

A STUDY ON MERGER AND AMALGAMATION OF COMPANIES UNDER COMPANIES ACT, 2013

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ABSTRACT

Everywhere throughout the world, Economies are becoming more powerful with the assistance of corporate rebuilding procedures like mergers and amalgamation so as to confront challenges postured by the new pattern of globalisation, which has prompted the more integration of national and worldwide markets. As every one of the economies particularly Indian Economy is getting to be worldwide, activity in mergers and amalgamation is booming. Fast and liberal law is required to help Merger and amalgamation bargains in Indian corporate word, so 60-year-old Companies Act, ('1956 Act') was supplanted by new Companies Act, 2013. The new Companies Act (2013) gives a chance to make up for lost time and make our corporate directions more contemporary, as likewise possibly to make our corporate administrative structure a model to imitate for different economies with comparable qualities and practices.

Chapter XV of Companies Act 2013 deals with Compromises, Arrangements, and Amalgamation. The whole chapter comprises of eleven provisions from section 230 to section 240. This paper is an endeavour to comprehend the general idea and development of Merger and Amalgamation as for Indian economy, by explaining a few arrangements of new Companies Act, 2013.

Key words: merger, amalgamation, companies, act, organisation

INTRODUCTION

Merger or amalgamation is a result of two or more companies into one in which the merging entities loss their identities. The concept of merger and amalgamation was not popular in India till 1988. During that period a little level of businesses in the nation used to meet up, generally into an agreeable securing with an arranged arrangement. The key factor adding to less affiliation related with the merger is the administrative and prohibitory plan of

MRTTP (Monopolistic and Restrictive Trade Practices) Act, 1969. As appeared by this Act, an affiliation or a firm needs to take after a pressurized and troublesome technique to get bolster for the merger and amalgamation. Merger and Amalgamation (M&A) have been an essential market passage methodology and also an extension procedure (Beena 2014). The idea of mergers and amalgamation is especially famous in the present situation. Union through mergers and amalgamation is considered as extraordinary compared to other methods for rebuilding structure of corporate units. M&A gives another life to the current organisations. The structural adjustment programme and the new industrial policy adopted by the Government of India would allow business houses to undertake without restriction any programme of expansion either by entering into a new market or through expansion in an existing market. In that context, it additionally seems that Indian business houses need aid progressively resorting on mergers and amalgamation similarly as a intends on development (Satish Kumar and Bansal 2008). The idea for mergers and amalgamation will be low recurrence mainstream in the present situation. Merging through mergers and amalgamation will be acknowledged likewise a standout (Tambi and Others 2005) amongst the most ideal approaches about restructuring structure for corporate units. M&A provides for another without limitations, is the existing organisations. Informally, when the surviving organisation is substantially greater, or has significantly more cash, and keeps its administration, representatives, workplaces, and items, set up, usually said to have obtained another organisation. When it is more similar to a joining of equivalents, it is informally called a merger (Pawaskar 2001). The paper attempt to analyse the role of merger and amalgamation in companies in legal aspects.

OBJECTIVE

1. To analyse the concept of merger and amalgamation
2. To analyse the merger and amalgamation related provisions under companies act, 2013
3. To know about the impact of merger and amalgamation

HYPOTHESIS

HO: Merger and amalgamation will not improves the operating performance and shareholders wealth of the acquiring firm

HA: Merger and amalgamation improves the operating performance and shareholders wealth of the acquiring firm

METHODOLOGY

The study is based on the secondary source of data and has been collected from various data's like articles, books and various research papers related to the subject matter of this study and it is doctrinal in nature.

MERGER AND AMALGAMATION:

Merger or amalgamation is defined as a combination of two or more companies into a single company result in which one survives and the other loses their corporate existence. The survivor company acquires both the assets and liabilities of the merged company or companies. In other words it is simply a combination of two or more businesses into one business. Amalgamation is a another legal term for merger which is used in India. It usually involves two companies of the same size and stature joining hands.¹ Amalgamation is a situation when two or more existing companies amalgamate or merge together to form a new company, result of both the existing companies lose their existence called as amalgamating company and a new company comes into existence called as purchasing company. There are different types of merger in which merging of the companies takes place. They are Horizontal merger, Vertical Merger, Reverse merger and Conglomerate merger (Sunil Kumar 2013).

Horizontal merger:

Horizontal merger also known as Horizontal integration. In this kind of merger, merger takes place between two companies which are in direct competition at the same stage of industrial process and these two companies share the same product line and market. A horizontal merger takes a company a step closer towards monopoly by eliminating a competitor and establishing a stronger presence in the market.² The some other benefits of horizontal merger are the economies of scale and scope. Merger of Tata Oil Mills company Ltd. With Hindustan Lever Ltd. and Volkswagen and Rolls Royce are some of the examples of Horizontal merger.

¹Avatar Singh, Company Law,16th edition (2015)

² Deepak Verma, A Study of Merger and Acquisitions with Provisions under Companies Act 2013 in India, 2015

Vertical Merger:

A Vertical Merger is a combination of two or more companies which are operating in the same industry but at different stages of production. The acquirer organization picks up a solid position because of the blemished market of its mediator items and furthermore through control over item determinations. It might bring about working and monetary financial aspects. Case for vertical merger is a merger of Reliance Petrochemicals Ltd with Reliance Industries Ltd.

Conglomerate Merger:

Conglomerate Merger is an amalgamation of two companies that engaged in unrelated industries. Like horizontal merger, conglomerate merger do not reduce the number of competitors in an industry. It is an expansion of a company. Example of conglomerate merger is merger of Mohana steel Industry Ltd. and Vardhaman Spinning Mills Ltd. This type of merger is called conglomerate merger since the companies being merged are engaged in activities which are complementary to each other but not competitive. This kind merger may lead to changes in the structure and behaviour of acquired industries since it opens up new possibilities.

Reverse Merger:

Reverse merger is a merging of a profit making company with a loss making company, which is generally a sick company. If a merging company is a sick company under the Sick Industries Companies Act, then such merger should take place through the Board of Industrial and Financial Re- construction (BIFR). The reverse merger automatically makes the transferee company entitled for the concession and rebates under the Income Tax Act, 1961.³ In the form of resource sharing and diversification, the acquiring company will obtain benefits.

MERGER AND AMALGAMATION UNDER COMPANIES ACT:

Section relating to merger and amalgamation under companies act , 2013 are 230 and 232. Section 230 deals with the power to make compromise and arrangement of companies. Section 231 explains the power of Tribunal to enforce compromise or arrangement. Section 232 of companies act,2013 deals with the procedure of merger and amalgamation. Central Government has issued on 7th November 2016 for the enforcement of section relating to merger and amalgamation. On 14th December 2016, Ministry of corporate Affairs issued ruled regarding Companies Rules, 2016 (Borad 1981*).

³ Jyoti Rawat, Merger and Amalgamation under CA, 2013 (2017)

Where a compromise or course of action is recommended to the reason for remaking from claiming any particular company or companies for those amalgamation about mix about two or all the more companies, those request should be aggravated to suitable requests also directions under section 230 along with section 232 of the act.

PROCEDURE UNDER COMPANIES ACT 2013:

Filing Application for merger and amalgamation:

An application is required to be a record with Tribunal. For the purpose of sanctioning the scheme of amalgamation a petition can be made by both the transferor and transferee of the company to the tribunal (Bruner 2016).

The applicant might likewise unveil to the Tribunal by method for the previously mentioned testimony, the premise on which each class of individuals or creditors has been identified for the motivations behind endorsement of the plan. The Tribunal may, at its caution, allow the dispensation of any gatherings of the creditors as far as Section 234 (9).

(3) On hearing the application under sub-section (1) of Section 230, the Tribunal might, unless it supposes fit for any motivation to reject the application, give such directions as it might think essential in regard of the accompanying issues:-

(a) determining the class or classes of creditors as well as of individuals whose meetings must be held for considering the proposed bargain or course of action; or shedding the meeting or meetings for any class or classes of creditors as well as individuals;

(b) settling the time and place of the meeting or meetings;

(c) appointing a chairperson(s) for the meeting or meetings to be held, all things considered;

(d) fixing the majority and the technique to be taken after at the meeting or meetings, including voting as a substitute or postal ballot;

(e) determining the estimations of the creditors or potentially the individuals, or the lenders or individuals from any class, all things considered, whose gatherings must be held;

(f) notice to be given of the meetings and the advertisement of such notice;

(g) the time inside which the chairperson(s) of the meeting is required to report the consequence of the gathering to the Tribunal; and

(h) such different issues as the Tribunal may regard fundamental.

(4) The notice of the meeting under sub-segment (3) of Section 230 should be promoted in Form No. AMG 2 in no less than one leading English daily paper and in no less than one vernacular daily paper having wide circulation in the State in which the registered office of the organisation is situated, or such daily papers as might be coordinated by the Tribunal and

should likewise be put on the site of the company (assuming any), at least thirty days before the date settled for the meeting.

Merger of little organizations and holding with entirely claimed subsidiaries:

Not at all like the 1956 Act under which merger everything being equal, regardless of nature and size requires court endorsement, the 2013 Act cuts out a different method for little organizations and the holding and completely possessed auxiliaries. Section 233 of the 2013 Act endorses an improved quick track technique for their merger which requires assent of investors holding 90% in esteem and banks speaking to 9/tenth of obligation in esteem and also endorsement of the Scheme by the Regional Director, Ministry of Corporate Affairs on the off chance that no protests are gotten from the Official Liquidator and Registrar of Companies. There is no need to approval from the Tribunal in these kind of mergers. This could be good news for the merging entities who may not be required to (i) file documents required to be filed under the listing agreement, in the case of listed companies, (ii) give notice to various authorities, (iii) provide auditor's certificate of compliance with applicable accounting standards (Bhalla 2016). In any case, if the Regional Director is of the conclusion that the Scheme isn't in light of a legitimate concern for the partners, he may approach the Tribunal who could take after the merger technique recommended under the 2013 Act. This capacity to exchange to the Tribunal can possibly change quick track to a typical merger and make such mergers less engaging.

Merger and amalgamation of a company with a foreign company:

The merger and amalgamation of a company with a foreign company shall be effective upon-

- (a) Sanction of the scheme by the Tribunal in India in accordance with the Act and these Rules; and
- (b) Sanction of the scheme by the relevant adjudicating and regulatory authorities of the notified countries having jurisdiction over the other companies who are party to such scheme, in accordance with the law applicable to sanction of such schemes in those countries, if applicable.

The merger or amalgamation of a company into a foreign company, or vice versa, shall comply in all respects with the Foreign Exchange Management Act, 1999 and any applicable regulations thereunder, including any amendments or clarifications thereto, and any other applicable laws (including the applicable law in the relevant jurisdiction), including with respect to the obtaining of any approvals required for the purposes of giving effect to the

merger or amalgamation (N. Tripathi 2008). For the purposes of this rule, a 'company' means a company as defined under section 2(30) of the Act and a 'foreign company' means a company or a body corporate as defined under section 2(42) of the Act, incorporated outside India in jurisdictions as may be notified by the Central Government from time to time for the purpose of section 234 (Levi 2007).

REASON FOR MERGER AND AMALGAMATION:

- > Expansion and Diversification
- > Optimum Economic Benefits
- > Risk Strategy
- > Scaling up operations for competitive advantages
- > Tax Benefits
- > Increasing the efficiencies of operations
- > Reducing overheads for cost reduction
- > Access Foreign Markets
- > A merger of a privately held organisation into a publicly held organisation permits the target company investors to get a public company's stock, regardless (Research Scholar (commerce) Singhania University and Patel 2011) of the liquidity
- > Merger enables the investors smaller entities to possess a smaller bit of a bigger pie, expanding their general total assets.

Top merger and amalgamation deals in India merging

> TATA STEEL-CORUS

Tata Steel is one of the greatest ever Indian's steel organisation and the Corus is Europe's second biggest steel organisation. In 2007, Tata Steel's takeover Europeans steel major Corus at the cost of \$12.02 billion, making the Indian organisation, the world's fifth-biggest steel maker. Tata Sponge iron, which was a minimal effort steel maker (Mueller 1986) in the quick creating locale of the world and Corus, which was a high-esteem item producer in the area of the world requesting esteem items (S. S. Tripathi 2012). The obtaining was expected to give Tata steel access to the European markets and to accomplish potential cooperative energies in the regions of assembling, acquisition, R&D, coordinations, and back office activities.

> RIL- RPL MERGER

Reliance Industries Limited is an Indian Conglomerate holding organisation headquartered in Mumbai, India. Reliance is the most beneficial organisation in India. It is the second biggest traded company in India. Reliance Petroleum Limited (Douma, George, and Kabir 2006) was set by Reliance Industries Limited, one of the India's baddest private sector company situated in Ahmedabad (Saha 2009). Right now, Reliance Industries (Mantravadi and Reddy 2008) assuming control Reliance Petroleum Limited at the cost of 8500 crores or \$1.6 billion.

> MAHINDRA & MAHINDRA- SCHONEWEISS:

Mahindra and Mahindra Limited is an Indian multinational car fabricating company home office in Mumbai, India. It is one of the biggest vehicles maker by generation in India. Mahindra and Mahindra obtained 90 percent of Schoneweiss, a main company in the producing area in Germany. The arrangement occurred in 2007, and consolidated Mahindra's situation in the worldwide market (Jindal 2015).

> TATA MOTORS-JAGUAR LAND ROVER:

Tata Motors Limited (TELCO), is an Indian multinational car producing company home office in Mumbai, India and a backup of the Tata Group and the Jaguar Land Rover Automotive PLC is a British multinational car company base camp in Whitley, Coventry, United Kingdom, and now an auxiliary of Indian automaker Tata Motors. Tata Motors acquisition of extravagance car creator Jaguar Land Rover was at the cost of \$2.3 billion (Pathak 2016). This could likely be the most driven arrangement after the Ranbaxy won. It unquestionably landed Tata Motors in a ton of inconveniences.

FINDINGS:

New provisions of merger and amalgamation have been included which would make mergers and amalgamation which shall ease out the procedural mazes. Merger and amalgamation tend to make the environment more investor-friendly in the market.

SUGGESTION:

- > The Companies Act, 2013 incorporates some genuinely necessary changes, for example, quick track plans and cross-outskirt mergers which support M&A action. (Adithya Bharadwaj, 2016)
- > There may be cognisance and dealt with tries to incorporate the differentiating various leveled social orders, for the mergers to yield the pined for results.

CONCLUSION:

Indian companies have regularly outperformed their foreign partners in corporate rebuilding both inside and past the national wildernesses. Mergers and amalgamation are effective pointers of a powerful and developing economy. The lawful system for such corporate rebuilding must be simple and facilitative and not prohibitive and buried in bureaucratic and administrative obstacles. The greatest snag in the method for finishing a merger or an amalgamation remains the frequently protracted court strategy required for the authorize of a scheme of arrangement. While a few critical changes have been proposed, partnerships could see the need to get various endorsements from various controllers as difficult. In any case, the thirty days time constrain forced on the controllers will, ideally, guarantee that they react in a period bound way. On its substance, the 2013 Act offers extensive and better straightforwardness guaranteeing assurance of shareholders interest, while all the while maintaining a strategic distance from trivial protests. The correct time period that the whole merger process would include will be known once it is tried and which will occur after the Tribunal is constituted and the rules actualised. It is reasonable for say that the 2013 Act looks to streamline and make M&A more smooth and straightforward. The new provisions should make it less demanding for enterprises proposing mergers as it lances to have a good arrangement of checks and parities to prevent abuse of these arrangements.

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