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Mergers and Acquisition: A Tool to Grow in the Global Market

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The companies mostly use mergers and acquisitions for diversification and expansion in international markets. Mergers and acquisitions are part of corporate restructuring. They are used to create synergies, for survival in the market, expansion in existing, and entering [i] new markets. They are used in various fields such as to exchange technology, gain customer base and get the advantage of brand value. They may also be undertaken to eliminate competition, reduce tax liabilities, etc. with the wave of globalization, merger, and acquisition having gained significant importance in recent times. Such mergers and acquisitions have long terms advantages for both companies. The authorization under corporate and tax laws enhances the effectiveness of a functional merger and acquisition regime in the economy. Matured economies consistently boast a supportive framework under corporate as well as tax lax laws which acts as a catalyst in facilitating inorganic growth in the economy. In recent times, Cross border mergers also have become fundamental in the global market as it enables companies to enter the different market without the initial struggle of creating a customer base, production plant, etc. This article put forwards an understanding of various mergers and acquisition-related problems and opportunities and indeed an understanding of the nature of global strategy. In this article attempts have been made to understand the impact of mergers and acquisitions through various case studies, to analyze various reasons for mergers and acquisitions, and the legal framework for the same.

Keywords: *mergers, acquisition, corporate restructuring, outbound merger, inbound merger.*

INTRODUCTION

Corporate Restructuring is making substantial changes in the organizational structure; it leads to alterations in the business model, financial structure, management structure, and internal structure. Mergers and Acquisitions are one of the tools of corporate restructuring. Mergers and acquisitions is a generic term in which different business transactions are involved. Merger refers to combining two or more business organizations as a result of which ownership structure is changed. Acquisition refers to one company acquiring another company, when it comes to acquisition most of the time a bigger company acquires a smaller company, however it is not a mandatory rule. Mergers and acquisitions are driven by different motives being; the creation of a synergetic effect since, Survival in a highly competitive environment, creating dominance in a market, and Growing without any geographic boundaries (international growth). Since growth is one of the significant motives for m and a, it is not restricted to domestic markets as it also expands to international markets. There are many examples in the market where companies have used mergers and acquisitions as a strategic tool to grow in the global market in a faster and more efficient way.

LEGAL FRAMEWORK FOR INTERNATIONAL MERGER

In the Indian context, Mergers and acquisitions are governed by sections 230 to 240[1] of the Companies Act, 2013. Section 234[2] of the said Act specifically mentions the provisions regarding the cross-border merger; this section was notified by the Ministry of Corporate Affairs (MCA) and has recently come into effect from April 13, 2017. This section provides for the process to be followed when an Indian company merges with a foreign company and vice versa. However, there are jurisdictional requirements to be met by foreign companies, when it is merging with an Indian company.

[1] Companies Act 2013, s 230-240
[2] Companies Act 2013, s 234

There are two kinds of cross-border mergers:

Inbound merger: where two or more companies merge and the resultant company is an Indian company, it is an inbound merger.

Outbound merger: where two or more companies merge and the resultant company is a foreign company it is an outbound merger. The outbound merger was not allowed in the erstwhile Companies Act 1956; however Companies act 2013 has provisions for the outbound merger.

Various laws are required to be followed for mergers and acquisitions. The following are laws governing mergers and acquisitions in India:

- Companies Act 2013
- Competition act,
- Foreign Exchange Management Act, 1999
- Income Tax Act, 1961
- Insolvency and Bankruptcy act, 2016, etc

CASE STUDIES RELATED TO MERGERS AND ACQUISITIONS

1. ***Disney and Pixar merger*:**

Disney being a market leader in the business of production of animated films never failed to deliver an authentic, creative and joyful experience to its audience. The reason for Disney's continued success in the industry is that they have always focused on creating memorable characters such as snow white, lion king, Mickey Mouse, etc. Disney though at its peak during 2D animation, struggled in the development of 3D technology. While Disney was struggling other companies acquired a market share of CG films. Disney was suffering to deliver creative, engaging, modern, and 3D content. Therefore, Disney offered Pixar 5 film cooperative contract as Disney had a brand value, and revenue model, and Pixar have a modern and creative production system and the combination of these can create excellent films. Pixar is one of the few studios that successfully entered the animation market. Pixar achieved 5 consecutive hits leading Pixar to be one of the market leaders. Though Pixar initially struggled with acquiring the required technology and funding, it stood strong against all odds. Acquiring Pixar was a competitive advantage for Disney as Disney is lacking in technology and Pixar has the latest technology. Therefore, it can be said that the Disney and Pixar collaboration made perfect sense, creating synergy. Disney and Pixar had both financial as well as organizational advantages. Though the merger was expensive, the market price of stocks increased. From an organizational point, the merger allows both companies to focus on their strengths, leading to an increase in profitability and productivity. Disney and Pixar complemented each other in various aspects. The merger led to an increase in synergies and a cost reduction. First, Disney and Pixar collaborated for creating Computer Animated Production System; this collaboration gave extraordinary results with a hit of Lion King and Disney's rescuer down under. Later, Disney and Pixar made a feature film agreement and co-production agreement. Finally, in the year 2002, Disney and Pixar negotiated a deal where 100% ownership of films goes to Pixar and the participation fees were lowered by Disney. Finally, the deal was closed and Disney got rights to Pixar films and Pixar got the rights to the sequel of Disney films. This is one of the successful stories of mergers.

2. ***Sun pharm and Ranbaxy laboratories***

Sun Pharma - Sun Pharmaceutical Industries Limited is a Mumbai; Maharashtra (India) based multinational pharmaceutical company. In the past three decades, Sun Pharm has become one of the most profitable companies in the pharmaceutical sector around the globe through joint ventures and acquisitions in India and abroad. Gujarat Lyka Organic Ltd and MJ Pharm in India and Taro Pharmaceutical and Caraco in the US are some of the major acquisitions of Sun Pharm. The company has its manufacturing units located in the US, Canada, Brazil, Israel, etc.

Ranbaxy Laboratories ltd - Ranbaxy was listed on the BSE, NSE, and Luxembourg Stock Exchange. It had acquired Crosland Research Laboratories, Rima Pharmaceuticals, and RPG Aventis among others to get a foothold in the European and US markets. In the year 2008 Daiichi Sankyo acquired a controlling interest in the company, Under his control the company was doing poorly and facing many quality control issues, Ranbaxy's plants at Paonta Sahib and Dewas faced an import ban in 2008. In 2013 Ranbaxy gave out $500 million for felony charges because of the manufacture and distribution of adulterated drugs in India. In September 2013, its plant at Mohali and Toansa were banned from manufacturing pharmaceuticals for export to the US over quality issues. Sun Pharma has always used Mergers and acquisitions as a tool for market expansion. Sun Pharma looked at Ranbaxy as an opportunity to grow in the international market. Ranbaxy is a well-known brand in the international market and has a global presence in many countries. Sun Pharma believed that the combination of both companies will give a diversified portfolio of products offered. Other added benefits of this deal were resources of companies complimentary, better research, and Sun Pharma's dependence on the US market will lower; manufacturing plants and global connections of both the companies will help in creating stronger networks. Sun Pharma is known to turn around the game for the distressed businesses acquired by it. Ranbaxy has got some issues in the quality control department that will soon be solved by Sun Pharma and also help it in regaining the trust of regulatory authorities. Sun Pharmaceutical Industries Ltd. acquired Ranbaxy Laboratories Ltd from[3] Japan's Daiichi Sankyo completely the deal concluded on 6th April 2014 after regulatory approvals. Thus, the world's fifth biggest generic Pharma Company by revenue and India's largest drug maker with a local market share of 10% was created. Daiichi'S stake was reduced to 9% post the deal This merger is a classic example of how Mergers and acquisitions are used by giant companies to expand even further creating dominance in the market. A lot of importance was given to the creation of a synergetic effect and becoming a bigger brand globally in this transaction

3. *Facebook and WhatsApp acquisition*

Facebook is an American online social network service owned by a company called Meta Platforms. Facebook was founded by Mark Zukerberg in the year 2004 along with his friends who were all students at Harvard University. Facebook is a platform that helps people to connect and build communities. People use Facebook to stay in touch with existing friends, discover new people, stay updated on what's going on in the world, and express themselves.

[3] 'Experts say Ranbaxy acquisition positive for Sun Pharma shareholders' (*Business Today,* 1 May 2014) <https://www.businesstoday.in/magazine/stocks/story/ranbaxy-acquisition-good-for-sun-pharma-shareholders-experts-46990-2014-04-29> accessed 10 July 2022

Facebook has seen immense growth in the past decade; however, it has also got competitors in the market like Snapchat, Pinterest, Twitter, etc. WhatsApp is a mobile messaging company. It provides a platform to its users where they can send text messages, pictures, gifs, videos, audio, etc. to communicate. WhatsApp was founded by Jan Koum and Brian Acton in 2009. WhatsApp was growing at a rapid pace in February 2013 its active users reached 200 million. Facebook saw WhatsApp as a threat and announced its acquisition in 2014. Facebook acquired Instagram in the year 2012 when it was competing with Facebook, Same can be seen in this acquisition. WhatsApp is by far Facebook's biggest acquisition, even bigger than the Instagram acquisition. Facebook saw vulnerability as well as opportunity in WhatsApp and acquired WhatsApp for 19 billion USD. WhatsApp is a major player in developing countries since it can operate even with sparse internet connection; Facebook saw this as a chance to grow in developing nations, especially Asian countries. WhatsApp was giving tough competition to Facebook messenger in user engagement time causing a threat to the social media giant. One of the main focuses of Facebook is mobile connection hence WhatsApp seemed to be a promising partner. This Acquisition is an accurate case study for understanding how market leaders eliminate their competition by buying the competitor. In this acquisition, Facebook not only eliminated its threat but also used WhatsApp to its advantage.[4] Facebook used this acquisition to widen its market as well as maintain its leadership position in the market.

CONCLUSION

In a nutshell, companies have been using mergers and acquisitions as a strategy to cope with the competitive market. As mentioned above companies have been using mergers and acquisitions for different purposes; however, the ultimate motive is growth. To achieve the said purpose of growth proper implementation becomes necessary as there are various cases in the market which have failed miserably due to lack of planning and implementation. Some of the prominent examples of failed mergers and acquisitions are Google and Motorola, Microsoft and Nokia, eBay and Skype, etc. Indeed mergers and acquisitions are a tool for growth, however,

[4] *PB* Jayakumar, 'Merger with Ranbaxy Laboratories poses challenges for Sun Pharmaceutical' *(Business Today,* 15 November 2015) <https://www.businesstoday.in/magazine/cover-story/story/bt-500-india-most-valuable-companies-2015-sun-pharma-rank-8-57056-2015-10-22> accessed 10 July 2022

the success of mergers and acquisitions depends on various factors such as clarity of vision, planning, and implementation, market reactions so on and so forth. To conclude merger and acquisition is a complex and lengthy process. There are many technical and legal difficulties requiring critical analyses. When done properly it can do wonders for the company. Therefore, Mergers and acquisitions are a tool for global growth which require to be handled cautiously.