Merger, Demergers & Acquisitions: A new trend of exponential growth in business

By

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Introduction:

Business is one of the oldest professions practiced in the world. With the passage of time the way of doing business has been changed a lot. Nowadays merger and acquisition are very common phenomenon. These proves to be a great opportunity to expand business worldwide.

The corporate sector all over the world is restructuring its operations through different types of consolidation strategies like mergers and acquisitions. Various companies come together to form a large company in order to expand its business. The government has also taken various efforts to strengthen such policies. The purpose of such merger and acquisition revolves around a company's growth strategy. The reason of doing this is to increase market share, make more profits, enter into new sector, reduce competition, geographical outreach etc.

Terminologies defined

Merger: The very ordinary meaning of merger is two combine two companies to form a large company. The object of doing this to expand business.

Merger has not been defined under the Companies Act, 2013.

As per section 2(IB) of the Income Tax act, 1961, amalgamation means merger of one or more companies with another company or the merger of two or more companies to form another company.

Acquisition or takeover: when a business takes over another business it is known as acquisition. It occurs when one company purchases another company.

Acquiring Company: It is the company which acquires the majority of shares of another company

Acquired Company: It is the company whose shares has been acquired by another company.

Amalgamation: It is the merger or combination of two or more companies to form a separate new entity. Section 230-232 of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 deals with the Mergers and Amalgamation of the Companies.

Demerger– means transfer and vesting of an undertaking of a company into another company.

Reconstruction- means re-organization of share capital in any manner; varying the rights of shareholders and/or creditors.

Arrangement- All modes of reorganizing the share capital, including interference with preferential and other special rights attached to shares.

Spin off- The ordinary meaning of A spinoff is the creation of an independent company through the sale or distribution of new shares of an existing business or division of a parent company

Why Merger and Acquisition?

For management, one of the biggest challenges is to enter into new market and run the business successfully. It can be done through two ways either to start a new business or to merge or acquire the running business. While setting up a new business will take more time and money, on the other hand acquiring or merging with another business will save both time and money. It also helps in gathering knowledge, entering into new market and improve output.

Types of Merger

Horizontal merger: When two or more companies dealing with the same product or services come together to form a new company it is known as horizontal merger.

Vertical merger: It means combining of two or more companies in the same industries who operate in different stages of production.

Concentric merger: It is the merger where the acquirer and target company have different products or services, but operate within the same market and also deals with the same customers. They are complementing to each other.

Conglomerate merger: This type of merger and acquisition occurs when both the target company and target seeking company are different in terms of industry, product offering, and stage of production.

Reverse merger: It is a merger where private company becomes a public company by purchasing/ acquiring it. **Example of reverse merger-**

Hardcastle Restaurants private limited("HRPL"), a master franchisee which operates the McDonald's branded restaurants in western and southern India and which also became the direct subsidiary of Westlife Development Limited("WDL"), a BSE- listed company, by way of a composite scheme of arrangement and Amalgamation under a reverse merger in the year 2013.

Largest merger and acquisition

1. **Walmart acquisition of Flipkart:**

Walmart acquired 77% stake for $ 16 billion in Flipkart, an e-commerce company in India. Flipkart is an e-commerce company which was founded by Delhi IITians and former Amazon employees Sachin Bansal and Binny Bansal with just rupees 4 lakhs in year 2007. It is headquartered in Bengaluru, Karnataka. The company has made various acquisitions since the time of its existence which includes E-Bay, PhonePe and online lifestyle retailers like Myntra and Jabong which have made Flipkart a leading company.

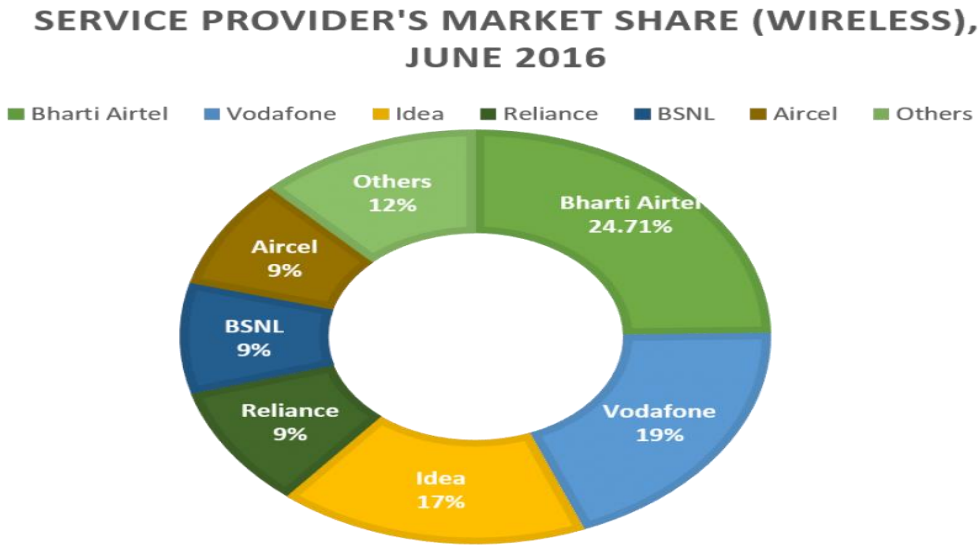
Walmart Inc is an American multinational retail company which was originated by Sam Walton in the year 1962 and incorporated in the year 1969. It is headquartered in Bentonville. Walmart arrived India through a Joint Venture with Bharti enterprises in year 2007 and got its first store opened in Amritsar, Punjab in year 2009.

In May 2018, Walmart announces its acquisition of Flipkart. The strategy behind this alliance is to make its entry in e-commerce business.

2. Vodafone Idea Merger:

Vodafone is one of the world leading telecommunication companies, it was founded in year 1985 and is based in London. Shares of Vodafone is traded on London stock exchange and NASDAQ. It came to India in September 2007, after Vodafone Plc.

Idea cellular limited is a Public limited company which was based in Mumbai, India.

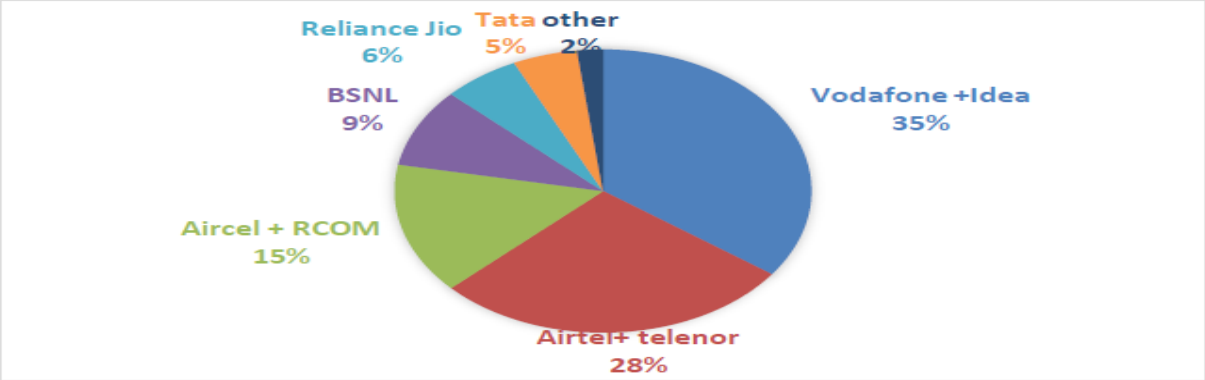


Telecom-market-share-before-Jio; source: TRAI

The idea that gave birth to this merger is to compete with Jio by joining hands together. The merger between Vodafone and Idea was approved by NCLT Mumbai bench on 30th August 2018 which

means the merger became effective from 31st August 2018. The combined entity is worth more than $23 billion.

Post-consolidation market share :(Based on data as of 31/12/2016)



Source: TRAI

Recent updates on merger and acquisitions

1. ICICI Lombard gets final IRDAI approval for Bharti Axa acquisition
2. Kalpathi AGS Group-Owned Veranda Acquires Edureka For Rs 245 Crore
3. HDFC Life Acquires Exide Life Insurance In Rs 6,687-Crore Deal
4. Prosus Buys Indian Payments Company Billdesk For $4.7 Billion

Source: https://economictimes.indiatimes.com/industry/banking/finance/insure/icici-lombard-gets-final-irdai-approval-for-bharti-axa-acquisition/articleshow/85921963.cms

List of Acquisitions in India

Aquirer	Aquiree	Year of Aacquisition
Lenskart	DailyJoy	2021
Byju's	Aakash Educational Services Ltd	2021
ITC	Sunrise Foods	2020
Ebix	Yatra	2020
Reliance Retail	Future Group's Retail Business	2020
Infosys	Kaleidoscope Innovation	2020
Medlife	PharmEasy	2020
Zomato	Fitso	2020

Big Basket	Daily Ninja	2020
Zomato	Uber Eats	2020
PayU	PaySense	
Ola	Etergo	2020

List of Mergers in India

Name of the First Company	Name of the Company Merged with	Year of merger
National Institute of Miners' Health (NIMH)	ICMR – National Institute of Occupational Health (NIOH)	2019
Bank of Baroda	Vijaya Bank and Dena Bank	2019
Vodafone India	Idea Cellular	2018
Housing.com	PropTiger.com	2017
State Bank of India	Bhartiya Mahila Bank, SB of Bikaner and Jaipur, SB of Patiala, SB of Travancore	2017
Flipkart	E-bay India	2017

Challenges faced by companies during merger and acquisition

- **Legal considerations**
- **Political issues**
- **Cultural differences**
- **Due diligence**
- **Funding**

Legal Framework:

1. The Companies Act, 2013
2. The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011
3. The Competition Act, 2002 read with The Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011
4. The Insolvency and Bankruptcy Code, 2016

1. **The Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016**

Chapter XV (Section 230-240)- Notified Date of Section: 7/12/2016 Effective Date: 15/12/2016

Section 230 to 240 of the Companies Act, 2013 under Chapter XV deals with 'Compromises, Arrangements and Amalgamations', that covers compromise or arrangements, mergers and amalgamations, Corporate Debt Restructuring, demergers, fast track mergers for small companies/holding subsidiary companies, cross border mergers, takeovers, amalgamation of companies in public interest etc.

MCA vide notification dated 14th Dec, 2016 has issued rules i.e. The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. These rules will be effective from 15th December, 2016.

The MCA notified Section 234 of the Companies Act 2013 which permits cross border mergers with effect from 13 April 2017. Further, in consultation with the Reserve Bank of India (RBI), the MCA has also notified corresponding amendments to the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 by inserting a new Rule 25A effective from 13 April 2017, which deals with cross border mergers.

Power to Compromise or Make Arrangements with Creditors and members

(1) Where a compromise or arrangement is proposed—

(a) between a company and its creditors or any class of them; or

(b) between a company and its members or any class of them,

The NCLT may, on the application of the company or of any creditor or member of the company, or in the case of a company which is being wound up, of the liquidator, "appointed under this Act or under the Insolvency and Bankruptcy Code, 2016, as the case may be," order a meeting of the creditors or class of creditors, or of the members or class of members, as the case may be, to be called, held and conducted in such manner as the NCLT directs.

- An application under Section 230 for compromise/arrangement/amalgamation, have to disclose the following to the NCLT:

(a) all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company and the pendency of any investigation or proceedings against the company;

(b) reduction of share capital of the company, if any, included in the compromise or arrangement;

(c) any scheme of corporate debt restructuring consented to by not less than seventy-five per cent. of the secured creditors in value, including—

(i) a creditor's responsibility statement in the prescribed form;

(ii) safeguards for the protection of other secured and unsecured creditors;

(iii) report by the auditor that the fund requirements of the company after the corporate debt restructuring as approved shall conform to the liquidity test based upon the estimates provided to them by the Board;

(iv) where the company proposes to adopt the corporate debt restructuring guidelines specified by the Reserve Bank of India, a statement to that effect; and

- (v) a valuation report in respect of the shares and the property and all assets, tangible and intangible, movable and immovable, of the company by a registered valuer.
- Notice of proposed meeting required to be sent to all the creditors or class of creditors and to all the members or class of members and the debenture-holders of the company, individually at the address registered with the company which shall be accompanied by a statement disclosing the details of the compromise or arrangement, a copy of the valuation report, if any, and explaining their effect on creditors, key managerial personnel, promoters and non-promoter members, and the debenture-holders and the effect of the compromise or arrangement on any material interests of the Directors of the company or the debenture trustees, and such other matters as may be prescribed.
- Notice shall also provide an option to vote through postal ballot.
- Only those shareholders can raise objection to the scheme who holds not less than 10% of the shareholding.

- Only those creditors can raise objection to the scheme who holds 5% of the total outstanding debt.
- The NCLT may provide the order for exit option to dissenting shareholders based upon the valuation by Registered valuer.
- A notice along with all the documents shall also be sent to the Central Government, the income-tax authorities, the Reserve Bank of India, the Securities and Exchange Board, the Registrar, the respective stock exchanges, the Official Liquidator, the Competition Commission of India established under sub-section (1) of section 7 of the Competition Act, 2002, if necessary, and such other sectoral regulators or authorities which are likely to be affected.
- Certificate from Statutory Auditor that accounting treatment complies with prescribed accounting standards.
- The order of the NCLT shall be filed with the Registrar by the company within a period of thirty days of the receipt of the order
- Every company has to file a yearly statement with ROC until the completion of the scheme, certifying that compliance is as per an order of NCLT.
- No compromise or arrangement in respect of any buy-back of securities under this section shall be sanctioned by the Tribunal unless such buy-back is in accordance with the provisions of section 68
- An aggrieved party may make an application to the Tribunal in the event of any grievances with respect to the takeover offer of companies other than listed companies in such manner as may be prescribed and the Tribunal may, on application, pass such order as it may deem fit.

Power of Tribunal to enforce compromise or arrangement

Section 231 provides the power to the NCLT to enforce compromise or arrangement. These powers are-

- to supervise the implementation of the compromise or arrangement; and
- may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper implementation of the compromise or arrangement.

In the situation where the NCLT is satisfied that the compromise or arrangement sanctioned under section 230 cannot be implemented satisfactorily with or without modifications, and the company is unable to pay its debts as per the scheme, it may make an order for winding up the company and such an order shall be deemed to be an order made under section 273.

In case of Government Company - In section 231 for the word "Tribunal" the words "Central Government" shall be substituted.- Notification Dated 13th June, 2017.

Merger and Amalgamation of Companies

Section 232 prescribes for the procedure for Mergers and Amalgamations under Companies Act, 2013.

Where an application is made to the NCLT under section 230 for the sanctioning of a compromise or an arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the NCLT—

(a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of the company or companies involving merger or the amalgamation of any two or more companies; and

(b) that under the scheme, the whole or any part of the undertaking, property or liabilities of any company (hereinafter referred to as the transferor company) is required to be transferred to another company (hereinafter referred to as the transferee company), or is proposed to be divided among and transferred to two or more companies,

The NCLT may on such application, order a meeting of the creditors or class of creditors or the members or class of members, as the case may be, to be called, held and conducted in such manner as the NCLT may direct.

Filing of application:

Rule 3 of the Companies (Compromises, Arrangementsand Amalgamations) Rules, 2016 prescribes the details of filing of application for order of a meeting

An application is to be filed with the National Company Law Tribunal ("NCLT") in Form No.NCLT-1 along with following documents:

- A Notice of Admission in Form No. NCLT-2.
- An Affidavit in Form No. NCLT-6.
- A Copy of Scheme of Amalgamation.
- Fee as prescribed in the Schedule of Fees.

The application shall also disclose to NCLT, the basis on which each class of members or creditors have been identified for purposes of approval of the scheme of amalgamation between the transferor and transferee company.

Note: Where more than one company is involved in a scheme, such application may, at the discretion of such companies, be filed as a joint-application before NCLT. However, where the registered office of the companies is in different states, there will be two Tribunals having the jurisdiction over those companies, hence separate petition will be required to be filed for the purpose of amalgamation.

Notice of Meeting

Rule 6 of the Companies (Compromises, Arrangementsand Amalgamations) Rules, 2016 prescribes that the meeting shall be called as per the order of NCLT and the notice of the meeting shall be sent to all the creditors, members and debenture holders, to their respective addresses in Form No. CAA.2. The notice of the meeting sent to the creditors and members shall be accompanied by a copy of the scheme of amalgamation along with the relevant details and documents as mentioned in the section, if not already mentioned in the scheme.

A chairperson is appointed for the meeting of the company or other person who is directed to issue the advertisement and the notices of the meeting shall file an affidavit before the NCLT in not less than seven days before the date fixed for meeting or date of the first of the meetings, as the case may be, stating that the directions regarding the issue of notices and the advertisement have been duly complied with.

The notice shall be sent by the chairperson appointed for the meeting or any other person as the NCLT may direct, by registered post or speed post or by courier or by e-mail or by hand delivery or any other mode as directed by NCLT to their last known address at least one month before the date fixed for the meeting.

Advertisement

Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 prescribes that the notice of the meeting shall also be advertised, in not less than thirty days before the date fixed for the meeting, in Form No. CAA.2in at least one English newspaper and in at least one vernacular newspaper having wide circulation in the state in which the registered office of the company is situated or such newspaper as may be directed by the NCLT.

Note: Provided that where separate meetings of classes of creditors or members are to be held, a joint advertisement for such meetings may be given.

Notice to Statutory Authorities

Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 states that the aforesaid notice of a meeting of creditors and members in Form No. CAA.3 along with a copy of amalgamation shall be sent to the Central Government, the Registrar of Companies, the Income-tax authorities and other sectoral regulators or authorities, as required by NCLT. The notice of the authorities shall be sent forthwith, after the notice is sent to the members or creditors of the company, by registered post or by speed post or by courier or by hand delivery at the office of the authority. If the authorities desire to make any representation, the same shall be sent to the NCLT within a period of thirty days from the date of receipt of such notice and copy of such representations shall simultaneously be sent to the concerned companies. In case no representation is received within the stated period of thirty days, it shall be presumed that the authorities have no representation to make on the proposed scheme of amalgamation.

Report of the result of the meeting

Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 states that the chairperson of the meeting shall within the time period fixed by the NCLT or where no time has been fixed, within 3 (three) days after the conclusion of the meeting, give a report to NCLT providing the result of the meeting of the members and creditors in Form No CAA.4 and shall state accurately the number of creditors and members, as the case may be, who were present and who voted at the meeting either in person or by proxy, and where applicable, who voted through electronic means, their individual values and the method of voting adopted by them.

Filing of petition for confirming the scheme of amalgamation

Rule 15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 states that where the proposed amalgamation is agreed to by the members or creditors or both as the case may be with or without modification, the company, shall, within seven days of the filing of the report by the chairperson, present a petition to the NCLT in Form No.CAA.5 for sanction of the scheme of amalgamation.

Note: Where the company fails to present the petition for confirmation of the compromise or arrangement as aforesaid, it shall be open to any creditor or member as the case may be, with the leave of the NCLT, to present the petition and the company shall be liable for the cost thereof.

Date and Notice of Hearing

Rule 15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 states that the NCLT shall fix a date for the hearing of the petition, and a notice of the hearing shall be advertised in the same newspaper in which the notice of the meeting was advertised or in such other newspaper as the NCLT may direct, not less than ten days before the date fixed for the hearing. The notice of the hearing of the petition shall also be served by the Tribunal to the objectors or to their representatives and to the central government and other authorities who have made representation and have desired to be heard in their representation.

Order on the Petition

Rule 17 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 states that where the NCLT sanctions the amalgamation, the order shall include such directions in regard to any matter or such modifications in the scheme as the NCLT may think to fit to make for the proper working of the scheme. The order shall direct that a certified copy of the same shall be filed with the registrar of companies within thirty days from the date of the receipt of the copy of the order, or such other time as may be fixed by the NCLT. The order shall be in Form No. CAA. 6, with such variations as may be necessary.

Filing of Order:

The order of the NCLT shall be filed with the Registrar in Form INC-28 by the company within a period of thirty days of the receipt of the order.

Circulation

Circulation of the following documents for the meeting:

- The proposed draft scheme adopted by the directors of merging companies,
- Confirmation of filing the draft copy of the scheme with the Registrar,
- Valuation report,
- Report adopted by the directors of the merging companies explaining the effect of the compromise,
- Supplementary accounting statement if the last annual accounts of any of the merging companies relate to a financial year ending more than six months before the first meeting of the company summoned for the purposes of approving the scheme.

Order of NCLT

The NCLT, after satisfying itself that the procedure been complied with, may, by order, sanction the compromise or arrangement or by a subsequent order, make provision for the following matters, namely:—

(a) the transfer to the transferee company of the whole or any part of the undertaking, property or liabilities of the transferor company from a date to be determined by the parties unless the Tribunal, for reasons to be recorded by it in writing, decides otherwise;

(b) the allotment or appropriation by the transferee company of any shares, debentures, policies or other like instruments in the company which, under the compromise or arrangement, are to be allotted or appropriated by that company to or for any person:

Provided that a transferee company shall not, as a result of the compromise or arrangement, hold any shares in its own name or in the name of any trust whether on its behalf or on behalf of any of its subsidiary or associate companies and any such shares shall be cancelled or extinguished;

(c) the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company on the date of transfer;

(d) dissolution, without winding-up, of any transferor company;

(e) the provision to be made for any persons who, within such time and in such manner as the Tribunal directs, dissent from the compromise or arrangement;

(f) where share capital is held by any non-resident shareholder under the foreign direct investment norms or guidelines specified by the Central Government or in accordance with any law for the time being in force, the allotment of shares of the transferee company to such shareholder shall be in the manner specified in the order;

(g) the transfer of the employees of the transferor company to the transferee company;

(h) where the transferor company is a listed company and the transferee company is an unlisted company,—

(A) the transferee company shall remain an unlisted company until it becomes a listed company;

(B) if shareholders of the transferor company decide to opt out of the transferee company, provision shall be made for payment of the value of shares held by them and other benefits in accordance with a pre-determined price formula or after a valuation is made, and the arrangements under this provision may be made by the Tribunal.

Other Procedures

- If the Tribunal order to transfer any property or liabilities then those properties and liabilities shall be transferred to the Transferee Company by the Transferor company.
- Filing a certified copy of the order with the Registrar for registration within thirty days of the receipt of the certified copy of the order.
- The scheme shall indicate clearly the appointed date from which it shall be effective
- A statement certified by a Company Secretary or Chartered Accountant or Cost Accountant in Practice indicating whether the scheme has complied with the orders of the Tribunal every year until the completion of the scheme shall be filed.

Penalty

If a company fails to comply with any of the above provisions, the company and every officer of the company who is in default shall be liable to a penalty of twenty thousand rupees, and where

the failure is a continuing one, with a further penalty of one thousand rupees for each day after the first during which such failure continues, subject to a maximum of three lakh rupees.

Note: In case of Government Company - In section 232 for the word "Tribunal" the words "Central Government" shall be substituted.- Notification Dated 13th June, 2017.

Merger or Amalgamation of Certain Companies

As per Section 233, a scheme of merger or amalgamation may be entered into between two or more small companies or between a holding company and its wholly-owned subsidiary company or such other class or classes of companies as may be prescribed.

Notice of the proposed scheme

Rule 25 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 states that the notice of the proposed scheme, to invite objections or suggestions from the Registrar and Official Liquidator or persons affected by the scheme shall be in Form No. CAA.9.

The notice of the meeting to the members and creditors shall be accompanied by -

(a) a statement, as far as applicable, referred to in sub-section (3) of section 230 of the Act read with sub-rule (3) of rule 6 hereof;

(b) the declaration of solvency made in pursuance of clause (c) of sub-section (1) of section 233 of the Act in Form No. CAA.10;

(c) a copy of the scheme.

Copy of the scheme shall also be filed, along with Form No. CAA. 11 with -

(i) the Registrar of Companies in Form No. GNL-1 along with fees provided under the Companies (Registration Offices and Fees) Rules, 2014; and

(ii) the Official Liquidator through hand delivery or by registered post or speed post.

Where no objection or suggestion is received to the scheme from the Registrar of Companies and Official Liquidator or where the objection or suggestion of Registrar and Official Liquidator is

deemed to be not sustainable and the Central Government is of the opinion that the scheme is in the public interest or in the interest of creditors, the Central Government shall issue a confirmation order of such scheme of merger or amalgamation in Form No. CAA.12.

Where objections or suggestions are received from the Registrar of Companies or Official Liquidator and the Central Government is of the opinion, whether on the basis of such objections or otherwise, that the scheme is not in the public interest or in the interest of creditors, it may file an application before the Tribunal in Form No. CAA.13 within sixty days of the receipt of the scheme stating its objections or opinion and requesting that Tribunal may consider the scheme

under section 232 of the Act.

The confirmation order of the scheme issued by the Central Government or Tribunal, shall be filed, within thirty days of the receipt of the order of confirmation, in Form INC-28 along with the fees as provided under Companies (Registration Offices and Fees) Rules, 2014 with the Registrar of Companies having jurisdiction over the transferee and transferor companies respectively.

If the Registrar or Official Liquidator has any objections or suggestions, he may communicate the same in writing to the Central Government within a period of thirty days.

On receipt of an application from the Central Government or from any person, if the Tribunal, for reasons to be recorded in writing, is of the opinion that the scheme should be considered as per the procedure laid down in section 232, the Tribunal may direct accordingly or it may confirm the scheme by passing such order as it deems fit.

The registration of the scheme under sub-section (3) or sub-section (7) shall be deemed to have the effect of dissolution of the transferor company without process of winding-up.

Registration of the scheme

The registration of the scheme shall have the following effects, namely: —

(a) transfer of property or liabilities of the transferor company to the transferee company so that the property becomes the property of the transferee company and the liabilities become the liabilities of the transferee company;

(b) the charges, if any, on the property of the transferor company shall be applicable and enforceable as if the charges were on the property of the transferee company;

(c) legal proceedings by or against the transferor company pending before any court of law shall be continued by or against the transferee company; and

(d) where the scheme provides for purchase of shares held by the dissenting shareholders or settlement of debt due to dissenting creditors, such amount, to the extent it is unpaid, shall become the liability of the transferee company.

Merger or Amalgamation of Company with Foreign Company

Section 234 of the Companies Act, 2013 deals with the cross-border merger i.e. merger or amalgamation of company with foreign company. The Ministry of Corporate Affairs (MCA) has vide its Commencement Notification notified Section 234 of Companies Act, 2013 which provides for Merger or Amalgamation of company with Foreign Company which has come into force with effect from 13th April, 2016. MCA has also notified Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2017 by inserting Rule 25A for Merger or Amalgamation of company with a Foreign company and vice versa.

As per section 234, a foreign company may with the prior approval of Reserve Bank of India, merge into a company registered under this Act or vice versa.

Further Rule 25A has been inserted by the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2017 on 13th April, 2017. It provides that a foreign company may with the prior approval of Reserve Bank of India, merge into a company registered under this Act or vice versa.

A company may merge with a Foreign company incorporated in any of the jurisdictions:

(i) Whose security market regulator is a signatory to: - International Organisation of Securities Commission's Multilateral Memorandum of Understanding, or - Bilateral Memorandum of Understanding with SEBI

(ii) Whose Central Bank is a member of Bank of International Settlements (BIS), and

(iii) Which is not identified in the public statement of Financial Action Task Force (FATF) as:

- A jurisdiction having a strategic Anti-Money Laundering, A jurisdiction combating the financing of Terrorism deficiencies to which countermeasures apply,
- A jurisdiction that has not made significant progress in addressing the deficiencies or
- A jurisdiction that has not committed to an action plan developed with FATF to address the deficiencies.

Power to Acquire Shares of Shareholders Dissenting from Scheme or Contract Approved by Majority

Section 235 of the Companies Act, 2013 prescribes that where a scheme or contract involving the transfer of shares or any class of shares in a company (the transferor company) to another company (the transferee company) has, within four months after making of an offer in that behalf by the transferee company, been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved, other than shares already held at the date of the offer by, or by a nominee of the transferee company or its subsidiary companies, the transferee company may, at any time within two months after the expiry of the said four months.

The transferee company shall send a notice to the dissenting shareholder(s) of the transferor company, in Form No. CAA.14 at the last intimated address of such shareholder, for acquiring the shares of such dissenting shareholders.

The company is entitled to acquire, and the transferor company shall—

(a) thereupon register the transferee company as the holder of those shares; and

(b) within one month of the date of such registration, inform the dissenting shareholders of the fact of such registration and of the receipt of the amount or other consideration representing the price payable to them by the transferee company.

Any sum received by the transferor company under this section shall be paid into a separate bank account, and any such sum and any other consideration so received shall be held by that company in trust for the several persons entitled to the shares in respect of which the said sum

or other consideration were respectively received and shall be disbursed to the entitled shareholders within sixty days.

For the purposes of this section, "dissenting shareholder" includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

2. The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

Earlier there were Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. Various amendments have been made to these regulations. Then, The Securities and Exchange Board of India has notified the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 on 23rd September, 2011. It repeals the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

These regulations have been amended a number of times to address the changing circumstances and needs of corporate sector. The SEBI has notified SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2021 to amend the existing SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 which shall come into force from 1st April, 2022. These Regulations provides that it will be applicable to direct and indirect acquisition of shares or voting rights in, or control over target company.

These regulations provide the regulatory guidance regarding open offer, public announcement, periodical disclosures, control, delisting etc. while acquiring shares in another listed company.

Keeping in mind the extraordinary circumstances that have arisen due to the pandemic (coronavirus/COVID-19) and have affected the finances of domestic companies, SEBI announced the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2020.

As per the amendment, an acquirer can buy additional shares accounting for more than 5% but not over 10% in a target company only for the FY 2020-21 without making a public announcement of an open offer. However, these conditions must be fulfilled:

i. The acquirer has to be the promoter of the company.
ii. The target company has to raise the capital by way of preferential issue of equity shares

Terminology defined

Acquirer: means any person who, directly or indirectly, acquires or agrees to acquire whether by himself, or through, or with persons acting in concert with him, shares or voting rights in, or control over a target company.

Acquisition means, directly or indirectly, acquiring or agreeing to acquire shares or voting rights in, or control over, a target company

Control includes the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner

Convertible security means a security which is convertible into or ex-changeable with equity shares of the issuer at a later date, with or without the option of the holder of the security, and includes convertible debt instruments and convertible preference shares.

Disinvestment means the direct or indirect sale by the Central Government or any State Government or by a government company, as the case may be, of shares or voting rights in, or control over, a target company, which is a public sector.

Undertaking enterprise value means the value calculated as market capitalization of a company plus debt, minority interest and preferred shares, minus total cash and cash equivalents.

Frequently traded shares means shares of a target company, in which the traded turnover on any stock exchange during the twelve calendar months preceding the calendar month in which the public announcement is required to be made under these regulation, is at least ten per cent of the total number of shares of such class of the target company.

Open offer

As per Regulation 3, the initial threshold limit provided for open offer is 25%. In addition to this, if a party already holds at least a quarter of the target's voting rights, a mandatory open offer will be triggered if that party acquires more than 5% of the target's voting rights in any financial year.

Regulation 3 of the SEBI Takeover Regulations, 2011 provides the following. Shares or voting rights shall not be acquired by a target company which, when taking together shares or voting rights held by them and by persons acting in concert with him in such target company, entitling them to exercise twenty-five percent or more of the voting rights in such target company. The single exception to this is if the acquirer makes a public announcement of an open offer for acquiring shares of such target company following these regulations.

For the purpose of this regulation, any reference to "twenty-five percent" in case of listed entity which has listed its specified securities on Innovators Growth Platform shall be read as "forty-nine percent

It is provided that such acquirer shall not be entitled to acquire or enter into any agreement to acquire shares or voting rights exceeding such number of shares as would take the aggregate shareholding pursuant to the acquisition above the maximum permissible non-public shareholding.

It is also provided that, acquisition pursuant to a resolution plan approved under section 31 of the Insolvency and Bankruptcy Code, 2016 shall be exempt from the obligation under the proviso to the sub-regulation (2) of regulation 3.

Quantum of acquisition of additional voting rights:

i. gross acquisitions alone shall be taken into account regardless of any intermittent fall in shareholding or voting rights whether owing to disposal of shares held or dilution of voting rights owing to fresh issue of shares by the target company.
ii. in the case of acquisition of shares by way of issue of new shares by the target company or where the target company has made an issue of new shares in any given financial year, the difference between the pre-allotment and the post-allotment percentage voting rights shall be regarded as the quantum of additional acquisition .

Acquisition of control

Irrespective of acquisition or holding of shares or voting rights in a target company, no acquirer shall acquire, directly or indirectly, control over such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.

Intimations required

The Regulation 10 deals with the pre and post intimation by availing general exemptions. As per Regulation 10, the acquirer shall intimate the stock exchanges where the shares of the target company are listed, the details of the proposed acquisition in such form as may be specified, at least four working days prior to the proposed acquisition, and the stock exchange shall forthwith disseminate such information to the public.

It provides that the acquirer shall file a report with the stock exchanges where the shares of the target company are listed, in such form as may be specified not later than four working days from the acquisition, and the stock exchange shall forthwith disseminate such information to the public.

Publication of public announcement under Regulation 14

The public announcement shall be sent to all the stock exchanges on which the shares of the target company are listed, and the stock exchanges shall forthwith disseminate such information to the public.

A copy of the public announcement shall be sent to the Board and to the target company at its registered office within one working day of the date of the public announcement.

Publication of such detailed public statement in the newspapers, a copy of the same shall be sent to all the stock exchanges on which the shares of the target company are listed.

Contents of public announcement

The public announcement should contain the following, —

(a) name and identity of the acquirer and persons acting in concert with him;

(b) name and identity of the sellers, if any;

(c) nature of the proposed acquisition such as purchase of shares or allotment of shares, or any other means of acquisition of shares or voting rights in, or control over the target company;

(d) the consideration for the proposed acquisition that attracted the obligation to make an open offer for acquiring shares, and the price per share, if any;

(e) the offer price, and mode of payment of consideration; and

(f) offer size, and conditions as to minimum level of acceptances, if any.

Filing of letter of offer with the Board

As per Regulation 16, Within five working days from the date of the detailed public statement made under sub-regulation (4) of regulation 13, the acquirer shall, through the manager to the open offer, file with the Board, a draft of the letter of offer containing such information as may be specified along with a non-refundable fee, as per the following scale, by way of direct credit in the bank account through NEFT/RTGS/IMPS or any other mode allowed by RBI or by way of a banker's cheque or demand draft payable in Mumbai in favour of the Board.

Disclosure during the offer period

The acquirer, during the offer period, will disclose every acquisition made by the acquirer or persons acting in with him of any shares of the target company in such manner as may be specified to each stock exchanges where the shares of target company are listed and to target company at its registered office within 24 hours of the acquisition and the stock exchanges shall disseminate such information to the public.

Advertisement before the commencement of the tendering period

The acquirer shall issue an advertisement in such form as may be specified, one working day before the commencement of the tendering period, announcing the schedule of activities for the open offer, the status of statutory and other approvals, if any, whether for the acquisition attracting the obligation to make an open offer under these regulations or for the open offer, unfulfilled conditions, if any, and their status, the procedure for tendering acceptances and such other material detail as may be specified:

Such advertisement shall be, —

(a) published in all the newspapers in which the detailed public statement pursuant to the public announcement was made; and

(b) simultaneously sent to the Board, all the stock exchanges on which the shares of the target company are listed, and the target company at its registered office.

Post offer advertisement

The acquirer shall issue a post offer advertisement in such form as may be specified within five working days after the offer period, giving details including aggregate number of shares tendered, accepted, date of payment of consideration.

Such advertisement shall be, —

- Published in all the newspapers in which the detailed public statement pursuant to the public announcement was made; and
- Simultaneously sent to the Board, all the stock exchanges on which the shares of the target company are listed, and the target company at its registered office.

Announcement of withdrawal of open offer

In the event of withdrawal of the open offer, the acquirer shall through the manager to the open offer, within two working days, —

i. make an announcement in the same newspapers in which the public announcement of the open offer was published, providing the grounds and reasons for withdrawal of the open offer; and
ii. simultaneously with the announcement, inform in writing to, —
iii. the Board;
iv. all the stock exchanges on which the shares of the target company are listed, and the stock exchanges shall forthwith disseminate such information to the public; and
v. the target company at its registered office.

Conditional offer

The Regulation 19 provides that an acquirer may make an open offer conditional as to the minimum level of acceptance: where the open offer is pursuant to an agreement, such agreement shall contain a condition to the effect that in the event the desired level of acceptance of the open offer is not received the acquirer shall stand rescinded.

Where an open offer is made conditional upon minimum level of acceptances, the acquirer and persons acting in concert with him shall not acquire, during the offer period, any shares in the target company except under the open offer and any underlying agreement for the sale of shares of the target company pursuant to which the open offer is made.

Payment of consideration

It is prescribed that the payment of consideration should be made by the acquirer either in the form of cash, or as the case may be, by issue, exchange or transfer of securities, to all shareholders who have tendered shares in acceptance of the open offer, within ten working days of the expiry of the tendering period.

When the payment has been made in cash, the acquirer shall open a special escrow account with a banker to an issue registered with the Board.

Completion of acquisition

The acquirer shall not complete the acquisition of shares or voting rights in, or control over, the target company, whether by way of subscription to shares or a purchase of shares attracting the obligation to make an open offer for acquiring shares, until the expiry of the offer period.

Provided that in case of an offer made under sub-regulation (1) of regulation 20, pursuant to a preferential allotment, the offer shall be completed within the period as provided under sub-regulation (1) of regulation 74 of Securities and Exchange Board of India (Issue of Capital and Disclosure) Regulations, 2009.

It is further provided that in case of a delisting offer made under regulation 5A, the acquirer shall complete the acquisition of shares attracting the obligation to make an offer for acquiring shares in terms of regulations 3, 4 or 5, only after making the public announcement regarding the success of the delisting proposal.

Time limit: The acquirer shall complete the acquisitions contracted under any agreement attracting the obligation

to make an open offer not later than twenty-six weeks from the expiry of the offer period.

Other Obligations

During the offer period, no person representing the acquirer or any person acting in concert with him shall be appointed as director on the board of directors of the target company, whether as an additional director or in a casual vacancy.

In the event the acquirer or any person acting in concert is already represented by a director on the board of the target company, such director shall not participate in any deliberations of the board of directors of the target company or vote on any matter in relation to the open offer.

Responsibilities of the acquirer company

a) Before making the public announcement of an open offer for acquiring shares under these regulations, the acquirer shall ensure that firm financial arrangements have been made for fulfilling the payment obligations under the open offer and that the acquirer is able to implement the open offer, subject to any statutory approvals for the open offer that may be necessary.
b) In the event the acquirer has not declared an intention in the detailed public statement and the letter of offer to alienate any material assets of the target company or of any of its subsidiaries whether by way of sale, lease, encumbrance or otherwise outside the ordinary course of business, the acquirer, where he has acquired control over the target company, shall be debarred from causing such alienation for a period of two years after the offer period.
c) The acquirer shall ensure that the contents of the public announcement, the detailed public statement the letter of offer and the post offer advertisement are true, fair and adequate in all material aspects and not misleading in any material particular, and are based on reliable sources, and state the source wherever necessary.
d) The acquirer and persons acting in concert with him shall not sell shares of the target company held by them, during the offer period.

e) The acquirer and persons acting in concert with him shall be jointly and severally responsible for fulfillment of applicable obligations under these regulations.

Responsibilities of the target company

a) Upon a public announcement of an open offer for acquiring shares of a target company being made, the board of directors of such target company shall ensure that during the offer period, the business of the target company is conducted in the ordinary course consistent with past practice.

b) During the offer period, unless the approval of shareholders of the target company by way of a special resolution by postal ballot is obtained, the board of directors of either the target company or any of its subsidiaries shall not, —

i. alienate any material assets whether by way of sale, lease, encumbrance or otherwise or enter into any agreement therefor outside the ordinary course of business;

ii. effect any material borrowings outside the ordinary course of business

iii. issue or allot any authorised but unissued securities entitling the holder to voting rights

iv. implement any buy back of shares or effect any other change to the capital structure of the target company;

v. enter into, amend or terminate any material contracts to which the target company or any of its subsidiaries is a party, outside the ordinary course of business, whether such contract is with a related party, within the meaning of the term under applicable accounting principles, or with any other person; and

vi. accelerate any contingent vesting of a right of any person to whom the target company or any of its subsidiaries may have an obligation, whether such obligation is to acquire shares of the target company by way of employee stock options or otherwise.

3. The Competition Act, 2002 read with the Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011

The Competition Act, 2002 was passed by the Parliament in the year 2002, to which the President accorded assent in January, 2003. It was subsequently amended by the Competition (Amendment) Act, 2007.

These regulations were notified on the 11th day of May, 2011 and came into effect on 1st day of June, 2011. It contains 35 Regulations and 2 Schedules.

Background

The Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act) was the first Indian competition law Act that was legislated in India in 1969. The MRTP Act became superseded in the light of international economic developments connecting more particularly to competition laws as it absorbed on restricting monopolies and not on promoting competition. Then in 1999, a committee was formed by the Government under the chairmanship of S.V.S Raghavan based on the recommendations of which, the Competition Act, 2002 was enacted and notified in January 2003, and the Competition.(Amendment) Act, 2007 was enacted in September 2007 to promote competition and to promulgate a modern competition law.

Contents

This Act contains 9 Chapters, 66 Sections. The Competition Act, 2002 is concerned with eradication of 3 types of agreements which are:

- Anti-competitive agreements,
- Abuse of dominant position and
- Regulation of combinations i.e. merger and acquisitions

Relevant Definitions under the Competition Act, 2002 under Section 2

"**Acquisition"** means, directly or indirectly, acquiring or agreeing to acquire—

(i) shares, voting rights or assets of any enterprise; or

(ii) control over management or control over assets of any enterprise; (

"Agreement" includes any arrangement or understanding or action in concert, —

(i) whether or not, such arrangement, understanding or action is formal or in writing; or

(ii) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings

"Commission" means the Competition Commission of India established under sub-section (1) of section 7;

"consumer" means any person who—

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, whether such purchase of goods is for resale or for any commercial purpose or for personal use;

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first-mentioned person whether such hiring or availing of services is for any commercial purpose or for personal use;

"Director General" means the Director General appointed under sub- section (1) of section 16 and includes any Additional, Joint, Deputy or Assistant Directors General appointed under that section.

"enterprise" means a person or a department of the Government, who or which is, or has been, engaged in any activity, relating to the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services, of any kind, or in investment, or in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate, either directly or through one or more of its units or divisions or subsidiaries, whether such unit or division or subsidiary is located at the same place where the

enterprise is located or at a different place or at different places, but does not include any activity of the Government relatable to the sovereign functions of the Government including all activities carried on by the departments of the Central Government dealing with atomic energy, currency, defence and space.

"price", in relation to the sale of any goods or to the performance of any services, includes every valuable consideration, whether direct or indirect, or deferred, and includes any consideration which in effect relates to the sale of any goods or to the performance of any services although ostensibly relating to any other matter or thing.

"public financial institution" means a public financial institution specified under section 4A of the Companies Act, 1956 (1 of 1956) and includes a State Financial, Industrial or Investment Corporation;

"**regulations"** means the regulations made by the Commission under section 62;

"relevant market" means the market which may be determined by the commission with reference to the relevant product market or the relevant geographic market or with reference to both the markets; (s) "relevant geographic market" means a market comprising the area in which the conditions of competition for supply of goods or provision of services or demand of goods or services are distinctly homogenous and can be distinguished from the conditions prevailing in the neighbouring areas;

"relevant product market" means a market comprising all those products or services which are regarded as interchangeable or substitutable by the consumer, by reason of characteristics of the products or services, their prices and intended use;

"service" means service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial matters such as banking, communication, education, financing, insurance, chit funds, real estate, transport, storage, material treatment, processing, supply of electrical or other energy, boarding, lodging, entertainment, amusement, construction, repair, conveying of news or information and advertising;

"shares" means shares in the share capital of a company carrying voting rights and includes—

(i) any security which entitles the holder to receive shares with voting rights;

(ii) stock except where a distinction between stock and share is expressed or implied;

"**statutory authority**" means any authority, board, corporation, council, institute, university or any other body corporate, established by or under any Central, State or Provincial Act for the purposes of regulating production or supply of goods or provision of any services or markets therefor or any matter connected therewith or incidental thereto;

"trade" means any trade, business, industry, profession or occupation relating to the production, supply, distribution, storage or control of goods and includes the provision of any services;

"turnover" includes value of sale of goods or services; (z) words and expressions used but not defined in this Act and defined in the Companies Act, 1956 (1 of 1956) shall have the same meanings respectively assigned to them in that Act.

What is Combination?

Section 5 of the Competition Act, 2002 defines the term "Combination" as acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprise shall be combination of such enterprise.

Threshold Limits for Combination

The Act prescribes that if the specified threshold limits are crossed then the parties to the combination have to notify about the combination to the Commission. The threshold limits under are revised by the Central Government through the Ministry of Corporate Affairs (MCA).

On March 04, 2016 the Ministry of Corporate Affairs has issued a notification, vide Notification No. S.O. 675(E), increasing the value of assets and value of turnover by 100% for the purposes of Section 5 of the Act.

Updated threshold

Section 5 prescribes that-

(a) any acquisition where—

(i) the parties to the acquisition, being the acquirer and the enterprise, whose control, shares, voting rights or assets have been acquired or are being acquired jointly have, —

(A) either, in India, the assets of the value of more than rupees 2 thousand crores or turnover more than rupees three thousand crores; or

(B) in India or outside India, in aggregate, the assets of the value of more than 1 billion US dollars, including at least rupees one thousand crores in India, or turnover more than three billion US dollars, including at least rupees three thousand crores in India; or

(ii) the group, to which the enterprise whose control, shares, assets or voting rights have been acquired or are being acquired, would belong after the acquisition, jointly have or would jointly have, —

(A) either in India, the assets of the value of more than rupees eight thousand crores or turnover more than rupees twenty-four thousand crores; or

(B) in India or outside India, in aggregate, the assets of the value of more than four billion US dollars, including at least rupees one thousand crores in India, or turnover more than twelve billion US dollars, including at least rupees three thousand crores in India.

Thresholds of De Minimis Exemption

Threshold limit notified by MCA vide Notification No. S.O. 674(E) dated March 04, 2016. Under this acquisition where enterprises whose control, shares, voting rights or assets of not more than Rs. 350 Crore in India or turnover of not more than Rs. 1000 crore in India are exempt from application of Section 5 of the Competition Act for a period of 5 years.

Regulation of combinations

Section 6 deals with the provisions which are concerned with the regulation of combinations. It says that no person can enter into a combination that causes harm or creates any adverse effect on competition in the relevant market in India. If any person enters into any such combination then it shall be treated as void.

Notice for proposed combination

Section 6(3) of the Competition Act, 2002 mandates that any enterprise which proposes to enter into a combination and satisfies the threshold limits as enumerated above shall send a Notice to the Commission in the prescribed form and along with the prescribed fee. The notice shall disclose the details of the combination.

Form of notice for the proposed combination

The Notice shall be Form I as specified in schedule II to these regulations. The parties to the combination may, at their option, give notice in Form II, as specified in schedule II to these regulations, preferably in the instances where-

(a) the parties to the combination are engaged in production, supply, distribution, storage, sale or trade of similar or identical or substitutable goods or provision of similar or identical or substitutable services and the combined market share of the parties to the combination after such combination is more than fifteen percent (15%) in the relevant market;

(b) the parties to the combination are engaged at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or trade in goods or provision of services, and their individual or combined market share is more than twenty five percent (25%) in the relevant market.

Notice for approval of combinations under Green Channel. -

Regulation 5A prescribes the following-

(1) For the category of combination mentioned in Schedule III, the parties to such combination may, at their option, give notice in Form I pursuant to regulation 5 along with the declaration specified in Schedule IV.

(2) Upon filing of a notice under sub-regulation (1) and acknowledgement thereof, the proposed combination shall be deemed to have been approved by the Commission under sub-section (1) of section 31 of the Act

Obligation to file the notice

i. In case of an acquisition or acquiring of control of enterprise(s), the acquirer shall file the notice in Form I or Form II, as the case may be, which shall be duly signed by the person(s)

ii. In case the enterprise is being acquired without its consent, the acquirer shall furnish such information as is available to him, in Form I or Form II, as the case may be, relating to the enterprise being acquired.

iii. In case of a merger or an amalgamation, parties to the combination shall jointly file the notice in Form I or Form II, as the case may be, duly signed by the person(s).

iv. Where the ultimate intended effect of a business transaction is achieved by way of a series of steps or smaller individual transactions which are inter-connected 6 [***], one or more of which may amount to a combination, a single notice, covering all these transactions, shall be filed by the parties to the combination.

v. The requirement of filing notice under regulation 5 of these regulations shall be determined with respect to the substance of the transaction and any structure of the transaction(s), comprising a combination, that has the effect of avoiding notice in respect of the whole or a part of the combination shall be disregarded.

Amount of Fee

The amount of fee payable along with the notice in Form I or Form II, as the case may be, shall be as under: -

(a) where the notice is filed in Form I, the fee payable shall be rupees fifteen lakhs (Rs. 15,00,000) only;

(b) where the notice is filed in Form II, the fee payable shall be rupees fifty lakhs (Rs. 50,00,000) only

Role of the Competition Commission

The Competition Commission is responsible for the establishment of the Competition Act, 2002. The Competition Commission tries to prevent adverse effects on competition in India. The major duty of the Competition Commission is provided under Section 18 of the Competition Act such as:

- Removing practices that are causing an adverse effect on the competition;

- Encouraging the freedom of trade in the country and removing any restricted entries from the marketplace;
- Maintenance of competition in the market (mostly for the protection of the needs, interests of the consumers by removing each and every practice that leads to affect the consumer's interest);
- The Competition Commission must create or develop awareness among the public at large.

Power to determine procedure in certain circumstances

- The commission has the power to determine the procedure in a situation not provided for in these regulations or the Competition Commission of India (General) Regulations, 2009.

Combination to come into effect

As per Section 6(2A), no combination can come to effect until 210 days have been completed since the date of receiving the notice to combination or date of passing which comes first.

Investigation of Combination

As per Section 29, where the Commission is prima facie of the opinion that the proposed combination is likely to cause appreciable adverse effect of competition (AAEC) in the relevant market, then the Commission shall issue a show cause notice to parties to show as to why investigation with respect to such combination shall not be conducted. The Commission shall not initiate any inquiry under this subsection after the expiry of one year from the date on which such combination has taken effect.

The Central Government shall, on the expiry of a period of two years from the date of commencement of this Act and thereafter every two years, in consultation with the Commission, by notification, enhance or reduce, on the basis of the wholesale price index or fluctuations in exchange rate of rupee or foreign currencies, the value of assets or the value of turnover, for the purposes of that section.

On receipt of response of parties, the Director General (DG) is called upon to prepare a report on the proposed combination.

Thereafter, the Commission within seven days from the date of response of parties or report of the Director General whichever is later shall direct the parties to publish the details of the combination for bringing the combination within the knowledge of the public or the person affected or likely to be affected by the proposed combination.

Additional Information

Section 29 (2) prescribes that the Commission, if it is prima facie of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall, within seven working days from the date of receipt of the response of the parties to the combination, or the receipt of the report from Director General called under sub section (1A), whichever is later, direct the parties to the said combination to publish details of the combination within ten working days of such direction, in such manner, as it thinks appropriate, for bringing the combination to the knowledge or information of the public and persons affected or likely to be affected by such combination.

Section 29(3) stated that The Commission may invite any person or member of the public, affected or likely to be affected by the said combination, to file his written objections, if any, before the Commission within fifteen working days from the date on which the details of the combination were published under sub-section (2)

Section 29(4) stated that the Commission may, within fifteen working days from the expiry of the period specified in sub-section (3), call for such additional or other information as it may deem fit from the parties to the said combination.

The additional or other information called for by the Commission shall be furnished by the parties within fifteen days from the expiry of the above-mentioned period.

Duration of Competition Assessment

Section 6(2A) of the Competition Act provides that a combination shall not come into effect until 210 days have passed from the date on which notice of combination was given to the Commission or the Commission passed orders under Section 31 of the Act (whichever is earlier).

Orders of Commission on certain combinations under Section 31

(1) Where the Commission is of the opinion that any combination does not, or is not likely to, have an appreciable adverse effect on competition, it shall, by order, approve that combination including the combination in respect of which a notice has been given under sub-section (2) of section 6.

(2) Where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition, it shall direct that the combination shall not take effect.
(3) Where the Commission is of the opinion that the combination has, or is likely to have, an appreciable adverse effect on competition but such adverse effect can be eliminated by suitable modification to such combination, it may propose appropriate modification to the combination, to the parties to such combination.

(4) The parties, who accept the modification proposed by the Commission under subsection (3), shall carry out such modification within the period specified by the Commission.

(5) If the parties to the combination, who have accepted the modification under subsection (4), fail to carry out the modification within the period specified by the Commission, such combination shall be deemed to have an appreciable adverse effect on competition and the Commission shall deal with such combination in accordance with the provisions of this Act.

(6) If the parties to the combination do not accept the modification proposed by the Commission under sub-section (3), such parties may, within thirty working days of the modification proposed by the Commission, submit amendment to the modification proposed by the Commission under that sub-section.

(7) If the Commission agrees with the amendment submitted by the parties under subsection (6), it shall, by order, approve the combination.

(8) If the Commission does not accept the amendment submitted under sub section (6), then, the parties shall be allowed a further period of thirty working days within which such parties shall accept the modification proposed by the Commission under sub-section (3).

(9) If the parties fail to accept the modification proposed by the Commission within thirty working days referred to in sub-section (6) or within a further period of thirty working days referred to in sub-section (8), the combination shall be deemed to have an appreciable adverse effect on competition and be dealt with in accordance with the provisions of this Act.

(10) Where the Commission has directed under sub-section (2) that the combination shall not take effect or the combination is deemed to have an appreciable adverse effect on competition under sub-section (9), then, without prejudice to any penalty which may be imposed or any prosecution which may be initiated under this Act, the Commission may order that-

(a) the acquisition referred to in clause (a) of section 5; or

(b) the acquiring of control referred to in clause (b) of section 5; or

(c) the merger or amalgamation referred to in clause (c) of section 5, shall not be given effect to:.

(11) If the Commission does not, on the expiry of a period of two hundred and ten days from the date of notice given to the Commission under sub-section (2) of section 6, pass an order or issue direction in accordance with the provisions of sub-section (1) or sub-section (2) or subsection (7), the combination shall be deemed to have been approved by the Commission.

Explanation. —For the purposes of determining the period of two hundred and tendays specified in this subsection, the period of thirty working days specified in sub-section (6) and a further period of thirty working days specified in sub- section (8) shall be excluded.

(12) Where any extension of time is sought by the parties to the combination, the period of ninety working days shall be reckoned after deducting the extended time granted at the request of the parties.

(13) Where the Commission has ordered a combination to be void, the acquisition or acquiring of control or merger or amalgamation referred to in section 5, shall be dealt with by the authorities under any other law for the time being in force as if such acquisition or acquiring of control or merger or amalgamation had not taken place and the parties to the combination shall be dealt with accordingly.

(14) Nothing contained in this Chapter shall affect any proceeding initiated or which may be initiated under any other law for the time being in force.

Power to impose Penalty

The competition commission is also empowered under the act after conducting inquiry into the matter pertaining to combination to impose a fine that can be extended to one percent of the total turnover or the assets of the combination, whichever is higher, for failure to give notice to the commission of the combination.

Appeals

The central government is empowered under the act to constitute Competition Commission Appellate Tribunal to hear any appeal or any direction issued or decision made by the competition commission under any provision of the act including any order related to combination. An appeal before the competition commission appellate tribunal is required to be filed within a period of 60 days after the passing of order or decision by the competition commission.

Case study

Nippon Steel Corporation and Sumitomo Metal

The case was analysed by the Competition Commission of India. The parties were engaged in manufacturing of various steel products ranging from crude steel to finished steel. Nippon Steel Corporation is engaged in manufacturing and supplying of steel products such as steel plate and sheets, steel bars and sections, wire rods, steel pipes and tubes, as well as stainless steel products and titanium products. Steel product may be differentiated on the basis such as composition, application, and physical characteristics. On the basis of the above, two broad categories of steel are flat steel and long steel the parties were found to have eight similar/ identical/substitutable products which included steel bars, wire rods, heavy medium plates. HR steel Sheets and Cols, CR Steel sheets and cols, surface treated steel sheets, NO's and seamless pipes. The Commission was of the opinion that it may not be necessary to define the relevant market for the purpose of assessment of the proposed merger, notwithstanding that the parties stated that they were engaged in the sale of eight similar/ identical/substitutable steel products in India, as the competitive assessment did not change substantially, even if the relevant market in respect of the steel products which the parties sold, was not conclusively delineated.

4. The Insolvency and Bankruptcy Code, 2016

The Insolvency and Bankruptcy Code, 2016 proves to be a landmark legislation which governs the law relating to restructuring and liquidation of persons (including incorporated and

unincorporated entities). Earlier winding up route was followed under the Companies Act for dissolving of companies. The previous bankruptcy law aimed at liquidation of the company by selling its assets and paying off the creditors. The Insolvency and Bankruptcy Code, 2016 has come up with an ultimate solution to an old regime. It was enacted with the intention to establish regulatory framework for liquidation and insolvency resolution in India. This code comprises of 5 Parts, 255 Sections and 12 Schedules.

Terminologies defined

"corporate debtor" under Section 3(8) means a corporate person who owes a debt to any person.

"**base resolution plan"** Section 5(2A) defines base resolution plan as a resolution plan provided by the corporate debtor under clause (c) of sub-section (4) of section 54A.

Resolution Plan: Section 5(26) of the Insolvency and Bankruptcy Code, 2016 defines resolution plan as "a plan proposed by resolution applicant for insolvency resolution of the corporate debtor as a going concern in accordance with Part II.

Explanation. - For removal of doubts, it is hereby clarified that a resolution plan may include provisions for the restructuring of the corporate debtor, including by way **of merger, amalgamation and demerger;"**

"**creditor"** means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder

"Committee of Creditors" means committee of Financial Creditors constituted by Interim Resolution Professional who approves resolution plan.

"liquidation cost" means any cost incurred by the liquidator during the period of liquidation subject to such regulations, as may be specified by the Board;

"liquidation commencement date" means the date on which proceedings for liquidation commence in accordance with section 33 or section 59, as the case may be.

"liquidator" means an insolvency professional appointed as a liquidator in accordance with the provisions of Chapter III or Chapter V of this Part, as the case may be.

"insolvency professional" means a person enrolled under section 206 with an insolvency professional agency as its member and registered with the Board as an insolvency professional under section 207.

"resolution professional", means an insolvency professional appointed to conduct the corporate insolvency resolution process or the prepackaged insolvency resolution process, as the case may be, and includes an interim resolution professional.

Initiation of corporate insolvency resolution process

Chapter II of the Insolvency and Bankruptcy Code, 2016 deals with the corporate insolvency resolution process. Section 6 prescribes that Where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor.

A financial creditor has to file an application before NCLT for initiating a CIRP. The NCLT then ascertains the existence of a default in and upon satisfaction admits the application (or rejects, as the case maybe) within 14 days.

In the case of operational creditors, a demand notice is to be sent by a creditor or the debtor. In the event of failure to make payment or raise a dispute within 10 days of receiving the notice, the creditor can file an application with NCLT, which it may admit if satisfied.

Time-limit for completion of insolvency resolution process

The corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.

Resolution Professional

The resolution professional shall file an application to the NCLT to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of sixty-six per cent. of the voting shares.

On receipt of an application, if the NCLT is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days,

it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days.

Moratorium

Upon admission of an application, NCLT declares a moratorium. It prohibits the following-

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Management of operations of corporate debtor as going concern. -
(1) The interim resolution professional shall make every endeavour to protect and

preserve the value of the property of the corporate debtor and manage the operations of the

corporate debtor as a going concern. The interim resolution professional shall have

the authority-

(a) to appoint accountants, legal or other professionals as may be necessary;

(b) to enter into contracts on behalf of the corporate debtor or to amend or modify the contracts or transactions which were entered into before the commencement of corporate insolvency resolution process;

(c) to raise interim finance provided that no security interest shall be created over any encumbered property of the corporate debtor without the prior consent of the creditors whose debt is secured over such encumbered property:

(d) to issue instructions to personnel of the corporate debtor as may be necessary for keeping the corporate debtor as a going concern; and

(e) to take all such actions as are necessary to keep the corporate debtor as a going concern.

Committee of creditors

The interim resolution professional shall after collation of all claims received against the corporate debtor and determination of the financial position of the corporate debtor, constitute a committee of creditors. The committee of creditors comprises all financial creditors with voting share proportionate to the share of financial debts owed by the debtor.

The committee of creditors shall have the right to require the resolution professional to furnish any financial information in relation to the corporate debtor at any time during the corporate insolvency resolution process.

Resolution professional to conduct corporate insolvency resolution process

The resolution professional shall conduct the entire corporate insolvency resolution process and manage the operations of the corporate debtor during the corporate insolvency resolution process period. the resolution professional shall continue to manage the operations of the corporate debtor after the expiry of the corporate insolvency resolution process period, until an order approving the resolution plan.

Resolution plan

A resolution applicant may submit a resolution plan along with an affidavit stating that he is eligible under section 29A to the resolution professional prepared on the basis of the information memorandum.

Global Scenario

When an India Company merges with foreign company it is known as cross boarder merger. It means that when two entity comes together to form one entity that is based in a different country. Various companies acquire foreign companies in recent years to enter into global market. Doing business globally will undoubtedly improves the company potential for expansion and growth.

By setting up a manufacturing unit in other country where labor and other production cost are cheaper than the home country will help in lowering cost of production. Hence proves to be fruitful for the company.

Why doing business globally?

Benefits of Cross Border Mergers & Acquisitions

- Expansion of markets
- Revenue generation
- Geographic and business diversification
- Technology transformation
- Potential employees
- Lower cost of production
- Exposure to new culture
- Avoiding access obstacles & Industry consolidation
- Tax planning and benefits
- Increasing Goodwill
- Increased customers base & Competitive gain
- Capital accumulation
- Sharing of management skills

Examples of cross boarder merger

Jet-Etihad deal and the Air Asia deal: Etihad, company incorporated in the United Arab Emirates (UAE), is stated to be the national airline of UAE and is based in the emirate of Abu Dhabi. It is wholly-owned by the Government of Abu Dhabi and is primarily engaged in the business of international air passenger transportation services.

Whereas, Jet is an Indian listed company incorporated in 1992 under the provisions of the Companies Act, 1956. It is primarily engaged in the airline business. Both the companies are in the same business line. Etihad agrees acquired 24 percent stake in Jet Airways for about Rs 2060 crore. Various approvals from Foreign Investment Promotion Board, Competition Commission of India has been taken for such an alliance.

Laws attracted during cross boarder merger in India

1. **The Companies Act, 2013**

Section 234 of the Companies Act, 2013 deals with the cross-border merger i.e. merger or amalgamation of company with foreign company. The Ministry of Corporate Affairs (MCA) has vide its Commencement Notification notified Section 234 of Companies Act, 2013 which provides for Merger or Amalgamation of company with Foreign Company which has come into force with effect from 13th April, 2016. MCA has also notified Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2017 by inserting Rule 25A for Merger or Amalgamation of company with a Foreign company and vice versa.

As per section 234, a foreign company may with the prior approval of Reserve Bank of India, merge into a company registered under this Act or vice versa.

Here **Foreign Company** means any company or body corporate incorporated outside India whether having a place of business in India or not.

Further Rule 25A has been inserted by the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2017 on 13th April, 2017. It provides that a foreign company may with the prior approval of Reserve Bank of India, merge into a company registered under this Act or vice versa.

A company may merge with a Foreign company incorporated in any of the jurisdictions:

(iv) Whose security market regulator is a signatory to: - International Organisation of Securities Commission's Multilateral Memorandum of Understanding, or - Bilateral Memorandum of Understanding with SEBI

(v) Whose Central Bank is a member of Bank of International Settlements (BIS), and

(vi) Which is not identified in the public statement of Financial Action Task Force (FATF) as:

- A jurisdiction having a strategic Anti-Money Laundering, A jurisdiction combating the financing of Terrorism deficiencies to which countermeasures apply,
- A jurisdiction that has not made significant progress in addressing the deficiencies or

- A jurisdiction that has not committed to an action plan developed with FATF to address the deficiencies.

2. The Foreign Exchange Management (Cross Border Merger) Regulations, 2018

The Ministry of Corporate Affairs, Government of India (MCA) has notified Section 234 of the Companies Act with effect from April 13, 2017 which permitted cross border mergers. Further, in consultation with the Reserve Bank of India ('RBI'), the MCA also notified corresponding amendments to the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 (Companies Merger Rules) vide Rule 25A with effect from April 13, 2017. It provides that a foreign company may with the prior approval of Reserve Bank of India, merge into a company registered under this Act or vice versa. Accordingly, with a view to establishing a regulatory framework for regulating cross-border mergers, on 26 April 2017, RBI released the draft of Foreign Exchange Management (Cross Border Merger) Regulations, 2017 on which RBI sought public comments till May 9, 2017. Subsequently, RBI issued the Foreign Exchange Management (Cross Border Merger) Regulations, 2018 (FEMA Merger Regulations) on March 20, 2018.

Contents

It contains 9 Regulations

Regulation 1	Short title and commencement
Regulation 2	Definitions
Regulation 3	Transfer of any security or debt or asset outside India
Regulation 4	Inbound merger
Regulation 5	Outbound merger
Regulation 6	Valuation
Regulation 7	Miscellaneous
Regulation 8	Reporting
Regulation 9	Deemed approval

Definitions under Regulation 2

'Cross border merger' means any merger, amalgamation or arrangement between an Indian company and foreign company in accordance with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 notified under the Companies Act, 2013.

'Foreign company' means any company or body corporate incorporated outside India whether having a place of business in India or not.

'Inbound merger' means a cross border merger where the resultant company is an Indian company

'Indian company' means a company incorporated under the Companies Act, 2013 or under any previous company law

'NCLT' means National Company Law Tribunal as defined under the Companies Act, 2013 or rules framed thereunder

'Outbound merger' means a cross border merger where the resultant company is a foreign company

'Resultant company' means an Indian company or a foreign company which takes over the assets and liabilities of the companies involved in the cross-border merger

Regulation 3

Person resident in India shall not acquire or transfer any security or debt or asset outside India and no person resident outside India shall acquire or transfer any security or debt or asset in India on account of cross border mergers except with the general or special permission of Reserve Bank.

Inbound merger under Regulation 4

In an Inbound Merger, a foreign company will merge into an Indian company and accordingly, all properties, assets, liabilities and employees of the foreign company will be transferred to the Indian company. These are the following conditions in relation to Inbound Mergers:

i. Issuance or transfer of security by Indian company to non-resident: Any issue or transfer of security by the resultant Indian company, to a person resident outside India pursuant to the Inbound Merger, should comply with the pricing guidelines, entry routes, sectoral caps,

attendant conditions and reporting requirements for foreign investment laid down in the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017.

ii. Merger of joint venture (JV) / wholly owned subsidiary (WOS) with its Indian parent company:

- If a JV/WOS of an Indian company merges with its Indian parent company, the Indian parent company shall have to comply with the conditions prescribed for transfer of shares of such JV/WOS as laid down in the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004.
- If the JV/WOS has further step-down subsidiaries outside India, the merger of the JV/WOS with the Indian parent company will result in the Indian parent company acquiring shares of the foreign step down subsidiaries of the JV/WOS and accordingly, the Indian parent company shall have to comply with Regulation 6 and 7 of the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004.

iii. Any offices outside India of the foreign company merging with the Indian company pursuant to the Inbound Merger shall be deemed to be the branch/office outside India of the Indian company in accordance with Foreign Exchange Management (Foreign Currency Account by a Person Resident in India) Regulations, 2015.

iv. Guarantees or outstanding borrowings from overseas sources obtained by the merging foreign company. The RBI has concerns on assumption of offshore liabilities by Indian companies and potential misuse of this route to undertake transactions which are otherwise not permissible.

v. The Indian company may acquire and hold any asset outside India of the foreign company (pursuant to a cross border merger), which an Indian company is permitted to acquire under the Foreign Exchange Management Act, 1999 (FEMA). Such assets can be transferred by the Indian company if such a transaction is permitted under the Foreign Exchange Management Act, 1999.

vi. If the Indian company is barred under FEMA from acquiring and holding any asset/security, then such Indian company shall have to sell such asset/security within two years from the date of sanction of the merger by the NCLT and the sale proceeds must be repatriated to India immediately through banking channels.

Outbound merger under Regulation 5

These are the following conditions in relation to Outbound Mergers:

(1) a person resident in India may acquire or hold securities of the resultant company in accordance with the Foreign Exchange Management (Transfer or issue of any Foreign Security) Regulations, 2004.

(2) a resident individual may acquire securities outside India provided that the fair market value of such securities is within the limits prescribed under the Liberalized Remittance Scheme laid down in the Act or rules or regulations framed thereunder.

(3) An office in India of the Indian company, pursuant to sanction of the Scheme of cross border merger, may be deemed to be a branch office in India of the resultant company in accordance with the Foreign Exchange Management (Establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016. Accordingly, the resultant company may undertake any transaction as permitted to a branch office under the aforesaid Regulations.

(4) Any guarantees and outstanding borrowings of the Indian company, which shall be transferred to the foreign company pursuant to the Outbound Merger, shall be repaid in terms of the scheme of merger sanctioned by the NCLT. Any assumption of liability in Rupees by a foreign company towards an Indian lender must comply with the Act or rules or regulations framed thereunder and must be consented to by such Indian lender.

(5) The foreign company may acquire and hold assets in India which a foreign company is permitted to acquire under the provisions of the Act, rules or regulations framed thereunder. Such assets can be transferred in any manner for undertaking a transaction permissible under the Act or rules or regulations framed thereunder.

(6) If the provisions of the Act, rules or regulations bars a foreign company from acquiring and holding any asset/security that is proposed to be transferred pursuant to the Outbound Merger, then such foreign company would have to sell such asset/security within two years from the date of

sanction of the merger by the NCLT and the sale proceeds must be repatriated outside India immediately through banking channels.

(7) The foreign company is permitted to open a Special Non-Resident Rupee Account (SNRR Account) in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016 for a maximum period of two years from the date of sanction of the cross-border merger by the NCLT, for undertaking the transactions contemplated by these Regulations.

Valuation under Regulation 6

The valuation of the Indian company and the foreign company shall be done in accordance with Rule 25A of the Companies (Compromises, Arrangement or Amalgamation) Rules, 2016.

Miscellaneous provisions under Regulation 7

Compensation by the resultant company, to a holder of a security of the Indian company or the foreign company, as the case may be, may be paid, in accordance with the Scheme sanctioned by the NCLT.

The companies involved in the cross-border merger shall ensure that regulatory actions, if any, prior to merger, with respect to non-compliance, contravention, violation, as the case may be, of the Act or the Rules or the Regulations framed thereunder shall be completed.

Reporting under Regulation 8

These Regulations provide that the resultant company and/or the companies involved in the cross-border merger shall be required to furnish reports as may be prescribed by the Reserve Bank of India.

Deemed approval under Regulation 9

Any transaction on account of a cross border merger undertaken in accordance with these Regulations shall be deemed to have prior approval of the Reserve Bank as required under Rule 25A of the Companies (Compromises, Arrangement and Amalgamations) Rules, 2016.

A certificate from the Managing Director/Whole Time Director and Company Secretary, if available, of the company(ies) concerned ensuring compliance to these Regulations shall be furnished along with the application made to the NCLT under the Companies (Compromises, Arrangement or Amalgamation) Rules, 2016.

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Useful websites

https://www.cci.gov.in/

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