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LEGAL ASPECTS OF MERGERS AND ACQUISITIONS IN INDIA

~ *Saif Alam*

ABSTRACT

In India's dynamic economy, mergers and acquisitions (M&A) have become important forces behind corporate growth and international integration, closely interacting with contract law. The structure, negotiation, and execution of M&A are governed by strong legislative frameworks that ensure legal certainty and transparency, such as the Companies Act, 2013, Competition Act, 2002, and the Indian Contract Act, 1872. Every M&A transaction is supported by contract law, which assigns risk, codifies mutual intent, and offers remedial steps in the event of a breach or disagreement. According to recent research, efficient contract drafting that addresses representations, warranties, and indemnities is still necessary for seamless asset or share transfers. With additional compliance for tax, foreign exchange, and competition scrutiny, cross-border M&A increases complexity and emphasizes the importance of explicit contractual obligations and due diligence. Although there are still issues with procedural enforcement, changing Indian jurisprudence has reaffirmed how crucial precise written agreement is to avoid litigation and guaranteeing value realization. Therefore, contract law serves as the foundation for M&A practice, facilitating corporate transformation in India's changing environment.

KEYWORDS: Mergers and Acquisitions, Indian Contract Act 1872, Competition Law, Regulatory Compliance, Due Diligence, Cross-borders Mergers, Companies Act 2013, Dispute Resolution, Remedy.

INTRODUCTION

M&As (Mergers and Acquisitions) considered now an important tactical instrument for entities trying expanding, outperform competitors, and gain market share in the modern, fast-paced as

well as dynamic commercial setting.¹ M&A is a strategy for external expansion that involves purchasing other businesses to enable the company to grow. For businesses to collaborate and take part in international industrial divisions, corporate M&A is crucial. When examining how an M&A decision affects a company's performance, it is impossible to overlook the various primary motivations behind each decision made by management.² The rationale behind takeovers, includes market power, efficiency, agency, free cash flow, diversification, information, avoiding bankruptcy, and accounting/tax theories.³ Therefore, M&A is a key component of explicit commercial growth, serving as a method for commercial amendment while enabling rapid firm growth as it functions as a tool for financial sector accountability, that improves organizational efficiency and optimizes both individual and societal well-being.⁴ However, despite other countries going through financial difficulties and stagnation, our financial sector has been expanding consistently and effectively over the last decade.⁵ The inflow of international investments towards India via overseas business deals and the enormous amount and scope of international M&A transactions in the country, which has an ideal marketplace for such commerce, are the main factors for this recent trend.⁶

RESEARCH METHODOLOGY

This research is based on a comparative method to analyse different notions of Mergers and Acquisitions and its implementation in India and over the globe. It also contains a multifaceted methodology with secondary sources that uses various websites and several journal articles for the research.

REVIEW OF LITERATURE

The legal academic work of R.K. Bangia offers an in-depth analysis of the main theme throughout Indian companies, especially as they relate to the Companies Act of 2013⁷ and the legal processes, regulatory requirements, and shareholder roles that are essential for M&A

¹ Kurada T S S Satyanarayana, Addada Narasimha Rao and Kumpatla Jaya Surya, *Capital Structure Dynamics and Financial Performance in Indian Banks (An Analysis of Mergers and Acquisitions)*, GENERAL FINANCE (2023).

² Markelevich and A., *Examining the performance of corporate acquisitions based on the motive for the acquisition*, THE CITY UNIVERSITY OF NEW YORK (2003).

³ Piesse, J., Lee, C. F., Lin, L., & Kuo, H.-C, *Merger and acquisition: definitions, motives, and market responses*, LEE ALICE: ENCYCLOPEDIA OF FINANCE (2013).

⁴ *Id.*

⁵ Avin Tiwari and Gaurav Shukla, *Emerging trends in Cross-Border Mergers and Their Tax Implications in India: A Critical Appraisal*, 8 BRICS LAW JOURNAL (2021).

⁶ *Id.*

⁷ Companies Act, 2013, Acts of Parliament, 2013 (India).

transactions to be successful in India are highlighted in his work.⁸ Bangia also talks about how important it is to follow disclosure guidelines and competition laws.⁹ The writings of Avtar Singh, which are based on the Indian Contract Act of 1872¹⁰, complement this by concentrating on the contractual elements unique to Indian M&A as he goes into detail on how M&A agreements are drafted, covering important topics like representations, warranties, and breach remedies.¹¹ In India's changing business landscape, both authors emphasize how important it is for statutory controls and contract law to work together to ensure mergers and acquisitions to be both legally sound and successful.

DIFFERENCE BETWEEN MERGER, ACQUISITION & TAKEOVER

Despite the clear distinctions in the economic effects of a takeover and a merger, the three terms are commonly been put interchangeably.¹² One interpretation of these distinctions states that an amalgamation combines a minimum of two separate organizations to create a "new" statutory entity, while an acquisition or takeover gives the purchaser ownership of over half of the target firm's stake.¹³ According to Hampton, "a merger is a combination of two or more businesses in which only one of the corporations survives." A plus B equals C is a simple algebraic representation of Singh's merger concept, while A plus B equals A or B or C is a representation of Hampton's.¹⁴ While takeovers are typically unfriendly and proceed in an aggressive and confrontational atmosphere, merger and acquisition negotiations are typically "peaceful" with the expectation that all participating firms will benefit.¹⁵

On the other hand, According to Stallworthy and Kharbanda, making a distinction in practice is pointless, so they are not overly concerned with terminology.¹⁶ Rees, agreeing to them, disagrees and contends that since the terms originate from a similar legal framework in the UK, there is no need to distinguish between them.¹⁷

⁸ 7 R.K BANGIA, CONTRACT-I (Allahabad Law Agency 2017).

⁹ *Id.*

¹⁰ Indian Contract Act, 1872, Acts of Parliament, 1872 (India).

¹¹ 13 RAJESH KAPOOR, AVTAR SINGH'S LAW OF CONTRACT & SPECIFIC RELIEF, (Eastern Book Company 2022).

¹² Singh, A., *Takeovers, Their Relevance to Stock Market and Theory of the Firm*, CAMBRIDGE UNIVERSITY PRESS (1971).

¹³ Piesse, J., Lee, C. F., Lin, L., & Kuo, H.-C, *supra* note 3.

¹⁴ 4 HAMPTON, J.J, FINANCIAL DECISION MAKING: CONCEPTS, PROBLEMS, AND CASES, (New Jersey: Prentice-Hall 1989).

¹⁵ Singh, A., *supra* note 12.

¹⁶ Stallworthy, E.A. and Kharbanda, O.P., *Takeovers, Acquisitions and Mergers: Strategies for Rescuing Companies in Distress*, LONDON: KOGAN PAGE (1988).

¹⁷ Rees, B., *Financial Analysis*, LONDON: PRENTICE-HALL (1990).

MOTIVES OF MERGER AND ACQUISITIONS

Although the reasons behind corporate mergers and acquisitions have been debated for a long time, no one theory can adequately explain all these transactions. Thus, a few of the primary theories are examined below.

1) Theory of Efficiency: These theories include, for instance, the theories of differential efficiency and management inefficiently. This former theory states that a company can use an acquisition to increase the effectiveness of the other company till the height of the former. However, according to inefficiency management theory, information about the inefficiency of other companies is known to the public, and by acquiring them, the former can raise the efficiency of the latter company to its own level. According to Stallworthy and Kharbanda, “it is projected that roughly a third of all acquisitions ultimately fall off within five years... the most prevalent reason of collapse is a disagreement between business traditions, or how operations are done there.”¹⁸

2) Agency Theory: The separation within priorities among executives or entrepreneurs confirms the focus of this theory.¹⁹ Agency theory's central premise is that all the actors in an agency are logical, monetary-driven people attempting to achieve the greatest possible their own benefits. The director, or senior management, is the agent in the framework of corporate governance, while the shareholder is the principal. The threat of acquisition, according to Jensen and Ruback, will effectively force executives to eradicate issues associated with agencies and optimize the market value of the company as desired by investors, failing which their businesses will be taken over, and they may lose their current positions.

3) Free Cash Flow Hypothesis: Cash flow that exceeds what is needed to finance all projects with net present values that are positive after being lessened price appropriate monetary availability is known as cash going freely.²⁰ According to Jensen, management typically opposes giving free cash flow to investors because doing so would significantly diminish the firm's funds and do not boost their own personal assets.²¹ Additionally, management has a reason to retain few easy money sync and interior monetary investments in reason for these assignments because raising money in the marketplace for later potential investments exposes

¹⁸ Stallworthy, E.A. and Kharbanda, O.P., *supra* note 16.

¹⁹ Jensen, M.C. and Meckling, W.H., *Theory of the firm: managerial behaviour, agency cost and ownership structure*, 3 JOURNAL OF FINANCIAL ECONOMICS (1976).

²⁰ Jensen, M.C., *Agency costs of free cash flow, corporate finance, and takeovers*, 76 American Economic Review (1986).

²¹ *Id.*

management to the stock market's direct scrutiny.²² When it comes to managing free cash flow, the market's authority to discipline turns into a helpful tool against agency problems.²³

4) Market Power Hypothesis: A buyout is viewed to be a strategy for gaining authority over a broader region and broaden the marketplace because it anticipates rapid expansion over the acquirer. As a result, this is understood to be an organization's ability to manipulate the market, availability, & good's value with the conclusion of the path the business has.²⁴ Thus, the large number slant acquisitions or the growing company focus which took place in sixties can be explained by the concept of market power hypothesis.²⁵ Due in large part to antitrust regulations that were implemented by numerous nations to safeguard the marketplace from excessive consolidation and the ensuing loss of rivalry, the trend of horizontal acquisitions has been decreasing in the last few decades.²⁶

5) The Bankruptcy Avoidance Hypothesis: Stiglitz maintained that properly constructed financing structures can help businesses prevent the prospect of either insolvency or takeover, and he views takeover as an alternative to insolvency. A timely acquisition can be an appealing option to insolvency, according to Shrieves and Stevens' analysis of the connection among acquisition and insolvency as an economic control process. But even though the purchaser and the desired investor viewpoints support the insolvency prevention theory, it ignores the agency's issue.

MERGER AND ACQUISITIONS IN INDIA

India's economy is among the most rapidly expanding in the world, trailing only China and the United States.²⁷ There is a lot of interest in the Indian economy because of its enormous market potential and growth trajectory.²⁸ One of the best places in the world to invest is India, which came in at number twelve in terms of FDI inflows in 2018 and grew by twenty percent to reach the amount of USD 42 billion in 2018 and USD 51 billion in 2019.²⁹ With a projected actual yearly GDP (gross domestic product) increase rate of 8.8% in 2021, the Indian economy has

²² Rozeff, M., *Growth, beta and agency costs as determinants of dividend payout ratios*, 5 *Journal of Financial Research* (1982).

²³ Piesse, J., Lee, C. F., Lin, L., & Kuo, H.-C, *supra* note 3.

²⁴ Leigh, R. and North, D.J., *Regional aspects of acquisition activity in British manufacturing industry*, 12 *REGIONAL STUDIES* (1978).

²⁵ Piesse, J., Lee, C. F., Lin, L., & Kuo, H.-C, *supra* note 3.

²⁶ *Id.*

²⁷ Avin Tiwari and Gaurav Shukla, *supra* note 5.

²⁸ Afra Afsharipour, *Rising Multinationals: Law and the Evolution of Outbound Acquisitions by Indian Companies*, 44 *UC DAVIS LAW REVIEW* (2011).

²⁹ UNCTAD, <https://unctad.org/webflyer/world-investment-report-2020> (last visited Oct. 5, 2025).

demonstrated encouraging signs of growing strength and development thanks to a robust financial sector and competitive, market-oriented regulatory reforms.³⁰ The number of every six months acquisitions across the nation reached a record above statistics ever in 2018, USD 75 billion, which included 638 distinct transactions, ten of which were in the billion-dollar segment, and about fifty-two deals with an estimated value of over USD100 million each, which collectively accounted for ninety-three percent of the deal value.³¹ At the moment, the Indian M&A (mergers and acquisitions) sector is flourishing. In 2022, there were a total of \$116 billion worth of mergers and acquisitions transactions in India overall, an upsurge of 25% from the year before.³² India's M&A growth is due to number of events, including expanding size and diversity of Indian companies, innovative approaches to growing their market share, and state's policies and involvement.³³ Additionally, it has simplified the merger and acquisition regulatory process. In India, M&A has a bright future as due to the current factors driving the M&A boom, the market is probably going to grow even more.

DETERMINANTS OF M&A AGREEMENTS IN INDIA

India's economic shifts in the year 1991 marked the beginning of the process of mergers and acquisitions, which were subsequently increased by the elimination of constraints in the MRTP Act of 1969³⁴, amendments to the FERA of 1993³⁵, and the FEMA of 2000³⁶ while the Competition Policy Act of 2002³⁷ enforced on this to avoid monopoly or Acquisitions and mergers, to prevent these actions from reducing competitiveness between businesses.³⁸ Basant claims that by consistently engaging in M&A activities both domestically and through foreign investments or agreements, Indian domestic companies have reacted favourably to shifts in financial regulation and stimulated the economy.³⁹ The mining sector, the energy sector, Utility Services, the telecommunications sector, FMCG, and healthcare are the industries in India that have seen the most merger and acquisition activity over the past four years and these industries' M&A activities are motivated by a variety of goals, including expanding their market share, breaking into new markets, acquiring exposure to distribution networks, and building up

³⁰ Sridhar Ramasubramanian, *Expert Speak on the Overall Economic Outlook*, 16 GTILLP (2018).

³¹ *Id.*

³² Kurada T S S Satyanarayana, Addada Narasimha Rao and Kumpatla Jaya Surya, *supra* note 1.

³³ *Id.*

³⁴ The Monopolies and Restrictive Trade Practices Act, 1969, Acts of Parliament, 1969 (India).

³⁵ The Foreign Exchange Regulation (Amendment) Act, 1993, Acts of Parliament, 1993 (India).

³⁶ The Foreign Exchange Management Act, 1999, Acts of Parliament, 1999 (India).

³⁷ Competition Policy Act, 2002, Acts of Parliament, 2002 (India).

³⁸ Dr. Sheeba Kapil and Kanika Dhingra, *Understanding Determinants of Domestic Mergers and Acquisitions Through Literature Review*, 6 INDIAN JOURNAL OF FINANCE AND BANKING (2021).

³⁹ Basant, R., *Corporate Response to Economic Reforms*, 35 ECONOMIC AND POLITICAL WEEKLY (2000).

authority in the marketplace. The finance business's liberalization and increased rivalry have led to a rise in the flow of money, which supports mergers and acquisitions for local businesses and helps them rebuild their key strengths. Some of the key determinants are:

1) Macro-Economic Determinants: Political, fiscal, cultural, and social settings, organizational environments, legal safeguards for financiers, the transparency of the country, valuable assets, affiliations with groups of the financial sector, and foreign direct investment (FDI) flows are some of the host country's factors that support merger and acquisition (M&A) transactions. A few studies have examined how a nation's membership of organizations like regional organizations, Coming-together nations, and international groupings affects the takeovers nationally.⁴⁰ Maintaining global relations can serve as a driving force behind M&A activities when the country has two-sided relations and is a partner of global groups.⁴¹

2) Financial Market Variables: While the expansion of GDP and the GDP of host countries have been determined to be insignificant for mergers and acquisitions activity in local acquiring by Asian nations, economic expansion in the form of rising GDP and market shares has attracted Asian countries, meaning they are looking into other countries for potential markets.⁴² According to the study, fuel chasing is the driving force behind both national and international acquisitions in Asian and western countries.⁴³

3) Strategic Determinants: In India, M&A is significantly influenced by industrial cooperation. Industrial cooperation render integrating challenging and make it harder for rivals to copy, resulting in advantages. Lall argues that it should be very focused on determining what variables are unique to a given nation, industry, and company for FDI in general, keeping in mind that the same variables drive all forms of FDI. In every industry, including the pharmaceutical sector, which is of national significance, the Indian government is also assisting mergers and acquisitions.

CROSS-BORDER MERGERS AND ACQUISITIONS

According to Companies Act, 2013, "cross-border merger" is "any consolidation, deal, or fusion among an Indigenous company and an alien company," while a "merger" is "the fusion

⁴⁰ Dr. Sheeba Kapil and Kanika Dhingra, *supra* note 38.

⁴¹ Murtha, T. P., & Lenway, S. A., *Country capabilities and the strategic state: How national political institutions affect multinational corporations' strategies*, 15 STRATEGIC MANAGEMENT JOURNAL (1994).

⁴² Liang, Z., Jamal, A., Malik, A., Dadwal, S., & Haq, A., *Determinants of Inter Country Investments Through Merger and Acquisition in Emerging Asian Markets*, 36 PAKISTAN JOURNAL OF SOCIAL SCIENCES (2016).

⁴³ *Id.*

of multiple businesses into a single entity, which involves the gathering of the assets & liabilities of each of the entities, and a formation that combines the two entities to form one entity." Mergers across borders which end up in an alien company are known as outbound mergers, while those that lead to in an Indigenous company are known as inbound mergers. Therefore, the act of a large foreign corporation acquiring an ownership stake in a small indigenous corporation is known as a "cross-border merger" as the acquired company fails its existence and becomes an arm of the acquiring company. Another set of variables that influence the possibility of a merger between two businesses is provided by cross-border M&As. Neoclassical profit-maximization, principal-agent theory, internationalization theory, and comparative ownership advantage theory are the primary drivers of both domestic and international mergers. Because it is allowed for after-merger merged businesses to set their own optimum rates, but not for prior to the merger distinct companies to band together to do so, multinational mergers can give rise to marketplace influence.

CROSS-BORDER MERGERS AND ACQUISITIONS IN INDIA

As we have already covered, several laws in India impact and govern cross-border mergers and acquisitions, that is, Section Two hundred thirty four to Two hundred forty of the Act that controls companies which address the provisions pertaining to "mergers" and "acquisitions" and the features for border beyond amalgamations between our country and outside businesses are found in Section 234.⁴⁴ In addition to the Companies Act of 2013, publicly traded companies are required to abide by the relevant SEBI laws and registration regulations, which also govern mergers and acquisitions involving companies registered on the approved stock exchanges of India.⁴⁵ The 2011 SEBI Rules and Regulations govern the ability to vote, management, and both the explicit and implicit purchase of shares in publicly traded companies.⁴⁶ Regarding the competition laws, any acquisition that surpasses the allowable monetary limits and does not belong to an umbrella category must first receive the Competition Commission of India's (CCI) consent.⁴⁷ Additionally, in the event of a crash sale, the disposal of the company under an authorized the company disposal protocol is liable to registration tax at the identical amount as the disposal of possessions. Prior authorization from the RBI is

⁴⁴ Avin Tiwari and Gaurav Shukla, *supra* note 5.

⁴⁵ *Id.*

⁴⁶ K.S. Reddy, *Institutional Laws, and Mergers and Acquisitions in India: A Review/Recommendation*, UNIVERSITY LIBRARY OF MUNICH, GERMANY (2015).

⁴⁷ Avin Tiwari and Gaurav Shukla, *supra* note 5.

required before any other financial asset apart from shares of stock, mandatory conversion preferred stocks, or mandatory conversion bonds, can be issued to a foreigner as credit.

MERGER AND ACQUISITIONS IN INDIAN BANKING SECTOR

The foundation of the Indian economy is the banking industry.⁴⁸ A triple-tier financial framework for the nation was put forward by the Narasimhan Committee in late nineties. It called for the creation of multiple major international financial institutions, up to ten indigenous institutions, and a sizable number of smaller local and neighbourhood institutions.⁴⁹ Building scale and enhancing their capacity for taking risks has always been the aim and according to Gandhi, bigger banks are thought to be less dangerous than smaller ones.⁵⁰

The Indian banking industry has seen several mergers and acquisitions in recent years, that is, the Indian government proposed in the year 2019 to combine ten government-owned banks into four entities, so, in 2020, PNB joined forces with UBI and OBC, while Bank of Baroda joined forces with Vijaya Bank and Dena Bank.⁵¹ The government claims that the consolidations are meant to increase the private sector's edge and sustainability. The alliances have also been approved of by the banking sector, which thinks they will boost profitability as well as productivity.

THE REASONING BEHIND THE INDIAN BANKS' M&A

The following are the rationales behind Mergers and Acquisitions of Banks:

- 1) Synergy: There are several types of it, including financial, corporate, and revenue synergy, that is, when banks combine, they frequently experience advantages like greater revenue, enhanced efficiency, lower expenses, and combining processes to prevent repetition, enhance distribution, and cut expenses is known as managing cooperation. Another type is financial synergy, in which businesses combine their balance sheets to generate financial gains.
- 2) Better Managerial Efficiency: Banks that perform noticeably worse are more inclined to be sought after and combined into an economically viable bank. The acquirer can then utilize the assets of the combined company, increasing its efficiency. One bank should combine with an

⁴⁸ Srishti Arora, *Indian Banks Mergers and Acquisitions- Conceptual Review*, 1 DON BOSCO INSTITUTE OF TECHNOLOGY DELHI JOURNAL OF RESEARCH (2024).

⁴⁹ *Id.*

⁵⁰ Gandhi, R., *Consolidation among Public Sector Banks*, RBI Bulletin (2016).

⁵¹ Kurada T S S Satyanarayana, Addada Narasimha Rao and Kumpatla Jaya Surya, *supra* note 1.

appropriate group that has technical know-how and an effective management system to address its shortcomings.

3) Growth: Banks prefer M&A to grow quickly, increase their market penetration, and enter emerging markets. When a company has a substantial share of the market, it may establish rates because of its greater dominance by removing competitors, which can lead to extraordinary earnings over time. A small bank can combine with a technologically sophisticated company to create novel innovations and maintain market competitiveness.

CONCLUSION

In conclusion, with the backing of strong legal frameworks, mergers and acquisitions have become essential tools for business growth, market share growth, and global integration in India. Profitable merger and acquisition negotiations depend on regulatory certainty, effective risk management, and arbitration, all of which are ensured by the cooperation of the law of contracts and legal regulations. Due to factors like improved productivity, competitive edge, executive advancements, and innovations in technology, the Indian economy's fast expansion and market liberalization have sparked both domestic and international M&A. M&A outcomes in India are shaped by strategic factors that include monetary factors, commercial partnerships, and national policies. Furthermore, state support highlights the importance of mergers and acquisitions for national economic goals, especially in industries like financial services and healthcare. Specific contract drafting and adherence to complex laws and regulations continue to be essential for optimizing merger and acquisition profits and company growth in the ever-changing Indian business landscape, even as Indian jurisprudence develops.