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BLEND IN AND STAND OUT- MERGERS AND ACQUISITION

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I. INTRODUCTION TO MERGERS AND ACQUISITION

Mergers and acquisitions are increasingly becoming strategic choice for organizational growth and achievement of business goals including profit, empire building, market dominance and long-term survival. The ultimate goal of this strategic choice of inorganic growth is, however, maximization of shareholder value. The phenomenon of rising M&A activity is observed world over across various continents, although, it has commenced much earlier in developed countries (as early as 1895 in US and 1920s in Europe), and is relatively recent in developing countries. In India, the real impetus for growth in M&A activity hadbeen the ushering of economic reforms introduced in the year 1991, following the financial crisis and subsequent implementation of structural adjustment programme under the aegis of International Monetary Fund (IMF). In recent times, though the pace of M&A's has increasedsignificantly in India too and varied forms of this inorganic growth strategy are visible across various economic sectors.

The term mergers and acquisitions encompass varied activities of stake acquisition and control of assets of different firms. Besides, there are several motives for different types of mergers and acquisitions seen in corporate world. This chapter provides an understanding of the concept of mergers and acquisitions from industry and regulatory point of view and motives for mergers and acquisitions.

MEANING OF MERGERS AND ACQUISITION MERGERS

The term 'merger' is not defined under the Companies Act, 1956 ("CA 1956"), and under Income Tax Act, 1961 ("ITA"). However, the Companies Act, 2013 ("CA 2013") without strictly defining the term explains the concept. 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. The possible objectives of mergers are manifold - economies of scale, acquisition of technologies, access to sectors / markets etc. Generally, in a merger, the merging entities would cease to be in existence and would merge into a single surviving entity.

ACQUISITION

An 'acquisition' or 'takeover' 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. A takeovermay be friendly or hostile, and may be affected through agreements between the offeror and the majority shareholders, purchase of shares from the open market, or by making an offer foracquisition of the target's shares to the entire body of shareholders.

PURPOSE OF MERGERS AND ACQUISITIONS

Mergers and acquisitions are resorted to by the corporate entities due to more than one reason. Some of the significant motives for mergers include the following:

(a) **Growth**: Broadly there are two alternatives available for growth of a corporate entity as long as investment opportunities exist. The first is through the internal growth where the firm invests its own resources in creating facilities for expansion. This can be slow and ineffective if a firm is seeking to take advantage of a window of opportunity in which it has short term advantage over competitors. The faster way to achieve growth in such case would be to merger and acquire necessary resources to achieve competitive goals. In this process, the acquirer will pay premium for acquisition of other company or assets, but ideally, the strategy would not be as expensive as that of internal growth.

(b) **Operating Synergy**: Synergy is one of the most commonly cited reasons to go for mergers. Synergy is simply defined as 2+2=5 phenomenon. The value of the company formed through merger will be more than the sum of the value of the individual companies just merged. Symbolically, $V(A) + V(B) < V(AB)$

$V(A)$ = value of A Ltd. $V(B)$ = value of B Ltd.
$V(AB)$ = value of merged company.

Expansion through a merger or acquisition increases the size of the company and hence may lower per-unit costs. Synergy takes the form of revenue enhancement and cost savings. By merging, the companies hope to benefit from reduced staff costs, economies of scale, acquisition of new technology to maintain or develop competitive edge and improved market reach and industry visibility.

(c) **Empire building**: Managers have larger companies to manage and hence more power. Manager's compensation: In the past, certain executive management fit teams had their pay out based on the total amount of profit of the company, instead of the profit per share, which would give the team a perverse incentive to buy companies to increase the total profit while decreasing the profit per share (which hurts the owners of the company, the shareholders); although some empirical studies show that compensation is linked to profitability rather than mere profits of the company.

(d) **Economic Necessity**: Economic necessity may force the merger of some units. If there are two sick units, government may force their merger to improve their financial position and overall working. A sick unit may be required to merge with a healthy unit to ensure better utilisation of resources, improve returns and better management. Rehabilitation of si.ck units is a social necessity because their closure may result in unemployment etc.

(e) **Better Financial Planning**: The merged companies will be able to plan their resources in a better way. The collective finances of merged companies will be more and their utilisation may be better than in the separate concerns. It may happen that one of the merging companies has short gestation period while the other has longer gestation period.

The profits of the company with short gestation period will be utilised to finance the other company. When the company with longer gestation period starts earning profits then it will improve financial position as a whole.

(f) **Diversification**: Two or more companies operating in different lines can diversify their activities through amalgamation. Since different companies are already dealing in their respective lines there will be less risk in diversification. When a company tries to enter new lines of activities then it may face a number of problems in production, marketing etc.

(g) When some concerns are already operating in different lines, they must have crossed many obstacles and difficulties. Amalgamation will bring together the experiences of different persons in varied activities. So amalgamation will be the best way of diversification.

(h) **Eliminations of Competition**: The merger or amalgamation of two or more companies will eliminate competition among them. The companies will be able to save their advertising expenses thus enabling them to reduce their prices. The consumers will also benefit in the form of cheap or goods being made available to them.

(i) **Utilisation of Tax Shields**: When a company with accumulated losses merges with a profit-making company, it is able to utilise tax shields. A company having losses will not be able to set off losses against future profits, because it is not a profit earning unit.

On the other hand if it merges with a concern earning profits then the accumulated losses of one unit will be set off against the future profits of the other unit. In this way the merger or amalgamation will enable the concern to avail tax benefits.

TRANASACTIONS INVOLVED IN M&A

M&A can include a number of different transactions, detailed below.

Merger: In a merger, the boards of directors for two companies approve the combination and seek shareholders' approval. After the merger, the acquired company ceases to exist and becomes part of the acquiring company. For example, in 2007 a merger deal occurred between Digital Computers and Compaq whereby Compaq absorbed Digital Computers.

Acquisition: In a simple acquisition, the acquiring company obtains the majority stake in the acquired firm, which does not change its name or legal structure. An example of this transaction is Manulife Financial Corporation's 2004 acquisition of John Hancock Financial Services, where both companies preserved their names and organizational structures.

Consolidation: A consolidation creates a new company. Stockholders of both companies must approve the consolidation, and subsequent to the approval, they receive common equity shares in the new firm. For example, in 1998 Citicorp and Travellers Insurance Group announced a consolidation, which resulted in Citigroup.

Tender Offer: In a tender offer, one company offers to purchase the outstanding stock of the other firm at a specific price. The acquiring company communicates the offer directly to the other company's shareholders, bypassing the management and board of directors. Example: when Johnson & Johnson made a tender offer in 2008 to acquire Omrix Biopharmaceuticals for $438 million. While the acquiring company may continue to exist — especially if there are certain dissenting shareholders — most tender offers result in mergers.

Acquisition of Assets: In a purchase of assets, one company acquires the assets of another company. The company whose assets are being acquired must obtain approval from its shareholders. The purchase of assets is typical during bankruptcy proceedings, where other companies bid for various assets of the bankrupt company, which is liquidated upon the final transfer of assets to the acquiring firm(s).

Management Acquisition: In a management acquisition, also known as a management-led buyout (MBO), the executives of a company purchase a controlling stake in a company, making it private. Often, these former executives'

partner with a financier or former corporate officers in order to help fund a transaction. Such an M&A transaction is typically financed disproportionately with debt, and the majority of shareholders must approve it. For example, in 2013, Dell Corporation announced that it was acquired by its chief executive manager, Michael Dell.

Difference Between Mergers & Acquisitions

BASIS FOR COMPARISON	MERGER	ACQUISITION
Meaning	The merger means the fusion of two or more than two companies voluntarily to form a new company.	When one entity purchases the business of another entity, it is known as Acquisition.
Formation of a new company	Yes	No
Nature of Decision	The mutual decision of the companies going through mergers.	Friendly or hostile decision of acquiring and acquired companies.
Minimum number of companies involved	3	2
Purpose	To decrease competition and increase operational efficiency.	For Instantaneous growth
Size of Business	Generally, the size of merging companies is more or less same.	The size of the acquiring company will be more than the size of acquired company.
Legal Formalities	More	Less

STEPS INVOLVED IN MERGERS&ACQUISITION

10-step merger and acquisition (M&A) execution strategy where each step follows the other, and where everyone who works in a company understands, agrees, accepts and can explain it to someone else. Everyone being able to explain a strategy in a cogent and an understandable way greatly increases its chances of being implemented.

Needs: For the majority of people in a company, the word "goal" is confusing. That is why if you ask people their goals they often hem and haw or just throw out some number to get theirboss off their back.

Not everyone has goals, but everyone has needs. And there are generally three needs for any company that everyone in the company will understand, agree with and accept:

a. To make money — to pay for overhead, grow and provide a return on investment toinvestors;
b. To consistently exceed (a.k.a. delight) customer, client, investor and communityexpectations; and
c. To fully engage employees to enthusiastically commit to fulfilling "a" and "b."

Results: Identify what result(s) which if achieved will fulfil the three needs above. For most companies, it is "b" above. When your company greatly and consistently exceeds expectations of all stakeholders, that company will make money (unless it is poorly managed)to invest in growth and satisfy investors.

Furthermore, employees will love working for a company that delights and excites vs. frustrates and disappoints customers and clients. For instance, by Apple creating products that were simple, reliable and beautiful, it took technology from the business to business to the business to consumer market.

Strategy: Identify what plan that will generate results. For Apple, it was to build products that were simple, reliable and beautiful.

Tasks: These are the specific actions that need to be taken to fulfill the strategy above. For Apple it was to research, design and manufacture products that were simple, reliable and beautiful and execute marketing and sales to take them into the marketplace.

Skills and resources: Identify the skills needed to complete the tasks above. With Apple, that included design, engineering, technical, marketing and sales skills. It also involves people from a particular specialty being able to identify and access additional resources beyond the skills that they will need to perform the tasks above.

Casting: Identify, hire and place people with the skills, ability to access resources and a trackrecord of successfully doing both to perform the tasks above.

This might include discovering someone in one department with amazing skills that aren't being used and moving them to another department to make the most of their potential value to the company. Most of this is under the aegis of the talent recruitment and development.

Motivation: Doing what needs to be done to consistently motivate, incentivize and when possible inspire the people selected above to enthusiastically want to make a maximum effort. Again, identifying these people is part of the talent recruitment and hiring process.

It's important to only hire people that bring positive, can-do energy to their jobs. It's also important to identify recalcitrant, negative people and not hire them, fix them or fire them.

Accountability: Keeping people on track with commitments with regard to time and quality and also to have in place a reparative process when it appears they won't be able to keep those responsibilities.

Review: Formally reassess on a monthly basis steps one through eight to make sure that the needs, results and strategies haven't changed, and then adjust as needed. In this step, tell people that they are expected to veer off course (vs. shaming them when they do, which will cause them to

hide such problems) just as air traffic controllers expect planes to never fly in astraight line.

Schedule follow-up meetings as a way to respectfully "nudge" people and the entire process back on course and do a course correction when needed.

"Go to" crisis team: Crises are unavoidable in business as they are in life. It is essential that the company have a handful of "go to" skilled crisis-management people in the event that such an event happens.

The above will no doubt seem cumbersome at first, especially if it is not currently being followed. Train people in these 10 steps over a period of time until they can internalize it. One of the greatest benefits is the positive effect on culture. The clarity from individuals knowing what their company is doing and why, and why their job is essential to the process, does more for culture than an entertaining offsite.

ADAVANTAGES AND DISADVANTAGES OF MERGERS AND ACQUISITIONS

The advantage and disadvantages of merger and acquisition are depending of the new companies' short term and long-term strategies and efforts. That is because of the factors likes' market environment, Variations in business culture, acquirement costs and changes to financial power surrounding the business captured. So following are the some advantages and disadvantages of merger and acquisition (M&A) are:

Advantages: Following are the some advantages

- The most common reason for firms to enter into merger and acquisition is to merge their power and control over the markets.
- Another advantage is Synergy that is the magic power that allow for increased value efficiencies of the new entity and it takes the shape of returns enrichment and cost savings.
- Economies of scale is formed by sharing the resources and services. Union of 2 firm's leads in overall cost reduction giving a competitive advantage, that is feasible as a result of raised buying power and longer production runs.
- Decrease of risk using innovative techniques of managing financial risk.
- To become competitive, firms have to be compelled to be peak of technological developments and their dealing applications. By M&A of a small business withunique technologies, a large company will retain or grow a competitive edge.
- The biggest advantage is tax benefits. Financial advantages might instigate mergers and corporations will fully build use of tax- shields, increase monetary leverage and utilize alternative tax benefits.

Disadvantages: following are some difficulties of mergers and acquisitions.

- Loss of experienced workers aside from workers in leadership positions. This kind of loss inevitably involves loss of business understand and on the other hand that will be worrying to exchange or will exclusively get replaced at nice value.
- As a result of M&A, employees of the small merging firm may require exhaustive re- skilling.
- Company will face major difficulties thanks to frictions and internal competition that may occur among the staff of the united companies. There is conjointly risk of gettingsurplus employees in some departments.
- Merging two firms that are doing similar activities may mean duplication and over capability within the company that may need retrenchments.
- Increase in costs might result if the right management of modification and also the implementation of the merger and acquisition dealing are delayed.
- The uncertainty with respect to the approval of the merger by proper assurances.
- In many events, the return of the share of the company that caused buyouts of other company was less than the return of the sector as a whole.

EXAMPLES OF MERGERS AND ACQUISTION

- **IDEA AND VODAFONE MERGER**

Kumar Mangalam Birla, chairman of Aditya Birla Group, with Vittorio Colao, CEO ofVodafone group.

The $23-billion merger proposal was announced on March 20, 2017 between idea and Vodafone. Both the telecom giants are likely to start operating as a single unit from April, two people aware of the matter said. "If everything goes as per plan, we are looking at the first week of April to

start operations as one entity," said one of the two people cited aboveon condition of anonymity.

The two companies, which are currently negotiating one of the most complex mergers in India, will create the world's second largest and India's largest telecom operator, surpassing Bharti Airtel Ltd, post completion of the merger process. It will have almost 400 million customers with 35% customer share and 41% revenue market share. It will have a revenue of Rs81,600 crore and an operating profit of Rs24,400 crore.

The combined entity of Vodafone India and Idea Cellular, which are currently India's number 2 and 3, respectively, would dislodge Bharti Airtel to counter the fierce price war in the world's second-largest telecom market. The merger is crucial for both telcos who have been struggling individually to take on new entrant Reliance Jio, losing subscribers and slumping to losses. Vodafone will own 45.1 per cent stake in the merged entity, while the Aditya Birla group, Ideas parent, will have 26 per cent, the remaining 28.9 per cent will be held by other shareholders.

- **OLA AND FOODPANDA**

Taxi aggregator Ola has bought Foodpanda India from its German parent Delivery Hero group in a stock deal pegged at about $40 million, re-entering a resurgent food-delivery market that has matured and become more competitive in the past year.

Ola will also invest $200 million in Foodpanda India, as it takes on rival UberEats and incumbents Zomato and Swiggy in one of the most-coveted and high-frequency consumer markets in India. Foodpanda India handles about 30,000 orders a day in about 150 cities, andUberEATS India about 10,000 orders a day in seven cities. The bigger challenge for Ola's food-delivery business will come from Swiggy, which handles about 140,000 orders a day inIndia. Zomato handles about 100,000 orders a day in India and the UAE.

For Ola, the synergy is the customer base that this acquisition gives, along with a fairly decent number of restaurants on board and some brand recall value though miniscule," said an investor in the food-delivery space, declining to be identified. Through this deal Ola will easily take on UberEATS, which is failing to pick up traction for varied reasons. But whether Ola can cement a significant position in the food-delivery space through Foodpanda.

Foodpanda India has been looking to trim expenses and build a robust balance sheet. The delivery firm, which works with 15,000 restaurants in India, shrunk its losses by almost 70%last year, making it a sweet purchase for Ola.

- **POOR MERGER AND ACQUISTION**

Yahoo & Facebook (almost!): Sometimes bad mergers or acquisitions can be avoided, with one company choosing to stick it out on their own. In 2006, Yahoo saw the blossoming Facebook as a youngster with a promising future. Yahoo made an offer to acquire the company for $1 billion, but Facebook gave a hard no. CEO Mark Zuckerberg was just about to launch Facebook's newsfeed and anticipated the company would be worth much more than Yahoo's offer. He couldn't have been more right. Today Facebook is worth around $38 Billion, earning $12.47 billion in 2014 alone.

II. CONCLUSION

Lastly, mergers and acquisition is a tactic not a strategy used by multinational companies forreaping short term or quick benefits. **"Kill two birds with one stone" by** choosing for M&A a company can diversify and increase their profitability easily.

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