A Study on Amalgamation and Merger of the Company

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Abstract

This paper is an attempt to evaluate the impact of Mergers on the performance of the companies. Theoretically it is assumed that Mergers improves the performance of the company due to increased market power, Synergy impact and various other qualitative and quantitative factors. Although the various studies done in the past showed totally opposite results. The purpose of this paper is to study the concept of Merger/Amalgamation in detail by taking examples of some companies. The objective is to find out the major issues associated with pre and post merging situations with special emphasis on the human aspect. Merger/Amalgamation is a phenomenon which is easy to think but hard to implement. Three phases of mergers – pre merger, transition phase and the post merger phase have its own advantages as well as difficulties, if handled with proper care synergies can be withdrawn but a little mistake can spoil the whole transition. Both management and employees have to work hard at their own level to make it a successful one because man is the major factor during the whole deal. Post merger transition phase is the most difficult one as in any organization whether large or small cultural clashes exist which may turn up a merger into the failure. Merger/Amalgamation is a process which is very essential nowadays for the growth and survival of the business. Companies are acquiring more and more firms in order to expand their business and with lots of reasons which are discussed here. If any company is not adopting this way either they will not grow or will be acquired by the other major big firm. Although the present system which is adopted by the companies for takeover can’t be taken as the appropriate one because the major reason behind this is of synergies but still more and more companies are merging with one another as there is a flow of merger or acquisition in the present era. When companies merge or make a plan for acquisition the only factor in their mind is growth or expansion or synergies. People factor is totally ignored. Either they are not involved anywhere or if involved then at very lower level.

Key Words: Merger, amalgamation, companies, phenomenon, employees.
1. Introduction

Following the financial changes in India in the post – 1991 period, there is a perceivable patterns among promoters and built up corporate gatherings towards union of piece of the overall industry and expansion into new zones through obtaining takeover of organizations yet in a more articulated way through mergers or amalgamations. Under the Companies Act 2013, the idea of merger and amalgamation is completely clarified though under organizations Act 1956, the term 'merger' isn't characterized and furthermore under the Income Tax Act, 1961. The merger is a mix of at least two substances into one, it isn't only the gathering of advantages and liabilities of the particular elements, yet the association of element into one business. Focal Government issued notice for authorisation of areas identified with merger and amalgamation on seventh November 2016. Despite the fact that significant changes have been joined in the new demonstration yet at the same time there are sure arrangements which stay unaltered, for example, pre-condition to merger and amalgamation of tolerating plan by three-fourths of investors is as yet a pre-condition under the new demonstration. Focal government still has the ability to arrange merger and amalgamation in light of a legitimate concern for the country. There is additionally a commitment to keep up records of merger and amalgamation under area 239. There are some different arrangements which stay unaltered identified with gathering gatherings, getting the authorisation of administrative specialists and focal government. Application recorded in connection to the reproduction of the organization under segment 230 for trade off and course of action or which includes merger or amalgamation of at least two organizations need to indicate the motivation behind the plan.

Aim of the Study

The aim of the study is used to know about the amalgamation and merger of the company.

Hypothesis

HO

The common reason in increase merge is sustain growth, It couldn’t be achieved by increasing market share and gaining access to additional customer.

HA

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2. Objective

- To know about the procedure for merger and Amalgamation under companies act 2013.
- To understand the process of terms mergers and Amalgamation.

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To analyze the concept of merger and Amalgamation of the company
To achieve growth of the company.

3. Review of Literature

It is the shareholders who have created it and they can bring it to a close. The other means by which a company can cease its identity is by merging with another company. This is called merger. Alternately, two companies can join to form a new company. This is called amalgamation (Author: Khan Jain, 2007)

Following the economic reforms in India in the post-1991 period, there is a discernible trend among promoters and established corporate groups towards consolidation of market share and diversification into new (Author: Machiraju, H.R., 2007) Business combinations, corporate restructuring and corporate reorganizations are terms used to cover mergers, acquisitions, amalgamations and takeovers. They are critical to the healthy expansion of business firms as they evolve through successive stages of growth and development (Author: Prasanna Chandra, 2010)

The central government is provided with an opportunity to have a say in the matter of amalgamations of companies before the scheme of amalgamation is approved (Author: Godbole Prasad, G, 2006) Amalgamation, however, doesn't involve formation of a new company to carry on the business of an old company. As per Companies Act, 2013, legislation that facilitates amalgamation in India, the terms merger and amalgamation are synonymous and not defined anywhere in the Act. Sections 390-396A of Companies (Author: Beena.P.L, 2011) This section summarises the important and relevant tax provisions applicable to amalgamations, acquisitions, mergers and demergers. Tax Aspects Related to Amalgamation/Mergers Amalgamation for the purposes of income tax is recognised (Author: Ray Ghosh kamal, 2014) Thus, corporate restructuring can take different forms like mergers, acquisitions, spin-offs or divestitures in order to increase a firm's value. However, according to Section 2 (IB) of the Income Tax Act, "an amalgamation means the merger of one or more companies with another company or the merger of two or more (Author: Rajasekhar, 2010) As co-operative banks are under dual control, with both the RBI and the RCS (Registrar of Co-operative Societies) for merger to take place the RBI must issue a no-objection certificate (NOC) to RCS. Amalgamation and mergers of co-operative banks falls under the purview (Author: Pradeep Mehta, S, 2008) Mergers and Amalgamation Concentration of economic power may result from merger, amalgamation or takeover. The MRTP Act does not prohibit merger, amalgamation or takeover, but seeks to ensure (Author: Orithazzan, 2016) Nature and Significance Business combinations, corporate restructuring and corporate reorganizations are terms used to cover mergers, acquisitions, amalgamations and takeovers. They are critical to the healthy expansion of business firms as they evolve through successive stages of growth (Author: S.petitt Barbara, 2007) The least contentious, perhaps, is that legislated municipal amalgamation is not a new policy, in the United States at
least. Much else about the lessons from Philadelphia's story would likely be subject to heated dispute. Without focusing on Philadelphia, the aims of this report are to explore the history of municipal (Author: Eric Barr, J., 2009).

4. Research Question

Whether the mergers and amalgamation is that it provides productive platform for the company to grow under Companies act 2013 with comparison to Income tax act 1961?

5. Methodology

In this research the researcher used the descriptive method. Descriptive Research More simply put, descriptive research is all about describing people who take part in the study. There are three ways a researcher can go about doing a descriptive research project, and they are: Observational, defined as a method of viewing and recording the participants.

6. Sources of Study

Various books, e-sources and journals are used for the study related to amalgamation and merger of the company.

7. Limitation

- The research has been limited to only referring to online sources and books.
- The topic is very vast with limited time.

8. Chapterisation

The entire study is divided into two chapters with an introduction and a conclusion.

Chapter - I This paper deals with Scheme for merger and amalgamation.

Chapter – II This paper deals with the meeting and information of the company

CHAPTER – I

Scheme for Merger and Amalgamation

Wherever two/more organizations consent to converge with each other, they need Scheme for merger and amalgamation. to set up a plan of amalgamation. The obtaining organization ought to set up the plan in meeting with its shipper banker(s)/money related advisors. The fundamental substance of a model plan, between alia, are as recorded beneath.

- Description of the exchange and the transferee organization and the matter of the transferor.
- Their approved, issued and bought in/paid – up capital.
- Basis of plan: Main terms of the plan in independent sections on the suggestion of valuation report, covering exchange of benefits/liabilities, exchange date, lessening or union of capital, application to monetary foundations as lead organization for authorization et cetera.
- Change of name, question statement and bookkeeping year.
- Protection of work.
- Dividend position and prospects.
- Management: Board of executives, their number and interest of transferee organization's chiefs on the board.
- Application under area 291 and 394 of the Companies Act, 1956, to get Higher Court's endorsement.
- Expenses of amalgamation.
- Conditions of the plan to wind up successful and agent, successful date of amalgamation.

The premise of merger/amalgamation in the plan ought to be the reports of the valuers of advantages of both the merger accomplice organizations. The plan ought to be set up based on the valuer's report, reports of contracted bookkeepers drew in for money related examination and obsession of trade proportion, report of evaluators and inspected records of both the organizations arranged up to the delegated date. It ought to be guaranteed that the plan is simply and fair to the investors, workers of every one of the amalgamating organization and to the general population.

**Essential Features of Scheme of Amalgamation**

The essential features pre-requisites for any scheme of amalgamation are as enumerated below.

**Determination of Transfer Date (Appointed Date)**

This includes settling of the cut-off date from which all properties, mobile and additionally steady and rights connected thereto are looked to be exchanged from amalgamating organization to the amalgamated organization. This date is known as exchange date or the selected date and is typically the primary day of the money related year going before the budgetary year for which the examined accounts are accessible with the organization.

**Approval from Creditors/Financial Institutions/Banks**

Endorsements are required from the loan bosses, banks and monetary organizations to the plan of amalgamation as far as their separate courses of action with each of the amalgamating and the amalgamated organizations as
likewise under Section 391 for the Scheme The plan of merger/amalgamation is administered by the arrangements of Section 391-394 of the Companies Act.\textsuperscript{5} The legitimate procedure expects endorsement to the plans as nitty gritty underneath approval from Shareholders to the extent Section 391, financial specialists of both the amalgamating and the amalgamated associations should hold their individual social events under the headings of the different high courts and consider the arrangement of amalgamation. An alternate get-together of both slant and esteem financial specialists should be met hence reason\textsuperscript{6}.

further, as far as Section 81(1A), the investors of the amalgamated organization are required to pass a unique determination for issue of offers to the investors of the amalgamating organization as far as the plan of amalgamation. Endorsement from Respective High Court(s) Approvals of the individual high court(s) as far as Section 391-394, affirming the plan of amalgamation are required. The courts issue orders for dissolving the amalgamating organization without ending up on receipt of the reports from the official outlet and the local executive, Company Law Board, that the issues of the amalgamating organization have not been directed in a way biased to the interests of its individuals or to open interests. Presently let us examine stepwise methodology for amalgamation.\textsuperscript{7} Question Clause The initial step is to analyze the items provisos of the reminder of relationship of the transferor and the transferee organizations in order to determine whether the energy of amalgamation exists or not. The items proviso of transferee organization ought to take into account carrying on the matter of the transferor organization. On the off chance that it isn't along these lines, it is important to change the items provision. So also, it ought to be learned whether the approved capital of the transferee organization would be sufficient after the merger/amalgamation. On the off chance that isn't along these lines, this condition ought to likewise be revised. Appropriate arrangements for these could be consolidated in the plan itself.

CHAPTER – II
Meeting and Information of the Company

Holding of meeting of the top managerial staff of both the transferor and the transferee organizations (a) to choose the selected date and the powerful date, (b) to favor the plan of amalgamation and trade proportion and (c) to approve chiefs/officers to make applications to the suitable high court for vital activity \textsuperscript{8} The shareholders and other members of the companies ought to likewise be educated through official statement. The transferor the and transferee organizations ought to illuminate the budgetary foundations, financiers/debenture-trustees no less than 45 days before the load up meeting with the goal that their endorsement is accessible to the proposed amalgamation at the season

\textsuperscript{5} Law Regulating mergers and Amalgamation by Prabhanshu., in India.
An application for amalgamation can be presented by the organization, individuals or even any of the banks. A part, in this setting implies any individual who has consented to be a part and whose name shows up on the enroll of individuals. A bank incorporates all people having financial cases against the organization for some sum whether present or future, unmistakable or unexpected. Indeed, even one part or one such lender can make an application for amalgamation. Where the application is proposed to be made by the organization, just a man approved by the organization for this benefit can make an application for amalgamation. It is, consequently, basic that the organization ought to approve the director(s) or other officer(s) to make an application to the fitting high courts and make fundamental move as might be required every once in a while. The chiefs can, be that as it may, apply for amalgamation just when imperative power shows up in the articles of affiliation initially or by method for alteration. Isolate applications under Section 291 are required to be submitted to the fitting high courts by the amalgamating and the amalgamated organizations with the end goal of the particular high courts issuing bearings to gather gatherings of investors independently for inclination and value investors to support the plan of amalgamation. It is officeholder on both the transferor and the transferee organizations to get endorse of high courts having ward over them. Be that as it may, where both the organizations are under the locale of a similar high court, a joint-application might be made. Such an application can be moved notwithstanding when a request for twisting up has been made. In any case, the transferee organization require not get endorsement under Section 391 when the transferor organization is a completely possessed auxiliary of the transferor organization.

The methodology for making application to the high court has been set down under the Companies (Court) Rules, 1959. An application under area 391 (1) for a request gathering a gathering of loan bosses or potentially individuals or any class of them ought to be by a judge's summons upheld by a sworn statement. A duplicate of the proposed bargain or course of action ought to be added to the testimony as a display. The summons ought to be moved ex-pardey. Where the organization isn't the candidate, a duplicate of the summons and of the sworn statement ought to be served on the organization, or where the organization is being ended up, on its vendor, at the very least 14 days before the date settled for the becoming aware of the summons. On receipt of the application by the high court, a hearing happens in the judge's chamber, and after the hearing the judge may either expel the summons or request a gathering of the individuals or may give such headings as he may think vital. In any case, it is occupant on the

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10 Orithazzan ., The merger model for business Development., published by little brown on 2016.,in USA.
11 Merger and Amalgamation under companies act 2013 by Jyoti Rawat
court to be fulfilled that by all appearances the plan is honest to goodness, banafide and to a great extent in light of a legitimate concern for organization and its individuals. On being not happy with the plan, the court may not by any means arrange the assembling of conference of lenders regardless of whether the assent of the loan bosses has been withheld or malafide or subjective regardless of whether the court considers the plan sensible and gainful to the leasers. The court may get rid of the prerequisite of gathering a gathering where every one of the individuals from a specific class have assented to the plan and have gone into important concurrence with the transferee organization. Having known. Having known the proposed meeting the loan bosses may likewise move the court for dismissal of the plan and the court may engage such an application and after sensible examination may assemble off the conference.

The net advance is to hold isolate gatherings of the investors and leasers of the organization to look for endorsement to the plan. The determination affirming the plan might be passed by voting face to face or as a substitute according to the bearings of the high court. No less than three-fourth in esteem of the individuals or class of individuals or banks must vote for the determination supporting the plan of amalgamation.

The individuals and the leasers are required to be grouped into various classes to convene gatherings. This procedure must be taken after promptly on receipt of application under segment 391 (1). In the event that gatherings of off base grouping are assembled and protest is taken as to a specific lender of having enthusiasm contending with others, the organization risks the plan being rejected. After characterization, the court may arrange gathering of the separate gatherings of individuals or potentially lenders.

Financial Framework

The financial framework of a merger decision covers three inter-related aspects
(i) determining the value of the amalgamating firm
(ii) financing techniques in merger, and
(iii) analysis of merger as a capital budgeting decision.

Determining the Firm's Value

The primary issues in breaking down a potential merger includes deciding the estimation of the obtained firm. The estimation of a firm depends upon its income as well as upon the working and monetary characteristics of the securing firm. It is, along these lines, impractical to put a solitary incentive for the gained firm. Rather, a scope of qualities is resolved that would be

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12 Ghosh., kamal., Ray ., Evaluating companies for mergers and acquisitions ., published by PHI Learning , Pvt ltd , on 2014., in India.
13 Ibid
monetarily legitimate to the planned acquirer. The last cost inside this range is negotiated by the two firms\textsuperscript{15}. To decide a worthy cost for a firm, various elements, quantitative and additionally subjective, are significant. In any case, setting an incentive on subjective factors, for example, administrative ability, solid, deals staff, great generation division, et cetera is troublesome. Along these lines, the focal point of deciding the association's esteem is on a few quantitative factors. The quantitative components identify with the estimation of the benefits and 960 the profit of the firm. In view of the benefits esteem and income, these elements incorporate book esteem, examination esteem, advertise esteem and profit per share.

**Book Value**

The book of a firm depends on the monetary record estimation of the proprietor's value. It decided partitioning total assets, by the quantity of value shares extraordinary. The book esteem, as the premise of deciding a company's esteem, experiences a genuine restriction as it depends on the recorded expenses of the advantages of the firm. Authentic expenses don't bear a relationship either to the estimation of the firm or to its capacity to produce profit. Neverthe-less, it is important to the assurance of a company's an incentive for a few reasons: (I) it can be utilized as a beginning stage to be thought about and supplemented by different examinations, (ii) in industries where the capacity to produce profit requires substantial interests in settled resources, the book esteem could be basic factor where particularly plant and hardware are moderately new, (iii) an investigation of company's working capital is especially proper and essential in mergers including a business comprising principally of fluid resources, for example, budgetary establishments.\textsuperscript{16}

**Appraisal Value**

Examination esteem as another measure of deciding a company's esteem is procured from a free evaluation organization. This esteem is ordinarily in view of the supplantment expenses of benefits. The appraisal esteem has a few benefits. In any case, it is a critical factor in uncommon circumstances, for example, in monetary organizations, characteristic asset undertakings or associations that have been working at a misfortune. For example, the advantages of a budgetary organization to a great extent comprise of securities. The estimation of the individual securities has an immediate bearing on the company's acquiring limit. So also, an organization working at a misfortune may just be justified regardless of its liquidation esteem which would rough the examination esteem.\textsuperscript{17} Besides, the examination by independent appraisers may allow the diminishment in bookkeeping altruism by expanding the perceived

\textsuperscript{15} http://www.theinternationaljournal.org/ojs/index.php.


worth of particular resources. Generosity comes about when the price tag of a firm surpasses the estimation of the individual resources. Third, evaluation by an independent office gives a trial of the sensibility of results acquired through techniques in light of the going-concern idea. Further, the appraiser may distinguish qualities and shortcomings that generally won't not be perceived, for example, in the valuation of licenses, mostly finished innovative work consumption. Then again, this technique for investigation isn't satisfactory without anyone else since the estimation of individual resources may have little connection to the company's general capacity to create profit and in this way the going concern estimation of the firm\textsuperscript{18}. To sum things up, the examination esteem strategy is helpful if completed in conjunction with other assessment forms. In particular cases, it is a vital instrument for esteeming a firm.

**Market Value**

The market an incentive as reflected in the share trading system citations includes another approach for assessing the estimation of a business. The support of market an incentive as an approximation of genuine worth of a firm is gotten from the way that market citations all things considered demonstrate the agreement of speculators with regards to the company's gaining possibilities and the compare ing hazard. The market esteem approach is a standout amongst the most generally utilized as a part of deciding worth extraordinarily of expansive recorded firms.\textsuperscript{19} The market estimation of a firm is controlled by venture and in addition theoretical elements. This esteem can change suddenly because of progress in the explanatory factors as well as absolutely theoretical impacts and is liable to showcase estimations and individual choices. By and by, the market esteem gives a nearby guess of the genuine estimation of a firm. In real practice, a specific rate premium over the market is regularly offered as an actuation for the present proprietors to offer their offers.

**9. Conclusion**

The most recent two decades have seen broad mergers and amalgamation as a vital means for accomplishing reasonable upper hand in the corporate world. Mergers and amalgamation (M&A) have turned into the significant power in the evolving condition. The arrangement of progression, decontrol and globalization of the economy has uncovered the corporate part to household and worldwide rivalry. Mergers and amalgamation (M&A) have likewise developed as a standout amongst the best strategies for corporate organizing, and have in this manner, turn into a vital piece of the long haul business procedure of corporate segment everywhere throughout the world. Right around 85 percent of Indian organizations are utilizing M&A as a center development system.


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[13] Law Regulating mergers and Amalgamation by Prabhanshu ., in India.

[14] Merger and Amalgamation under companies act 2013 by Jyoti Rawat


[18] http://shodhganga.inflibnet.ac.in/handle/10603/7210