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MERGER AND AMALGAMATION

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Introduction

Companies can grow in two ways - either by gradually building recognition and reputation in the market, or by expanding their workforce, customer base, and infrastructure to increase revenue and profits. Mergers, acquisitions, and combinations are some of the growth strategies that businesses undertake, where two entities come together to form a new or existing entity resulting in the overall growth of the companies involved.

A company can take over another company by buying its shares offered in the stock market or acquiring the company entirely, merging with it to form a new company or even doing a cash takeover offer for the stocks of the other firm. Further, a company can take control of assets from another company or make unsolicited attempts to take over control of the target company. The activity of amalgamating businesses or their key commercial properties through financial investment is described as merger, acquisition or amalgamation. In business definition, merger occurs when 2 or more companies voluntarily combine their ownership with another existing company or new separated company. Growth, widening the amount of customers and decreasing the level of competition in the market compelled the companies to use this method of merging/de-merging entities. Different agencies use this approach to enter a new region or market or obtain geography through an already existing brand to capture market space tax benefits and gain proficiency.

Types of amalgamation

There are various procedures available for companies to do such activities: -

First of all, the general merger is of the type in which the boards of directors of the parties participating in the merger endorse the plan of merger together with the approval of shareholders. Acquisition refers to when an enterprise purchases another enterprise for the purpose of having the other enterprise subsume its activities without changing particular core attributes such as name & organizational structure of the acquired enterprise.

Consolidation refers to a procedure in which a core business is formed by assimilating existing businesses while discarding previous company structures and, later on, issuing fresh stock to stockholders now in existence.
Bid in which one company seeks to acquire another firm by offering to buy its shares directly from the shareholders at a certain predetermined price instead of the prevailing market price on the stock exchange which seeks the interest of every shareholder of the other company.
A policy whereby one corporation purchases the other corporation's physical properties, this is in turn known as the asset acquisition. A company proposing to have a purchase of its assets made has to make sure that all its shareholders approve of that proposal.
And finally, in Management acquisition, a firm’s management seizes control of the firm’s operations by buying out equity interest of other investors which leads to, management buyout (MBO).

Types of Mergers

Additionally, there are kinds of mergers such, as mergers involving the consolidation of companies that operate in the same industry and compete directly with each other; the goal of such mergers is to enhance size and efficiency expand market share and achieve other advantages by combining the assets and strengths of the merging companies. A vertical merger entails the combination of two or more companies that operate in stages of the production cycle; for instance, a manufacturing business may merge with a supplier of its product or

materials provider. On the hand a conglomerate merger focuses on diversification. Involves companies, from various sectors and industries coming together.

Legislation governing merger.

The Companies Act, 2013 is the primary legislation in the context of procedures and rules for incorporation, management and operation of companies and owing for such combination in the internal structure of companies there is Part XV titled as 'Compromise, Arrangements and Amalgamations' within this Act. Therefore, any references to the provisions relating to mergers and acquisitions and other provisions of compromise epitomizing the moving Twitter having to read arrangement and reconstruction can be found in the present Act. Nevertheless, this Act also gets invoked on different occasions during such combination. Under this

Act a merger is defined to be a consolidation of two or more corporations into another corporation whether a new or an existing one while acquisition is defined to be the purchase of a corporation by another corporation, and finally combination is the term used to mean both mergers and acquisition.

This Act established the National Company Law Tribunal as the regulator-cum-forum for issues under this Act. The application for such combination shall be filed with the NCLT wherein both parties shall lodge a grievance procedure with the tribunal as per Section 230-232 of the Act for approval of the merger scheme. An application on form no. NCLT-1 along with various documents including affidavits, copies of the scheme, and details of the entities are to be filed with the NCLT. Upon hearing of the application by the tribunal, unless it deems it appropriate for any reason to dismiss such application, it will approve such application.

Under this Act, it is stipulated that where more than one company is involved in the process a joint application may be submitted, but if the registered company office is located in a different jurisdiction, then a separate application must be filed at a different jurisdiction. As the process involves the role of the Central Government through an Official Liquidator or the Regional director of the Ministry of Corporate Affairs along with the satisfaction and approval of the Court, the process is long drawn as such results in delay.

As stipulated under this Act at least 75% of the shareholders present and voting must provide

approval to such proposal along with filing and getting approval from various regulatory authorities including the National Company Law Tribunal, Competition Commission of India, and lastly Securities Exchange Board of India (in case of listed company only). This act also sets out rules for the valuation of shares necessary for determining the share exchange ratio between both parties. Lastly, this Act provides for the protection of minority shareholders wherein it requires that the shares of minority shareholders be treated on par with the shares of the majority shareholders, this act provides them with a right to object to the merger or acquisition and to ask for fair value of their shares as determined by the independent valuer.

Competition is a process of self-interest and gaining profits but it also should be beneficial for society. Competition makes the market system work efficiently and increases the economic growth of the market. In the process of combination the Competition Commission of India(CCI) established under the Competition Act, 2002 has a huge role to play as the Act regulates competition in the market by preventing anti-competition arrangements wherein the Act restricts entering into any kind of arrangement concerning the product, supply, distribution, provisions of services which causes an adverse effect on competition in India, and by preventing abuse of dominant position, this act also stipulates provisions concerning abuse of dominant position which occurs when a group of people are involved in conduct that eliminates a competitor from a concerned market. Such arrangements may include fixing prices, limiting production, or sharing markets.

The Act prohibits vertical mergers between entities that may cause adverse effects on competition in the concerned market. This act prevents one from entering into any arrangement which may cause an adverse effect on competition within a specific market in India. This regulation is necessary for the impact on the level of competition within the market. Regulation 9 of the Combination Regulations states that it is the responsibility of the acquirer to notify an acquisition or a hostile takeover whereas, in case of a merger or an amalgamation, a joint notice shall be filed by both the parties and in case of formation of a joint venture, the responsibility to file a notice would lie with all the parties forming the joint venture. In a combination notice, a fee must be attached in favor of the Competition Commission of India (Competition Fund).

The Securities Exchange Board of India (SEBI) is the primary regulator for the securities market in India established with an objective to protect the interest of the investors and to

promote the development of the securities market in India. SEBI achieves this objective by regulating various processes in the securities market including the process of mergers and acquisitions of listed entities.

SEBI requires companies to disclose information pertaining to such combinations to the stock exchanges and their shareholders to make sure that relevant information is available to all the investors of the concerned entities, information to be disclosed.

includes terms and conditions of the proposal, valuation of the companies involved, potential risks involved, and any benefits associated with such transactions.

The entities involved in such transactions shall submit a draft scheme of the combination for approval which shall include all such information mentioned above. Thereafter the SEBI will review the proposal and provide approval if they find that it complies with SEBI regulations and other regulations as provided by law.

Thereafter the company must hold a general meeting of their shareholders to obtain approval provided that the shareholders must be allowed to ask questions and to express themselves. SEBI regulations aim to ensure that the combination transactions in the Indian security market are conducted fairly and transparently with all relevant information made available to all the investors and with the approval of the stock exchange and shareholders.

PROCEDURE FOR MERGER/AMALGAMATION/COMBINATION

PRE-TRANSACTION PLANNINGMP.

The companies prepare after the target imposition, the market study of the internal resources, strengths and weaknesses, functional responsibilities as well as, the external market analysis with respect to the potential partner. They have to also draw up a scheme of thesis which relates with the overlap and strategic fit of the transaction as previously discussed. This stage proceeds with the analysis of the entities so as to obtain an aggregate gain understanding of the entity and the merits of such transaction.

VALUATION MP.

It is important that both of the companies to evaluate in regard to their assets and liabilities so as to know the fairest possible exchange ratio or the price at hand. Most of the times it requires the employment of an external market or business valuator that is distinct from and uninfluenced by the board. Companies' valuation rules and policies are detailed on Companies Act, 2013.

DUE DILIGENCE MP.

The companies concerned in the transaction should carefully analyze all legal and other documents such as financial statements including all contracts including the ceiling or hiring agreements to prevent potential risks or liabilities. This process helps the companies to gain an overall knowledge of the partner companies.

Negotiation: -

Once the due diligence process is complete, both the companies should enter in the negotiation round to establish terms and conditions of such transactions, including exchange ratio/price, structure of the transaction and others conditions if any.

DOCUMENTATION/PREPARATION OF MERGER SHCEME:-

Once the negotiation round is completed, a merger scheme is drafted by the companies which is executed by the companies which includes the details of the companies involved, composite scheme of such transaction, rationablity of the merger scheme, purpose of such combination, share capital of the entities, procedure of such transaction and other details of such transactions.

OBTAINING APPROVAL FROM THE BOARD OF DIRECTORS: -

The board members of entities involved must approve the merger scheme before execution of such transaction. The board members have right to amend/modify such scheme prior to execution with approval from concerned authority.

APPROVAL OF SHAREHOLDERS: -

Before such transaction takes place, the proposal must be approved by the shareholders of each company involved. The Companies Act requires atleast 75% of the shareholders present and voting to approve the proposal.

APPROVAL OF REGULATORY AUTHORITY: -

Such merger scheme requires to be approved by various regulatory authorities including the NCLT, CCI and SEBI. Wherein the impact of the scheme is evaluated to ensure compliance with various regulations including Companies Act, 2013, Competition Act, 2002 and lastly SEBI's regulations.

INTEGRATION: -

After the transaction is completed after the approval of the scheme, the companies should begin to process the integration of their operations, systems, financials and cultures to realize the benefit of such transactions.

POST TRANSACTION EVALUTAION: -

Finally, both companies should evaluate the success of the transaction and identify any areas of improvement or further integration. This evaluation process should continue over time to ensure the ongoing success of the combined entity.

Merger/Amalgamation/Combination are governed by various legislations and regulations which includes the Companies Act, 2013, Competition Act, 2002 and other regulations of Competition Commission of India, SEBI regulations in case of listed companies. The process of such transaction is a long-drawn process as it involves approval of various authorities including NCLT, CCI, SEBI and Central Government acting as Official Liquidator. This process shall be within the satisfaction of the Court, Therefore the process of such combination results in delay. The process of combination involves various procedures as merging of entities involves merging of operations, corporate structure, share capital, accounting transactions/financials and etc. The process of combination helps entities to grow and fulfill their objectives at large as a merged entity/ new entity function as a large entity with either same business or diversified business thereby increasing overall capital and profits of the entities.