Abstract

Mergers and acquisitions are a means of corporate expansion and growth. They are not the only means of corporate growth, but are an alternative to growth by internal or organic capital investment. From time to time, companies have preferred the external means of growth through acquisitions to internal growth. Indeed, mergers and acquisitions have tended to follow a historic pattern of ‘waves’ with periods of frenetic takeover activity punctuating periods of relative sedateness.

The terms 'merger', 'acquisition' and 'takeover' are all part of the mergers and acquisitions parlance. In a merger, the corporations come together to combine and share their resources to achieve common objective.

Whereas in an acquisition the acquired firm becomes the subsidiary of the acquirer. A ‘takeover’ is similar to an acquisition and also implies that the acquirer is much larger than the acquired. Where the acquired firm is larger than the acquirer, the acquisition is referred to as a ‘reverse takeover’. Although the terms merger and acquisition are often used interchangeably, they have precise connotations in certain contexts, such as when acquirers choose which accounting rules to apply in consolidating the accounts of the two firms involved.
RESEARCH METHODOLOGY

For proposed study, the primary and the secondary information have been collected. The nature of study is such that the researcher has to depend mainly on secondary data which has been collected from publications, records & reports, selected companies & institutions on Mergers and acquisitions with the practices adopted by different firms, type of merger adopted, valuation from all perspectives, accounting methods adopted.

DESIGN OF THE STUDY

The main emphasis of this research work has been given to evaluate the role of mergers and acquisitions in the Indian economy in total there are seven chapters to analyze the present research work chapter are presents the introductory framework of the study & second on chapter are presents the introductory framework of the study & second on “merger strategy” In chapter three discussion has been made on “legal framework” whereas chapter four evaluates the” valuation measures and acquisitions”. The main emphasis has been given to conceptual framework, tax aspects an financial analysis of M & A.

Chapter five presents “SEBI’s guidelines on M & A and chapter six is dedicated to “Case Study' which is main tool of evaluation the performance of mergers & Acquisitions. Last and final chapter seven deals with laying down “Conclusions and suggestions.”
DISCUSSION:

With the accent on globalisation round, the numbers of cross-border mergers have increased dramatically over the last few years. The large scale privatization programs that are on anvil in the East European countries and in many of the developing countries and the formation of common markets like the single European market are some of the other factors which are bound to stimulate a larger merger wave in the 90s.

Now, let us look at the Indian scenario. Has India remained insulated from the merger waves sweeping across the worlds? Well, it was so in the past. Given the regulatory framework with enactment’s like the MRTP and the FERA which inhibited growth of large industrial houses and restricted the infusion of foreign capital in Indian industry, the tax policies which encouraged only some specific types of mergers, and the high entry and exit barriers built into different industries, and the merger at a low ebb. Having said that, we must add this scenario is currently undergoing a sea change, thanks to the several far-reaching measures of liberalization and globalisation initiated by the government. With foreign companies being invited to invest in India; projectionist tariff walls being progressively demolished; fetters on the growth of large business houses being removed; the gateway to competition being opened up in almost every sector of the Indian economy; and infusion of private capital being encouraged in many industries hitherto reserved for the public sector, the government has made the domestic companies realize that there is going to
be more competition than ever before in the Indian market. One of the consequences of such realization is the large scale corporate restructuring that has started through a spate of mergers, acquisitions, strategic alliances and divestitures.

The term 'Corporate Restructuring' is used to describe any significant change in the capital structure, in the operations or in the ownership of a firm, which is outside the ordinary course of its business. Examples include, transfer of controlling interest in a business, a transfer of the assets and liabilities of a company to another company and the transformation of a business entity into a limited partnership from of business organization.

Merger is beneficial if it increases shareholder value or, more simply, increases the market value of the common stock. Market value is the net present value of the dividend stream discounted by the opportunity cost of capital. Market value will increase if either dividend stream increases, or opportunity cost of capital decreases.

A post-merger earnings per share (EPS) is major criteria used to evaluate merger candidates. If resulting EPS is higher, then market should value the stock more highly, once Merger is consummated.
These are exciting times for the corporate sector, with a number of companies in the process of taking over the entities. In recent times, there have been many takeover efforts-some of them are Raasi Cement by India Cement, Merind by Wockhardth and Indian Aluminium by Sterlite Industries. What are the Important attributes in an open offer? The need for an open offer arises when any company is interested in acquiring management control of another firm. The open offer process is regulated by the SEBI (substantial acquisition of shares and takeover) Guidelines 1997.

Under Section 394 of the Companies Act, if an application is made to the court for purposes of amalgamations of any two or more companies and the transfer of Property or liabilities of the transferor company to the transferee company, under a compromise or arrangement between the company and others the court by an order shall make provision for all or any of the following matters:

a) The transfer of whole / part of the undertaking, property is liabilities of transferor company to the transferee company.

b) The allotment of nay shares, debentures, etc. by the transferee company under that arrangement.

c) The continuation of any shares, debentures etc. by the transferee company against (or by) any transferor company.

d) The dissolution of any transferor company and
Suitable provisions for a person dissenting from the compromise or arrangement.

The accounting treatment of an amalgamation in the books of the "Transferee Company" is dependent on the nature of amalgamation. For a merger, the 'pooling of interest' method is to be used and for an Acquisition the 'purchase' method is to be used. Under 'the pooling of interest' method, the balance sheet of the combined entity is arrived at by a line-by-line addition of the corresponding items in the balance sheets of the combining entities.

Valuation of the target in an acquisition is an important part of the process of determining the consideration to be offered to the target shareholders. The value that the bidder places on the target sets the maximum or 'walk away' price the bidder can afford to offer the target shareholders. The value of the target from the bidder's point of view is the sum of the pre-bid stand-alone value of the target and the incremental value the bidder expect to add to the target's assets. The latter may arise from improved operation of the target or synergy between the two companies. Added value may also move from profitable target asset disposals, as in a bust-up takeover.

The key distinguishing factor regarding funding negotiated vs. hostile takeovers is the level of certainty relating to the
funds requirement in the two cases. In negotiated takeover of an asset, the exact quantum of funds requirement is known. Even in the case of negotiated deal for the purpose of acquisition of shares, a reasonably accurate estimate of the funds requirement can be had as the existing promoters stake being acquired is known and a reasonably accurate estimation of the public subscription can be made on the basis of the attractiveness of the offer. Thus, the funds requirement has an element of certainty.

SALIENT FEATURES OF SEBI's TAKEOVER REGULATIONS

- Acquirer holding more than 5% of the shares in a company must disclose its shareholding to the company and all stock exchanges where the scrip is listed.

- In a negotiated takeover, acquirer cannot acquire more than 10% shares in a company unless it makes a public offer for another 20% of shares.

- The 20% minimum mandatory offer allowed to be lowered, but conditional on a level of acceptance, provided 50% of consideration payable under the public offer is deposited in an escrow account.

- Creeping acquisition of 2% per year in case of holding not less than 10% and upto 51%.
• Consolidation of holdings above 51% triggers public offer.

• Change in control triggers public offer. The term control defined as the right to appoint majority of directors /right to control the management or policy decisions.

• Minimum offer price to be the highest of
  a) Negotiated price
  b) Highest price paid by the acquirer, for any acquisitions in the last 26 weeks.
  c) Price in preferential allotment of shares to the acquirer in the last 12 months.
  a) Average of weekly high and low of the closing prices of shares in the last 26 weeks.

• Competitive bids allowed within 21 days of the public announcement of first offer.

  Two case studies have been discussed for the study of “Role of Mergers and Acquisitions in the globalisation of the Indian Economy”. One is Merger of Hindustan Lever Limited with Ponds India Limited and the other is Merger of ICICI with Mudura Bank.

  Most of the M&A have multiple objectives, which are sometimes very complex. The objectives of the M&A activities could vary from getting a tax shelter to making a new project, which has become unviable due to changed government policies
time and cost overruns etc. Sometimes the objectives in case of mergers could also be the hefty financial gains, which promoters will get due to capital appreciation.

A total of 42 mergers and amalgamations took place in FY 2004 in Corporate India, encompassing the banking, finance, power, pharmaceuticals, chemicals, steel, electronics and automobile sectors.

Prominent among them were the mergers of two Tata group power companies—Andhra Valley Power Supply Company (AVPSC) and Tata Hydro-Electric Supply Company (THESC)—with Tata Power Company (TPC), the merger of Bank of Madura (BoM) with ICICI Bank and the merger of Cheminor Drugs (CDL) with Dr.Reddy’s Laboratories (DRL).

The Indian economy, considered to be one of the largest consumer markets that form the Asian Tiger Economies, was finally awakened from its sleep with the Liberalization reforms in 1991 undertaken by the Indian Government under the leadership of the Prime Minister P.V. Narishma Rao and Finance Minister Manmohan Singh.

A study of mergers by the consultancy firm, KPMG, that found that half the mergers had destroyed shareholders value while another third had made no difference. Other studies, covering different countries, sectors and time periods, have
come to similar conclusions. Indeed, it is fair to say that in few respects have managers defined the findings of pundits as resolutely as in the case of merger; every CEO, no doubt, thinks he can bring it off.

Germany’s top banker have had ridicule heapted on them following the collapse of merger talks, first between Dentsche Bank Dresdner Bank and then between Drasdner and commerz bank.

Mr. Kaufman of Financial Times says that mergers are bad because, far from leading to efficiency, these will create monopolies that will “inact a cost on society as a whole”. He laments the fact that corporate consolidation has gone largely in challenged. This is because it is taking place against. This is because it is taking place against a background of general prosperity and rising stock prites, with much of the stock being held by ordinary citizens.

The researcher after evaluating various aspects of M&A has offered following recommendations:

- Change in the FERA, MRTP, IDRA, 1961, new takeover code’97 and new companies act 97 are going to remove numerous hurdles in the path of Mergers, acquisitions and takeovers.
- Under these and other liberalization’s, the companies will need to grow rapidly and consolidate their
operations which can be done through Business restructuring in which mergers, acquisitions and takeovers will play a key role.

- Firms will substitute their Greenfield growth plans with takeover strategies because the benefits of taking over a company-ready-made manufacturing facilities, well-entrenched brands, capture market share, no entry delays and an entrenched distribution network.

- Further liberalization and resulting restructuring of Indian companies will force an unprecedented reshuffling of companies and businesses. They will identify their core-competencies that will help them cope best with the future and take necessary steps to consolidate (one way would be mergers and Takeovers).

- The Governments decision regarding disinvestments of some of its enterprises will also add to the activity of merger and acquisitions.

- The new definition of sickness by BIFR will also facilitate M&A activities. In view of the turbulent environment in the corporate India in wake of liberalization and globalisation process, the prospects of entrepreneurs burning that hands and more and more firm going silk and further put to sale are very high.
• According to the new definition of sickness, firms which have eroded their net worth, no longer have to post net losses for two successive years before they can be declared sick. BIFR is also been that sick companies be acquired quickly.

• With transnational also realizing that the complex local market is better accessed by ready-made distribution network rather than one build from the scratch.

• The opening up of banking industry to the private sector is also resulting in flurry of M&A activity in this industry. Further relaxing of rules a certainty and a trend towards universal Banking taking shape is also going to spurt the M&A and takeover activities in Banking.

• Increasing competition has already played its part in M&A activities in parts, further increase in competition particularly competition based on cost and efficiency, will result in merger and takeovers to achieve economies of scale so that to reduce costs and increase efficiency.

• The recent guidelines for NBFC’s will also add fuel to fire and those would be large consolidation of firms in this highly scattered industry.

• The current industrial slowdown and overcapacity in some sectors will also result in consolidation in these
industrial sectors (Cement, steel, auto-ancillaries, NBFC’s tyre industry).

- Companies operating in industries which are in a bad shape are likely to witness more takeover bids than companies operating in industries, which are in good shape. There are two reasons for this.

- In 1994 a large number of corporate went for public issues after which the holding of promoters went down substantially ad bulk of equity is not with the retail investor. These small investors have seen a constant erosion of their wealth in the last three-year. As soon as an acquirer offers a handsome price for his stock, investors will jump at the opportunity of offloading their junk stocks.

- Also strong companies, specially the multinational in the poorly performing industrial sectors, are added at much cheaper costs. It also reduced competition. They survive through recession on the strength of their deep pockets. This is evidenced by the spate of takeovers and mergers in the pharmaceutical industry where MNCs prevail.

- Industrial sectors which are likely to see a large number of such bids in near future include cement steel and flexible packaging.

- In the case of cement the industry is divided on the basis of regions. A south based company interested in
making its presence in any other region will be keen on taking over company in that particular region and will be able to expand at a lower cost then setting up of a new plant in that region.

- In case of steel industry, several companies have been hit hard by recession in the last three years. Due to large capital cost, promoters holding in most of the companies is very low. Replacement cost of putting up a next plant is very high and in the current state of the market he scraps are quoting much below their inherent worth. Moreover the steel industry is a cyclical industry and as soon as the cycle starts moving upwards the investment by an acquirer can be recovered soon.

- The flexible packaging industry has been a relatively new industry in India. The promoters, several of them first generation have expanded rapidly during 1993 to 1995. There have been huge capacities installed in this industry leading to low capacity utilisation and consequent fall in scrip prices.

- The promoters holding in several new companies are very low making them easy takeover targets. In flexible packaging industry the nature is such that the small converters have been able to grab regional market share at the lower end of the markets. During the last two years of recession of in flexible packaging industry. Lower end of the market has shown only small growth.
A big company can take daily if it acquires a medium size company, which has a large list of clients who may be small in size but add to the volumes of business.

- On the other hand the services sector is unlikely to see much of acquisition and takeover activity. Companies in industries like finance and software will be relatively immune from such threats. In software company the main asset of the company is skilled manpower. In case, of a takeover bid the skilled manpower can leave the company leaving the acquirer high and dry. This is particularly in the case of Indian software companies who are providing services rather than developing branded software, which could be, acquire along with the targeted company.

- Besides the assets, other major consideration for Takeovers is the share holding pattern. Companies where promoters holding are above 51% should feel less threatened unless somebody takes a substantial stake in the company to merely disturb the management or in certain cases green mail the promoters. In other cases where the promoters holding is less than majority level the holding of the financial institution an important role in the event of takeover threat.

- Another important factor in the take over game will be brands. If the targeted company owns very strong
brands, the chances that bidder company will offer a higher price than justified by the tangible assets. Plant and machinery of a company have a replacement cost but the value of a brand is intangible. The case of Lakme is prefect example. HLL has paid RS. 200 cr. for the brand of Lakme which is more than were they are likely to pay for plant and machinery so the companies which has strong brands and lower promoter holdings are likely to be attractive takeover targets. Even the level of institutional holding may company can determine susceptibility of a company to takeover threats. If the investment is held by investment institutions by UTI, LIC and other development financial institutions like ICICI, IDBI and IFCI, the chances of hostile bid will be lower but if the holding is with UTI and other mutual funds. The chances of the bidder succeeding are very high. For an institution like UTI or any other mutual fund the increase in their NAV is more important is more important than saving the incumbent management or the long-term prospect of business.

- A larger number of friendly takeovers will also take place. This is the much-voiced concept of the white knight. The white knight as it were takes over the target company to release its independence later. Under performing companies in big industrial groups are likely to witness friendly takeovers, but this may often jeopardize the interests of small investors.
Take over code has opened up the debt issue route to finance the Merger and takeover activity. It will add a new product to the current product portfolio of financiers and also make corporate job of generating funds for M&A a lot easier.

Hence, Globalization is a faster highlighting competitive pressure. According WIR, driving forces thus are liberalization and globalization and the special needs and condition of particular industries leading to a consolidation on a global scale.

So the study can predict the M & A activity in the Indian economy can help a company to decide whether it has time to strengthen itself or whether it should consider an M & A to survive. It makes the time frames for expected M & A seal. Especially with global competition coming in the 'S' curve would help corporate take crucial decisions.