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GLOBAL MERGERS AND ACQUISTIONS DYNAMICS: A COMPREHENSIVE LEGAL STUDY OF CROSS-BORDER MERGERS IN INDIA

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CHAPTER -1

1.1 ABSTRACT:

This dissertation is the study on the scheme of M&A and is based on the question that what are the reasons because of which the company has to choose the non-organic mode of expansion. However, the main focuses of this dissertation is on mergers and acquisitions globally and cross-border mergers in India. To conduct a uniform research and arrive at an accurate conclusion we have to examine each and every factor of merger and acquisition not only in India but in global perspective. To get a larger perspective we limit our research to Indian companies only.

We also test certain examples, which shows that merger improves operating performance of acquiring companies and with that we will also examine cross border mergers in India that what are the provisions that deal with CBM in India and how it works. We will try to conclude our dissertation by examining that does merger and acquisitions is really helpful in improving financial performance of the companies or not.

Through this study we will get an idea or overview of the provisions that are dealing with mergers and acquisitions in India and how it works.

1.2 INTRODUCTION:[1]

In today's era the main focus of any company is to make profits and to increase the wealth of the shareholders and growth can be achieved by two ways. First is the organic growth strategy which basically means that

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[1] https://www.linkedin.com/pulse/what-merger-acquisition-ma-meaning-definition-examples-kison-patel#:~:text=Mergers%20and%20acquisitions%20(M%26A)%20is,sale%20and%20an%20asset%20sale.

https://singhania.in/blog/introduction-to-mergers-acquisitions company introduces new products and services or by expanding the market size and present operations on existing products in order to achieve new heights and second strategy for growth is inorganic growth strategies by which external growth of the company can be achieved. Mergers and acquisition is one of the main strategies by which the external growth can be achieved and mergers and acquisition as inorganic growth strategy gained spurt because of increased globalization, privatization, liberalization, and deregulation. Mergers and acquisitions serve as crucial avenues for broadening product portfolios, entering fresh markets, and accessing new technologies, tapping into research and development, and acquiring resources to enhance global competitiveness. Nevertheless, some instances highlight mergers and acquisitions pursued not primarily for value optimization, but rather for bolstering a company's market image and prestige.

Consolidation in the field of M & A has been witnessed by the world in almost all the industries ranging from automobile, banking, telecom, healthcare, FMCG, aviation, oil, gas and telecom etc. some of the biggest example of mergers in the automobile industry are Maruti Suzuki, Hero Honda, Daimler- Benz, in the telecom industry is Vodafone Idea, In aviation is Air France and KLM and there are several other examples of mergers and acquisition whether they are horizontal vertical or conglomertate in different sectors which the world can never forgot.

In the recent times we can witness that many companies are adopting the strategy of cross-border mergers in order to obtain synergy and to increase their business growth as well as wealth. The concept of cross-border M&A is continuously rising in popularity due to the following reasons such as business globalization in general and European integration in particular has resulted in a growing number of cross-border mergers and acquisitions.

Another factor behind the rising in the number of cross-border M&A is to add value in economies of scale. Cross-border mergers and acquisition particularly in India saw a huge rise after the adoption of Liberalization, privatization, and Globalization policy (LPG policy) by the Government of India in 1991. Prior to 1991, foreign-manufactured goods faced restrictions in the Indian domestic market, along with high customs duties on imports and exports. However, following policy reforms, the Indian government opened up domestic markets to facilitate a smoother influx of foreign-manufactured goods and reduced import tariffs. Additionally, in response to changing business dynamics, the government amended laws pertaining to foreign exchange, such as the FEMA of 1999. These shifts in policy paved the way for significant investment from major foreign corporations into India. Consequently, this led to a surge in cross-border mergers and acquisitions activity, marking a notable development in the business landscape.

Mergers, amalgamation and acquisition are forms of inorganic growth strategies or we can say external growth strategies. These all terms comes under one head that is corporate restructuring. So, before going further we will examine the term, “what corporate restructuring really is?”

1.3 AIM AND OBJECTIVE OF THE RESEARCH:

This research on global mergers and acquisitions aims to understand the patterns, drivers, and outcomes of M&A activity worldwide. It seeks to evaluate performance, assess value creation, manage risks, analyze strategic decisions, navigate regulatory landscapes, address cross-cultural challenges, and consider stakeholder impacts. Ultimately, this research provides insights to help companies make informed decisions, enhance value, and successfully execute M&A transactions on a global scale.

OBJECTIVE-

The objective is to extract the background information and story behind it, to have clarification on the problem area and to establish detailed analysis.

To investigate and analyse and measure the phenomenon at a particular point of time and to analyse the laws and provisions which are dealing with the mergers and acquisitions globally as well as cross border mergers in India.

1.4 RESEARCH METHODOLOGY:

Before discussing the structure of research we have to understand what research does literally means. So, the word research is derived from the latin term which means “to know” and in other words research means to do search for something helpful.

In this dissertation I will conduct the entire research on the area of Mergers and Acquisitions Globally and cross border mergers in India.

This research article is based on the traditional doctrinal research method and most of the information used in this article is sought by referring books, articles, journals, and websites. A comprehensive literature review is conducted to gather the information about the mergers and acquisition in global context.

The present research is based on secondary sources of information. This includes information available on websites, books , articles. The data collected from various sources are then examined using quantitative and qualitative methods. The article can provide valuable insight into the global M&A.
This research was based on the basic attributes of research that are:

- Firstly this research will be problem solving and systematic.
- Secondly it will consist of logic and flow which makes it easy for everyone to understand quickly.
- This research will be based on facts,
- Lastly it will be replicable, so that others can test it or carry out for further research.

CHAPTER-2

2.1 CORPORATE RESTRUCTURING:[2]

Corporate restructuring encompasses a series of strategic transformations aimed at improving shareholder value through adjustments in ownership, the composition of business activities, asset allocation, and the formation of strategic alliances. This multifaceted process involves reconfiguring various aspects of a company's structure to optimize its performance and aggressiveness in the market. Such restructuring initiatives may include reorganization of ownership stakes, realignment of business operations, and optimization of asset portfolios. By undertaking these restructuring efforts, companies seek to enhance their overall value proposition, adapt to evolving market dynamics, and position themselves more effectively for sustainable growth and success in the long term.

Corporate restructuring, according to the Collins English Dictionary, is a shift in an organization's business strategy that results in diversification, closing of business units, etc. to boost its long-term profitability. The process of altering how a business is organized is known as corporate restructuring. Combining of various departments or eliminations can result in significant changes to a company's operations and this process in known as corporate restructuring. It entails reorganizing the company to boost productivity and profitability. To put it another way, it's a thorough procedure that helps a corporation streamline its operations, improves its standing for accomplishing corporate goals, creates synergies, and keeps it a successful, competitive enterprise.

Through spin-offs, joint ventures, leveraged buyouts, share buybacks, mergers and acquisitions, and strategic alliances, a business can change its ownership structure. Reorganizing business divisions or units is a part of business restructuring. It covers brand acquisition, outsourcing, divesting, and diversification into other industries, among other things. The buying, selling, and ownership structure of assets are all included in asset restructuring. Receivable factoring, debt securitization, asset sales and leasebacks, and other similar practices are examples of asset restructuring. Restructuring a company primarily aims to increase shareholder value. To identify potential for boosting shareholder value, a company should regularly assess its ownership and asset arrangements, capital mix, and business portfolio. It should prioritize the efficient use of resources, lucrative investment prospects, and the restructuring or sale of less successful or loss-making ventures or goods. In addition to increasing value through capital restructuring, the corporation can create cutting-edge securities that lower capital costs. Acquisitions and mergers come under the category of external company restructuring, where a business seeks outside assistance.

In the earlier years, India operated within a tightly regulated economic framework, characterized by extensive government involvement and centralized control over various sectors.[3] This centralized approach resulted in a

[2] https://onlinedegrees.scu.edu/media/blog/what-is-corporate-restructuring
https://www.portebrown.com/newsblog-archive/corporate-restructuring-strategies

[3] https://www.icsi.edu/media/webmodules/publications/Full%20Book%20of%20PP-CRVI-2014.pdf

highly controlled economy, where market forces such as demand and supply lacked the autonomy to fully dictate market dynamics. Essentially, the economy was closed off, with limited room for adjustments or realignments, as virtually every aspect was subject to government oversight and intervention. Consequently, the scope and methods of corporate restructuring were constrained by the stringent government policies and regulatory frameworks in place at the time. This regulatory environment posed significant challenges for businesses looking to undertake restructuring efforts, as they had to navigate complex bureaucratic processes and adhere to rigid guidelines set forth by government authorities. Thus, the landscape for corporate restructuring was significantly restricted within this regulatory context, hindering the flexibility and agility of businesses to adapt to changing market conditions and pursue growth opportunities. The restrictions persisted for more than two decades, impeding India's ability to align with global economic trends and achieve rapid economic growth. Recognizing the need for change, the government undertook an overarching review of its policy framework. As part of economic liberalization efforts, the government abolished these restrictions by eliminating relevant sections and provisions, thus aligning India's economic policies more closely with global standards and facilitating faster economic growth.

The true commencement of economic liberalization began with the Industrial Policy of 1991, which emphasized the concept of "continuity with change" and placed significant emphasis on relaxing industrial licensing, encouraging foreign investments, and facilitating the transfer of foreign technology. This shift towards economic liberalization, globalization, and the opening up of economies prompted a wave of restructuring within the Indian corporate sector as it sought to adapt to the opportunities and challenges presented by increased competition. These reforms have had a profound impact on the global business landscape, notably through the integration of national economies with market-oriented global counterparts. The advent of multilateral trade agreements and the establishment of (WTO)[4] have further facilitated the smooth and unrestricted flow of technology, capital, and expertise across international borders. A sweeping wave of restructuring is engulfing corporate sectors worldwide, affecting entities of all sizes and spanning various industries, including traditional, conglomerates, and emerging new economy companies, as well as infrastructure and service sectors. This trend encompasses a wide range of industries, from banking to telecommunications, oil exploration to power generation, and petrochemicals to aviation, as companies are joining forces in unprecedented ways. Moreover, the emergence of new industries like e-commerce and biotechnology is reshaping the business landscape, while traditional sectors undergo transformation. With intensifying competition and the global economy moving towards globalization, corporate restructuring activities are anticipated to occur on a larger scale than ever before. Corporate restructuring serves as a pivotal strategy for enterprises to achieve economies of scale, enhance global competitiveness, right-size operations, and reap various benefits, including cost reduction in operations and administration.

[4] https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm1_e.htm

2.2 BENEFITS OF CORPORATE RESTRUCTURING:[5]

• Expansion of plant capacity,

• Augmentation of market share,

• Decrease in financial risks,

• Utilization of operational expertise and research and development

2.3LARGE MERGER AND ACQUISTION IN THE WORLD:[6]

Major merger and acquisition in the world have taken place since the last 100 years, and in between 1895 and 1905, there were more than 1800 mergers in the United States alone, and this phase in the United States is known as "The great merger movement". However, the large sized billion dollars merger deals took place in last two decades and some of the top mergers and acquisition from last two decade are Vodafone Airtouch PLC and Mannesmann, valued at $183 billion (CNN, 2000). Merger and acquisition that took place in pharmaceutical sector are Pfizer and Warner-Lambert which was valued at 90 Billion dollars.

2.4LARGE MERGERS AND ACQUISTION IN INDIA:[7]

News of Indian companies buying foreign companies was news a few years ago, but time have changed and Indian companies going abroad and taking over foreign companies have become more common. Some of the deals because of which India became famous in all over the world and reach new heights in the corporate sector have been the merger of Tata steel and Corus group. Another biggest merger was between the metal giant Hindalco and Novelis. Videocon and Daewoo Electronics was the third largest overseas deal, and if we talk about pharmaceutical sector then, Dr. Reddy's Laboratories acquired Betaphram from Germany. The biggest mergers and acquisition originating from India itself valued to be close to USD 21,500 million.

One of the most significant mergers in the history is being discussed within the telecommunication industry. The Indian telecom giant Bhartiairtel was in talks for a merger with South African company MTN. This merger has the potential to make a significant impact on the worldwide telecommunication market.

[5] https://www.ahlawatassociates.com/blog/benefits-of-corporate-restructuring

[6] https://www.globalexpansion.com/blog/the-largest-mergers-and-acquisitions

[7] https://www.financialexpress.com/market/5-biggest-mergers-amp-acquisitions-in-india-reliance-tata-vodafone-walmart-did-their-big-bets-pay-off-3156967/#:~:text=Vodafone%2DIdea%20merger%2C%20Walmart%2D,have%20expanded%20by%20significant%20heights.&text=Over%20the%20years%2C%20several%20M%26A,propelled%20companies%20to%20new%20heights.

2.5STRATEGY FOR MERGERS AND ACQUISTIONS:[8]

- Firm Diversification:

  Typically, companies engage in mergers and acquisitions with firms that operate in similar lines of business rather than diversifying into unfamiliar industries. However, partnering with diversified firms can offer unique advantages not found with undiversified counterparts. Diversification involves expanding into different sectors in a manner that positively impacts the firm's value and benefits shareholders. Firms may opt for diversification to spread risk across various industries in which they operate. Additionally, capital markets tend to favor diversified activities, leading to growth and profitability. Nevertheless, there are inherent risks in mergers and acquisitions, requiring thorough assessment of strengths and weaknesses before venturing into new industries and markets.
- Cross-Border Mergers and Acquisitions:[9]

  In today's market, internationalization is a key strategy adopted by firms to expand their operations into foreign countries. Cross-border acquisitions involve a parent company headquartered in one country acquiring or merging with a company in another country. While domestic mergers are typically simpler due to familiarity with laws, procedures, and other factors, international mergers pose various complexities. Firms are choosing for CBM because it offers a more efficient alternative to establishing operations in foreign markets, saving time and costs associated with building infrastructure and supply chains. Numerous studies have demonstrated that cross-border acquisitions yield positive returns for shareholders. For instance, research conducted in the US by Eun et al. (1996) found that cross-border acquisitions generated substantial wealth for acquiring shareholders.

CHAPTER -3

3.1 GENESIS OF MERGERS AND ACQUISITION:[10]

The merger movement tends to happen when a company undergoes consistent and significant growth, indicating promising business prospects. These movements align with changes in the business landscape. Waves occur as firms react to fresh investment and profit prospects emerging from shifts in economic conditions and technological advancements. They typically lead to effective allocation and reallocation of resources, as well as efficient resource utilization, making mergers and acquisitions a worldwide trend. Studies indicate that merger waves stem from a mix of eco., regulatory, and technological changes.

[8] https://www.icsi.edu/media/webmodules/CSJ/August/9.pdf

[9] https://www.dlapiper.com/en/insights/publications/crossroads-icr-insights/2022/india-cross-border-merger-compliance#:~:text=The%20term%20cross%2Dborder%20merger,merger%20or%20an%20outbound%20merger.

[10] https://www.ijmra.us/project%20doc/2018/IJRSS_SEPTEMBER2018/IJRSSSep18RaeesM.pdf

FIRST MOTION (1897-1904)[11]

- The first motion occurred after the great depression of 1883.
- This motion was on its peak in between 1898 and 1902.
- All mining and manufacturing industries were affected by this wave.
- This motion witnessed mainly horizontal mergers which resulted in a monopolistic market structure.
- Example of some giants which were merged during this period was- JP Morgan, Standard Oil, General Electric, U.S. Steel etc.
- The Sherman act was also enforced during this time period to keep an eye over the rising monopolistic structure of market but mergers continued unabated.
- Reasons for growth of mergers and acquisition during this time period.
- Interpretation of provisions of Sherman act- due to misguided focus, the law was not applied to prevent the formation of monopolies in several industries.
- Relaxation of corporation law by some states- due to this companies got a chance to expand their operations without any legal hindrance.
- Development of US transportation system- companies merged with other local companies to retain their market shares and to compete with their distant rivals.
- Expansion of firms- this led to economies of scale in production and distribution and greater efficiency. Mergers and acquisition was a convenient way of achieving it.

SECOND MOTION (1916-1929)[12]

- This motion saw the rise of oligopolistic nature of market and many diverse firms and unrelated businesses merged together and hence large scale conglomerates arose.
- There was disproportionate number of mergers in primary metals, petroleum products,chemical and food products.
- Some major corporations like General Motors, IBM were born during this time period only.
- At that time, US government predicted the treat of cartels and hence used the Clayton act and Sherman act to prevent unfair trade practices.
- At that time, radio was the popular mode of entertainment, hence it was considered as the era of merchandizing and product differentiation.
- In the 1940s, there was a shift in the concept, moving away from the concentration of economic power and instead focusing on the merger of smaller firms.

[11] https://www.nber.org/system/files/chapters/c2527/c2527.pdf

[12] http://arno.uvt.nl/show.cgi?fid=129395

THIRD Motion (1965-1969)

- This period was also known as conglomerate merger period.
- Smaller firms targeted the larger firms for acquisition.
- Some prominent conglomerates that came into existence during this period were Long-Temco-vought, Litton Industries and ITT.
- Many new legislations were passed like the celler-kefauver act to cover the demerits of clayton act,
- As the legal environment made horizontal and vertical mergers tougher, companies saw that only conglomerates were the alternative for expansion.
- However conglomerates became unpopular due to the following reasons;
- Buyers were overpaid for the diverse companies they purchased,
- Companies would move away from specialization resulting in deteriorating performances. E.g. revlon's core business suffered when they ventured into health care.

1970's

- This era witnessed the hostile takeovers and saw a drastic decline in the number of mergers.

FOURTH MOTION (1984-1989)

- This motion is also known as the wave of mega mergers.
- The mergers which took place in this wave were chevron and gulf oil, Philip Morris and Kraft, Texaco and Getty oil, British petroleum and standard oil of ohio.
- During this wave the concept of "corporate raider" was introduced. They are the investors who engage in the act of directed or orchestrated hostile takeover of a company and are also known as company breakers.
- The role of investment bankers became very aggressive in pursuing mergers and acquisitions during this period.
- Mega deals were financed with leveraged buyouts.

FIFTH MOTION (1984-1989)

- This era marked significant economic shifts in numerous economies, leading to heightened overall demand, the expansion of businesses, and an uptrend in stock market values.
- There was a rise in strategic mergers, with a greater number of merger agreements being funded through equity rather than debt.
- Privatisation of state owned enterprises took place during this period.
- European nations were dissatisfied with the prevailing takeover patterns, particularly because numerous domestic enterprises were being targeted. Consequently, they felt compelled to enact measures to impede the acquisition of major national companies.

- While the whole world is battling with the worst recession, but mergers and acquisition continued to took place even at a slower pace.

3.2 GENESIS OF MERGERS AND ACQUISTION IN INDIA:[13]

In 1931, the merger between Tata Oil Mills Company and Lever Brothers India Limited marked one of India's early mergers, resulting in the formation of Hindustan Unilever Limited (HUL), the country's leading fast-moving consumer goods company with a revenue exceeding 597 billion Indian rupees. The British initially established their presence in India through ventures like the East India Company, which, at the time, merged with its competitor to consolidate its influence in the Indian market. Presently, across various sectors like energy, telecommunications, and pharmaceuticals, businesses are recognizing the enduring impact of mergers and acquisitions (M&As) and anticipate their growing significance. As India progresses towards a landscape characterized by the dismantling of monopolistic structures, the trend towards M&A activity is steadily gaining momentum.

The genesis of M&A in India can be traced back to various historical and economic factors:

- Colonial Influence: The British colonial rule in India introduced corporate entities such as the East India Company, which engaged in strategic mergers to consolidate control over trade and commerce. These early mergers laid the foundation for future corporate restructuring activities in the country.
- Post-Independence Industrialization: Following India's independence in 1947, the government embarked on a path of industrialization through the establishment of public sector enterprises. Mergers and acquisitions were often used as tools for restructuring and consolidating industries under state control.
- Liberalization and Economic Reforms: The economic reforms initiated in 1991 boost up the Indian economy to foreign investment, liberalized trade policies, and deregulated various sectors. This led to a surge in M&A activity as Indian companies sought strategic alliances with global players and foreign investors sought entry into the Indian market.
- Globalization and Competition: Globalization and increasing competition compelled Indian companies to explore M&A as a means of enhancing competitiveness, gaining access to new markets, technologies, and resources, and achieving economies of scale.

3.3 TYPES OF MERGERS:[14]

Mergers are generally classified as horizontal, vertical or conglomerate mergers. These types are different in characteristics and their effects on corporate restructuring.

[13] https://catdir.loc.gov/catdir/samples/wiley031/2001045451.pdf
https://onlinelibrary.wiley.com/doi/10.1002/9781119380771.ch2

[14] https://archive.mbda.gov/news/blog/2012/04/5-types-company-mergers.html

- Horizontal mergers:[15]

Horizontal mergers, which involve corporations in similar or related product lines, aim to eliminate competitors, thereby increasing the market share of the acquiring company and industry concentration. However, strict laws are enforced to ensure fair competition and prevent monopolies and oligopolies from abusing their power.

Apart from enhancing market power, horizontal mergers are often utilized to reinforce the dominance of an existing firm and improve the efficiency and economies of scale of the acquiring entity. Recent instances of horizontal mergers in the international market include partnerships like the Lufthansa-Swiss International link-up and the Air France-KLM merger.

- Vertical mergers:[16]

A vertical merger occurs when two or more companies operating at different stages of the supply chain for a common product or service combine. Unlike conglomerate mergers, which involve companies offering unrelated products or services, vertical mergers involve firms that produce different components along a related value chain.

These mergers often involve a manufacturer joining forces with a supplier, aiming to enhance efficiency and capture more business opportunities. Essentially, they serve as a strategic tool for companies involved, as each one offers complementary services or goods.

Vertical mergers enable participating companies to leverage operational efficiencies, leading to increased profitability and growth opportunities for their businesses.

In simple terms, a vertical merger involves the integration of companies operating at different stages of the same product or service. Typically, the primary goal of such mergers is to secure the sources of the supply chain.

- Conglomerate mergers:[17]

Conglomerate mergers occur between companies that lack a direct connection in terms of their value chain or competitive landscape. The rationale behind conglomerates is the belief that a central management office can efficiently allocate capital and oversee operations across diverse businesses better than if they were independent entities (Robert Bruner, 2004).

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[15] https://corporatefinanceinstitute.com/resources/management/horizontal-merger/#:~:text=A%20horizontal%20merger%20occurs%20when,based%20and%20revenue%2Dbased%20synergies.

[16] https://cleartax.in/glossary/vertical-merger

[17] https://mnacommunity.com/insights/conglomerate-merger/

The primary motive behind forming conglomerates is risk diversification, wherein successful subsidiaries offset underperforming ones within the group. These mergers involve companies that are neither competitors nor have a buyer-seller relationship.

It's commonly observed that conglomerate mergers have a low success rate, with only a few exceptions like General Electric (GE) achieving success. Most conglomerates tend to fail in achieving their objectives.

In simple terms, A Conglomerate Merger involves the joining of companies from different industries engaged in unrelated business activities.

Conglomerate mergers are categorized into two types: pure conglomerate mergers and mixed conglomerate mergers. Pure mergers involve two companies operating in entirely different markets, while mixed mergers occur when merging firms seek to broaden their product lines or target markets, potentially transitioning away from solely unrelated core businesses.

During the 1960s and 1970s, there was a surge of conglomerate mergers in the U.S., but many of these newly formed entities were soon divested. Currently, conglomerate mergers are rare occurrences.

Apart from these three there are some other types of mergers also that are:

- Congenric mergers-
  A congenric merger occurs when two companies are in the same or related industries or markets but do not offer identical products. In this merger type, companies may have similar distribution channels, offering potential synergies. The acquiring and target companies might share overlapping technology or production systems, facilitating the integration process. Entities often pursue congenric mergers to enhance market share or broaden their product lines.
- Accretive mergers-
  Accretion denotes the creation of value, typically achieved through gradual external additions leading to natural growth in size or scope. An accretive merger occurs when a company with a high price-to-earnings ratio acquires a company with a low price-to-earnings ratio. This type of merger generates operational and financial synergies, ultimately bolstering the earnings of the acquiring company.
- Dilutive mergers-
  In a dilutive merger, the EPS of the acquiring company decreases post-merger. Consequently, the price of the share of that acquiring company also declines, as the market anticipates a reduction in future earnings. A dilutive merger or acquisition happens when the price-to-earnings (P/E) ratio of the acquiring firm is lower than that of the target firm.

3.4 REASONS FOR MERGES AND ACQUISITONS:[18]

Mergers and acquisitions (M&A) are strategic business activities pursued by companies for various reasons, including:

- Market Expansion: M&A can provide access to new markets, both domestically and internationally, allowing companies to reach a broader customer base and increase sales.
- Diversification: Companies may engage in M&A to diversify their product or service offerings, spreading risk across different industries or market segments. This helps reduce dependency on a single product or market.
- Economies of Scale: Merging with or acquiring another company can lead to cost savings through economies of scale. By consolidating operations, companies can reduce redundant expenses, negotiate better terms with suppliers, and optimize production processes.
- Synergies: M&A can create synergies by combining complementary resources, capabilities, and expertise. This can lead to enhanced innovation, efficiency improvements, and increased competitiveness in the market.
- Increased Market Power: Merging with competitors or acquiring key players in the industry can strengthen a company's market position and bargaining power. This may lead to higher pricing power, better distribution channels, and improved negotiating leverage with customers and suppliers.
- Strategic Realignment: Companies may use M&A to realign their business strategies in response to changing market conditions, technological advancements, or regulatory requirements. This can involve exiting declining markets, focusing on core competencies, or pursuing new growth opportunities.
- Access to Resources: M&A can provide access to critical resources such as technology, intellectual property, talent, and capital. Acquiring companies with valuable assets or capabilities can accelerate growth and enhance competitive advantage.
- Financial Objectives: M&A can be driven by financial considerations such as increasing shareholder value, maximizing profitability, or achieving specific financial targets. For instance, acquiring a company with strong cash flows or undervalued assets can enhance financial performance.
- Risk Management: In some cases, M&A can be used as a risk management strategy to mitigate threats or challenges facing the company, such as competitive pressures, industry disruption, or changing consumer preferences.
- Shareholder Value Creation: Ultimately, the goal of many M&A transactions is to create value for shareholders through strategic growth, improved operational performance, and enhanced market position. Successful mergers and acquisitions should generate positive returns for investors in the long term.

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[18] https://www.startupfino.com/blogs/top-5-reasons-for-merger-and-acquisition-benefits-of-ma/

3.5 ADVANTAGES AND DISADVANTAGES OF MERGERS:[19][20]

Mergers occur for various strategic reasons aimed at bolstering a company's growth through improved production and marketing capabilities. With increased competition, dismantling of trade barriers, and globalization fostering the free movement of capital, mergers and acquisitions have gained popularity. Despite claims of numerous benefits, not all touted advantages materialize. Empirical evidence and corporate experiences highlight the most prevalent motives and benefits of mergers and acquisitions. Based on those empirical evidences, the most common advantages of mergers and acquisition are:

- Maintain or accelerating company’s growth.
- Enhancing profitability.
- Diversifying the risk of the company or establishment.
- Reducing tax liabilities.
- Limits the severity of competition by increasing the company’s market power.

ACCELERATED GROWTH:

One purported advantage of mergers and acquisitions is accelerated growth. This strategic move allows companies to rapidly expand their market presence, product offerings, or geographic reach by combining resources and capabilities with another entity. By leveraging synergies and economies of scale, mergers and acquisitions can facilitate quicker growth trajectories than organic expansion alone.

ECONOMIES OF SCALE:

Another advantage of mergers and acquisitions is the realization of economies of scale. This occurs when combined entities can reduce per-unit costs by spreading fixed expenses over a larger output or by negotiating better deals with suppliers due to increased purchasing power. Economies of scale enable merged companies to operate more efficiently and competitively, potentially leading to improved profitability and enhanced shareholder value.

OPERATING ECONOMIES:

One benefit of mergers and acquisitions is the attainment of operating economies. This refers to efficiencies gained through streamlining operations, eliminating redundant functions, and optimizing resource utilization. By consolidating overlapping activities and rationalizing processes, merged entities can reduce costs, improve productivity, and enhance overall operational performance. This efficiency boost can contribute to increased profitability and competitiveness in the marketplace.

[19] https://www.sacattorneys.com/advantages-and-disadvantages-of-mergers-and-acquisitions.html

[20] https://dealroom.net/blog/pros-and-cons-of-mergers-and-acquisitions

SYNERGY:

Synergy is often touted as a key advantage of mergers. It refers to the combined entity's ability to generate greater value than the sum of its individual parts. Synergies can arise from various sources such as cost savings, revenue enhancement, and operational efficiencies. By leveraging complementary strengths, expertise, and resources, merged companies can unlock new opportunities, penetrate new markets, and create a more robust competitive position. Synergy is a driving force behind many mergers, aiming to maximize shareholder value and foster long-term growth.

DIVERSIFICATION OF RISK:

Another advantage of mergers and acquisitions is the diversification of risk. By combining businesses operating in different industries or geographic regions, the merged entity can spread its risk across a broader portfolio of activities. This diversification helps mitigate the impact of adverse events or downturns in any single market or sector, reducing overall volatility and enhancing the stability of the business. Additionally, diversification can provide access to new revenue streams and growth opportunities that may not be available to each company independently. Overall, diversifying risk through mergers and acquisitions can contribute to a more resilient and sustainable business model.

REDUCTION IN TAX-LIABILITY:

Another benefit of mergers and acquisitions is the potential reduction in tax liability. Through strategic structuring of the transaction, companies can take advantage of tax efficiencies such as tax deductions, credits, and favorable treatment of certain transactions. This could include utilizing net operating losses, leveraging tax incentives in different jurisdictions, or restructuring to optimize the tax implications of the combined entity. By minimizing tax expenses, merged companies can enhance their after-tax profitability and allocate more resources towards strategic initiatives or shareholder returns.

Mergers and acquisitions come with several potential disadvantages:

Integration Challenges: Merging two distinct corporate cultures, processes, and systems can be complex and time-consuming. Poor integration efforts can lead to disruptions in operations, decreased employee morale, and loss of productivity.

Financial Risks: Mergers often involve significant financial investments, including transaction costs, debt financing, and potential overpayment for the target company. If the expected synergies and benefits do not materialize as anticipated, it can lead to financial losses and shareholder dissatisfaction.

Regulatory Hurdles: Obtaining regulatory approvals, particularly regarding antitrust concerns, can be a lengthy and uncertain process. Regulatory scrutiny may result in the imposition of conditions or even the blocking of the merger, leading to wasted time and resources.

Loss of Talent: Mergers can create uncertainty among employees, leading to talent retention challenges. Key employees may leave the organization due to concerns about job security, changes in leadership, or cultural clashes, which can impact the company's performance and future prospects.

Overvaluation: Companies may overpay for the target company, driven by competitive bidding or unrealistic growth expectations. Overvaluation can erode shareholder value and make it challenging to achieve the desired return on investment from the merger.

Strategic Misalignment: Mergers may fail to achieve their intended strategic objectives if there is a lack of alignment between the companies' business models, goals, or cultures. Misalignment can hinder integration efforts and prevent the realization of synergies, leading to underperformance or failure of the merged entity.

Brand Dilution: Merging two well-established brands can result in brand dilution or confusion among customers. Poorly executed branding strategies can erode brand equity and customer loyalty, impacting revenue and market share.

Legal Liabilities: Mergers may inherit undisclosed legal liabilities or ongoing litigation from the target company, leading to potential financial and reputational damage. Failure to adequately assess and address legal risks can result in costly legal proceedings and regulatory fines.

One notable disadvantage of mergers and acquisitions is the risk of antitrust issues. When companies merge, especially if they are competitors or operate within the same industry, it can raise concerns about reduced competition and potential monopolistic practices. Antitrust authorities may scrutinize the transaction to ensure that it does not result in anti-competitive behavior, such as price-fixing, market dominance, or barriers to entry for other competitors. If regulators determine that the merger could harm competition or consumers, they may impose conditions, require divestitures, or even block the deal altogether. Antitrust challenges can delay or derail mergers, leading to increased costs, uncertainty, and potential reputational damage for the companies involved.

Overall, while mergers and acquisitions offer potential benefits such as growth opportunities and cost synergies, they also entail significant risks and challenges that must be carefully evaluated and managed to ensure successful outcomes.

3.6 REASONS FOR MERGERS AND ACQUISITIONS TO FAIL:[21]

Some of the main reasons which may lead to the failure of mergers and acquisitions are:

- Integration risk
- Overpayment

[21] https://orgmapper.com/why-do-mergers-and-acquisitions-fail/

- Culture clash

Integration risk:

Often, merging the operations of two companies presents greater challenges than anticipated, potentially preventing the combined entity from achieving the expected cost savings through synergies and economies of scale. Consequently, what was initially seen as a transaction that would enhance earnings per share could end up having a negative impact instead.

Overpayment:

If Company A is overly optimistic about the prospects of Company B and aims to prevent a potential bid from a competitor, it might offer a significant premium to acquire Company B. However, once the acquisition is completed, the optimistic scenario Company A envisioned may not come to fruition. For example, a key product under development by Company B could have unforeseen adverse effects, limiting its market prospects. In such a situation, Company A's management and shareholders may regret paying a higher price for Company B than its actual value. This overpayment can significantly impede future financial performance

Culture clash:

Mergers and acquisitions can stumble when the corporate cultures of the parties involved are vastly different. Imagine a scenario where a well-established technology giant purchases a trendy social media startup – the clash in cultures becomes apparent.

3.7 DEFINITIONS OF M&A:

We have been learning about the coming together of companies to form another company and the companies taking over the existing companies in order to expand their business. With recession taking effect on many Indian businesses and the feeling of insecurity which is rising over our businessman and employees also, it is not surprising when we hear about the immense number of corporate restructuring that is taking place in order to compete in the market. In this scenario, several companies have taken over, several had undergone internal restructuring and several companies which are in same line of business have gone for mergers and acquisitions.

In this context, it is important to understand that what corporate restructuring and mergers and acquisitions are all about.

The term mergers and acquisitions is commonly used interchangeably and in lay parlance, both are viewed as the same, however, there lies a difference between the two which helps us to determine that whether that particular practice is merger or acquisition.

Basically, mergers is defined as the unification of 2 or more companies into a single company, where one survives and other one loses its corporate existence, the survivor company acquires all the assets as well as all the liabilities of the merged company or companies. Merger is simply, the collaboration or unification of 2 or more companies to form a one company. For example- A+b = AB or C. In this case, generally the survivor company is the buyer company, which retains its existence and the company which extinguished its identity would be the seller company.

The Companies Act, 2013, as well as the IT Act, 1961, does not explicitly define the term "merger." However, in Section 2(1) (b) of the IT Act, 1961, amalgamation is described as the combining of one or multiple companies with another entity, or the consolidation of 2 or more companies to form a single entity. The companies undergoing this process are termed as the "amalgamating company or companies," while the resulting entity is known as the "amalgamated company."

So, merger can also be defined as the amalgamation according to IT Act, 1961 and as both the terms means the fusion of 2 or more companies. The company which is going to merger or is going to losing its identity is known as the “transferor company” and the company which is going to retain its identity is known as the “transferee company”. The transferee company will receive all assets, liabilities, and shares of one company in exchange for consideration, which may take the form of:

- Equity shares in the resultant company,
- Debentures in the resultant company,
- Cash or,
- Mixture of above considerations.

Though the meaning of merger and amalgamation is same but there lies a difference between both the terms. Normally, merger involves the coming together to companies of same businesses to gain certain advantage whereas amalgamation means the acquisition of smaller company by the larger company in order to gain advantages or synergy. The main point of difference between both the term is that in merger the acquiring company may retain or may not retain its identity but on the other in amalgamation the acquiring company retain its identity. [22]

Now, amalgamation is also of two types. First one is similar to the merger under which all the assets, liabilities and shareholders of the amalgamating companies are combined together to form a new company and the second one involves, acquisition of one company by another company. Under this process, the shareholders of the acquired company may not have the same rights as they have earlier or sometimes the business of the acquired company may be discontinued. This type of amalgamation is basically like a purchase of business entity.

In, India, merger is a complete court driven process, where NCLT plays an important role, whereas each country have its own set of principles that are dealing with the mergers and acquisitions of companies, like United States Of America have clayton act, codified at 15 U.S.C Code and more commonly known as Hart-Scott-Rodino

[22] https://www.startupfino.com/blogs/difference-between-merger-and-amalgamation-in-india/#:~:text=Major%20Difference%20between%20Merger%20and%20Amalgamation%20in%20India&text=Amalgamation%20is%20the%20nature%20of%20purchase%20rather%20than%20the%20type%20of%20merger.&text=In%20a%20merger%2C%20the%20acquiring,smaller%20company%20loses%20its%20identity.

Antitrust improvement act (HSR) act amendment to the clayton act., UK follows the European Union Law for the mergers and acquisitions etc.

MERGER: IN SIMPLE TERMS-[23]

- A merger entails an agreement that combines two existing companies into a single new entity.
- This strategic move is often undertaken to broaden a company's market presence, diversify into new sectors, or increase its market share.
- This strategy is to be used please shareholders, create value, and to attain synergy.
- Mergers are regulated by companies act, 2013.

Mergers are normal activity within the economy is means for enterprises to expand business activities. A merger is a transaction that brings about change in control of different businesses enabling one business entity effectively to control a significant part of the assets or decision making process of another.

The equation of "one plus one equals three" exemplifies the transformative synergy of mergers or acquisitions. The fundamental principle driving the acquisition of a company is to generate shareholder value surpassing the combined worth of the individual entities. The amalgamation of two companies is perceived to yield greater value than their standalone existence—this is the underlying rationale behind M&A activity. Particularly in challenging economic climates, this logic becomes compelling. Robust companies strategically acquire others to enhance competitiveness and operational efficiency. Through consolidation, companies aim to secure a larger market share and streamline operations. Given the potential advantages, target companies often consent to acquisition, recognizing the limitations of independent survival.

In its truest form, a merger occurs when two companies, typically of similar size, agree to unite as a single new entity rather than remain separate entities. This scenario is specifically termed a "merger of equals." Both companies relinquish their stocks, and new stock is issued for the newly formed company. For instance, the amalgamation of Daimler Benz and Chrysler resulted in the creation of Daimler Chrysler, where both original entities ceased to exist. However, genuine mergers of equals are rare in practice. It's practically impossible to find two companies that are perfectly equal in every aspect. Typically, one company acquires another, but to maintain a positive perception, the acquired firm may be allowed to present the deal as a merger of equals, even if it's technically an acquisition. The notion of being acquired often carries negative implications, so portraying the transaction as a merger aims to make the takeover more acceptable to stakeholders.

[23] https://dictionary.cambridge.org/dictionary/english/merger#:~:text=The%20merger%20of%20these%20two,the%20world's%20biggest%20accounting%20firm.&text=The%20merger%20proved%20to%20be,the%20case%20for%20a%20merger.