects involved with respect to the substantive law are covered under the Rules made under Chapter XV of the Act. Previously, mergers or demergers were largely governed by sections 391-394 of the Companies Act, 1956.[1] With effect from 15 December 2016, sections 230-240 of the Companies Act, 2013, were notified(except Section 234 of Companies Act, 2013), pursuant to which all the Schemes of Arrangement now require approval of the National Company Law Tribunal (NCLT) as against the High Court earlier.[2] Procedurally, any scheme is first approved by the audit committee, the board of directors, stock exchanges (if shares are listed) and then by the shareholders/creditors of the company with a requisite majority (i.e. majority in number and 3/4th in value of shareholders/creditors voting in person, by proxy or by postal ballot).[3] NCLT will give its final approval to the scheme after considering the observations of the Regional Director, Registrar of Companies, Official Liquidator, income tax authorities, other regulatory authorities (RBI, stock exchanges, SEBI, Competition Commission of India [CCI], etc.) and any other objections filed by any other stakeholder interested in or affected by the scheme.[4] Section 232 deals with mergers and amalgamation including demergers.

Compromise or arrangement includes `demerger' Rule 15.31 of the Rules made under Chapter XV states that For the purpose of Chapter XV of the Act, `demerger' in relation to companies means transfer, pursuant to scheme of arrangement by a 'demerged company' of its one or more undertakings to any 'resulting company' in such a manner as provided in section 2(19AA) of the Income Tax Act, 1961, subject to fulfilling the conditions stipulated in section 2(19AA) of the Income Tax Act and shares have been allotted by the 'resulting company' to the shareholders of the Demerged company against the transfer of assets and liabilities.[5] (2) For the purpose of the compromise in the nature of 'demerger' till the Accounting Standards is prescribed for the purpose of 'demerger', the Accounting Treatment shall be in accordance with the conditions stipulated in section 2(19AA) of the Income Tax Act, 1961 and (i) in the books of the 'demerged company':- (a) Assets and liabilities shall be transferred at the same value appearing in the books, without considering any revaluation or writing off of assets carried out during the preceding two financial years; and (b) The difference between the value of assets and liabilities shall be credited to capital reserve or debited to good will. (ii) In the books of 'resulting company':- (a) Assets and liabilities of 'demerged company' transferred shall be recorded at the same value appearing in the books of the 'demerged company' without considering any revaluation or writing off of assets carried out during the preceding two financial years; (b) Shares issued shall be credited to the share capital

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account; and (c) The excess or deficit, if any, remaining after recording the aforesaid entries shall be credited to capital reserve or debited to good will as the case may be.[1]

Under a demerger, shareholders in the parent are given 'free' shares in the subsidiary in proportion to their shareholding which then gains a stock market quote.[2] An acquisition of a business undertaking could be effected in various manners such as demerger of a business from the target, slump sale or slump exchange. In case of a typical demerger, the shareholders of the target are issued shares of the acquirer.[3] In case of a slump sale/exchange, cash is paid or securities are issued to the target itself and not to its shareholders.[4]

Demergers are included within the definition of 'compromise/arrangement'. However, the section permitting outbound mergers from India specifically talks about mergers and does not use the term 'compromise/ arrangement'.[5] However, there is an element of doubt about whether or not outbound demergers will be permitted. A cross border merger may have multiple implications, namely transfer of assets/loans, acquisition of new property, etc., which are not currently dealt with.[6] The law needs to evolve to facilitate seamless transactions. For instance, on the merger of a foreign company into an Indian company, a loan/borrowing appearing in the books of the foreign company will get transferred to the Indian company.[7] In such situations, it is unclear whether the loan/borrowing will get classified as an external commercial borrowing

(ECB) and whether the provisions with respect to eligible borrower, lender and end use would apply. In the case of a merger of an Indian company into a foreign company, where assets are taken over by the latter, suitable provisions to prescribe the procedure, terms, etc., need to be incorporated.[8] It is expected that the legislature will will issue clarifications on the SEBI Takeover Code as well to bring about uniformity in the regulatory framework.[9]

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[2] Singh, S., & Barman, A. (2016, 13 June). Tata Power acquires Welspun Energy's renewable assets for Rs 10,000 crore. The Economic Times. Retrieved from http://economictimes.indiatimes.com/industry/energy/power/tata-power-acquires-welspun-energys-renewable-assets-for-rs-10000-crore/ articleshow/52718618.cms, last accessed on 27/03/2019

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[4]https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=2ahUKEwiR_t6t-L3hAhWN7XMBHUfKDYUQFjACegQIBBAB&url=http%3A%2F%2Fvinodkothari.com%2F2017%2F04%2Fcompanies-act-now-permits-cross-border-mergers-by-meenakshi-lakshmanan%2F&usg=AOvVaw0bJhcdl9CHIvBpkNJBVgEF, last accessed on 04/04/2019

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VALUING THE SHAREHOLDERS THROUGH THE SCHEME OF DEMERGER

The undercurrent of globalization supplemented by liberalization and deregulation transformed the easygoing business climate into a tough and volatile one. While merger and acquisition is the only remedy for number of companies to create value and to grow, the others feel separating or segmenting ownership might become more advantageous.[1] To them corporate break-ups seem to be more effective and attractive to enjoy improved operating performance and better information flow to the investors because of separating financial disclosure.[2] Investors become more equipped and the companies can raise additional equity funds by boosting their valuations up and unlocking hidden shareholders' value as a sequel of demerger.[3]

Cessation of licensing era, arrival of new technological development, globalization and rapid changing economic landscape in the country made the firms mandatory to undergo certain restructuring activities to improve efficiency and overall performance.[4] At the foothill of Demerger attempt has also been made by different companies to increase shareholders' value and to give a snazzy shape to the firm in the form of demerger.[5] The demerger movement gained its strength in India when in paragraph 87 of the Union Budget 1999-2000 the then Finance Minister emphasized on demerger so that the companies can avail tax benefit and enhance shareholder's value.[6] Thus, whatever be the reason, increasing corporate control, or undoing the unsuccessful mergers and acquisitions, or family settlement, since 2000-01 Indian corporate sector has been passing through a wave of demerger too. In Indian perspective various reasons act as the driving force for the demerger to be resorted to by the companies, like - Pulling down the business risk in the fierce competitive environment that has been emerged as a consequence of liberalization and globalization or Achieving tax advantages provided under Income Tax Act or Opening a new window for resolving crisis relating to inheritance.[7]

Consequently the dawn of 21st century of this country witnessed a raft of demergers for enhancing corporate values by raising efficiency and performance.[8] In Indian context demerger is mainly driven by two reasons - splitting up as family settlement and hiving off for strategic gain. As most of the private sector companies in India are family managed, partitions among siblings cause demerger.[9] When a spin-off happens, shareholders in in the original entity automatically acquire shares in the newly created business. The original entity will also adjust the 'cost base' of their shares, and also set the cost base for the shares issued in the demerged entity.[10]

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Many analysts have looked at the performance of demerger announcements and their impact on shareholders' equity. The general belief among many analysts and observers is that a spin-off is usually beneficial to shareholders of the parent as well as the spun-off companies.[1]

Barring the two specific reasons mentioned earlier demerger is adopted by the companies with the aim of enhancing the future position and prospects of a parent and the spun-off subsidiary, and hence, focuses on reasons which are considered to be most plausible explanations for the anticipated positive effects on shareholder wealth.[2] Among the recent notable demergers taken place on this line include ITC Ltd TOMCO, Ahmedabad Advanced Mills, Godrej Soaps, Sterlite Industries, Eveready Industries, etc. Demerger is gaining momentum in India as firms in different sectors are adopting demerger as an important corporate strategy to increase value of the business and shareholders' wealth.[3] Indian two-wheeler giant Bajaj Holdings and Investment Ltd spun its two divisions off into separate companies Bajaj Auto Ltd and Bajaj Finserv Ltd so that it can increase focus on the core business of automobiles. Similarly Apollo Hospitals Enterprise separated Apollo Mumbai Hospitals through demerger.[4]

The improved business and investment prospects are waiting for the forthcoming days through demerger leaving the merger-dominated millennium-dawn far away.[5] The demerger is not limited to a sector specific strategy; rather companies from various sectors are coming forward to demerge their various divisions.[6]

If undertaken after proper analysis and with good intentions, demergers are beneficial to shareholders, both at the time of the announcement and in the following years.[7] Where the demerger is done under a scheme of arrangement under Sec. 391 to 394 of the Companies Act, there is no tax incidence either for the demerged company or for the shareholders under the Income Tax Act.[8]

Section 47 of the Income Tax Act exempts any transfer by way of conversion of bonds or debentures into shares or debentures of that company.[9] Under Section 55 where holder of capital asset being share or any other security security is allotted any additional financial asset without any payment, the amount actually paid for the original asset would be deemed to be the cost.[10] So there is no liability on mere allotment of any financial asset for 'any share or any other security.'[11]

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[2] *Supra note 36*

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CASE OF DEMERGER OF BAJAJ AUTO LIMITED

Bajaj Auto Ltd (BAL) has been demerged. Consequently, shareholders of the erstwhile Bajaj Auto Ltd. received shares of the demerged new companies as per the provisions of the demerger. In this case, Bajaj Auto Ltd. has been demerged into resulting companies the same are as follows[1]:

(a) Bajaj Auto Ltd. to focus on the auto business,

(b) Bajaj Finserv Ltd (BFSL) to focus on wind energy generation, insurance, consumer finance etc, and

(c) Bajaj Holdings & Investment Ltd (BHIL) to focus on investments and new business opportunities.

Simultaneously, the name of the erstwhile Bajaj Auto Ltd. has been changed to Bajaj Holdings & Investment Ltd, and the name of the erstwhile Bajaj Holding & Investment Ltd., i.e, the company to which the auto business has been transferred, has been changed to Bajaj Auto Ltd. The record date for the demerger is March 25, 2018[2].

Consequence of the demerger :- The existing shareholders of Bajaj Auto Ltd. will get one share each in the resulting companies for every share that they held in Bajaj Auto Ltd.

Tax impact of the demerger:- As per the Income Tax Act, a transaction of demerger per se has no tax implication on the shareholders.

Hence, when the shareholders of Bajaj Auto Ltd. are allotted the new shares in each of the three companies, there would be absolutely no tax implication whatsoever.

The tax implication will only arise when either the shares of Bajaj Auto Ltd. (now BHIL) or the shares of the new resulting companies are sold.

Tax implications when shares are sold:-

When the shares of any of the companies are sold, it would give rise to capital gains tax liability.

The three issues that arise are:

1. Whether the new shares (in the resulting companies) are long-term assets or short-term: To find out whether or not shares in the Resulting Companies are long-term or not, the holding period of the original Bajaj Auto Ltd. shares will be included in the period of holding of the new shares

2. Indexation of the capital gains: The indexation will start from the date of allotment of the new shares and not from the date of acquisition of the original Bajaj Auto Ltd. Relevance of indexation is only for working out the capital gain amount if the same has to be set off against capital loss

3. Cost of acquisition of various shares after the demerger transaction: To calculate capital gains when the shares are sold, a vital piece of information is the cost of acquisition. Your original cost of acquisition of Bajaj Auto Ltd. shares will change now on account of the demerger. Plus, there will be a new cost accorded to the new shares of the resulting companies. The Income Tax Act specifies a formula that takes into account the proportion of the net worth of Bajaj Auto Ltd. vis-à-vis the book value of the businesses transferred to arrive at the new costs of acquisition.

[1]https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&cad=rja&uact=8&ved=2ahUKEwiyn4Xgib7hAhVRjuYKHYqVAtwQFjACegQIABAC&url=https%3A%2F%2Fwww.bajajauto.com%2Fpdf%2Fdemerger_news_bajaj%2520_auto.pdf&usg=AOvVaw3keZtKJeUegwr5G4bICIrJ, last accessed on 05/04/2019

[2]https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=2ahUKEwiyn4Xgib7hAhVRjuYKHYqVAtwQFjABegQICxAF&url=https%3A%2F%2Fm.economictimes.com%2Fbajaj-auto-demerger-approved%2Farticleshow%2F2291206.cms&usg=AOvVaw00vnxqcLfT1uWyg39bf8Dm, last accessed on 2/04/2019

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Name of company	% of cost of BAL shares
Bajaj Holding & Investments Ltd.	56.5%
Bajaj Auto Ltd.	22.1%
Bajaj FinServe Ltd.	21.4%
Total	*100%*

Bajaj have summarised the net results of the above calculations as per the following table[1]-

The above table indicates the proportion in which your original cost of acquisition of Bajaj Auto shares will be apportioned to the new shares.[2]

Now let's understand all of the above in terms of an example Say, Anand had purchased 10 shares of Bajaj Auto for Rs 3,100 on January 10, 2017. Consequently, his total cost of acquisition would be Rs 31,000. Now, post the demerger, his new costs would be as below:

Share Purchased	***Share Value***
Bajaj Holding Investment Ltd. (56.5% of Rs. 31,000)	Rs. 17,515
Bajaj Auto Ltd. (22.1% of Rs. 31,000)	Rs. 6,851
Bajaj FinServe Ltd. (21.4% of Rs.31,000)	Rs. 6,634
Total	Rs 31,000

For the per share cost, just divide the above values by the number of shares. For example, Anand's new cost of acquisition of Bajaj Auto (actually BHIL on account of the change in name) post demerger would be Rs 17,515 divided by 10, which work out to Rs 1,751.50.[3]

By and large, demergers are tax-neutral if they meet certain conditions i.e., the company and its shareholders do not pay tax at the time of demerger. However, the subsequent disposal of the original shares has certain tax complications.[4]

From the investors' perspective, the law has a method to compute gains from the sale of shares of a company that has been demerged, and the shares of the company that has resulted from the demerger.[5] The factors relevant to such computations are the date of acquisition and cost of acquiring shares of the demerging company and the new company. The date of purchase of shares in the demerging (original) company should also be the date of purchase of shares of the new company. The cost of acquisition of the demerging company and the new company should be computed by applying the ratio of total assets (or net worth) and the assets transferred from the demerging company to the new company.[6]

DEMERGER AS A STATEGY TO FOCUS ON CORE GOAL OF THE COMPANY

Demerger, by whatever name it is called – split-up, split-off or spin-off, intends to trim size to sharpen company's core competency for growth and efficiency.[7] The rationale behind demerger is to unlock the

[1] Supra note 48

[2] https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=8&cad=rja&uact=8&ved=2ahUKEwiyn4Xgib7hAhVRjuYKHYqVAtwQFjAHegQIBRAB&url=http%3A%2F%2Fshodhganga.inflibnet.ac.in%2Fjspui%2Fbitstream%2F10603%2F136739%2F12%2F12_chapter5.pdf&usg=AOvVaw1Xank8yvKL2Ib7uOqeMyn4, last accessed on 30/03/2019

[3] https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=12&cad=rja&uact=8&ved=2ahUKEwiyn4Xgib7hAhVRjuYKHYqVAtwQFjALegQIBxAB&url=https%3A%2F%2Fwww.livemint.com%2FCompanies%2FTAw6n7iFiHEGTRRtxLQ3II%2FRestructuring-over-two-Bajaj-companies-to-be-listed-today.html&usg=AOvVaw2mYEuEsunIRIE9nEgRtG07, last accessed on 31/03/2019

[4] https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=7&cad=rja&uact=8&ved=2ahUKEwiyn4Xgib7hAhVRjuYKHYqVAtwQFjAGegQIARAB&url=https%3A%2F%2Fm.economictimes.com%2Fbajaj-auto-demerger-approved%2Farticleshow%2F2291206.cms&usg=AOvVaw00vnxqcLfT1uWyg39bf8Dm, last accessed on 06/04/2019

[5] Supra note 50

[6] Supra note 39

[7] https://books.google.co.in/books?id=xV 9CQAAQBAJ&pg=PA50&lpg=PA50&dq=Demerger,+by+whatever+name+it+is+called+%E2%80%93+split-

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potential of business organizations to create and preserve shareholder value. Enhancing efficiency of an underperforming asset separation helps management concentrate with increasing focus on core competencies and business.[1] The hope comes with its real blooming since demerger, as a strategy, works toward excelling the performance of companies in their long run drive to enhance value at both ends of tunnel.[2] To become world class the organizations adopt separation strategy as a first choice rather than a last resort reaction to the consequences.[3]

The demerger of a group brings greater investor focus on to the subsidiary company and its potential becomes clearly defined.[4] Most of the parent companies does not enjoy any positive synergy between them and their subsidiaries, neither their size bring them a competitive edge over other players in the market.[5] At this point of time a demerger can work as a miracle for both the parent and subsidiary company, their negative synergy and diseconomies of scale can be eliminated. Still then a demerger has plenty of reasons, which can be categorized[6]-

- **To raise additional equity**: Demerger as a corporate restructuring technique, which involves the separation of business unit or subsidiary from the parent can help a company to raise additional equity funds from the market.
- **Financial Performance Improvement**: From an organizational point of view, demerger allows to increase management focus on their core area, elimination of misfits in the strategic focus, which helps the organization to improve their financial performance.
- **Reduce Internal Competition**: Also separating a subsidiary from its parent can reduce internal competition for corporate funds. For investors, that’s great news it curbs the kind of negative internal wrangling that can compromise the unity and productivity of a company.
- **Corporate Governance Improvements**: Value creation through improvements in the role and function of the head office, improvements in the structuring of managerial incentives and more effective market based governance mechanisms due to increased transparency.
- **Dismantling of Conglomerates**: Generally a big conglomerate carrying out dissimilar business activities may likely transfer one or more of its existing activities to a new company to achieve objectives like removing inefficient organizational structures, elimination of negative synergies.

The companies, trimming size through demerger anticipate the benefits of restructuring by outperforming the market indexes focusing more on core competency and sharpening the competitive edge.[7] To improve

up,+split-off+or+spin-off,+intends+to+trim+size+to+sharpen+company%E2%80%99s+core+competency+for+growth+and+efficiency.&source=bl&ots=tNuOIIvwRI&sig=ACfU3U0HV5qUXbGdCsoLDA0os7WESs7niw&hl=en&sa=X&ved=2ahUKEwi9nJCCib7hAhVc6XMBHap5AxwQ6AEwAHoECAoQAQ, last accessed on 29/03/2019

[1]https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=2ahUKEwi9nJCCib7hAhVc6XMBHap5AxwQFjABegQIBBAB&url=https%3A%2F%2Fkeydifferences.com%2Fdifference-between-spin-off-and-split-off.html&usg=AOvVaw3iUzGrDhixNTRQ5oOdPL4x, last accessed on 2/04/2019

[2] Mandelker, G. (1974), “Risk and Return: The Case of Merging Firms”, Journal of Financial Economics, Vol. 4, Pp 303-335.

[3] Markham, J. W. (1955), “Survey of Evidence and Findings on Mergers”, Business Concentration and Price Policy, National Bureau of Economic Research, Princeton, N. J., Princeton University Press.

[4] Mahmood, W. and Mohammad, R. (2007), “Does Operating Performance Really Improve Following Mergers? The Case of Malaysian Banks”, The ICFAI University Journal of Mergers & Acquisitions, Vol. 1, Pp 69-78

[5]https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&cad=rja&uact=8&ved=2ahUKEwjTvJ3Fgr7hAhUL_XMBHZh_DPIQFjAEegQIARAC&url=http%3A%2F%2Fetheses.lse.ac.uk%2F1502%2F1%2FU111809.pdf&usg=AOvVaw15Qf9Lij_Oi5D0H6NdDEDb, last accessed on 26/03/2019

[6]https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=2ahUKEwjTvJ3Fgr7hAhUL_XMBHZh_DPIQFjAAegQIBBAB&url=https%3A%2F%2Fpapers.ssrn.com%2Fsol3%2FDelivery.cfm%2FSSRN_ID2782754_code1595499.pdf%3Fabstractid%3D2782754%26mirid%3D1&usg=AOvVaw0dkCVazveAtJQPJHhoDOKM, last accessed on 3/04/2019

[7] Supra note 48

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efficiency, company should focus on cost and asset reduction as well as revenue generation.MCost reductions can be achieved through redundancies, leasing instead of buying, reduced employee training etc, while asset reduction means to sell any asset which is not of major importance for the firm's operations.[1]

Presently demerger is given a standing ovation by the companies since it comprises a set of reasons stated below that serve as drivers to achieve organizational excellence[2]-

 Improving the overall organizational effectiveness and capabilities;

 exploring the possible opportunities more efficiently;

 transforming operational environment by internal restructuring of the organization;

 Increasing operating efficiency resorting to strategic adjustment;

 Strengthening control on the corporate activities; and

 Enhancing value of the organization and in turn of the shareholders

Theoretically claimed reasons in favour of corporate restructuring are synergies, economies of scale, expansion of business operations and cost reduction leading to an enhanced market share with a hope of increased value of the shareholders

Corporate restructuring, though criticized as merely a rearrangement of deck chairs on the Titanic, is fuelled no doubt by the globally based consultancies to reach a new height with a whole host of strategic options – expansion, contraction, corporate control and changes in ownership structure.[3] Expressively the purpose of demerger is to revive a company's flagging commercial fortune, or simply to lift its share price. Different mechanism shedding the business off through demerger takes place with a number of motivations like[4] –

- **Improving Performance**– The accountability created by restructuring through demerger often improves performance, and investors also get benefit from the greater visibility of the demerged entities as concentration in the core competency sharpens company's competitive edge.
- **Booming Independence** – Demerger is intended to promote independence as the separated company can operate freely at its own discretion. Often the function of this kind of restructuring is to move assets to those who can utilize them more effectively and efficiently resulting to their highest valued uses.
- **Increasing Value** – Demerger represents harvesting of value by unlocking the hidden value of the firm. By making financial and managerial resources available and concentrating on the core competency the firm is able to enhance shareholders' value as well as value of the firm.

[1]https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=6&cad=rja&uact=8&ved=2ahUKEwjxhaqz-73hAhXp63MBHa16C5UQFjAFegQIAhAB&url=https%3A%2F%2Fwww.academia.edu%2F12162249%2FDEMERGERS_A_FORM_OF_CORPORATE_RESTRUCTURING&usg=AOvVaw0Nr9F8-Sy_yIUINw15Lrrv, last accessed on 05/04/2019

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[4]https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&cad=rja&uact=8&ved=2ahUKEwjxhaqz-73hAhXp63MBHa16C5UQFjABegQIBRAB&url=https%3A%2F%2Fm.economictimes.com%2Fplanned-demergers-can-be-good-for-shareholders%2Farticleshow%2F2644326.cms&usg=AOvVaw3JI0WIKBDUD_yjurT-kbB-, last accessed on 28/03/2019

CONCLUSION

With the detailed yet limited in certain aspects, it could be said that demerger helps in the value creation of the shareholders in Indian context and that demergers are not uncommon phenomena in Indian companies. Several companies across sectors and irrespective of size and scale of business have opted for demergers. Apparently, most demergers take place with a rationale of focusing on core business or develop a new business segment. Also, the associated benefits of conducting a demerger are introduced from a financial point of view which includes economic value added, market value added and shareholders' value added. By making financial and managerial resources available and concentrating on the core competency the firm is able to enhance shareholders' value of the firms with which the study has come out with significant findings having important policy implications for improving the performance of demerged companies. In Indian context demerger activities came into existence only after 1999 due to governmental support given in the Union Budget of 1999-2000. So, the response from Indian corporate entities was not according to the expectation and as a result the number of demerger activities undertaken by Indian companies is also very less compared to other developed countries. It could be concluded that demerger is not a panacea for the companies whose businesses suffer any deficiency in financial performance but with the proper planning process, good future prospects for an improvement of performance after demerger can be anticipated.

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M&A'S ARE STRATEGIC & COMPETITIVE ROUTE TO GLOBAL BIG BUSINESS TRIUMPH: WSR TO TATA GROUP

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Abstract

Tata, a highly branched corporate cluster from India, is well known for their corporate policy of merger & acquisition in India as well as abroad. Tata conglomerate comprising nearly hundred corporations working in seven industrial sectors i.e. the steel sector, services sector like Hospitality, Telecommunications, Infrastructure, Tea estates, Automobiles, Information Technology, Pharmaceutical & Chemicals and Engineering. Tata is India's chief cluster of companies on a long two decade acquisition fling has become one of the prime global brands, according to a UK-based self-regulating consultancy firm. Valued at USD 11.4 billion, Tata Group has been placed as 57th amid top hundred brands listed as per Brand Finance, an autonomous company focused on the valuation & management of brands across globe.

With such a wide dome under its wings and being the first family of corporate India, the researchers feel it is pertinent to do in detail case studies in the Tata Group mergers and acquisitions deals so far. Majority of the high-flying acquisitions taken place in the last two decades clearly bring out that the acquired brand is playing an essential role in enhancing the brand equity as well as brand reach and aspirational aspect. This inspires Tata Group to opt for these prominent global acquisitions. The effort here is to comprehend the objectives of acquisition, to find out whether the objectives have been met also to further study the market implications of the acquisition in terms of brand enhancement and spread of the brand. As mentioned in the research methodology, case based research is particularly useful in context of the acquired companies or brands, as each of the acquisition brand case is distinctive and purpose of each acquiring organization have diverse, all depending upon the Tata vision and strategic move.

Keywords: Strategic Advantage, Competitive Advantage, Brand Equity, Merger, Acquisition, Acquired Brand

Introduction

Corporate world has seen the upsurge of merger, acquisitions and takeovers emerge as a prime force in the business environment in an era. The same has been the case of corporate growth in India also, there has been a significant impact after the liberalization of Indian economy in 1991. Mergers and acquisitions have come up as one of the most relevant and trustworthy methods of corporate restructuring, and became an integral part of the long-term trade strategy of corporates in India. The objectives at the back any M&A transaction were found to be:

1. Improving Profitability
2. Rapid growth in scale and closer time to market
3. Strong and fast Brand presence in new market
4. Acquirement of new technology

A huge number of corporates in India would be jealous of the Tata Group's strategy around mergers and acquisition. Past few years have seen the Tata Group make 35 overseas acquisitions, including coal and iron ore mines, adding up Rs 78,000 crore, mostly in the past 3 years. Tata, a highly branched corporate cluster from India, is well known for their corporate policy of merger & acquisition in India as well as abroad. Tata conglomerate comprising nearly hundred corporations working in seven industrial sectors i.e. the steel sector, services sector like Hospitality, Telecommunications, Infrastructure, Tea estates, Automobiles, Information Technology, Pharmaceutical & Chemicals and Engineering. Tata is India's chief cluster of companies on a long two decade acquisition fling and has become one of the prime global brands, according to a UK-based self-regulating consultancy firm. Valued at USD 11.4 billion, Tata Group has been placed as 57th amid top hundred brands listed as per Brand Finance, an autonomous company focused on the valuation & management of brands across globe. The mergers and acquisitions done by the Tata's globally have been the main reason behind these leaps and improved global presence. The relevance and importance of the strategy of mergers and acquisition can be well understood from the cases of Tata group of companies.

Research Problem

To scrutinize the outcome of going global by Tata group via mergers and acquisitions and the effect on Tata's long term and short term valuation changes. This would abet in studying the impact on companies financials past the merger or acquisition. To also conclude on the Tata enterprise value of the corporation by comparing it with the peer group and studying the value of the firm

Research Methodology

The research methodology, case based research is particularly useful in context of the acquired companies or brands, as each of the acquisition brand case is distinctive and purpose of each acquiring organization have diverse, all depending upon the Tata vision and strategic move.

Objectives

1. To study major M&A's by Tata Group
2. To understand the major outcomes post M&A's
3. To ascertain the strategic advantage gained by these M&A's

Limitations of the Study

This study uses case based approach hence does not give quantitative situation analysis of each of these M&A's by Tata. It's more a qualitative understanding of the overall outcomes of these major M&A's . Also exhaustive study has not been done so the paper compiles limited mergers and acquisitions done by the group.

Review of Literature

Case One: British Salt [Country: UK, Year: 2011, Worth: ₹650 Crore]

Tata Chemical's UK subsidiary, Brunner Mond, had inked an agreement to acquire British Salt Ltd for 93 million pounds (about Rs 656.48 crore). The acquisition was financed entirely through debt, with no recourse to TCL. Pure dried vacuum salt manufacturer British Salt owns brine wells in the UK with a residual life of 50 years and is also active in the gas storage business, reported PTI.

Case Two: Jaguar and Land Rover [Country: America, Year: 2008, Worth: $2.3 Billion]

Tata Motors entered the luxury car and truck business after it took over Ford Motor Company's Jaguar and Land Rover brands for $2.3 billion in 2008. Commenting on the accquisition, Mr. Tata said, "This is a momentous time for all of us at Tata Motors. Jaguar and Land Rover are two iconic British brands with worldwide growth prospects. We are looking forward to extending our full support to the Jaguar Land Rover team to realise their competitive potential. Jaguar Land Rover will retain their distinctive identities and continue to pursue their respective business plans as before."

Case Three: Corus [Country: Europe, Year: 2007, Worth: $12.04 Billion]

World's third largest producer of steel, Corus Group, was acquired by Tata Steel in 2007 for 100 percent stake of Corus Group for $12.04 billion. Tata Group changed the name of the company to Tata Steel Europe in 2010 and also adopted the logo. The acquisition uplifted the rank of Tata steel among the top 5 steel manufacturers in the world. The Economic Times & India Times reported that, "Tata's acquisition of Corus has not only created a new steel giant, but also because this deal was a private sector venture far from Indian government influence making an impact on global front."

Case Four: Brunner Mond Group [Country: UK, Year: 2006, Worth: ₹508 Crore]

The Brunner Mond Group manufactures soda ash and sodium bicarbonate and has manufacturing locations in three countries, UK, Netherlands and Kenya. Brunner Mond Group's 63.5 per cent stake was acquired by Tata Chemicals in 2006 for ₹508 crore.

Case Five: Ritz-Carlton Hotel [Country: Boston, Year: 2006, Worth: $170 Million]

The Indian Hotels Company Limited (IHCL), popularly known as Taj Hotels Resorts and Palaces, has its headquarters in the Oxford House in Mumbai and is an important part of Tata Group. The chain is considered as one of the most posh hotels in the country and carries a legecy. The Boston based Ritz-Carlton Hotel was also acquired by Taj in 2006 for $170 million from it's then owners, Millennium Partners. After the acquisition the hotel was renamed as Taj Boston.

Case Six: Tyco Global Network [Country: U.S., Year: 2005, Worth: $130 Million]

Acquisition of the U.S. based Tyco Global Network by Tata Motors in 2005 made them one of the world's largest providers of submarine cable bandwidth. N Srinath, head of operations of VSNL said, "This acquisition is another positive step in our ongoing drive to offer global connectivity and efficient communications solutions for our customers." He further added that the acquisition confirms Tata's position as a leading global service provider and the unchallenged leader.

Case Seven: **NatSteel** [Country: Singapore, Year: 2005, Worth: $365 Million]
In August 2004, Tata Steel acquired NatSteel, the Singapore-based steel manufacturer's operational arm, for $486.4 million in cash. The acquisition was completed in February 2005. The acquisition provided Tata Steel a proper kickoff in key Asian growth markets.

Case Eight: Daewoo Motors [Country: South Korea**,** Year: 2004**,** Worth: $102 Million.]
Tata Motors acquired South Korea based Daewoo Motors for approximately $102 million in the year 2004. After the acquisition Mr Ratan Tata said, "This is a major step for Tata Motors and a milestone for the group in its quest for globalization. I am confident that both companies will derive considerable benefits from this arrangement," reported Business Line.

Case Nine: Tetley Group [Country: UK, Year: 2000, Worth: $450 Million]
During the 1990s West Bengal headquartered Tata Tea decided to extend the brand globally. In 1992 it formed an export joint venture with Britain's Tetley Tea. In 2000 Tata Tea took over UK based Tetley Tea for a £271 million.

Conclusion
This study was undertaken to gain an understanding of the overall outcomes of these major mergers, acquisitions and takeovers by the Tata group world-over. The general analysis of pre- and post-merger market brand standing showed that there was a significant impact of mergers, for different industrial sectors in India and abroad. The type of industry has been making remarkable difference to the post-merger performance of acquiring firms and leading to difference in the overall brand reputation.

Expansion through mergers and acquisition is one of the best ways for any domestic company to step outside the shores of their country and not only India, in an international market place and acquit itself as a global player. Company can turn into conglomerate in reasonably less time by capitalizing on its strengths of efficiency and effectiveness by acquiring relatively poor performing companies as TATA did in almost all its group of companies. In case of Tata Motors, the Jaguar and Land Rover brands helped it sustain in the market when the domestic market had slumped due to recession. In case of Tata Steel, the acquisition mainly helped them to sustain and gain a higher position when the scenario for the entire steel industry looked bleak. For both Tata Motors and Tata Steel the brands acquired by them were strong brands having a global presence. The acquisition helped both the Tata organizations to increase and expand their markets in terms of Geographical spread.

We can say that the brand equity of the acquired brand when leveraged properly does help the acquiring brand resulting in beneficial marketing implications. (revenues, sales volume).Recent examples of companies which adopted similar pattern of expansion are Renuka Sugars, Arcelor Mittal, Reliance, Essar Group, Aditya Birla Group, etc. One can study any of the above mentioned company and conclude that the key underlying decision of these companies expanding quickly and efficiently is their timely decision of merging and acquiring appropriate companies.

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RELATIONSHIP BETWEEN MERGER, ACQUISITIONS AND COMPETITION LAW

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ABSTRACT

Mergers and acquisitions are regular and necessary phenomena of the business world and is the bone of contention with respect to the competition law which is studied in this very paper. Mergers and acquisitions have their own advantages such as they help to achieve economies of scale, operating efficiencies, management efficiencies. Mergers and Acquisitions are the modes of corporate restructuring and the synergy is the foremost incentive for it. Synergy is generated by strategic integration of two entities ensuing economies of scale, cost cutting, spreading risk, tax sops, elimination of competition, gaining access to new technology and expanding product of service offerings etc.

Mergers and acquisition are methods of corporate expansion. However there is a continuous debate on the subject matter with respect to competition in the market. There are two sets of arguments one is that mergers increase power of reducing competition or swallowing the business competitor, this type of merger is known as horizontal merger. Merger also increases bargaining power of a company. However other argues that mergers and acquisitions are integrations which help companies in diversification of business areas and exploring new vistas in new sectors etc. Therefore an effort has been made to analyze mergers and acquisition as to whether there are adverse effects of corporate mergers and acquisitions, which leads to monopolies and to what extent mergers and acquisitions should be controlled and its interplay with the competition law in India i.e. how and to what extent Indian Competition Law helps in striking a balance between corporate consolidation and protection of economic interests of the society.

In nutshell it is aimed to find advantages and disadvantages of mergers and acquisition with respect to competition in the market and whether competition law plays a complementary role in the process of corporate consolidation. Mergers and acquisition are advantages for the organization as a tool of corporate restructuring and for the market also, and competition law plays a complimentary role in the furtherance of merger and acquisition and does not unnecessarily act as an impediment in the way of mergers and acquisition.

INTRODUCTION

Mergers & Acquisitions (combinations) mean any situation in which the ownership of two or more enterprises is joined together. In business world joining of ownership may take many different forms, and may be either amicable and consensual, or unwelcome and hostile. In India Mergers are regulated under the Companies Act and also under the SEBI Act. With the enactment of the Competition Act in 2002, mergers also come within the ambit of this legislation. Does it not appear that too much of legislations on one topic? It does appear so yet there is necessity for having different legislations to regulate mergers differently. In the Companies Act mergers between companies inter alia essentially tries to protect the interests of the secured creditors and in the SEBI Act it tries to protect the interests of the investors. Apart from protecting the interests of private parties, the objective of them is different or mutually exclusive. In the Competition Act the objective is much broader. It aims at protecting the appreciable adverse effect on trade-related competition in the relevant market in India (AAEC).

Let us consider an illustration. Air India and Indian (erstwhile Indian Airlines) have combined. Consequent upon that, the market share of the combined entity has increased considerably. The enhanced market share may cause:

i) barriers to entry to other competitors; (competitors may not have market to trade)

ii) rise in passenger fares;

iii) poor quality of service

On the contrary, it may not cause any concern at all if we look at the following factual issues: i) passengers have wider choice (Jet Airways, Spicejet, Kingfisher, Air Deccan, Indigo, Go Air, foreign airlines etc.); ii) with wider choice, the combined entity may not be able to create entry barriers; iii) in order to maintain an optimal passenger base (for successful and viable business venture) the combined entity may have to provide competitive level price for tickets and maintain highest or at least similar levels of quality of services that its competitors would extend. So, in Companies Act and SEBI Act, though both are mutually exclusive yet aim to protect the interests of private individuals. Whereas, in the Competition Act, the impact of combinations

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directly affects the market and the players in the market including the consumers. We may, therefore, safely say that apart from the fact that all these legislations are mutually exclusive, the Companies Act and the SEBI Act are the sub-sets of Competition Act in so far as legal scrutiny of mergers are concerned.

Background and Evolution of Competition Law in India

Monopoly imposes heavy costs in every society. It is a conspiracy against the public to raise prices. It hates competition because competition lowers prices to a level which is fair, honest and earned under competitive environment. Adam Smith spoke of 'the wretched spirit of monopoly', the 'mean rapacity, the monopolising spirit' in which 'the oppression of the poor must establish the monopoly of rich.' Monopoly is exercised through market shares gained by buying up or bullying the present competitors out of, and the potential from, the market. The purpose is to earn maximum profit at the cost of consumers and rival competitors, more than the natural profit which the fair and free competition endures. It also destroys efficiency and discourages innovation. On the other hand, competition enhances consumer choice and promotes competitive prices, with the result society as a whole benefits from the best possible allocation of resources. That's why most countries in the world have enacted competition laws to protect there free market economies-an economic system in which the allocation of resources is determined solely by supply and demand.

The competition law of India was previously contained in the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act). This Act was formed as a result of 'command and control' policies adopted by Indian government after independence. The government intervention and control pervaded almost all areas of economic activity in the country as India followed the strategy of planned economic development. The companies needed license for everything from setting up an industrial understanding, to its expansion or layoff of workers and closing it down. The era was also known as 'License-Raj.' The out come of the 'License-Raj' system was restriction of freedom to entry into industry which ultimately resulted in concentration of power into few individuals or groups.5 Thus, MRTP Act came into existence in 1969 to control such monopolies. The word 'socialist' in the Preamble to the Constitution of India has been embodied with a high object. The principal aim of a socialist state is to eliminate inequality in income, status and standard of life.6 The genesis of this Act is traceable to the Preamble of our Constitution and Article 38 and 39 of the Directive Principles of State Policy.

MERGERS UNDER THE COMPETITION ACT

The term Merger has been used broadly in the competition act as to include amalgamation and acquisition of shares and control over the assets and the voting rights of an enterprise. Merger is a kind of event which brings tremendous change in the management of the affairs of one enterprise by another enterprise. Through merger one enterprise is entitled to exercise control over the significant part of the assets and the decision making power of the other enterprise. Merger is an ordinary activity which takes place between the business entities in order to expand their business. Merger is considered to be a significant activity for the enterprise as it provides the enterprises to run their business on a large scale.

But there are certain mergers which are considered detrimental and adversely affect the competition. The most negative impact of merger is that it leads to the reduction of competition in the market by reducing the number of entities in the market. Merger between entities also leads to the increase in price of the goods and services which prejudicially affects the interest of consumers as the merged enterprises exercises full control over the market and restrain the entry of new players in the market which confers on them the advantage of limiting the output and restricting market access.

Kinds of Merger

Ø Horizontal merger –This type of merger takes place between the enterprises that are engaged in the trading of similar goods and services. It mainly takes place to improve the market share and to carry out the operations of the enterprises on a large scale. This kind of merger has an adverse affect on the competition as it creates collaboration between the enterprises pertaining to pricing of the good and limiting the output.
Ø Vertical Merger -Vertical merger is a kind of merger in which enterprises are engaged in different stages or levels of production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services.

Ø Conglomerate Merger - Conglomerate merger is a kind of merger where two enterprises that merge together are involved in different kind of business. The significance of conglomerate merger is that it helps the merging companies to enhance their activities and strengthen their financial position. There are two kinds of conglomerate merger, the first one is known as pure conglomerate merger which basically takes place between the companies who are doing business which is not related to each other. The other kind of conglomerate

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merger is known as mixed merger which is a kind of merger in which the main object of the enterprises are to expand their business and to gain market access and to increase the range of their products.

REASON BEHIND MERGERS AND ACQUISITIONS

In the recent years mergers between the enterprises has rapidly increased. The point listed below discusses the main reason behind increased mergers taking place

i) Market share- Companies amalgamate to reduce competition and to gain dominant position in the market. The increase in the market share helps the enterprises in exercising their will and limiting the production and increasing the prices.

ii) Large economy- One of the most important significance of merger is that the scales of the business entities are enlarged and they carry operations on a large scale which in turn leads to the generation of huge amount of revenue.

iii) Diversification- Diversification leads to the increase in the trust of the consumers as diversification yields fruitful earnings for the companies.

iv) Tax consequences- Companies amalgamate to evade tax. So it is one of the major factors which are considered while granting the order to merge as tax evasion creates loss of revenue to the government and prejudicially affects the economic development of the country

MERGER CONTROL IN INDIA

Though the competition act came into force in the year 2003 but the provisions pertaining to anti-competitive agreements, abuse of dominant position came into effect in the year 2009. In the year 2011 proposal for the amendment to the provisions to the merger control was made by cci after consulting law firms, business entities and the stake holders.

In India Merger as a part of the combinations has been defined in section 5 of the competition act and the provisions relating to the regulation of the combination is defined in section 6 of the Act. Merger is an ordinary practice in the business world. It has several advantages like increasing efficiency and economy but there are several detrimental effects of merger. The effects are so severe that there was need felt to control merger. Any merger is considered to be prejudicial if it causes “Appreciable Adverse Effect” on competition. The term appreciable adverse effect has not been defined in the Competition act but any kind of merger having this effect is prohibited under the competition act. Section 20(4) of the Competition Act, 2002 provides the substantive test whether the combination has or is likely to have ―appreciable adverse effect on combination -. The substantive test encompasses examination of certain factors incorporated in the above section.

SOME OF THE FACTORS ARE

a) Restraining entry of new players in the market
b) Advantage of the combination to the economy of the country

c) Extent of elimination of competition from the market.

d) The availability of substitutes in the market.

e) Whether the benefits of combination outweighs the adverse effect on competition.

ANALYSIS OF THE ROLE OF COMPETITION COMMISSION

Competition commission of India is a significant body of the Government of India. It is accountable for the enforcement of the competition act, 2002. Competition Commission plays an imperative role in preventing adverse effect on competition in India. Competition commission acts as a market regulator of all the sectors and primarily draws focus on curbing the anti-competitive practices which is detrimental to the competition. Competition Commission of Indiais empowered to take cognizance of the anti-competitive practices prevailing in the Indian market. The Competition commission was established on 14 October and came into effect on May 2009.

DUTIES OF COMPETITION COMMISSION

Competition commission has been entrusted with several duties under the competition act 2002. The primary duties of the competition commission are:

- To eliminate practices having appreciable adverse affect on competition
- To maintain competition in the market.

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- To promote freedom of trade and eliminate any constraints in the entry in the market. To protect the interest of the consumers and to eliminate all the practices prejudicially affecting the interest of the consumers.

  To persuade new entities to enter in the market for producing better quality of good and delivering better services. Competition commission is also required to give its opinions on vital matters affecting competition or any reference made to it by the statutory authority.

- It is also the duty of the competition commission to create consciousness among the public and impart training facilities on competition issues

Section 18 of the competition act deals with the duties of the competition commission of India.

CONCLUSION

Combinations whether in the form of mergers, amalgamations or acquisitions are very important for a developing country like India. They provide numerous advantages to an economy like India in the form of diversification of business, increased synergy, accelerated growth, tax benefits, improved profitability etc. They enable foreign collaboration through cross-border mergers and enable companies to withstand global competition. But on the other hand, they may lead to monopoly or create barriers to entry and similar anti-competitive practices. Therefore, they need regulation. The need to swiftly permit such mergers which are beneficial to the economy and prohibit anticompetitive ones has led to the formulation of merger control regime all over the world. In India, mergers were regulated under the MRTP Act, 1969. But the Act had become obsolete in the light of international economic developments and was replaced by the Competition Act, 2002. The provisions relating to combinations came into force recently on 1 June 2011. The CCI also notified the implementing combination regulations effective from the same date.

The Act and the Regulations together constitute the merger control regime. The gradual succession from the MRTP Act to Competition Act is one of the most important milestones as far as economic reforms in the field of competition law in the country are concerned. By shifting the focus from the stage of merely ‘curbing monopolies’ in the domestic market to ‘promoting competition’ the competition regime in India has attained recognition for its progressive ways. It provides for pre-merger notification, review and remedies in the form of modifications which if applied effectively can play a crucial role in regulating mergers. The merger control provisions are designed in such a way to prevent mergers that are likely to have an appreciable adverse impact on competition.

With the FDI policies becoming more liberalized, Mergers, Acquisitions and alliance talks are heating up in India and are growing with an ever increasing cadence. They are no more limited to one particular type of business. The list of past and anticipated mergers covers every size and variety of business -- mergers are on the increase over the whole marketplace, providing platforms for the small companies being acquired by bigger ones. The basic reason behind mergers and acquisitions is that organizations merge and form a single entity to achieve economies of scale, widen their reach, acquire strategic skills, and gain competitive advantage. In simple terminology, mergers are considered as an important tool by companies for purpose of expanding their operation and increasing their profits, which in façade depends on the kind of companies being merged. Indian markets have witnessed burgeoning trend in mergers which may be due to business consolidation by large industrial houses, consolidation of business by multinationals operating in India, increasing competition against imports and acquisition activities. Therefore, it is ripe time for business houses and corporates to watch the Indian market, and grab the opportunity.

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- The areas of concern in Competition Act and the combination Regulations have been highlighted in the topic 'Suggestions for Amendments in Competition Law'.

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MARKET FOR CORPORATE CONTROL IN INDIA - AN EMPIRICAL ANALYSIS

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ABSTRACT

Hostile takeovers are not visible in the Indian jurisdiction due to various reasons peculiar in the Indian corporations such as concentrated shareholding pattern, passivity of the institutional investors, presence of protectionist policies to name a few. The researcher will analyze the legal and regulatory barriers along with presence of invisible barriers to hostile takeovers in India. The researcher conceptualises around the utility of takeover defences in India to avoid such takeovers.

This paper argues that in practice the theory of market for corporate control has performed less than optimum in the Indian context as Indian companies are characterized with a concentrated shareholding pattern in which the promoters or promoter groups have the clout to prevent any takeover bid and this is further empirically analyzed in this paper.

Keywords: Hostile mergers and acquisitions, concentrated shareholding, institutional shareholders, legal barriers.

I. PUTTING THE DEBATE TO CONTEXT

According to the monumental work of *Berle and Means* which highlighted separation of ownership and management has given rise to various agency costs. The agency costs are of three kinds, the one between shareholders and managers, between minority and controlling shareholders and the one between outsiders (stakeholders) and Insiders (Managers and Shareholders).

In the context of Market for corporate control, the agency cost which is most pertinent is between minority (Principle) and the controlling shareholders (Agent). Till mid 90s the concept of merger was seen from the lens of competition aspects, but the seminal work of Manne changed the view from antitrust perspective to that of shareholder (consumers) protection and efficient working of the management of a corporation.

Manne was of the view that mergers and takeovers should provide for an exit opportunity to the minority shareholders and the concept of hostile takeovers should be seen as a mechanism to ensure an efficient management of the company affairs. The theory of Market for Corporate control focussed on a market driven system of checks and balances on the discretionary powers held by the management which gets abused in the name of advancing the cause of shareholder welfare.

The principle determinant of an efficient management as mentioned by various economists and jurists was the share price of the corporation, but for an efficient determination of the share prices a robust stock market was needed.

In the western world, the market for corporate control is robust because of scattered shareholding pattern and in the Indian context the market has a negligible impact on the industry because of concentrated shareholding pattern peculiar to the country. The market in India works on ‘relationship’ as compared to the Wall Street that was built on ‘sharks’.

The ownership structure coupled with the relationship of trust and confidence (RETAC) among the key market players or the corporations is one of the prime reasons for the failure of Market for Corporate Control in India.

The paper will now examine the empirical data for proving that the promoters and the institutional investors are hand in glove when it comes to India and thus the possibility of a hostile takeover is very difficult. The data analyzed by Prof. Umakanth and SEBI data in Table 1 clearly manifests that the motive behind most offers was consolidation of holdings and not Change of Control. Almost none of the offers are intended to flip the control in the corporation.

Table-1: Source: Handbook of Statistics SEBI 2017

Year	Open Offers							
	Change in Control of Management		Consolidation of Holdings		Substantial Acquisition		Total	
	No.	Amount(in crores)	No.	Amount(in crores)	No.	Amount(in crores)	No.	Amount(in crores)

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2015-2016	61	6866	6	2847	6	2050	73	11763
Apr 2016-Dec 2016	30	5064	4	78	2	360	36	5502
Jan2017-Dec2017	47	1762	3	39	5	227	55	2028
Aggregate for the Period	138	13692	13	2964	13	2637	164	19293

II. MANDATORY OPEN OFFER RULE: INDIAN TAKEOVER CODE ON EXIT OPPORTUNITY

The Takeover Code provides for two thresholds which trigger the Mandatory Bid Rule (MBR) in India. First, when an acquirer has bought shares or voting rights as a result of which the acquirer is in a position to have 25% or more voting rights in the target company. Second, when an acquirer already has 25% or more shares till the upper limit of 75%, has acquired more than 5% in each financial year. Third, when the acquirer gets 'Control' in the target corporation regardless of its shareholding or voting rights in the target corporation.

CONUNDRUM OF CORPORATE 'CONTROL'

The purview of Indian Takeover Code when it comes to encompass even the indirect acquisitions in a corporation, regardless of the jurisdiction in which the shift of control takes place triggers the Mandatory open offer threshold. This could have a substantial chilling effect on investors who are not interested neither in running the day to day affairs of the company nor are willing to shell out big money to give a mandatory offer.

Subhkam Ventures Case, the Securities Appellate Tribunal held that the right to nominate one member to the board or a say in few decisions of the board does not give control over the target. But the Supreme Court on appeal by SEBI held that the order of the tribunal should not be considered as a precedent. The Court also mentioned that this is an open question of law. Thus, ultimate authority still lies with SEBI on the issue of control.

III. NATURE OF OFFER (IS INDIAN LAW TOO RIGID?): (MINUS POINT)

The judicial pronouncements by courts and decisions of statutory authorities in India are against the general global trend when it comes to withdrawal of offer has been strict till date. This leaves little room for the investors who may be willing to withdraw any prior offer on various grounds like commercial viability, delay in acquiring statutory permissions and others.

The Supreme Court in both *Nirma Industries Case* on the basis of fraud and *Akshya Infrastructure Case* on the ground of delay in acquiring statutory permissions rejected the request for withdrawal application of the acquirer; similarly Securities Appellate Tribunal rejected the withdrawal application in *Pramod Jain Case* filed on similar ground as that in *Akshya Infrastructure case,* which is delay in acquiring statutory permissions and commercial viability because the tribunal was bound to follow the precedent of Apex Court.

III. PARTIAL OFFER IN INDIA: REALITY OF BUSINESS VERSUS EXIT OPPORTUNITY: (PLUS POINT)

In the Indian corporate arena, the company who is the acquirer will have to mandatorily give an exit opportunity via mandatory open offer to at least 26% of shareholders as has been enshrined under the Takeover Regulations, 2011. This threshold should act as a facilitator for the acquirers because in other jurisdictions the exit opportunity has to be made available to all other shareholders and not just 26%. This was also recommended by SEBI Committee, but the recommendations to give an exit opportunity to all the shareholders were not accepted by SEBI. SEBI was of the view that given the financial constraints and business realities, this would have a chilling effect on the acquirers.

The influence of having such relaxation should have been positive but given the statistics available from past 5 years, it doesn't seem to have actually impacted the market for corporate control by way of hostile takeovers. Rather it has turned out to be a tool for the promoters or majority shareholders to materialise friendly takeovers without providing an exit opportunity to all its shareholders. Therefore, it is recommended that the threshold should be raised for instance to around 35% (similar to UK).

IV. HOSTILE TAKEOVERS AND TAKEOVER DEFENSES IN INDIA: (PLUS POINT)

The takeover defences which are generally available in other jurisdictions are either not available or else all difficult to use because of other invisible factors

A. Poison Pill is an option which is not per se restricted. The Takeover Code has to a large extent tried to curb this defence by recent amendments and only pre offer poison pills are allowed.

B. Staggered board defense is applicable in default when it comes to Indian context because any director could be removed by an ordinary resolution and a company can opt out of this defense by changing its Articles of Association which will make it very difficult for the acquirer to amend since that will need a special majority of 75%.

C. Embedded defence is applicable in India. The defense relates to third party contractual liability; brand pill to name a few are applicable in Indian context and are extremely difficult to know about because of information asymmetry in market.

D. **White Knight Defence** is permissible under Indian SAST Regulations because the regulatory authorities view it as an option for the existing shareholder to choose between incumbent and hostile acquirer.

Creeping Acquisition: A Mechanism towards further Concentration of Shareholding (Minus Point)

The SEBI Takeover Code explicitly enshrines that any person holding shares in the range of 25 to 75% shares can make a creeping acquisition without triggering a mandatory open offer threshold in a financial year. This provision facilitates the promoters to enhance and consolidate their shareholding in the company which makes it difficult for the hostile acquirers to break through.

Case Study on Hostile Takeover in India

Emami vs Zandu Pharmaceuticals Case (2008)

In 2008, the only case in an entire decade which saw a hostile takeover was Emami, which acquired control over Zandu for 750 million rupees. Even in this case the legal battle between the companies and promoters went for a long time and increased the share prices. This case shows the resistance of the Indian corporate world towards hostile takeovers.

CONCLUSION

The thesis statement is justified because the concentrated nature of shareholding pattern in India raises both legal as well as practical difficulties and has a chilling effect on market for corporate control in the form of invisible barriers. The Takeover Code has both pros and cons when looked from the perspective of promoting hostile takeovers and in a way promotes friendly takeovers. The prime focus of the law should be to break the relationship of trust and confidence between promoters of Indian companies to improve the market for corporate control. In India the families of different promoters have a nexus between them by way of real corporate marriages and the law has to be very innovative to break the relation of trust and confidence between them.

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THE MARKETING ASPECT OF MERGERS AND ACQUISITION

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ABSTRACT

The ease of doing business ranking in India is improving very fast, because of policy reforms, like Real estate Regulation bill, Insolvency and Bankruptcy bill (IBC) Goods and Sales Tax bill(GST). Research suggest that mergers and acquisitions environment has been very phenomenal in generating momentum in business. The national company law tribunal (NCLT) nod to Vodafone idea conglomerate will open Pandora of mergers in future for market supremacy, sustainable customer solutions, leveraging more financial resources in India. Mergers and acquisition come with lot of opportunities but due diligence is needed. Apart from value creation and shareholders wealth maximization, the focus should be on sustainable customer satisfaction. This paper highlights various contours that are required to make merger and acquisition successful. This study focuses on how mergers and acquisitions affect the consumer's buying behavior, brand equity and advertising pattern of new venture. The current study examined the motivation to recognize either the assumed benefits of the deal of Mergers and Acquisitions have increased or not.

Keywords: mergers and acquisition, post-merger integration, marketing, brand equity, advertising

When one company takes over another and clearly establishes itself as the new owner it is called acquisition. The Target Company ceases to exist. Acquisition can be in the form share purchase where by control of interest in the target company is acquired. For example in September 2016 Tata Power Renewable Energy private limited acquired shares of Weespun Renewable Energy limited for around 1.4 billion USD(9249 crore INR)there by increasing the Green energy portfolio by 1.4 GW.

In mergers two or more than two organization constitute one organization (Alao, 2010). Merger is the legal activity in which two or more organizations combine and only one firm survives as a legal entity (Horne & John 2004).In a merger two or more firms approach together and became a single firm while in acquisition big and financially sound firm purchase the small firm.

Mergers are of different types, Horizontal merger (merger of companies involved in same industry and in direct competition e.g. Idea and Vodafone, Flipkart and Myntra) Vertical merger (operating in same industry but at different levels within the industry supply chain e.g. Reliance and Flag telecom group) a conglomerate merger (where completely unrelated companies come together to achieve synergy benefits).

In a typical merger, the shareholders of the transferor company are allotted shares as consideration for their holding in the transferee company. As recent as August 2016, an amalgamation of Aditya Birla Nuvo Limited (ABNL) with Grasim Industries Limited (Grasim), both being listed on stock exchanges, was announced in a bid to unlock shareholders' value and create a 9 billion USD (60,300 crore INR) consolidated enterprise. India's largest oil producing company, Cairn India Limited (Cairn), merged with the metals and mining giant Vedanta Limited (Vedanta) in an all-share deal amounting to 2.5 billion USD, whereby the public shareholders of Cairn would be allotted equity and preference shares of Vedanta.

There are two theories explaining why firms or corporates acquire or merge with other firm.

1. Monopoly theory : this theory postulates that the firms use the route of merger and acquisition to raise the market power (Steiner 1975, Chartjee 1985) example Flipkart taking over Myntra to be market leader
2. Efficiency theory: this theory postulates that mergers and Acquisitions M&A are planned to reduce the cost of achieving the economies of scale (Porter1985 Shelton 1988) example.

Over the decades, the practice of merger and acquisition (M&A) has attained considerable significance in the contemporary scenario, and is used broadly to reorganize business entities. There are many benefits of M&A. Srivastava (2012) stated that M&A can improve cost efficiency through economies of scale. Others have shown that M&A can increase sales by gaining market share. Through M&A, firms can also buy new technologies, products, and distribution channels and can thus achieve a desirable position in the market.

The main objective of Merger and acquisition by the firms both in the developed and developing countries is to work with other companies that can be more beneficial then working alone. The return on equity along with shareholders wealth increases which helps in decreasing the operating expenses for the firm. With mergers and

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acquisitions M&A business takes the path of exponential growth instead the linear growth which generates continuous interest. The final nod given by National company law tribunal to the Vodafone Idea merger on august 30, 2018 will make the Vodafone idea limited the largest telecom operator in India in terms of subscribers and revenue surpassing Bharti Airtel. This will further give the Vodafone idea limited short in the arm to take on both Bharti Airtel and JIO.

Apart from public sector undertakings whose prime concern is the social welfare, the main objective of every business organization is profit maximization to increase the wealth of shareholders. Every organization adopts different strategies, techniques and marketing mantras to maximize the profit to keep the interest of shareholders going in the cut throat competitive business environment. There exist certain events for which every organization has to respond differently .in order to maximize gains like entering into a new market (Jio Entry into 4G market)launching new product (Mahinda XUV 500) increasing portfolio (HUL) need strong financial resources else the competitive advantage will be lost.

In this paper We are trying to highlight how marketing along with advertising pattern and customer behavior of the new merged venture evolve .There has not been ample research on marketing aspect of M&A. Results from a survey of 232 horizontal merges show that market related performance after the M&A has a much stronger impact on financial performance then does cost saving e.g. Hindalco could have not reached the zenith if relied on cost saving.

There is growing belief that all the value creation takes place after the acquisition (Haspeslagh & Jemison, 1991 p,129) the topic of post-merger integration has received increasing attention however marketing related issues of post-merger integration such as whether and how two firms marketing activities are integrated and how this affect the merged firms have been neglected. In recent Vodafone Idea merger both companies kept the individual brands intact and there has been no post-merger integration strategy visible, which gives Reliance Jio an edge to rise the ladder. The fear of losing customers during the integration phase is evident in case of Vodafone idea integration. The technicalities of integration keeps the managerial energy absorbed inside internal issue which within no time loses sight of the customer related issues. This has cascading effect on service quality

There are three issues which should be kept in mind in M&A. First is how the marketing integration process (extent and speed of integration affects the integration outcomes (Magnitude of cost saving and market related performance) second investigate how these relationships are affected by certain moderators (customer orientation of integration, market growth, product /service industry, relatedness of the firms. Third importance is market related performance (compared with cost saving) for M&A performance.

The principal benefit of M&A is increased value generation. Evans (2000) observed that the best mergers seem to have four strategic reasons that is positioning (to take advantage of future opportunities Vodafone and Idea when it comes to spectrum allocation for 5G), gap filling (to cover weaknesses e.g. Flipkart taking over Myntra to strengthen its position vis a vis Amazon), organizational competencies (e.g. Adidas and Reebok) and broader market access (Facebook and WhatsApp).

Apart from the law of the land a possible consequence is that decisions are made predominantly on the basis of internal criteria, such as internal structures, processes, power distribution, or individual managers' preferences. Against this background, a define customer orientation of integration as the extent to which decisions about marketing integration are driven by customer-related considerations rather than internal considerations.

A high level of customer orientation of integration is present if decisions are strongly influenced by the goal of creating additional customer value rather than reducing the costs of serving customers. In the case of a high customer orientation in PMI, decisions are driven by cost reduction motives to a lesser extent. Therefore, an increase in the extent of integration will produce less cost savings in this situation than in a context of low customer orientation. Furthermore, we predict that a high level of customer orientation can alleviate, at least to some extent, the negative market-related consequences of integration.

When decisions to integrate brands, product variants, or distribution channels are made with a strong focus on customer value, the negative market-related consequences of a high level of the extent of integration should be weaker.

The speed of integration is vital and serves as means to reduce uncertainty among customers. the orientation of customers towards a brand serves as partial substitute for speed in reducing customer uncertainty caused via M&A. Customers will still believing that integration decision are driven for their consideration . The belief of customers in new venture increases brand value and reduces uncertainty. While as in case of high customer

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orientation integration speed becomes less relevant as a means to reduce customer uncertainty and avoid detrimental effects on market-related performance.

The relatedness of firms market position includes firms market position to the extent its offers are similar in terms of customers' needs they satisfy in terms of quality and pricing Consistent with previous studies (e.g., Hagedorn and Duysters 2002), a high level of relatedness offers a great potential for cost reductions. Thus, an increase in the extent of integration may result in greater cost savings when the market positioning of the firms is highly related. However compelling argument for why the relatedness of market positioning should moderate the impact of the extent of integration on market related performance. The potential scope of changes (e.g., repositioning the strategic focus of the entire firm) is much greater in M&A between unrelated firms (Larsson 1989).

Because of the reduced potential for changes in highly related M&A, a lower level of uncertainty among customers about their future relationship with the merged firm is likely. Because uncertainty reduction is the major effect of integration speed, an increase of integration speed has a smaller impact on market-related performance when relatedness is high. E. g .The failed case of M&A of Microsoft and Nokia wherein customers could not relate with either firm. In these conditions, internal conflicts, inter organizational competition, holding back of information, and so forth, are likely consequences and will absorb managerial energy that is needed to serve customers. Against this background, an increase in the integration extent will produce greater damage to market related performance when the relative size of the acquired firm is high. With respect to integration speed, the number of customers affected by the transaction is greater when the relative size is high. When the acquired firm is relatively small in proportion to the acquirer, with an increasing relative size, the customer base affected by the integration also broadens. In turn, the potential for rumors about possible changes, which lead to uncertainties among customers, also increases. An increase in integration speed is more likely to be beneficial for market-related performance when the relative size of the acquiree is high.

Brand equity is the term that marketers use to refer to the value created by establishing customer preference for one's brand. Keller (2013) stated that brand equity reflects the consumer's feelings and actions toward the brand. It has implications on the prices and profits of the brand in the marketplace and helps market capitalization of the company owning that brand. Strong brand equity helps to improve the marketing of a firm. Aaker (1991) stated that there are five assets of brand equity for the creation of value: brand loyalty, brand awareness, perceived value, brand association, and other proprietary brand assets.

When a company with an inferior brand value is acquired by a company with strong brand value, the brand value of the acquirer gets a hit. The perceived quality, brand association and brand loyalty Results from the MANOV and T test show that greater the perceived difference between the acquirer and the acquired brand the more the brand equity of the acquirer will increase .Hindalco which used the M &A to become one of the largest manufacturers of aluminum in this process the Indian commodities player turned into an integrated global major player and boosted revenues from 30 times from $500 million to 15 billion USD in just 7 years. Hindalco acquired several companies before it pulled up Atlantic headquartered giant Novelis IN 2007. Each take over thought Hindalco the industry related skills and M&A techniques, Hindalco cultivated both kinds of capabilities to acquire a North American twice of its size.

CONCLUSION

There is dearth of research on successful M&A, apart from few papers the focus has not been entirely on marketing aspect of M&A .Usually M&A process is deemed to be complete when the legalities are done. The competition commission of India takes note of nature of M&A so as to safeguard the customers from any predatory pricing. M&A is a wonderful tool in the hands of shareholders and CEOS to maximize the profits, increase market share, strength the financial position, leverage the resources for attractive portfolio and sustainable customer solutions. Due diligence should be take care by not letting M&A become Frankenstein monster eating the resource pool. By keeping both the merged ventures separate brands , firms can maximize leverage the individual resources pool ,cutting edge technology and brand equity to increase the market share (ADIDAS AND REEBOK has been successful in serving diverse customer pool separately).

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ACQUISITION BY AMERICAN GIANT RETAILER WITH REFERENCE TO WAL-MART AND FLIPKART CASE

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ABSTRACT

Year of 2014-16 India have witnessed substantial slowdown in mergers and acquisition ("M&A") whereas after 2016 the country have gain boost. In 2014, Indian companies were involved in transactions worth $33billion whereas in the year 2015, the value of M&A activity reduced to $20 billion. (Tiwari, 2011) The election of Modi led government has brought back tremendous faith in the investor community by introducing schemes like Digital India, Startup India, new bankruptcy law and the faster pace of approvals initiated by the government as for the ease of doing business in India campaign. In 2018, India has witness the biggest e-commerce acquisition of Flipkart, an Indian startup company by American giant retailer Walmart (Bierman, 2017). This deal has went through a lot of legal challenges at each face dealing with various FDI guidelines and a nod of CCI and a lot of criticism on the part of traders. In this paper the author has tried to focus on the merger of Flipkart and Walmart and discussed the problem and challenges faced by both the companies and what was the issue held by CCI along with the concept of vertical and horizontal mergers author has also laid down the reason why Walmart have chosen Flipkart for the acquisition and what is the present case of M&A in India.

I. INTRODUCTION

Merger and acquisition (M&A) is the path businesses take to achieve exponential and not just linear growth andtherefore continues to generate interestand the Indian landscape is no different (Hiten, 2017). With the increasing rate of growth of economy in India, it is considered to be suitable for the growth of business taking into account the size of population and being a developing nation various aspect remain undiscovered. In the upcoming years it is anticipated that the value of transaction would cross $ 30 billion (Tiwari, 2011) owing to the relevant corporate laws/regulation in India which have been revamped in the last few years, be it Takeover code, companies Act, Competition law, delisting guidelines, accounting, tax laws are continually evolving and so are foreign exchange management (FEMA) regulations, impacting both inbound and outbound investment. The Merger and Amalgamation of corporate constitute an area under discussion of companies act, the courts & law and there are well laid down procedures for appraisal of shares and rights of investors whereas acquisition/takeover bids fall underneath the purview of SEBI (Anil Kumar, 2012).

Walmart - Flipkart deal have gained everyone's attention due to the purchase of 71% shares by paying $16 million (Browne, 2018), which is the highest ever in e-commerce, and not just this, the legal provision behind this deal and the huge amount of criticism by traders all over India led to the involvement of government. Complaints have been filed before both the Competition Commission of India (CCI) and department of industrial promotion and policy by various organizations have also requested the government to intervene and prevent the proposed transaction assessing the effect on competition in the relevant market hence, broadly speaking, the larger the size of the relevant market, the smaller would be the effect, positive or negative, of the proposed transaction (Shahi, 2018). This issue becomes quite important in the present case.

II. Why Wal-Mart Chose Flipkart for the Deal

Such questions have been raised to understand why Wal-Mart has paid $16billion for a majority stake in Flipkart, India's biggest online majority. Author has formulated the following reason for such an acquisition.

- **Demand**
  India is one of the most attractive retail market in the world, given its size and growth rate (Ray, 2018) as India is expected to have 475 million online shoppers by 2026 according to a report of Morgan Stanley and this acquisition allows the company (Walmart) to jump straight into small but growing e-commerce market with about 100 million customers. This deal is also new front in Walmart's battle with amazon, the global leader in online retailer which accounts for 44% of the US e-commerce market.

- **Growth**
  Flipkart sold products worth a total of $7.5bn in the financial year that ended in March 2018 - the sales had grown by 50% since the previous year (2016). Its net sales, after discounts, returns and cancellation, were worth $4.6bn (Saxena, 2018). The deal still gives Walmart the fastest entry possible into one of the most promising, albeit difficult, e-commerce markets.

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- **History**
  Venture capital firms Accel and Tiger Global invested more than eight years ago when Flipkart was valued at just $50m (Mishra, 2018) - and they have now exited with more than 400 times what they invested. The SoftBank Vision Fund led by Masayoshi Son was a big beneficiary of the deal - it had invested $2.5bn in August 2017 for a 20% stake and it exited with $4bn (Ray, 2018).

III. New Start of Companies

On 8 August, 2018 Competition commission of India, CCI approves proposed acquisition of Flipkart Private Limited by Wal-Mart International Holding, it has acquired a 77% stake (Chaudhary, 2018) inIndia's largest ecommerce Flipkart, for $16 billion(Rs1.06 lakh crore).The deal will give the American retailer a direct link to a market that is expected to be worth $200 billion by 2026 (Tandon, 2018).This deal will provide various benefit to the consumers in India and also boost the economic deal in the country. ***"India is one of the most attractive retail markets in the world, given its size and growth rate, and our investment is an opportunity to partner with the company that is leading the transformation of e-commerce in the market,"*** said **Doug McMillon, Walmart's president and chief executive officer** (Abrar, 2018). The intensity of mergers and acquisition is increasing with the de-regulation of various government policies as a facilitator of the new economic regime (Beena, 2008). The reforms process initiated by the Indian government since 1991, has influenced the functioning and governance of Indian firms (India P. C., 2015) which has resulted in adoption of different growth and expansion strategies by the corporate firms. These reforms have opened up a whole lot of challenges both in the domestic and international spheres (Singh, 2013). Such a deal is possible due to the change in the laws governing such acquisition and merger. Recent change in the schemes of Government includes measures to improve the ease of doing business, making it easier for entrepreneurs to start a business, reducing the length of procedures to obtain permits, protecting minority investors, easing trading across borders, and enforcing contract.

IV. CHALLENGES FACED BY BOTH THE COMPANIES

Traders

Various traders and associations dealing in commerce think that this deal has more reason of downfall in terms of economy and uneven competition in India rather than producing any good. Many association have alleged that the $16 billion Flipkart-Walmart deal will create an uneven playing field in the country's commerce sector. The Confederation of All India Traders (CAIT) said that the deal is nothing but a clear attempt to control and dominate the retail trade in India by Walmart through e-commerce in the long run (India P. T., 2018). RSS-affiliate Swadeshi Jagran Manch alleged that ***"this merger will further eliminate small and medium businesses, small shops, and opportunity to create more jobs, they further stated that many most of the small entrepreneurs are already battling for their existence, entry of Walmart will create problems for them."*** (Sen, 2019) On the other hand Walmart projections suggest that this deal alone can create 10 million jobs through partnerships with locally owned businesses, boost farmers' income, create more efficient agriculture supply chains through introduction of digital technology, improve service delivery and access for consumers, and support initiatives like Skill India and Startup India.

COMPETITION TEST

Competition commission of India is a statutory body of the government of India responsible for enforcing the competition act,2002. CCI look into what comprised anti-competitive practices and entry barriers, among others in such transactions. The CCI dealt with the question if indeed the Walmart-Flipkart combination was altering the competition both in the horizontal and vertical markets. In competition parlance, a *horizontal overlap* is a merger between two competitors in similar line of business, while a *vertical overlap* is a merger between a manufacturer and distributor, who are at different stages of production chain in different markets. Needless to say, the Walmart-Flipkart deal has a horizontal overlap as both the companies are in the wholesale cash and carry of goods (B2B market). Considering the facts on record and the foregoing assessment, the commission is of the opinion that the proposed combination is not likely to have an appreciable adverse effect on competition in India and therefore, the same is hereby approved in terms of Section 31(1) of the Act," CCI said in its ruling

FOREIGN DIRECT INVESTMENT

In the present deal of Walmart- Flipkart, and CCI as a statutory body, had the final say in the present proposal. In terms of the Act, a combination is assessed on the basis of whether or not it causes ***"appreciable adverse effect on competition"*** in the relevant market in India (India, 2018).CCI further said that ***"in the foreign direct investment (FDI) policy for an e-commerce platform cannot influence market prices directly or indirectly"*** (India C. C., 2018).

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From the order passed one can analyze that both the parties are engaged in B2B sales, the combination would facilitate B2C sales for Walmart (India C. C., 2018). Coming to the question of vertical overlap, the FDI policy restricts both the parties from engaging in B2C sales. However, there is no restriction on the parties to offer an online market place where they function merely as intermediaries as per FDI policy, author has illustrated the point below. Flipkart is engaged in this kind of sales through its online platforms, namely Myntra.com, Jabong.com and Flipkart.com while on the other hand Walmart has no presence in any online market place for B2C sales.

Taking into account of a *Press note 3*that the Commerce ministry had issued under the Consolidated FDI Policy Circular 2015 which was passed in 2016 regulating the FDI norms circumscribing the e-commerce Industry. (Gupta,2018)

Major norms are

A. 100% FDI under automatic route in B2B e-commerce.

B. FDI in B2C e-commerce, on the other hand, was not permitted. It was only allowed when:

i. Manufacturer was permitted to sell its products manufactured in India through ecommerce.

ii. Single brand brick and mortar entity undertakes to sell through e-commerce.

iii. Indian manufacturer is permitted to sell its own single-brand products through ecommerce retail which manufactures 70% of its products in-house and sources at most 30% from Indian local markets.

C. FDI in inventory based model e-commerce was strictly prohibited.

D. e-commerce entities were obligated not to permit more 25% of its sales to be affected by one vendor or its group companies.

E. They were prohibited to, directly or indirectly; influence the sale price of goods and to maintain a level playing field.

V. PARADOX IN THE DEAL RELEVANT MARKET

The order of the Competition Commission of India ("CCI") in All India Online Vendors Association ("AIOVA") v. Flipkart India Private Limited (Case No. 20 of 2018) ("Flipkart") dated 6 November 2018.(Samarth Saxena, 2018) is highly criticized by traders pan India.

In the above stated order the CCI's take on relevant product market analysis has been a confusing one. Author has illustrated the point by different case to case analysis. Bigger question is whether the proposed combination is resulting in elimination of any major player in the relevant market. Before proceeding further we need to know to understand what relevant market is. This is defined in CCI act as- ***"the market which may be determined by the Commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets"*** under *section 2(r)* of the Act. Therefore, for any enterprise to abuse its dominance, it will have to be dominant in its '*relevant product market'* given under *section 2(s)* of the Act defined as ***"means a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use"*** as well as ***'relevant geographic market'*** defined under section 2(t) of the Act as ***"means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighboring areas"*** A significant increase in price in one segment shall cause the buyer to shift to the other segment and therefore, ***"the offline and online markets are different channels of distribution of the same product and are not two different relevant markets"*** (Ashish Ahuja v. Snapdeal and others, (Case No 17 of 2014)). According to the order, Walmart and Flipkart have not made a distinction between organised and unorganised cash and carry of goods (B2B sales) and considered both these as part of one relevant market.(India P. t., 2018)given the small size of Walmart India's B2B sales business in India, a narrower delineation of the identified relevant market was considered unnecessary by the Commission.(Parmita Pal, 2018)With respect to direct sales to consumers ("B2C sales"), it was noted by the Commission that both Flipkart and Walmart India cannot engage in direct sales to consumers on account of restrictions under the Foreign Direct Investment ("FDI") policy(India P. t., 2018).

BACK-ENTRY

CCI examined the proposed combination from the perspective of both horizontal overlap and vertical overlap. In the case of horizontal overlap CCI declared that the Proposed Combination is not likely to have any adverse implication on competition irrespective of the whether the market is taken as all B2B sales. Accordingly, the relevant market for B2B segment is left open.With respect to B2C sales, Walmart has submitted that the FDI Policy restricts the parties from engaging in business to consumer sales and thus, they are not engaged in the said segment. This deal has faced much ire of the small and domestic retailers as they have alleged violations of FDI norms by creating a de-facto inventory model by procuring large sums of goods from their own subsidiaries and group companies as Flipkart is an inventory model e-commerce, which means the marketplace owners owns the products and also manages the complete end-to-end sales process. The inventory of the goods is owned and sold by the ecommerce entity directly to the customers thereby violating 25% sales from a single vendor or group companies rule set under the Press Note.

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REGULATIONS FOR MERGER AND ACQUISITIONS UNDER COMPETITION LAW IN INDIA

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ABSTRACT
Merger and acquisitions are regulated under various laws in India. Firstly they are regulated through the provision of Companies Act, 1956(now Companies Act, 2013).The other Act which regulates mergers and acquisitions include the Competition Act, 2002.The Competition Act 2002, in India could not be implemented in 2002,due to writ petitions being filed in Supreme Court and after requisite amendments being made the Act came into force which was titled Competition Act, as amended by the Competition (Amendment) Act, 2007.Among a number of provisions which faced criticism, probably the provisions relating to merger and acquisition which were called combinations under the new Act faced the maximum criticism. Despite the competition law having been functional in India, albeit partly, since as early as May 2009, it took over two years for merger control to be enforced. On account of the pressure of stakeholders, first draft of merger regulations was made in such a way that the opponents of merger review did not get an opportunity to create unnecessary noise. The first form for merger filing was such that, effectively, it was almost discretionary to file a merger review. Despite being under no obligation to do so , nearly all the merger filings, voluntarily, included the details of the transaction as well as the reason why it was not to cause an appreciable adverse effect on competition (AAEC), the substantive test for evolution of mergers in India. The CCI had brought in Amendment Regulations in 2011 and 2013 to amend the threshold and process relating to Combination review under Competition Act. The mandatory regime requires companies that enter into mergers and Acquisition and meeting the asset/ turnover thresholds specified in the Act seek prior approval from CCI. It becomes apparent that the thresholds specified are perhaps, the highest in the world. Interestingly, even the default merger filing form, Form-1, is also, perhaps, the simplest in the world. Apart from the provisions of the Act, the CCI has published the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations 2011, which contains procedural rules relating to transactions which qualifies as "combination" under s. 5 of the Act. The Ministries of Corporate Affairs notified 1st June 2011 as the effective date for bringing into force ss. 5, 6,20,29,30 and 31 of the Act, dealing with combination.

A look at the journey of progression of enforcement of merger control in India shows a very slow movement. It can be said that Indian Competition regime is at its infancy. There are not many cases in India that can be studied to back up the efficacy of mandatory regime. But it can be predicted that mandatory regime can bring many controversial combinations within the scanner of CCI and the combinations can be ratified after minor changes that are to be made according to the directives of CCI.

INTRODUCTION
Eric L.Kohler defines "merger" in his Dictionary of Accounts, in the words:

" The fusion of two or more enterprises, through the direct acquisition by one of the net asset of other or others. A merger differs from a consolidation in that in the former no new concern is created, whereas in a consolidation a new corporation or entity acquires the net assets of all combining units."

Merger and acquisitions are regulated under various laws in India. Firstly they are regulated through the provision of Companies Act, 1956(now Companies Act, 2013).The other Act which regulates mergers and acquisitions include the Competition Act, 2002.The Competition Act 2002, in India could not be implemented in 2002,due to writ petitions being filed in Supreme Court and after requisite amendments being made the Act came into force which was titled Competition Act, as amended by the Competition (Amendment) Act, 2007.Among a number of provisions which faced criticism, probably the provisions relating to merger and acquisition which were called combinations under the new Act faced the maximum criticism.

Be it USA, Canada or EU-history shows that competition law has always received reluctant acceptance from business. In India even post enforcement the opposition against complete implementation of the Act refused to subside, owing to sustained resistant from domestic stakeholders who viewed the Act as an added layer of Government regulation, The reason given for continued opposition were varied, and ranged from apprehension of Competition Commission of India (CCI) sitting over and delaying mergers clearances to question over the expertise of an nascent CCI to review complex combinations.

In India merger control provisions of the competition law was brought into force on June 1, 2011.Despite enactment of Competition Act in 2003, major provisions could not be enforced till as late as May 2009 on

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account of certain legal challenges. Despite the competition law having been functional in India, albeit partly, since as early as May 2009, it took over two years for merger control to be enforced .It goes to the credit of CCI for preparing the draft merger control regulations even before the enforcement could become a reality.

There was even a talk for first amending the Act before the provisions could be brought into force. However, good sense prevailed and the proposal was shelved. It was decided to employ the provisions of merger control and amend the same, if and when any faults were found. It was the result of this changed outlook, within the Government of India, that a beginning towards a fully functional competition law regime in India could be made.

After extensive consultations by all stakeholders in the industry, CCI issued the draft merger regulations on May 11, 2011.Dispite grim warnings to the contrary, June 1, 2011 came and went without any grave dangers to either economy or the fast moving pace of the normal transactions such as mergers, amalgamations and acquisition as was feared. It was business as usual. On the contrary, international antitrust community welcomed the performance of Indian merger control regime.

On account of the pressure of stakeholder, the first draft of merger regulations was made in such a way that the opponents of merger review did not get an opportunity to create unnecessary noise. The first form of merger filing was such that, effectively, it was almost discretionary to file a merger review. It was big relief to businesses but its utility for competition assessment can be gauged from the fact that, despite being under no obligation to do so, nearly all the merger filings, voluntarily, included the details of the transaction as well as the reason why it was not to cause an appreciable adverse effect on competition (AAEC), the substantive test for evolution of mergers in India. Despite having a mandatory merger review regime, the first filing requirements, practically, gave the merger filter entire discretion on which form to choose for filing: Form-1 or Form-II? Form-1 is minimalistic in the information sought. It is seen that a huge proportion of merger filings are in Form-1 only.

The need for improvements in the regulations was felt soon, especially vis-à-vis intra group filings. A large proportion of merger filings pertained to intra-group combinations which did not change the control dynamics of enterprise(s), but only served to clog the functioning of CCI merger shop (as they call in USA). Subsequently, to ease the burden on CCI, the regulations were amended to eliminate the need for CCI review of those combinations which did not result in change of control of an enterprise(s).

REGULATORY FRAMEWORK

The Competition Act contains detailed provisions on regulation of combinations, which are as follows:

- Definition of combinations s.5
- Regulation of combination s.6
- Inquiry into combinations s.20
- Procedure for investigation of combination(ss.29 and30) and orders relating to certain combinations s.31

The Competition Commission of India (Amendment Regulation s) 2011 and(Amendment Regulations)2013

The CCI had brought in Amendment Regulations in 2011 and 2013 to amend the thresholds and Process relating to combination review under the Competition Act. In 2011, the following asset and turnover had been created.

		Assets	Turnover
In India	No Group	INR 1,500 Crores(approximately USD 330 million)	INR 4,500 Crores (approximately USD 1billion)
	Group	INR 6,000 Crores (approximately USD 1,320 million)	INR 18,000 Crores (approximately USD 4 billion

		Assets		Turnover	
		Total	**India**	**Total**	**India**
In India or outside	No Group	USD 750 million	INR 750 Crores(approximately USD 165million)	USD 2.25 billion	INR 2,250 Crores (approximately USD 500 million)

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	Group	USD 3 billion	INR 750 Crores (approximately USD 165 million)	USD 9 billion	INR 2,250 Crores (approximately USD 500million

It becomes apparent that the above thresholds are, perhaps, the highest in the world. Interestingly, even the default merger filing form, Form-1, is also, perhaps, simplest in the world. According to that regulation the value of assets include the brand value, goodwill, value of intellectual property, but not the deprecation. Highlighting the amendments made to schedule 1 of the Combination Regulation, which describes categories of transaction not likely to have appreciable effect on Competition in India, The CII press Release said the change exempting intra -group Mergers and Acquisitions of two or more enterprise are held by enterprises where more than 50% shares or voting rights or the other enterprise are held by enterprise(s) within the same group is vital.

Section 20(3) of the Act provides that the Central Government, in consultation with the CCI, can enhance or reduce the threshold limits of value of assets and turnover mentioned under s. 5 of the Act, based on the wholesale price index on fluctuation in the exchange rate of rupee or foreign currencies.

A look at journey of progression of enforcement of merger control in India shows a very slow movement. If we look at the Indian thresholds, nearly the highest in the world, wherein only the big ticket acquisitions, mergers and amalgamations come under CCI scanner, However, there is a slow upward progression. Gradually, the CCI is increasing the rigor of review. There have been exceptions where the CCI examined the agreements in detail and directed modification of certain combinations to change some of the conditions considered anti-competitive. Two cases Orchid Chemicals and Pharmaceuticals Ltd (Combination Reg. No C-2012/09/79) and the other is Mylan Inc. (Combination Reg. No. C-2013/04/116).

In these cases, the provisions of Regulation 19(2) of the combination regulations were put in practice. Under these regulations similar to understanding of EU the parties to the combination can come forward with modifications to the combinations on their own which may be accepted by CCI.

If the CCI is of the opinion that the proposed combination has or is likely to have an AAEC in the relevant market in India, but such competition law concerns, emanating from the combination may be eliminated by suitable modification to the proposed combination, then the CCI may propose appropriate modification to the combination. The parties can accept the modifications proposed by the CCI. If the parties to the combination accept the modifications suggested by the CCI, the parties to the combination will then to carry out such modification within the time-period specified by the CCI, failing which such combination will be deemed to have an AAEC in the relevant market and hence will be rejected by the CCI.

Regulation 4 of the Combination Regulations read with Schedule 1 of the Combination Regulations provide for certain categories of combination which are ordinarily not likely to cause appreciable adverse effect on competition in India and hence combination notice for approval under s.6(2) of the Act need not be filed. Although the exclusion of combination mentioned in Schedule I is seen as a respite to acquirers, and thereby enabling ordinary course of business transactions to occur without notifying the CCI, the subjectivity of the words ‘ordinarily not likely to have an AAEC in India’ and ‘would not normally require to be notified’, makes Schedule I not a ‘strait jacket exclusion’ that can be applied to transactions described therein but shifts the burden on the acquirer to determine whether the combination is subject to notification or not.

Recently, the CCI looked into exemption of a notification in case of acquisition of assets in the ordinary course of business in the Etihad/Jet (Combination Registration No. C-2013/05/122) combination. There was a sale and leaseback arrangement of three pairs of Heatthrow slots that was entered into between Etihad and Jet. The parties to the transaction did not notify this transaction to the CCI on the ground that such slots and leaseback arrangement are very common in aviation industry and that such acquisition was done in ordinary course of business.CCI did not agree with the interpretation of the parties and held that the exemption of “acquisition of assets in the ordinary course of business” was not available because the 3 pair of Heatthrow slots formed the basis for jet’s entire services between India and London ; and absent these slots, Jet would have no business operation nor would have earned any revenue in the said sector.

The parties to the combination can take a defense that the combination will not cause an AAEC in India because one of the parties is failing firm(loss making firm) and such combination will not distort competitive structure of the market. In order to satisfy the conditions of the failing firm defense, the following conditions should be met:

(a) First, in order to rely on a failing firm defense. It must be clear that the firm is in such a deteriorated financial situation that without the combination, the firm and its assets would exist the market and this is imminent in the near future.

(b) Secondly, there must be no serious prospect of reorganizing the business of the failing firm. This could include reorganizing the underlying business or the financial structure. Even companies in sever financial difficulties often survive and recover and explained, the test is whether in the absence of the combination, the assets of the failing firm would exist the market.

(c) Thirdly, there should be no less anti-competitive alternative to the combination Even if the company is failing and a sale of the company or its relevant assets is inevitable, the failing firm argument only applies where there are no competitively preferable acquirers of the assets.

ROLE OF EFFICIENCIES AS A DEFENSE

The CCI will approve a combination if the combination increases efficiencies in the market. As mentioned above, combinations are very common in the market and such reorganizations increase the competitiveness of industry.

The CCI will have to perform a counterfactual analysis to see whether the efficiencies brought about by the combination would counteract the anti-competitive effects that the combination may have otherwise. In order to assess whether the combination will cause an AAEC within India, the CCI would have to take into account whether the combination increases the efficiencies in the market, including the development of technical and economic progress.

ANCILLARY RESTRAINTS OR NON-COMPETITION CLAUSES IN MERGERS AND ACQUISITION

One of the issues that needs to be taken into account in case of combination, is that generally combination will, apart from the general share subscription or share purchase terms, consist of numerous contractual arrangements (like provisions relating to non-compete, licensing et al) which restricts the freedom of the parties to the combination to compete in the relevant market, post the consummation of the combination. Such restrictions will be analyzed by the CCI to check whether such non compete restrictions will distort the competitive structure of the relevant market.

Such ancillary restrictions(like non-compete/non- solicitation) to be valid under the principles of competition law, must be “ directly related” to the implementation of the combination and in absence of such restrictions, the combination will not effectively be implemented.

CONCLUSION

The CCI, in its analysis of combinations, engage in futuristic exercise and analyze whether in the future, the combinations would result in an AAEC in India. The CCI has to review the market structure and the transaction documents to ensure the market structure will not be distorted as a result of the said combination and ancillary restraints (like non compete and non solicitation) are not excessive. Further, the timelines in our view of a combination case are not very stringent considering that industry wants an influx of investment, which should not be hauled up for regulatory delays. The CCI has adhered, to all timelines mentioned under the Act and the Combination Regulations to date. There are not many cases in India that can be studied to back up the efficacy of mandatory regime. But it can be predicted that mandatory regime can bring many controversial combinations within the scanner of CCI and the combination can be ratified minor changes that are to be made according to directives of CCI.

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ANTI-COMPETITIVE AGREEMENTS: THE ARRANGEMENTS WHICH DISRUPT THE COMPETITIVE SPIRIT

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ABSTRACT

Competition means a struggle or contention for superiority, and in the corporate world, the term is generally understood as a process whereby the economic enterprises compete with each other to secure customers for their product. The agreements which restrict freedom of trade and cause consumer harm by way of limiting production and distribution of goods and services and fixing prices higher than normal are called anti-competitive agreements. In my research paper, I will be elucidating on the essentials of anti-competitive agreements, its categories, and measures to curb anti-competitive behaviour.

Key Wors: Competition, Corporate World, Consumer, Distribution of goods

INTRODUCTION

Competition law not only ensures competition in the market but it also actively checks practices that are harmful to the competitive process. It can be considered as an act of Government which prohibits conduct which is anti-competitive and tends to interfere with the free enterprise because if competition or free enterprise is unprotected by the government, it sometimes produces, in some areas of business, practices which are anti-competitive or monopolistic leading to inefficiencies in the market.[1] While elucidating on the anti-competitive behaviour, it is of extreme importance that anti-competitive agreements are discussed in detail. The agreements which limit freedom of trade and cause harm to the consumers by way of limiting production and distribution of goods and services and fixing prices higher than normal are called **anti-competitive agreements**.

Anti-competitive agreements have been defined in The Competition Act, 2002 as:

"No enterprise or association of enterprises or person or association of persons shall enter into any agreement in respect of production, supply, distribution, storage, acquisition, or control of goods or provisions of services, which causes or is likely to cause an appreciable adverse effect on competition within India.[2]"

On reading this section, it becomes clear that the act does not provide that all agreements between enterprises and the persons are prohibited. This Act pays attention to the positive synergies that emanate from agreements between enterprises. Going by the definition stated in Section 3(1) of the Competition Act, 2002, it is clear that if an agreement does not have any appreciable adverse effect, then it will remain out of the purview of this provision. But if someone claims that an agreement is likely to cause an appreciable adverse effect, then, in that case, an action shall be taken. Thus, this section imposes a duty on the enterprises to scrutinize the propositions for an agreement or arrangement to determine their long-term effect on competition in the market.[3]

The Competition Commission of India has pointed out in the case of **Mr.RamakantKini V. Dr. L.H. Hiranandani Hospital, Powai, Mumbai[4]**that the ambit of Section 3 is extremely wide and covers all kinds of commercial agreements (even if they do not fall within the category of Section 3(3) and Section 3(4) and the CCI has to check whether such commercial agreement will cause appreciable adverse effect based on the principles laid down in section 19(3).

ESSENTIALS OF AN ANTI-COMPETITIVE AGREEMENT

For the operation of this section, there should be an **agreement** which causes or is likely to cause an **appreciable adverse effect on competition** within India.

An agreement includes any arrangement or understanding or action in concert:-

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[1]Abir Roy and Jayant Kumar, Competition Law in India, Second Edition, Eastern Law House

[2] Section 3(1) of The Competition Act, 2002

[3]Abir Roy and Jayant Kumar, Competition Law in India, Second Edition, Eastern Law House

[4] Case No. 39 of 2012

(i)Whether or not, such arrangement, understanding or action in concert is formal or in writing; or

(ii) Whether or not such arrangement, understanding or action in concert is intended to be enforceable by legal proceeding.[1]

This means that in order to fall under this definition, concerted action on the part of enterprises or person is a pre-requisite. Even if parties to such an arrangement do not intend to create any legally enforceable mutual duties and liabilities, it shall be considered as an agreement under this Act. [2]

In the case of **Technip S.A. V S.M.S. Holding Pvt. Ltd.,**[3]the court laid down that the term covers an understanding as well as an agreement, and an informal as well as a formal arrangement which leads to the purchase of share to acquire control of the company.[4]

This definition is inclusive and includes not only the agreement which has been defined in section 2(e) of Indian Contract Act, 1872,[5]but also any 'arrangement' or 'understanding' or 'action in concert' in between two or more parties.

Agreements are considered void only if they result in an appreciable adverse effect on competition in India (apart from the per se illegal categories) and the same is tested on "rule of reason" analysis.

The expression "**appreciable** adverse effect on competition" has not been defined in the Act, in abstract or general terms; every case has to be examined individually. In the case of **Haridas Exports v. All India Float Glass Manufacturers Association**,[6]the Supreme Court laid down that the expression "adverse effect on competition" includes acts, contracts, agreements or combinations which operate prejudicially to public interests by inordinately restricting competition or inordinately occluding the course of trade. The court also emphasized that public interest is the prime consideration.

For an agreement to have an appreciable adverse effect on competition, it must affect actual or potential competition to such an extent that on the relevant market, negative effect on prices, output, innovation or the variety or quality of goods and services can be expected with a reasonable degree of probability.[7]

The Competition Commission of India has laid down in the case of **Mr.RamakantKini v L.H. Hiranandani Hospital, Powai, Mumbai**[8]that Section 3(1) prohibits any agreement in respect of provision of services which causes or is likely to cause an appreciable adverse effect on competition within India and therefore the ambit of Section 3 is extremely wide and covers all kinds of commercial agreements [even if they do not fall in the category of Section 3(3) and Section 3(4)].

Further, the Competition Commission of India, in this case, held that the exclusive agreement entered into between Dr. L.H. Hiranandani Hospital and Cryobanks India is a violation of Section 3 because it causes an appreciable adverse effect on the competition in India. The said the case is very relevant because the Competition Commission of India held that such exclusive agreement was anti-competitive, even though L.H. Hiranandani Hospital was not dominant in the relevant market.

The factors enumerated under Section 19(3) of the Competition Act, 2002, show that it comprises of both positive and negative factors for evaluation of an appreciable adverse effect on the competition in India.

This section lays down the factors which are to be considered by Competition Commission of India(CCI) in determining whether an agreement has an appreciable adverse effect on competition under Section 3 of the Competition Act, 2002:-

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[1] Section 2(b) of the Competition Act, 2002

[2]Abir Roy and Jayant Kumar, Competition Law in India, Second Edition, Eastern Law House

[3](2005)5 SCC 465 (485).

[4] (2005)5 SCC 465 (485)

[5] Section 2(e)-Every promise and every set of promises, forming the consideration for each other, is an agreement

[6]Civil Appeal No 2330 of 2000

[7]Abir Roy and Jayant Kumar, Competition Law in India, Second Edition, Eastern Law House

[8] Case No. 39 of 2012

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The Commission shall, while ascertaining whether an agreement has an appreciable adverse effect on competition under Section 3, have due regard to all or any of the following factors, namely:

(a) Creation of barriers to new entrants in the market
They refer to hindrances without which firms have full freedom to entry/exit the market allowing competition to prevail and substitutes to remain in the market, which in turn helps in maintaining fair prices. Barriers may prevail owing to government intervention (such as industry regulation, legislative limitations on the new firms, special tax regulation, etc.) or they could be naturally prevalent in the market such as technological patents, strong brand identity, strong customer loyalty or high customer switching costs;

(b) Driving existing competitors out of the market
It refers to the capacity of big firms to drive competitors out of the market owing to their monopolistic advantages used to maintain favourable prices due to the efficiency of large scale production. A tool like marginal squeeze, which is an exclusionary practice can be used by a vertically integrated firm to leverage its market power in the upstream market to squeeze the margins of its downstream competitors;[1]

(c) Foreclosure of competition by hindering entry into the market
It refers to the ability of firms to either singularly or jointly restrict the entry of potential entrants in the market. In the case of **United States v Griffith**,[2]the SC laid down that the use of monopoly power, however, acquired lawfully, to destroy the competitors is unlawful;

(d) Accrual of benefits to consumers
As a consequence of anti-competitive agreements, the price may rise which will result in profit enhancement in the long run. If the profit is distributed equally amongst all the important players of the distribution channel, then the anti-competitive agreements can have a favourable impact on consumers;

(e) Improvements in production or distribution of goods or provision of services

(f) Promotion of technical, scientific and economic development by means of production or distribution of goods or provision of services.

The informant and the Competition Commission of India, under the rule of reason analysis, have to actually prove that the challenged practice harms competition in the relevant market.[3]

Under the rule of reason analysis, the true test of legality is whether the restraint imposed is such that it merely regulates or promotes competition or whether it is such that it suppresses or destroys competition.[4] Most of the agreements are tested on the rule of reason basis according to which the finder of fact must decide whether the questioned practice imposes an unreasonable restraint on competition or not, taking into consideration a variety of factors, including specific information about the relevant business, its conditions before and after the restraint was imposed and nature and effect of the restraint.[5] The burden of proof is on the informant to prove that the agreement is in violation of the principle of competition law and once the informant discharges the burden; the opposite parties can escape the liability if it shows that the same has pro-competitive aspects, which would outweigh any harm to competition.

CARTELS

"There are certain agreements or practices which, because of their pernicious effects on competition and lack of redeeming virtue, are conclusively presumed to be unreasonable, and therefore illegal without any elaborate inquiry as to precise harm they have caused or the business excuse for their use."[6] Cartels fall under the category of such deleterious agreements which have a tendency to injure the interests of the consumers. Also, they have an adverse effect on the economy of the country.

The cartel has been defined under **Section 2(c)** of the Competition Act, 2002 as:

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[1]PietroCrocioni& Cento Veljanovski, Price squeezes, Foreclosure and Competition Law Principles and Guidelines(available at hhtp://www.casecon.com/pdfs/pricesqueeze.pdf

[2][1949]334 US 100.

[3]CopperwelCorpn. V. Independence Tube Corporation 467 US 752

[4] National Society of Professional Engineers v United States 435 US 679

[5]State Oil v Khan 522 US 3.

[6] Northern Pacific Ry. V United States

"Cartel" includes an association of producers, sellers, distributors, traders or service providers who, by agreement amongst themselves, limit, control or attempt to control the production, distribution, sale or price of, or, trade in goods or provision of services.

Elaborating on cartels in general terms, they are considered to be a group of persons or enterprises that agree to harmonise their efforts in order to dominate the prices by exercising control over the production, distribution, and sale of a particular product/service. They directly affect the consumers as they tend to pay more for the respective goods or services than they would have usually paid in a competitive market.

TYPES OF CARTELS AND ANTI-COMPETITIVE HORIZONTAL AGREEMENTS

Predominantly, there are four types of cartels. These cartels are the agreements which focus on fixing price, division of the market between the competitors, controlling the production and avoiding competition for particular tenders. Following are the types of cartels

(a) Price fixing

This occurs when competing businesses make an agreement with the purpose of fixing or controlling the price of goods or services. In this agreement, the potential competitors lay down the prices at which they wish to sell the goods. This results in the elimination of one form of competition. It has been categorically held that an agreement to fix prices is unlawful per se, and it is no excuse that the prices fixed are themselves reasonable. Such kinds of cartels give them enormous power to dictate prices and other terms of sale to wholesalers and retailers in the marketing channel.[1]

(b) Market sharing

In market sharing, the competitors divide the market to avoid competition. The agreement can be of nature where a competitor agrees to a specific location for the operation of its business and there is no intervention of other competitors. This type of agreement can include:

(i) Not producing the goods with an intention to compete with each other;

(ii) Not selling goods in the allocated 'geographic territories 'of each other;

(iii) Not selling goods to existing customers of each other.

Judicial pronouncements have also held that horizontal customer or market allocation is the practice by which the competitors divide up customers or markets and coming to an agreement of non-compete with each other for sales or in those markets.[2]

(c) Output controls

Output restrictions can be defined as agreements between competitors in which the competitors agree to reduce or restrict the level of production. Agreements like these are treated illegal per se.[3] The Competition Commission of India, in the Cement cartel case, observed that restricting and controlling supplies by cement companies over a passage of time was aimed at creating shortages as a result of which the demand increased. To take benefit of this situation, prices were raised by the cement companies. Since in some seasons, the demand is generally more, the cement companies limited the supplies just before the peak demand and ultimately sold the cement at a high price.[4]

(d) Bid rigging

Bid rigging takes place when two or more competitors agree to not to compete with each other for particular tenders. Eventually, in this type of agreements, one of the participants in the agreement wins the tender. These are the agreements among potential bidders that either influences the prices they will bid for or these agreements try to secretly affect the outcome of a contract or a series of contracts. Bid rigging is illegal per se and it does not matter whether the agreement concerns what the low bid would be or the quantum of individual bidders bidding or the bidder who would win the contract.[5]

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[1]Abir Roy and Jayant Kumar, Competition Law in India, Second Edition, Eastern Law House

[2]United States v Topto Assocs Inc. 405 US 596.

[3]Hanford Empire Company v United States 323 US 86.

[4] Builders Association of India v Cement Manufacturers' Association, Case No. 29/2010, decided on 26.06.2012

[5] Case No. 52/2010, Main order, Decision dated 16.02.2012[hereinafter Eros case].

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VERTICAL AGREEMENTS

Under **Section 3(4)** of the Competition Act, 2000 when enterprises or persons at different stages of production chain in different markets enter into agreement in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, then they can be said to have entered into vertical agreements. On perusal of this section, it is evident that vertical agreements are only void if they cause an appreciable adverse effect on the competition in India.

TYPES OF VERTICAL AGREEMENTS

(1) Tying

A "tying arrangement" is an agreement in which the seller agrees to sell a desirable product which is the tying product only if the buyer purchases a less desirable product, i.e., the tied product irrespective of the fact that whether the buyer wants to buy the tied product or not.It is not compulsory that the tying product and the tied product are similar in the character.[1]However, it is important to note that not all the tying agreements are illegal and not all illegal tying agreements are illegal per se. An important element for this offence is that the customer was coerced into buying both the tying product and the tied product. Here, by the reason of nature or commercial usage of both products, they bear no connection with the subject matter of the main contract.

(2) Exclusivity

Exclusive dealing arrangements are commonly defined as arrangements, which require a buyer to purchase all of its requirements or a large extent only from one(dominant) seller, or, respectively, as arrangements, which require a supplier to sell all of its products or services or large part of the same to the dominant firm.[2]

This Act addresses two kinds of exclusive dealing agreements:

(a) Exclusive distribution agreement includes any agreement to limit the supply of any goods. This agreement also includes allotting a market for the sale of goods.

(b) Exclusive supply agreement includes any agreement restricting the purchaser in any manner in the course of his trade from dealing in any goods other than those of seller of any other person.

Exclusive agreement poses a great threat to competition regulators as they might lead to intense market foreclosure in case of leading market power. But these agreements have pro-competitive features too like safeguarding the investments made by the seller, building the brand image, etc.

(3) Resale price maintenance includes an agreement which states that the goods will only be sold if the prices which will be charged by the purchaser on resale will be stipulated by the seller unless it is stated that the prices lower than those prices may be charged. **For example,** If a stipulation exists that a cement dealer should not sell below a fixed price, then this practice is a 're-sale price maintenance' practice and is an anti-competitive practice.

(4) Refusal to deal means an agreementwhich limits by any method the persons or class of persons to whom the goods are sold or from whom goods are bought.

For example,an agreement which lays down that the franchise will not deal in similar goods for a period of 3 years from the date of determination of the agreement amounts to a refusal to deal.

EXCEPTIONS

Section 3(5) of the Competition Act, 2002 provides relief from the adverse effect of Section 3 and provides a right to a person to restrain any violation of his rights in order to protect them. The rights which can be protected under this subsection are provided under acts like the Copyright Act, 1957; the Patents Act, 1970; the Designs Act, 2000, amongst others.

[1] In re, Anand Gas, RTP Enquiry 43/1983

[2] Report on Single branding and exclusive dealing, Ths Unilateral Conduct Working Group, 7th Annual Conference, International Competition Network, April 2008, p.3(hereinafter ICN)

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CONCLUSION

In conclusion, anti-competitive agreements are detrimental to the competition in a market and it is imperative that enterprises don't engage in anti-competitive behaviour and aid in maintaining the competitive spirit in the market.

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CLIMBINGTHE HORIZONTAL AND VERTICAL LADDER BY BITING THE ANTI-TRUST EXAMINING THE MERGER REGIME IN INDIA IN LIGHT OF RECENT COMBINATION CASES

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ABSTRACT
Mergers and Acquisition are a very popular strategy adopted by enterprises to expedite their growth.The Competition Act, 2002 encompasses precise provisions relating to the regulation of 'Combination', so as to prevent competition constraints in the relevant market. This article is a brief overview of the merger regime in India focusing on the horizontal and vertical integration of enterprises while elaborating upon the stance of the Competition Commission. It primarily focusses on the statutory provisions under the Competition Act, 2002 and throws light on the decisions of the Commission in respect of approving or rejecting a combination after examining its adverse effect on competition in the relevant market.

1. INTRODUCTION

A horizontal merger refers to an integration between enterprises operating on the same level of the production chain i.e. dealing with substitutable goods or services whereas a vertical merger refers to an integration between enterprises operating at different levels of the production chain. Mergers are one of the most popular forms of inorganic growth strategies which most businesses adopt with two primary objectives in mind, namely to achieve higher efficiency and cut back on the costs i.e. attaining economies of scale.

These belt-tightening exercises are most optimal when mergers are proposed across horizontally or vertically integrated enterprises due to the advantages of reduction in duplicated overhead costs, consolidation of resources, enhancement of dominance in the sector, increased influence over distribution platforms, increased bargaining power with vendors due to prevalence in both levels of production chain, and diversification.

Besides the aforementionedmultitude of advantages of horizontal and vertical mergers, there is an apprehension of competition concerns raised on account of the monopolistic tendencies of such ventures as the merging of two enterprises in the same horizontal line would lead to greater market share in the hands of one. Similarly, the merger between two vertical enterprises leads to a shift of control of the distribution systems in the hands of the merged entity, thereby prejudicing the interests of other market players competing on the same level. These apprehensions dilute the very essence of competition in the market as they lead to barriers to entry and foreclosure of competition, thereby necessitating the intervention of regulatory authority i.e. the Competition Commission of India (CCI). The Competition Act has specified the threshold under §5 based on which a merger shall qualify as a 'combination', whereby a proposed combination i.e. a merger qualifying within the specified threshold shall provide a prior notice to the CCI who shall either approve or reject the proposed combination after ascertaining the adverse impact on competition in the relevant market.

This article shall briefly deal with the parameters on which horizontal and vertical mergers are adjudged by the Competition Commission in light of decided cases of combination.

2. STATUTORY PROVISIONS IN INDIA

The Competition Act, 2002 (hereinafter referred to as 'the Act') encompasses provisions with respect to the meaning of 'combination' under §5 of the Act which identifies mergers and acquisitions meeting the prescribed threshold for assets or turnover as a 'combination'. The Act obligates the combining enterprise to file a notice forthe proposed combination with the CCI within 30 days of the said proposal, upon which the CCI shall enquire into the impact of the proposed combination and communicate its acceptance or refusal.[1] However, the Central Government has, videNotification S.O. 2039 (E) dated 29th June 2017,granted a blanket exemption for all combining entities from giving a notice under §6 within 30 days for a period of 5 years from the date of publication of the said notification. However, this notification shall still be subject to a penalty up to a maximum of 1% of the turnover of the enterprise in case of failure of disclosure of information.[2] A penalty of INR 10, 00, 000/- (Rupees Ten Lakhs) was imposed on Bharti Airtel Limited in August 2018 i.e. after the effect of the aforementioned notification for its failure to file a notice under §6 besides its gun-jumping clause.[3]

[1]*The Competition Act, 2002*, s.6.

[2]The Competition Act,2002, s.43A.

[3]*Bharati Airtel Limited*2018, C-2017/10/531.

It is a pertinent fact to note that such procedural lapses shall not be a ground for rejection of combination *in toto* and shall only lead to penalty, since the powers of refusal of a combination by CCI shall be based on substantive factors when ascertaining the adverse impact on competition.[1]

The CCI also has wide powers of refusing a merger even if the same does not fall under the purview of ‘combination’ as defined by the Act. This refusal shall be based on the ground that the ‘group’ of enterprises shall lead to or create a likelihood of abuse of its dominant position.[2] Earlier, §4 of the Act merely covered abuse of dominance by a single enterprise holding a dominant position. However, by the Amendment Act of 2007, the term ‘group’ has been added to §4 which widens the powers of CCI under the Act to ascertain the impact of mergers on Competition based on the parameters[3] envisaged under the Act.

3. JUDICIAL PERSPECTIVE IN VIEW OF THE PROPOSALS OF COMBINATION

‘Appreciable Adverse Effect on competition’ as defined under §20 specifies various factors which shall be taken into consideration with respect to a combination.[4]These parameters are ascertained in respect of a carefully delineated ‘relevant market’ in view of §2 of the Act.

The CCI takes into account whether the market is fragmented and whether there are many players in the relevant market which will continue to pose effective competitive constraints on the parties to the combination.[5]In a case of horizontal merger where post-combination shall continue to comprise of many players, the CCI has approved the Combination. A similar view was held by the CCI in the combination of Kuoni Travels (India) Private Limited and Thomas Cook (India) Limited[6], wherein the former acquired 100% shares in the latter and both the parties engaged in the business of travel services thereby resulting into a horizontal merger. This combination also involved a vertical merger as the acquirer had a subsidiary engaged in the business of provision of resort and hotel services Sterling Holiday Resorts (India) Limited, which operated at a different level in the business. However, the CCI approved the combination based on the grounds that there would be no appreciable effect due to the presence of large number of competitors in the said market.

The CCI adopts a dual object approach when ascertaining the appreciable adverse impact on competition in the relevant market i.e. it determines the pro-competitive and pro-consumeristic impacts as well, which are regarded as efficiencies to be achieved. Efficiencies include cost savings, more intensive use of existing capacity, economies of scale or scope, or demand-side efficiencies such as increased network size or product quality.[7] They might also encompass pro-competitive changes in the combined entity’s incentives, for example, by capturing complementarities in R&D activity, which in turn might increase incentives to invest in product development in innovation markets.[8]

With respect to concerns arising on account of highermarket share of the parties to the combination, a flexible approach has been adopted by the CCI especially in sectors which have a very volatile market share– the broadcasting sector where the viewership and production shares vary from quarter to quarter. In sectors which function in two-sided or multi-sided markets, the CCI is also considerate of the Network Effects arising out of the proposed combination. For instance, in case of a horizontal merger between two broadcasting organisations that operate in a two-sided market of provision of broadcasting services driven by advertising, the CCI has allowed the combination based on the ground that the said combination would result in a variety of content available which would not only cater to the needs of the viewers but also gratify the advertisers.[9]

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[1]*The Competition Act, 2002*, s.4.

[2]*The Competition Act, 2002*, s.4.

[3]*The Competition Act, 2002*, s.19.

[4] The Competition Act, 2002, s.20.

[5]*CCI- Inox/Fame India/Fame Motion/Big Pictures/Headstrong films* C-2012/10/84, CCI- CTLC/TCFSL C-2012/09/78.

[6]*Thomas Cook India Limited*C-2015/09/306.

[7]International Competition Network, ‘ICN Merger Working Group: Investigation and Analysis Subgroup, Merger Guidelines Work Book ‘ (2006) p. 62.

[8]ibid.

[9]*The Walt Disney Company and TWDC Holdco 613 Corp*Combination Registration No. C-2018/07/583.

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A combination, short of monopoly, is not objectionable merely because of its size or power of production or merely because a power to restrain competition, if not exerted.[1] Moreover, if one of the parties already had high high market pre-existing the transaction and post-closing of the transaction, there is minimal accretion because the second party to the combination has negligible market share, the CCI approves the transaction.[2]Lack of horizontal overlaps (i.e. where parties are close competitors in a similar line of business) is another reason for the Commission to approve the combination as fewer overlaps are indicative of diverse competition. The recent combination of Walmart with Flipkart[3] is a perfect example of a horizontal merger between the two online shopping giants, which was perceived by many as a hindrance to competition and therefore the same was hanging loose on the thread of rejection by the CCI. However, after carefully examining the combination of Walmart and Flipkart, the CCI approved the said combination and it was found that the operations of Flipkart were relatively strong in mobile and electronics, which constituted a substantial majority of its business. However, operations of Walmart in the same products were insignificant. On the other hand, operations of Walmart were focussed on groceries but Flipkart was not present in this segment. Both the parties did have some horizontal overlap in lifestyle products, which includes skincare, haircare, oral care, baby & feminine hygiene, personal wash, apparel and shoes & accessories. But again, the combined value of sales of the parties in this segment was low and relatively insignificant to the size of the markets for the said products. Since the combination did not alter the current market structure significantly, the same was approved by CCI.

Unlike anti-competitive agreements and abuse of dominance conduct, which are prohibited, combinations (i.e. mergers, amalgamations and acquisitions) are only regulated under the Act.[4] Hence, this legal mandate of regulating combinations is evident in the liberal approach of the CCI which encourages combinations and imposes sanctions or modifies the combinations instead of an outright denial.

4. CONCLUSION

Horizontal and vertical mergers are a ladder for growth which help in multiplying efficiencies and result in economies of scale where the combined entity is more profitable than the individual capacities of the parties. The Competition Act envisages a liberal approach when considering combinations as it does not restrict but merely regulates combinations. These provisions encourage enterprises to expand their capacities further simulating a business-friendly environment.

The CCI is a not a blood hound but merely a watch dog when ascertaining the horizontal and vertical integration of combinations, thereby imposing penalties and acquiring undertakings wherever necessary.

[1]United States v. United States Steel Corporation et. al 251 US 417.

[2]United Spirits Limited/ RELAY B.V. (DIAGEO) C-2012/12/97.

[3]Wal-Mart International Holdings, Inc.C-2018/05/571.

[4]ibid.

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DEMERGER IN INDIA: A CRITICAL STUDY OF ITS EVOLUTION AND SIGNIFICANCE IN TODAY'S ERA

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ABSTRACT

In this competitive environment of today, the sole aim of any corporate is to make the competition benign and ease the commercial risks, and one of the most efficient ways of doing the same is via corporate restructuring, which incorporates within its domain the process of reformation and restructuring of the associations according to the determination of corporate officials. The basic purpose behind restructuring is to adopt more apposite and less arduous approach to attain its objects. There are basically four types of purposes on the basis of which restructuring takes place viz., growth, retrenchment, and more efficient control mechanism and to bring about certain changes in the ownership structure. This paper shall focus on one of those modes called demergers and, that it may be called split-up, split-off or spin-off, but the basic purpose behind the same, which shall be the course of this research would be to understand the purpose, plans and objectives behind cutting down short the size of the company for better efficiency and the legal framework behind the same. This paper shall also analyze through various case laws, some of the biggest examples of demergers in India and shall also examine the evolution of the jurisprudence behind demergers in India by probing the history of the same.

Keywords: Demergers, Corporate Restructuring, Contraction.

INTRODUCTION

In last two decades, India has been witnessing a dramatic change in corporate world due to the New Economic Policy of 1991, which introduced globalization, liberalization and privatization. Aftermath of which, various challenges were faced by the companies like greater domestic as well as global competition, lack of economies of scale, funds constraints, unwanted diversifications, freer import, over creation of capacities and so on. Companies were engaging in various efforts to consolidate themselves in areas of their core competence and divest those businesses where they do not have any competitive advantage. Companies often have to contract and downsize their operations. Here the need of corporate restructuring arises because a division of the company was performing poorly or simply because it no longer fits into the firm's plans. Mainly mergers & acquisitions and demergers were opted as the major corporate activities. Soon after, government made changes in regulation, which made restructuring activity an even more viable business strategy. The objective of corporate restructuring is to create efficient and competitive environment with a view of increase market share, brand name and synergies. While many sell-offs are motivated by financial pressure brought about by high leverage and weak economic demand, the volume of sell-offs increase when overall deal volume increases. It follows the ups and downs of the economy.

CORPORATE RESTRUCTURING

Corporate restructuring refers to a whole lot of decision affecting the functioning of a company. It can take the form of outsourcing, downsizing, selling off assets or businesses or changing the finance portfolio or a combination of all. In other words, it is a comprehensive process, by which a company can consolidate its business operations and strengthen its position for achieving corporate objectives - synergies and continuing as competitive and successful entity. The objective is to reorient or tune the organization to make it more efficient and effective. So any activity done with this objective is corporate restructuring which can be done in form of divestiture, spin off, demerger, assets swap etc. Generally, the company that is debt ridden removes one part of organization and sells to repay their debts. There is no specific definition of corporate restructuring because there are multiple methods like assets based method, which include mergers and acquisition, demergers, divestiture and asset, swap; financial based method which includes internal restructuring, external restructuring, buy-back, conversion of debt into equity; and management based methods.

TYPES OF CORPORATE RESTRUCTURING:

1. **Mergers:** It is a combination of two or more companies, which is generally by offering the stockholders of one-company securities in the acquiring company in exchange for the surrender of their stock. Merger is a form of amalgamation and it is the most common form of corporate restructuring. An example of mergers in India is Tech Mahindra and Satyam Computer Services Ltd.

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2. **Acquisition:** It refers to a situation when one company acquires the controlling interest, which is greater fifty percent (50%) in another company. It is a case of acquisition or takeover. An example of acquisition is Yahoo acquired broadcast.com. The audio and video features integrated Yahoo's vertical areas, including Yahoo new finance, auctions and shopping.
3. **Demerger:** It is refer to hiving off or selling of a part of business to another entity. One of the well-known demerger is Pantaloons Retail (India) Limited in 2012. In this case, Pantaloons Retail (India) Limited (PRIL) transferred all undertakings, business activities and operations to 'Pantaloons Format' to Peter England Fashions and Retail Limited (PEFRL). Shareholder of PRIL to receive one share of PEFRL of Rupees ten each for every five fully paid share of Rupees two each.
4. **Divestiture:** It refers to the disposal of transfer to the third party of a business unit subsidiary company interest sometimes significant holding in associate often for cash. An example of divestiture is Carlyle Group purchased Johnson and Johnson's Ortho Clinical Diagnostics Unit for USD 4.15 billion dollars to divest the slow growing business.
5. **Asset Swap:** There is simultaneous divesting and acquiring others business unit by two companies setting the difference valuation in cash. In other words, the asset swap can be defined as 'An arrangement in which one type of asset (such as one generating capital gain) is exchanged for another (such as one generating regular income) to achieve better asset- liability matching.'
6. **Internal reconstruction:** It is an arrangement made by companies whereby the claim of shareholder, debenture holder, creditors and other liabilities are reduced so that the accumulated losses are written off and the assets are shown at the fair value.
7. **External reconstruction:** It means that by liquidating the existing company and floating a new company to take over the business of an existing company will carry out any such scheme.
8. **Buy-Back:** A buyback, also known as a share repurchase, is when a company buys its own outstanding shares to reduce the number of shares available on the open market and there are number of reasons for company's buyback, such as to increase the value of remaining shares available by reducing the supply or to prevent other shareholders from taking a controlling stake.

DEMERGER- MEANING, TYPES AND NEED

In simple terms, demerger is a device whereby a company without losing its identity or existence, transfer its one (or more) undertaking or even a part or division thereof with all its assets and liabilities to another company at its book value. It refers to hiving off of a part of a business to another entity. The new company formed is known as resulting company. The existing company, which transfers one or more of its undertakings to the resulting company, is known as demerged company. Resulting company issue shares to the shareholders of demerged company as a consideration. Demerged company does not receive any consideration.

There are two forms of demerger, which are:

1. **Spin-off:** This is a type of divestiture strategy where the company's undertaking or division is set apart from the parent company. After the spin-off, both resulting company and parent company function as different corporate entities.
2. **Split-up:** This is a type of demerger where the parent company ceases to exist after splitting-up into one or more independent companies. Once the company is split into different entities, the shares held by the parent company are exchanged for the shares in the new company formed.

Demerger seems to be a beneficial solution for the companies to improve efficiency by trimming the size of the company and focusing on the core objective and sharpening the competitive edge. There are multiple reasons behind the company choosing strategy of demerger as an option for flagging company's commercial fortune. The accountability created by restructuring through demerger often improves performances, and investors also get benefit from the greater visibility of the demerged entities as concentration in the core competency sharpens company's competitive edge. It is also an attempt to undo the previous investment in the form of merger and acquisition which results in wrong decision taken by companies during the process and which can be corrected through demerger. This type of strategy can also be implemented before merger and acquisition to hike the value of the firm. Sometimes demerger become a necessity when a company wishes to establish in its unit in particular territory to comply with the local rules and regulations of that area. Demerger attracts investors who have particular interest in resulting company rather than parent company. For example, Pantaloons which is a retail brand was only attracting retail investors, by spinning off a private equity fund, Kshitij it attracted

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investors of a different sector. It is an important tool of a company to increase the value of market price by focusing on the core goal of its each unit separately. By the virtue of demerger, it diverts the resources to the core businesses, which increase productivity, and also gives more flexibility and opportunity to grow.

HISTORICAL BACKGROUND OF DEMERGER

In 1980s, the trend of takeovers and acquisitions was on peak and opposed by many due to the unsolved problems and failure in meeting expectations of corporate world. Mckinsey and company (1972) found that since 1972, 86% of large unrelated acquisitions of 116 large U.S. and U.K. companies failed to earn back the cost of capital invested. There were multiple reasons of such failure analyzed by different author with different viewpoints. Some authors analyzed it as overestimating synergy (Sirower, 1997), slow pace of integration (Coopers and Lybrand, 1996), poor strategic fit (Bloger, 1996), poor post-merger communication (Chakrabarti,1990), overpaying (Rau and Vermaelen, 1998), conflicting corporate cultures (Hillyer and Smolowitz, 1996) and the list goes on.

Soon after, demerger was first time introduced in the USA, commonly known as spin-offs. With the intention to increase shareholders wealth, a total of 123 spin-offs took place in USA reducing the trend of mergers. Not only in the U.S. but around the world demerger was getting momentum because of the economic recession and introduction of liberalization and globalization. Bowater and Co. split-off in 1984, which was the first case of demerger in the U.K. Demergers, was getting popular in almost every sector of business over the globe.

In India, after introduction of the new economic policy in 1991 many restructuring activities were taking place to improve efficiency and overall performance. First attempt of mergers and acquisition in India was of Swaraj Paul's Escort takeover bid before liberalization was introduced. Since then all strategies of corporate restructuring was adopted by the companies including demerger. Specifically the activities of demerger gained its strength in India when in paragraph 87 of the Union Budget 1999-2000 the then Finance Minister emphasized on demerger so that the companies can avail tax benefit and enhance shareholders value. In context of India, the most common reasons of demerger are- splitting up as family settlement for which the most common example would be of Reliance Industries Limited in 2005. Another reasons are- to gain advantages provided under Income Tax Act and to reduce business risk in competitive market.

DEMERGER LEGISLATIONS IN INDIA

The term 'demerger' is not defined under Companies Act, 1956 but the term 'arrangement' can make it possible to understand demerger. According to Section 390(b) of Companies Act, 1956 the expression 'arrangement' includes' a reorganization of the share capital of the company by the consolidation of shares of different classes, or by the division of shares of different classes, or by both those methods'. Here, The division takes place when – a) part of its undertaking is transferred to a newly formed company, or an existing company and the remainder of the first company's undertaking/division continues to be vested in it; and b) shares are allotted to some or all of the first company's shareholders.

Though, it has been defined in Sub-section (19AA) of Section 2 if the Income Tax Act,1961 in relation to companies, means the transfer, pursuant to a scheme of arrangement under section 391-394 of the Companies Act, 1956, by a demerged company of its one or more undertakings to any resulting company in such a manner that:

1. all the property of the undertaking, being transferred by the demerged company, immediately before the demerger, becomes the property of the resulting company by virtue of the demerger
2. all the liabilities relatable to the undertaking, being transferred by the demerged company, immediately before the demerger, become the liabilities of the resulting company by virtue of the demerger
3. the property and the liabilities of the undertaking or undertakings being transferred by the demerged company are transferred at values appearing in its books of account immediately before the demerger
4. the resulting company issues, in consideration of the demerger, its shares to the shareholders of the demerged company on a proportionate basis except where the resulting company itself is a shareholder of the demerged company
5. the shareholders holding not less than three-fourths in value of the shares in the demerged company (other than shares already held therein immediately before the demerger, or by a nominee for, the resulting company or, its subsidiary) become shareholders of the resulting company or companies by virtue of the demerger, otherwise than as a result of the acquisition of the property or assets of the demerged company or any undertaking thereof by the resulting company

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6. the transfer of the undertaking is on a going concern basis
7. the demerger is in accordance with the conditions, if any, notified under Income tax act, 1961 s. 72A(5) by the central government in this behalf.

The said provision explain about demerger is that- all the property of the division shall be transferred from the demerged company to the resulting company on the book value; all the liabilities of the division shall be transferred from the demerged company the resulting company on the book value; resulting company shall issue shares to the demerged company as consideration on a proportionate basis; 75% shareholders of demerged company shall become shareholders of resulting company; the division of the unit which is being transferred shall be in-going business; any condition fixed by central government shall be satisfied.

Section 391 of the companies act states that demerger shall be carried on under the scheme of arrangement with approval of the court. Demerger forms part of the scheme of arrangement or compromise within the ambit of Sections 390, 391, 392, 393, 394 besides 394-A. It is most likely to attract the other provisions of the Company's Act envisaging reduction of share capital comprising Sections 100 to 105. So, a company should follow the following procedure to get demerger approved by the court –

1. The Company is required to pass a special resolution, which is subject to confirmation, by the court by making an application.
2. The notice to the shareholders convening the meeting for the approval will consist of the full detail of the scheme; effect of the scheme on shareholders, creditors and employees; and details of the valuation report.
3. An application has to be made for approval of the High Court for the scheme of arrangement.
4. It is necessary that the Articles of Association should have the provision of reduction of its share capital and its Memorandum of Association should provide for demerger.

However, no specific guidelines have been provided by the SEBI, but in the Press Release 311-203 dated Dec 17, 2003 it has been proposed by the SEBI to enforce appropriate disclosure in case of demerger as it is followed in case of amalgamation.

CASE STUDIES OF DEMERGER IN INDIA

There are five notable demerger take place in India in the year 2006 which includes big names like Television Eighteen India Limited, Great Eastern Shipping Company Limited, Zee Entertainment Enterprises Limited, Camlin India Limited, Indiabulls Financial Services.

CASE 1: Television Eighteen India Limited is demerged company from resulting company named as Network 18 Fincap Limited on 27th September 2006. The Board of Directors of the company approved a Scheme of Arrangement with an overall objective of simplifying the corporate structure of the company and its subsidiaries, associates and joint ventures (together referred to as the 'Network 18 Group').

CASE 2: Great Eastern Shipping Company Limited is a demerged company from a resulting company named as Great Offshore Limited on 16th October 2006. The scheme of demerger approved by the Board envisages the demerger of the offshore business consisting of drilling services, marine logistics, marine construction and port services into a separate new company, Great Offshore Limited with effect from April 1, 2005 through a High Court approved process.

CASE 3: Zee Entertainment Enterprise Limited is a demerged company from resulting companies named as Zee News Limited and Wire and Wireless India Limited on 22nd November 2006. ZTL's chairman Subhash Chandra release a statement stating the objective of demerger- "In keeping with its philosophy of building long-term shareholder value, the board of Zee had decided to restructure its various businesses. This would strengthen long-term business prospects of each individual business, by providing focused management attention."

CASE 4: Camlin Limited is a demerged company from a resulting company named as Camlin Fine Chemical Limited on 17th December 2006.The main objective of the company behind this demerger was altered to enable the company to pursue business in Fine Chemicals as they launched a new product with large demand and attractive price.

CASE 5: Indiabulls Financial Services Limited is the demerged company from the resulting company named as Indiabulls Real Estate Limited on 20th December 2006. The shareholders will get the equity shares of the

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resulting company i.e. Indiabulls Real Estate Limited in the ratio of 1 equity share each credited as fully paid-up in cash for every 1 equity share each held by the members of the company.

SUGGESTIONS

1. The company must be aware of competitive environment for better results and future perspective before split-off.
2. Besides conforming to the present requirements for continuous growth and viability, the company must ensure an uninterrupted progress for the future, by setting up short-term targets as regards the changing scenario rather than confining to goals for the longer run.
3. Such strategy must be evolved so that there could be more of stability in share prices rather that sudden fluctuations, to which the market could react in a more efficient, well prepared and in subtle manner.
4. The present scenario as regards the current situation prevailing in market is an extremely important factor, which affects demerger of any firm

CONCLUSION

This research examined the importance of demerger activity as one of the possible strategic option for restructuring of the company which resulted to be appropriate method to focus on the core business and to obtain the focus needed to improve the profits and value of the company. It is also observe that demerger is not an option for businesses suffering from financial deficiency but in other cases demerger has successfully proved the dominant objective of restructuring by enhancing shareholder value, reducing the risk of diseconomies of scale and good future prospects for an improvement in performance after demerger.

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MERGERS AND ACQUISITION: ROLE OF IT IN M&A COMPANIES

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ABSTRACT

Mergers and acquisition (M&A) describe the consolidation of companies or assets. M&A include a number of different transactions that are often in pursuit of growth, competitive advantage, or to influence the supply chain. A merger occurs when both the companies combine, when both companies' board of directors have secured shareholder approval. An acquisition takes place when the acquiring company obtains a majority stake in the target firm, which does not change its name or legal structure.

Mergers and acquisitions are strategic decisions taken for maximization of a company's growth by enhancing its production and marketing operations. They are being used in a wide array of fields such as information technology, telecommunications, and business process outsourcing in order to gain strength, expand customer base, cut competition or enter into a new market or product segment.

Mergers and acquisitions in India are governed by the Indian companies act, 1956, under section 391 to 394. Although mergers and acquisition can be instigated through mutual agreements between the two firms, the procedure remains chiefly court driven. The approval of the high court is highly desirable for the commencement of any such process and the proposal for any merger or acquisition should be sanctioned by a 3/4th of the shareholders or creditors present at the general board meetings of the concerned firm.

By understanding business behind mergers and acquisitions (M&A) and being included in the initial stages of the process IT leaders can contribute significantly to the success of such M&A. But this is only possible if the merging business' technology infrastructure is planned, integrated and run to support such mergers and acquisitions.

The aim of this research paper is to shed light upon barriers faced by IT teams while closing such deals. We also detail how IT organizations position themselves to add significant value throughout the process of M&A.

By creating a template, model that can be easily understood by business side of the enterprise IT organization can make a clear case of how IT infrastructure can contribute to add value to virtually every stage of M&A lifecycle. Business executives need to see IT infrastructure as they see other strategic and value generation aspects.

Keywords: mergers and acquisition, growth, information technology, outsourcing, mutual agreement, court driven.

INTRODUCTION

Mergers and acquisition are strategic decisions taken for the expansion and maximization of company's growth through various marketing operations. The various fields like telecommunication, business outsourcing, information technology have widely contributed in the process of making M&A a huge part of business field.

Technology companies, in search of new ideas, new products, trained knowledge workers, strategic relationships and additional market share, have been the most acquisitive. The sector is highly innovative and subject to constant technological development. it is also the source of dramatic changes in business practices in all other industrial sectors. over the past few years India's top software companies have acquired foreign firms to increase their local present in the US and Europe.

The IT and IT- enabled services sector saw cross- border merger and acquisition transaction worth $1.4 billion With a bulk of the deals happening in Europe and North America. Indian IT companies have thoroughly realised the value of making strategic cross-border acquisitions as demonstrated by infosys Ltd"s acquisition of Lodestone, Wipro Ltd"s acquisitions of Promax.

MERGER & ACQUISITION INDUSTRY

Because of the unique complexities of the mergers and acquisitions process, a unique industry has grown up around it with a number of law firms, accountants, stock brokers and other business experts dedicating their practices to it. Mergers and acquisition are most common in health care, technology, financial services and retail sectors. In health care and technology many small and medium sized company find it difficult to compete in the market place with the handful of behemoths that control the industry.

The technology industry moves so rapidly that, like health care, it takes a massive presence and huge financial backing for companies to remain relevant. When a new idea or product hits the scene, industry giants such as Google, Facebook and Microsoft have the money to perfect it and bring it to market. Many smaller companies, instead of unsuccessfully trying to compete, join forces with the big industry players.

MERGER OR AMALGAMATION

The term merger is not been defined in the companies act, income tax act or any other Indian law. Laws in India use "amalgamation" for merger. The income tax act, 1961 section2(1B) says that merger of two or more company to form a new company such that all the assets and liabilities of amalgamating company becomes the assets and liabilities of amalgamated company.

Section2(1B)[1] "amalgamation", in relation to companies, means the merger of one or more companies with another company or the merger of two or more companies to form one company (the companies or company which so merge being referred to as the amalgamating company or companies and the company with which they merge or which is formed as a result of the merger, as the amalgamated company) in such a manner that-

1. All the property of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company by the virtue of amalgamation;
2. All the liabilities of the amalgamating company or companies immediately before the amalgamation become the liabilities of the amalgamated company by the virtue of amalgamation;
3. Shareholders holding not less than[2] [three-fourths] in value of the shares in the amalgamating company or companies (other than shares already held therein immediately before the amalgamation by, or by a nominee for, the amalgamated company or its subsidiary) becomes shareholders of the amalgamated company by virtue of the amalgamation

Otherwise than as a result of the acquisition of the property of one company by another company pursuant to the purchase of such property by other company or as a result of the distribution of such property to the other company after the winding up of the first mentioned company;]

ROLE OF IT SECTOR IN M&A COMPANIES

Different companies have different strategic goals and different approaches to M&A. Alignment with the strategy of the company is clearly important but transactions can be justified as well. Some acquisitions occur because they represent a window on a new or emerging market and technology and the objective is not developing the synergies, but learning so the purchaser can avoid surprises and move quickly to invest as the market emerges.

In India, mergers and acquisitions have been more in number and the value in the last decade or so. The total number of mergers and acquisitions in 1999 – 2000 was 1068 and the value of the acquisitions was Rs 32,012 crores. In 2000 – 2001 the total number was 1215 and the value of acquisitions being 29,218 crores. Thus, mergers and acquisitions, the way in which they are understood in the western countries, have started taking place in India in last decade.

Indian IT companies have thoroughly realised the value of making strategic cross-border acquisitions as demonstrated by Infosys Ltd. acquisitions of Lodestone and Wipro Ltd acquisitions of Promax.

LIST OF ACQUISITION BY TOP 5 IT COMPANIES[3]

• COGNIZANT- Fathom solutions, AimNet solutions, C1,Corelogic, Galileo Performance, Ygyan Consulting, Zaffera, UBIS India Captive Unit	• WIPRO- American Management System Global Utilities service, Citi Technology Service(India), Spectramind e-Services, Saraware Oy, Promax Application Group
HCL Tech- UCS Group, Axon Group, Capital, Stream, Control Port Solutions, HCL EAJ Services, Liberta Financial Services	INFOSYS- Expert Information Services, Lodestone Holding, McCamish Systems, Portland Group, Unza Holdings
TCS- Citigroup Global services, Comicrom, Computational Research Laboratories, Financial Network Services, Supervalu, TCS Management, TKS- Teknosoft	

[1] Income tax act,1961 define amalgamation

[2] Substituted for ''nine-tenths'' by the finance act, 1999, w.e.f. 1-4-2000.

[3] Source for table: www.legalservicesindia.com

If the companies lack the understanding of the technology or role of IT sector during mergers and acquisitions it might drain the value of the acquisition itself. But on the other hand a planned and streamlined IT can bring results more than expected out of the project.

Better IT department is able to sense the requirements of the company from this M&A than the competitors who do not consider the challenge of IT sector. And thus, the ones who do are more successful in getting fruitful results from M&A.

For getting better results in any M&A considering their IT department generally follow three rules which lead to their success. These are:

- **IMPROVISE THE IT DEPARTMENT**

Companies first enhance and maintain their IT department before starting of any M&A work. They assure if the department is supported with latest technology, better workforce who are job oriented which all together makes the department flexible, adaptive to perform the work of M&A and is able to handle large amount of workload and information of the other companies that would come in way of the talks of M&A. Also, they keep in mind not only about the current atmosphere and model of the company but also of future data that might come in hand.

- **DUE DILIGENCE**

Having a perfect IT does not make a M&A successful but utilising its resources and knowledge do the job. Therefore, the company CEOs and Board members need to give a seat at the due diligence table to the IT heads so that they can know the present situation and determine what information is necessary to be forwarded and what information is vital for the resultant company in the end. These information, strategy and operations are not just to make the IT better of the companies coming together or of the acquired company but also all other functions that IT perform like HR and PR.

- **POSTMERGER PLANNING**

Planning for after M&A is also necessary. If the acquired company is able to transform its present IT and other strategies according to the acquiring company the whole postmerger integration is able to perform better and exploit their resources better.

While buying a company you need to evaluate company’s IT expenses and identify risks. To look for hidden opportunities for cost saving and new revenues. Basically, you want to get sure what are you buying in that company and that you are paying a fair price and technology plays an important role evaluating since it makes tasks easier, faster, accurate and more reliable.

IT team can play these two to maximise the success rate of M&A

1. RISK MANAGEMENT: IT teams can play a major role in reducing the risk if failure being part of the due diligence table and highlight the low performance areas, enrich value, new and innovative ways to compete.
2. SPEEDER PROCESS: The faster the process of the M&A will be complete the sooner the benefits will occur and it also saves cost and uncertainty among the employees and the customers. Also, the care should be kept otherwise speedy completion may lead to errors which will cause harm instead of giving benefits to the organisation. Experiences and planned IT teams can easily help the company to complete the process faster and with less errors.

IT teams play others roles as well to ensure M&A process is carried smoothly:

- Hand picked managers and team members who are experienced and qualified to work in such an environment.
- IT members try to communicate and win confidence of all other departments and top management that they have a seat at the due diligence table.
- The IT teams can develop skills to identify and measure risks and implement the required plans smoothly.

FINAL THOUGHTS

The organisations need to realise the importance of involving IT in the process of the M&As because as other areas such as cost, marketing IT also can help and to a great extent increase the success rate of the acquisitions. As per past researches done it has been observed that more than 50% of the areas in M&As in different sectors such as health care, technology, financial services and industries is related to IT. Therefore, involving IT only increases value of the M&A process.

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- Meghna maji is a law student of KIIT school of law, Bhubaneswar pursuing BBA LLB (Business Hons.)

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ECONOMICAL IMPACT OF MERGERS & ACQUISITIONS ON COMPANIES FINANCIAL PERFORMANCE OF COMPANIES AFTER M & A

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ABSTRACT

The Merger & Acquisitions has taken the delineation of corporate restructuringactivity toolwith purpose to expand the area of companies. The ideology of M&A works as the best corporate economic strategy all over the world. Even in the Indian economy, the economy reforms, size and competence has drastically changes which lead to business enterprises in India. In this research paper the main focus on the analysis of how the Merger &Acquisitions among the companies impacts on the economic performance. The research methodology adopted in this paper is based on the recent and old legislation, data or reports and rules laid down by governmentregarding the M&A andalso cover the important case laws. The paper will be divided into four section followed by sub-sections. The first section will cover the introduction part which broadly discuss on the development of M&A among corporate sector and its economical factor. Then in second part there will be discussion on the statutes, government rules and analysis and reports of corporate experts. Then the third section will cover the important case studies. The final part of the paper will cover the conclusion part where the total outcome of the research discussed followed by suggestions if any.

Keywords:Economical factor, financial performance, Merger & Acquisitions, standard deviations

1. INTRODUCTION

While the interest in the merger and acquisitions is not common and new but in thiscommercial era the topic has taken the delineation of great discussion. In the earlier period, the focus on the impact of the merger and acquisitions was not so much, but from the last two decades, this issue has drawn considerable interests from the academicians, researchers and mostly from the corporate practitioners or businessman. In today's globalisation period with the advancement of technologies, the sustaining of companies in the market has become a key challenge (T.C & Vishwanatham, 2015). Actually the mergers and acquisitions suggest the idea of reviving, or restructuring of such companies who are declining in the market or fail in complying with their vision and mission. Evenwe can say that this M&A act as crutch to provide support tothe worst performer companies. Well, this merger and acquisitions both terms might have the same concept,but the meaning of both is different as the term 'Merger' means, "the combination of two things into one"while the term 'Acquisition'means, acquire which denotes to an instance where "one company taking over the assets of another company". Butdon't confuse with the term 'Amalgamation', as it has different meaning then Acquisitions. Therefore, this study is limited and only deals with the Merger and Acquisitions and not with the Merger and Amalgamation. However, the concept of M&Ais not limited only upto the reviving, or restructuring of companies,but other aspects too, like impact on the economic structure of the company, working, shareholders, etc. Coontz'04 (2004) in his research study briefly analyses the view of proponents about the impact of merger & acquisitions. According to him, some proponents renege that this corporate ideology will help in rises the efficiency while the rest believe that it will drop down the consumer welfare by monopoly power. Well, if we deep trace out in the past of corporate sector, we'll found that, there are a numberof studies have done the till,now (and still working) to analyse and quantify the financial impacts and profits through the merger and acquisitions, not only to the companies but on the countries and their market too. But, the finding of these studies is so diverse that it creates lots of confusion among the readers to understand and amplify it and arrive at any further conclusion or an opinion. Although, if we deeply analyse motive behind the various takeovers and merger of the companies happen till now, will come over with the fact that, the prime objective behind the M&A are either to provide the tough competitions to their rivalry or to compete with the existing or upcoming challenges jointly. And the ideology of reviving or restructuring comes after that.

LITERATURE REVIEW

This literature review has been made to analyse the impact of M&A on themonetary performances of the company belonging to telecom sector. Along with the passing of time, this merger and acquisitions have become an important for the growth of the corporation.Nowadays, the pace of M&A in Indian business sector are actively picking up as a key of development factor, in response to the various economic reforms, which were introduced by the Indian government, since 1991, in its move towards the liberalization and globalization (Singh, July 2013). These economic reforms bring the upheaval in the Indian economy, which lead it to a depth mutation and also impacted on the size and competence, which becomes the main objective for business

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enterprises in India. Even, the free flows of capital across the countries and demolition of trade barriers can be considered as the other reason behind the pace of M&A across the nation.

2.1. Telecom Sector

Today, the telecom industry has remarkably grown in the Indian subcontinent with holding second largest in the world with 1.2 billion subscribers.Kumar (2009) in his study had examined the operating performance of post-mergers companies. With the help of accounting data, he tried to disquisitions of gains through mergers and acquisitions. But in comparison with the pre-merger monetary position there were no improvement in the post-merger.Sinha et. al (2010) had conducted research study on some selected financial institution in India who were merged and acquired. They used non-parametric Wilcoxon signed rank test to disquisition of impact in the efficiency of companies during pre & post-merger. On their final submission they pointed out that, there was significant correlation between financial performance and merger & acquisition and the firms who takeover another were capable to procreate the value. Verma & Sharma (2014) studied on the impact of M&A on pre & post analysis on telecom industry. Their analytical study was different from the other's empirical study. In their study, they have concluded that in comparison with pre-merger, the liquidated positions in post-merger were average significant underperformance but in operating performance it still poor improvement. Seethanaik (2015) had profound the impact of mergers and acquisitions in the telecom industry. His analysis of the pre & post capitalization and market share of the two telecom companies who were acquired the other companies i.e., Spice Communication by Idea Cellular and Zain telecom by Bharti Airtel Limited. His study clearly reflects that how acquisitions variable impact on the operating and financialperformance of the company. Chawla (2017) also in his strategic analysis of the telecom industry has examined that there is no any significant improvement have on the financial and operating during the post-merger phase. In his further submission, he added the reason behind it that after financial breakdown the economy takes time to recuperate. Bedi (2018)in her empirical study, has critically researched and submitted that, except Airtel & Vodafone other telecom industries were failed to improve their liquidity position through merger and acquisitions.

2.2 Research Methodology

The research study based on the interpretation of diverse sources which is collected through books, articles, journals, websites, corporate data's, etc. Actually, this research approach has conventionally been favoured in the improvement of the understanding regarding the raised context and depth help in preparing the paperit will help the readers to easily grasped its nature, finding and outcome and also help them to cross-check with their finding & outcome. The inchoate part of this paper is dealing with the introduction about the nature of the paper which subsequently followed by finding of the paper and will surcease with the conclusion and recommendations. In order to understand the impact on the financial position of companies in post-merger and acquisitions have selected two companies from telecom industry for the evaluations. The companies are as follows;

1. Merger of Idea with Vodafone
2. Acquisition of Telenor by Bharti Airtel

2.3. Statement of problem

Well the resources, technologies, skills and most of all financial conditions and markets, are always acting as the biggest factor which attracts the two or more similar companies to go with the idea of the merger process in order to celerity achieve their aims & mission. Actually, in the merger when both the existing companies failed to perform as a successful entity anymore, then they merge their resources and assets and create a new single entity. Thus the monetary and other benefits equally redistributed. Even the share of both old companies after acquiring new single entity equally redistributed among the shareholders of both companies. However, in the case of acquisitions the scenarios are different. The first difference is that, in acquisitions, the majority shareholding company acquire on the resource, assets and control of the company by buying their shares. And second is that, no new entity creates, but the company who takeover becomes the new owners.

2.4. Research Objective

The prime objective behind this research study is that, how the M&A impact on the financial performance of the companies by comparing their financial ratio in pre & post merging year.

2.5. Limitation of the study

Well of the above explain it clears that, this research study is an interpretation of the limited secondary sources and this is a prime limitation of the paper. Second limitation of this study is that the specific country chooses. Last limitation of this study that this paper only covers the merged & acquired companies from telecom sector.

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Important note that, this study didn't cover the impact of every industry of the selected country because they might have their own retention on the impact of the mergers and acquisitions. However, this study didn't restrict on its future finding, it can be carried out in future study for better arriving of the finding and will help in proper study the nature of the research question.

3. DATA ANALYSIS

To analyse the financial data,have taken three-year report from Balance sheet& Profit/lossstatements of the two telecom companies mentioned above. This analysis will determine that whether merger and acquisitions enhance in the liquidate position of companies or not.The 'percentage change' term here apprise as the comparison of change between the various status & operating performance of the company, before and post-merger. The simple method has been used for calculation of financial data is as follows;

$$\textbf{Change (\%)} = \frac{\textbf{(Succeeding financial year – Preceding financial year) X 100}}{\textbf{Preceding financial year}}$$

- If in the result the earliest year is zero or negative, the percent calculated will not be meaningful. Thus N/M is used in the below tables and termed as 'Not Meaningful'.
- Most of the percent's used below are rounded to one or two decimals unless more are meaningful.

3.1. Hypothesis

For clear and easy understanding the data analysis has classified hypothesis into two part i.e., H_0, $H_1$and H_2. Through these hypotheses, it will be easily grasp out that how much M&A impact on the financial ratio of company.

H_0 – There is no any significant impact on the liquidity position of the selected companies

H_1 – There is quite significant change but not so much in the financial performance of the selected companies

H_2 - There is much change in the financial position of the selected companies

3.1.1. Company profile

[A] Merger of Idea with Vodafone (Year of Merger: 2017-18)

Table-1: Table is showing the Balance sheet of Vodafone Idea Ltd. during pre & post-merger period

Ratios (Rs. in crores)	Pre- Merger (Year end March)			Post-Merger (Year end March)		
	FY' 15	FY' 16	%Change	FY'17	FY'18	%Change
Equity Share capital	3597.84	3600.51	0.07	3605.33	4359.32	21
Reserves & Surplus	18292.30	21164.69	15.7	20118.43	21310.19	5.59
Total Shareholders' Funds	21890.14	24765.2	13.13	23723.76	25669.51	8.20
Total non -current liabilities	19072.52	41243.47	116.24	55142.21	60415.11	9.56
Total Current liabilities	16713.18	12646.62	N/M	16896.44	10638.42	N/M
Total Capital and Liabilities	57675.84	78655.18	36.37	95762.42	96723.04	1.01
Fixed Assets	37193.35	71010.13	90.92	83654.18	83293.21	N/M
Total Non-Current Assets	42730.63	74879.37	75.23	89141.01	88168.46	N/M
Total Current Assets	14945.21	3760.32	N/M	6621.41	8554.58	29.2
Total Assets	57675.84	78655.18	36.37	95762.42	96723.04	1.01
Result	**H_0**					

Source: Data compiled from the annual financial report of the (Vodafone Idea Limited, 2019)

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Table-2: Table is showing the Profit/Loss statement of Vodafone Idea Ltd. during pre & post-merger period

Ratios (in Rs Cr.)	Pre-Merger			Post-Merger		
	FY'15	FY'16	%Change	FY'17	FY'18	%Change
Total Operating Revenues	31279.47	35803.69	14.46	35278.65	27828.60	N/M
Other Income	452.34	177.34	N/M	197.03	298.20	51.34
Total Revenues	31731.81	35981.03	13.4	35475.67	28126.80	N/M
Total Expenses	27392.73	31910.18	16.5	36894.67	35423.50	N/M
Profit / Loss before Tax	4339.08	4070.85	N/M	-1419.00	-7296.70	N/M
Profit / Loss after Tax and continuing operations	2809.84	2646.29	N/M	-831.08	-4780.60	N/M
Results	**H_0**					

Source: Data's complied from the annual financial report of the (Vodafone Idea Limited, 2019)

Table 1 and 2 deals with the comparison of three-year balance sheet & profit/loss statements of Vodafone Idea Ltd., respectively. The financial year has been calculated from 2015 to 2018 and it is classified into pre & post-merger for better understanding. For the study of the balance sheet have used financial variable; Equity share capital, total current and non-current liabilities and for the analyse of the status of company's assets used fixed, current and non-current assets. And for the study of the profit / loss statements, have used financial & operating variable; total operating revenue, other income, total revenue, total expense and also included Profit before tax (PBT) & Profit after tax (PAT). If we go along with the table and compare the pre and post-merger status of the company, we will found that the liquidated condition of the company was much better than the post-merger. And also in the table it is clearly depicted that there are no any significant changes in the any status of the company except in the equity share capital and total current assets where the company has remarkably increased.

[B] Acquisitions of Telenor by Bharti Airtel (Year of acquisition: 2017-18)

Table-3: Table is showing the Balance sheet of Bharti Airtel Ltd. during pre & post-acquisitions period

Ratios	Pre-Acquisitions			Post-Acquisitions		
	FY'15	FY'16	%Change	FY'17	FY'18	%Change
Equity share capital	1998.7	1998.7	N/M	1998.7	1998.7	N/M
Reserve & Surplus	76274.20	109730.40	43.8	99208.60	100862.20	1.67
Total shareholder funds	78272.90	111729.10	42.7	101207.30	102860.90	1.63
Total non-current liabilities	25099.30	45452.10	81	54613.90	58436.00	7
Total current liabilities	23051.50	27846.80	20.8	35816.40	43640.40	21.8
Total Capital & Liabilities	126423.70	185028.00	46.3	191637.60	204937.30	7
Fixed Assets	62511.30	95755.80	53.18	121123.00	128152.10	5.8
Total non-current assets	111667.30	173607.00	55.4	174954.60	183441.40	4.85
Total current assets	14756.40	11421.00	N/M	15310.10	21495.90	40.4
Total Assets	126423.70	185028.00	46.3	191637.60	204937.30	7
Result	**H_0**					

Source: Data's Complied from the annual financial report (Bharti Airtel, 2019)

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Table-4: Table is showing the Profit & Loss statement of Bharti Airtel Ltd. during pre & post-acquisitions period

Ratio	Pre-Acquisitions			Post-Acquisitions		
	FY'15	FY'16	%Change	FY'17	FY'18	%Change
Total revenue	60689.40	60300.30	N/M	62460.60	53898.60	N/M
Total Expense	45034.10	49538.90	10	53699.30	53975.70	N/M
PBT	15655.30	10254.40	N/M	-8509.50	-681.20	N/M
PAT	13200.50	7780.30	N/M	-9925.60	79.20	N/M
Result	**H_0**					

Source: Data's Complied from the annual financial report (Bharti Airtel, 2019)

Table 3 &4 deals with the comparison of three-year balance sheet and profit/ loss report of Bharti Airtel Ltd. In this case also the financial year has been calculated from 2015 to 2018 and it is classified into pre & post-acquisitions for analysing of the financial status after takeover. For the study of the balance sheet, same criteria have been followed as in case of Vodafone followed & for the study of the profit/loss account, the financial variance used are as follows; Total revenue, Total expense, Profit before tax (PBT), Profit after tax(PAT). Well even the Bharti Airtel's condition is not remarkable but one-line ahead than Vodafone status.

4. CONCLUSION & RECOMMENDATION

This paper studied the two parameter i.e., literature review and data analysis for determining the impact of merger & acquisitions on the financial position of the company in the telecom sector. But none parameter depicts any significant change in the liquidated and operating performance of the company after merger and acquisitions. Therefore, the result has come outafter the overall study and deeply analyse the two parameters, that the companies through mergers and acquisitions not been able to rise up in the financial positions, but they might be able to take the mileage of synergies which arises out of the mergers and acquisitions deal. Even the merger and acquisition in this paper has been analysed separately, but still the results remained negative. Although the outcome of this paper do not apply on the other merged or acquired companies' financial performance they might have their own retention on the impact of the mergers and acquisitions.In a simple terminology it can be said as that M&A are like the marriages where it is not pre-decided that every marriage will be happy. Therefore, at last it is highly recommending that its become very crucial for the companies to identify the problem and resolve it expeditiousness in order to rise the profit after M&A and rationalize the decision of merger and acquisitions.

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4. The title of the paper should be in capital letters, bold, size 16" and centered at the top of the first page. The author(s) and affiliations(s) should be centered, bold, size 14" and single-spaced, beginning from the second line below the title.

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EXAMPLES OF REFERENCES

All references must be arranged first alphabetically and then it may be further sorted chronologically also.

- **Single author journal article:**

Fox, S. (1984). Empowerment as a catalyst for change: an example for the food industry. *Supply Chain Management, 2*(3), 29–33.

Bateson, C. D.,(2006), 'Doing Business after the Fall: The Virtue of Moral Hypocrisy', Journal of Business Ethics, 66: 321 – 335

- **Multiple author journal article:**

Khan, M. R., Islam, A. F. M. M., & Das, D. (1886). A Factor Analytic Study on the Validity of a Union Commitment Scale. *Journal of Applied Psychology, 12*(1), 129-136.

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- **Text Book:**

Simchi-Levi, D., Kaminsky, P., & Simchi-Levi, E. (2007). *Designing and Managing the Supply Chain: Concepts, Strategies and Case Studies* (3rd ed.). New York: McGraw-Hill.

S. Neelamegham," Marketing in India, Cases and Reading, Vikas Publishing House Pvt. Ltd, III Edition, 2000.

- **Edited book having one editor:**

Raine, A. (Ed.). (2006). *Crime and schizophrenia: Causes and cures.* New York: Nova Science.

- **Edited book having more than one editor:**

Greenspan, E. L., & Rosenberg, M. (Eds.). (2009). *Martin's annual criminal code:Student edition 2010*. Aurora, ON: Canada Law Book.

- **Chapter in edited book having one editor:**

Bessley, M., & Wilson, P. (1984). Public policy and small firms in Britain. In Levicki, C. (Ed.), *Small Business Theory and Policy* (pp. 111–126). London: Croom Helm.

- **Chapter in edited book having more than one editor:**

Young, M. E., & Wasserman, E. A. (2005). Theories of learning. In K. Lamberts, & R. L. Goldstone (Eds.), *Handbook of cognition* (pp. 161-182). Thousand Oaks, CA: Sage.

- **Electronic sources should include the URL of the website at which they may be found, as shown:**

Sillick, T. J., & Schutte, N. S. (2006). Emotional intelligence and self-esteem mediate between perceived early parental love and adult happiness. *E-Journal of Applied Psychology*, *2*(2), 38-48. Retrieved from http://ojs.lib.swin.edu.au/index.php/ejap

- **Unpublished dissertation/ paper:**

Uddin, K. (2000). A Study of Corporate Governance in a Developing Country: A Case of Bangladesh (Unpublished Dissertation). Lingnan University, Hong Kong.

- **Article in newspaper:**

Yunus, M. (2005, March 23). Micro Credit and Poverty Alleviation in Bangladesh. *The Bangladesh Observer*, p. 9.

- **Article in magazine:**

Holloway, M. (2005, August 6). When extinct isn't. *Scientific American, 293*, 22-23.

- **Website of any institution:**

Central Bank of India (2005). *Income Recognition Norms Definition of NPA.* Retrieved August 10, 2005, from http://www.centralbankofindia.co.in/ home/index1.htm, viewed on

7. The submission implies that the work has not been published earlier elsewhere and is not under consideration to be published anywhere else if selected for publication in the journal of Indian Academicians and Researchers Association.

8. Decision of the Editorial Board regarding selection/rejection of the articles will be final.