CHAPTER-I

INTRODUCTION

“Growth through merger and acquisition has been a critical part of the success of many companies operating in the new economy. The plain fact is that acquiring is much faster than building. And speed-speed to market, speed to positioning and speed to becoming a viable company – is absolutely essential in the new economy.”

Alex Mandl

1.1. Introductory

Intense competition, rapid technological change, major corporate scandals and rising stock market volatility have increased the burden on companies to deliver superior performance and value for their shareholders. In the modern ‘winner takes all’ economy, companies that fail to meet this challenge will face the certain loss of their independence, if not extinction. Corporation restructuring has enabled thousands of organisations around the world to respond more quickly and effectively to new opportunities and unexpected pressures, thereby reestablishing their competitive advantage.\(^2\) In the late twentieth and beginning of twenty first century, corporate restructuring by means of mergers, acquisitions or amalgamations have become a major force and anthem of new financial and economic environment across the globe.\(^3\)

Growth is the key objective of any business entity, irrespective of the political dogma/party which runs the country, in which such business entity functions.\(^4\) But when growth strategies do not visualise or contemplate increase in capital base, companies would go in for consolidations, mergers, amalgamations and management buy outs. The trend towards globalisation of all national and regional economies have increased the


intensity of mergers, in a bid to create more focused, competitive, viable, larger players in each industry.\textsuperscript{5}

Mergers, takeovers, restructuring and corporate control issues have become central public and corporate policy issues. Mergers and Acquisitions (M&As) have indeed come a long way and become the corporate mantra of the new century. M&As, restructuring and corporate control activities represent a new industrial force that will lead our country and other economics that practice these arts to new heights of creativity and productivity.\textsuperscript{6}

The rationale for this phenomenon can be explained as hereunder. Companies look at various ways to grow. One way to do so is organic growth, where the company ploughs back the profit it earns. The retained earnings, together with additional loans raised from the lenders contribute to the expansion and growth of the company. Organically, growth may take years to take place. In the dynamic corporate world, where few minutes delays could mean a loss of millions, a few people would have the time to wait. It is then that the companies look at mergers and acquisitions (M&As) as an alternative. M&As constitute one of the most important methods for securing inorganic growth. In other words, to survive in an increasingly complex and competitive global economy, it is imperative to enhance size by joining hands with those, which have similar interest.\textsuperscript{7}

Today, even the corporate world is hit by Darwin’s theory of evolution. i.e. survival of the fittest. A firm focusing on organic growth essentially aims at achieving business growth through enhanced customer base as well as high sales, both physical and financial, together with growth in revenue. An inorganic growth opportunity, on the other hand, provides the organisation with an avenue for accelerated growth.\textsuperscript{8} That’s why companies are focusing on inorganic growth through M&As these days. Today, restructuring wave is sweeping the corporate sector all over the world. Companies are

vying with each other in search of excellence and competitive edge, experimenting with various tools and ideas. The changing national and international environment is radically changing the way business is conducted. Moreover, with the pace of change so great, corporate restructuring through M&As assumes paramount importance.

Mergers and acquisitions have gained importance in recent times as globalisation and liberalisation has forced various business entities to restructure themselves by way of mergers, demergers and acquisitions. Unless, a company is large in size and capital, it is very difficult to compete with overseas companies where the cost of production is lower due to economies of scales. In a free competitive world, it is necessary for a company to be placed in such a manner that it is in a position to compete with the best in the world. This could easily be achieved through M&As.

Financial Restructuring through mergers and acquisitions (M&As) is taking place at an unprecedented pace all over the world including India during the last few years. Dramatic events in mergers, takeovers, restructuring and corporate control fill the newspaper headlines almost daily. Be it, the latest Sun Pharma’s acquisition of Ranbaxy from its Japanese parent Daiichi Sankyo, Daiego’s recent endeavour to buy stake in Vijay Mallya’s United Spirits, Cairn-Vendata merger, Airtel acquisition of Zain Telecom of Africa, or the Jet-Sahara merger, merger and acquisition is the word of the day. Hindalco acquisition of Novelis, Videocon acquisition of Daewoo Electronic Corporation, Tata Steel’s acquisition of the European steelmaker, Corus headlined a frenzy of acquisitions of foreign companies by Indian corporate enterprises in the past few years.

As the sweeping wave of economic reforms and liberalisation has. transformed business scenario all over the world, the national economics have been integrated with ‘market-oriented globalised economy’. Considering, the drastic changes in global environment, India has also changed it self, in its economic policies.

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11 J. Fred Weston et al., 1990, p. xxv (Preface).
Historically, the foreign investment policy of the Indian Government (during the period from 1950 to 1990) consisted of stringent foreign exchange controls and regulations including in the form of industrial licensing, quota system, capital controls, a bar on free trade and control of the flow of funds to a very larger extent. As early as 1984, India saw the failure of a takeover attempt of Escorts Limited and DCM by Swaraj Paul’s Caparo Group, owing to the promoters using political clout against the uninvited acquirer.\textsuperscript{12}

But with the advent of liberalisation in the FDI policies post-1991, M&As and alliance talks are heating up in India and growing at a tremendous pace. The policy of opening the country for international trade and investment thus allowing the investors across the globe to enter the Indian market has lead to unprecedented rise in M&A transactions in India. Today the Indian market is witnessing lot of high value M&As like Bharti Airtel’s acquisition of Zain Telecom of Africa for $10.7 billion. With this deal Bharti has acquired Zain’s African mobile services operations in 15 countries with a total customer base of over 42 million. With this acquisition, Bharti has become the world’s fifth largest wireless company with operations across 18 countries. Another prominent acquisition is that of India’s largest IT companies HCL Technologies Ltd acquiring the British based Axon group Plc’s SAP consulting firm for $0.662 billion in all cash deal. The deal has catapulted HCL into the top 15 global players in the enterprise applications services (EAS) business.\textsuperscript{13} One of the largest deals in Indian M&A space is acquisition of majority stake in Cairn India Limited by Vedanta Resources Plc. The deal marks the Vedanta group’s foray into the Oil and Gas space with an access to a world class oil exploration asset having significant growth potential in the import reliant Indian Oil and Gas market. Last but not the least, Tata’s acquisition of Corus Steel for 12.2 billion dollars. Thus, the liberalisation of foreign exchange policies coupled with rapid economic growth have driven Indian companies to acquire softer targets in India or abroad.


Mergers, acquisitions and takeovers have become a major force in the financial and economic environment all over the world. Essentially an American phenomenon till the mid-seventies, they have become a dominant global business force since then. On the Indian scene, too, thanks to the liberalisation of FERA, MRTP Act and industrial licensing and the compulsion to be more competitive, corporates are looking seriously at mergers, acquisitions and takeovers.\textsuperscript{14} The recent liberalisation of the earlier state-controlled, sluggish Indian economy has made mergers more necessary and acceptable.\textsuperscript{15}

A restructuring wave in the form of mergers, takeovers and acquisitions activities is sweeping the corporate world. Indian corporate sector could not have been left behind, that’s why from banking to oil exploration, telecommunication to power generation, petro chemicals to aviation, companies are coming together as never before.

The concept has caught up like wild fire with a merger or two being reported every second day and this time Indian companies are out to make a global presence. Close on heels of Tata-Corus acquisition, as discussed above, came another acquisition i.e. acquisition by Hindalco, the flagship metal company of Aditya Birla Group of Novelis Inc based in Atlanta at $6 billion. With this transaction, Hindalco has become world’s largest aluminum rolling company and one of the biggest producers of primary aluminum in Asia. The other major takeover making waves has been the acquisition of majority interest of Hutchison-Essar by Vodafone.\textsuperscript{16}

Tata’s pioneering acquisition of Corus coupled with Hindalco’s acquisition of Novelis and other acquisitions exemplify the arrival of India Inc. in the global arena. The event is path breaking and displays a level of confidence and values which places Indian Industry at an altogether new level. These deals have put India in the centre stage of global M&A activity. From senior politicians to ordinary citizens, Indians have joined

the business community in celebrating the recent M&A boom, confident that it is yet another indicator of India’s recent and rapid economic ascent.\(^{17}\) Even the wholly European takeover of Arcelor by Mittal steel, orchestrated by Indian-born Lakshmi Mittal, drew the vocal support of the Indian Government, with the Indian Commerce Minister, Kamal Nath, publicly imploring the French government to recognise that ‘globalisation is not just a one-way street.’\(^{18}\)

Deregulation, liberalisation, technological innovation, digital convergence and the evolving requirements of the capital markets have driven dramatic changes in the Indian corporate sector as a whole.\(^{19}\) The Indian industry found itself in an Excel or Exit environment. If an industrial unit wants to survive, it has to excel and compete successfully both with domestic and multinational competitors in internal as well as international markets. If it cannot do it, the market forces would show such lethargic units the exit door.\(^{20}\) The Indian companies have realised this fact that they have to play skillfully, if they have to compete with multinational companies with vast resources, advanced technology and enviable managerial skills. This has made inorganic growth through M&As indispensable for our corporate sector. It has lead to a recent surge of M&As in the Indian Corporate World.

The way for combinations, acquisitions, mergers and spin-offs has been paved by none other than the highest court in India, which found no harm in the lines being redrawn in the corporate map of the country. The Hindustan Lever Limited-Tomco case, embroiled in interminal legislation, was given the deliverance by this epoch making pronouncement of the court, thereby heralding liberation from the old mouldy policies plaguing the country.\(^{21}\) The Apex court remarked: \(^{22}\)


“In this era of hyper competitive capitalism and technological change, industrialists have realised that mergers/acquisitions are perhaps the best route to reach a size comparable to global companies so as to effectively compete with them. The harsh reality of globalisation has dawned that companies which cannot compete globally must sell out as an inevitable alternative.”

To sum up with the increasing competition and economy heading towards globalisation, the corporate restructuring activities are expected to occur at a much larger scale than at any time in the past, and are slated to play a major role in achieving the competitive edge for India in international market place.

1.2. Basic Concepts

1.2.1. Corporate Restructuring

Corporate Restructuring involves reorganisation and rebuilding of areas within an organisation which requires special attention from the management. It includes a complete set of tools to transform existing organisational structure or capital of a company, in order to achieve its corporate objectives and to attain certain strategic and financial synergies. It refers to those activities that enhance or compress a firm’s operations or substantially change its financial structure or bring about a significant change in its organisational structure and internal functioning. Simply stated, corporate restructuring is the comprehensive process by which a company can consolidate its business operations and strengthen its position for achieving the desired objectives-staying synergetic, slim, competitive and successful. To sum up, corporate restructuring can be defined as any change in the business capacity or portfolio that is carried out by an inorganic route or a change in the capital structure of a company that is not a part of its ordinary course of business or any change in the ownership of or control over the management of the company or a combination thereof. It occurs in

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myriad ways in the form of mergers, acquisitions, spin-offs, leveraged buy-outs, divestitures, demergers, joint-venture, equity-carve outs, etc.

As the focus of research is on Mergers and Acquisitions (M&As), the study will be focused on corporate restructuring through M&As. M&As are the most popular means of corporate restructuring activities. They have played an important role in external growth of a number of leading companies the world over.

1.2.2. Mergers

A merger is said to occur when two or more companies combine into one company. In a merger, one or more companies may merge with an existing company or they may merge to form a new company.28 Most generally mergers mean any transactions that forms one economic unit from two or more pervious ones.29 According to Weinberg and Blank:

“A ‘merger’ may be defined as an arrangement whereby the assets of two companies become vested in, or under the control of, one company (which may or may not be one of the original two companies) which has as its shareholders or substantially all, the shareholders of the two companies. A merger is effected by the shareholders of one or both of the merging companies exchanging their shares (either voluntarily or as a result of legal operation) for shares in the other or a third company.”30

Merger is the fusion between two or more enterprises, whereby the identity of one or more is lost and the result is a single enterprise. For example, both Centurion Bank and Bank of Punjab ceased to exist when the two banks merged, a new banking company Centurion Bank of Punjab was formed.

It can also happen the other way around, when one loses its identity and is merged into another, for example in 2010, the Bank of Rajasthan merged with ICICI Bank, the India’s largest private sector bank in an all share deal at about Rs 30.41 billion.31 The Bank of Rajasthan lost its identity and merged into ICICI Bank. The same happened in

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29 J. Fred Weston et al., 1990, p. 4.
30 M.A. Weinberg et al., *Weinberg and Blank on Take-overs and Mergers*, Sweet and Maxwell, London, 1979, p. 4, para 104.
31 Ernst and Young, 2011, p. 7.
Feb 2008 when Centurion Bank of Punjab was merged into HDFC Bank for $2.4 billion.

In a merger, the shareholders of the company or companies, whose identity/ies has/have been merged (hereinafter referred to as the merging company or companies, as the case may be) will be allotted shares in the merged company in exchange for the shares held by them in the merging company or companies, as the case may be, according to the share exchange ratio incorporated in the scheme of merger as approved by all or the prescribed majority of shareholders of the merging company or companies and the merged company in their separate general meetings and sanctioned by the Court.\(^{32}\) For example, in March 2009 when RPL (Reliance Petroleum Limited) merged into RIL (Reliance Industries Limited), the swap ratio was fixed a 16:1 i.e. for every 16 shares in RPL, the shareholders get 1 share in RIL whereas in 2002-03, when IPCL (Indian Petrochemicals Limited) got merged into RIL, the shareholders got 1 share of RIL for every 5 shares held by them. In 2012, in the merger of Sesa Goa-Sterlite industries, Sterlite shareholders got 3 shares in Sesa Goa for every 5 shares held in Sterlite industries.

**Merger or Amalgamation may take two forms:**

(1) *Merger through Absorption:* An absorption is a combination of two or more companies into an existing company. All companies except one lose their identity in a merger through absorption. An example of this type of merger is the absorption of Tata Fertilisers Ltd. (TFL) by Tata Chemicals Ltd. (TCL). TCL, an acquiring company (a buyer), survived after merger while TFL, an acquired company (a seller), ceased to exist. TFL transferred its assets, liabilities and shares to TCL. Under the scheme of merger, TFL shareholders were offered 17 shares of TCL (market value per share being Rs. 114) for every 100 shares of TFL held by them.\(^{33}\)

(2) *Merger through Consolidation:* A consolidation is a combination of two or more companies into a new company. In this form of merger all companies are legally dissolved and a new entity is created. In a consolidation, the acquired company transfer

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\(^{32}\) The Institute of Company Secretaries of India, 2010, p. 2.  
its assets, liabilities and shares to the acquiring company for cash or exchange of shares. In a narrow sense, the terms amalgamation and consolidation are some times used interchangeably. An example of consolidation is the merger or amalgamation of Hindustan Computers Ltd, Hindustan Instrument Ltd, Indian Software Company Ltd and Indian Reprographics Ltd. in 1986 to an entirely new company called HCL Ltd.\(^\text{34}\)

### 1.2.3. Acquisition

Acquisition, in general sense, is acquiring the ownership in the property. In the context of business combinations, an acquisition is the purchase by one company of a controlling interest in the share capital of another existing company. An acquisition may be affected by the following: \(^\text{35}\)

1. Agreement with the persons holding majority interest in the company management like members of the board or major shareholders commanding majority of voting power.
2. Purchase of shares in open market.
3. Making takeover offer to the general body of shareholders.
4. Purchase of new shares by private agreement.
5. Acquisition of share capital of one company by either all or any one of the following form of considerations viz. means of cash, issuance of loan capital or issuance of share capital.

Acquisition may also be effected by acquiring assets. Acquirer may purchase only assets or some specific assets and not all the assets and liabilities of the company. An acquisition can also be defined as an act of acquiring effective control of one company over assets or management of another company without any combination of companies. Thus, in an acquisition, two or more companies may remain independent, separate legal entities, but there may be a change in control of the companies. \(^\text{36}\) But in some cases, acquisition may also be aimed simply to consolidation of shareholding or voting rights.

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\(^{34}\) Ibid.


\(^{36}\) I.M. Pandey, 2000, p. 1097.
in a company without intending to takeover the control and management of the company.

It can be noted that in acquisition unlike merger, the target company’s identity remains intact. Unless the acquirer company does not specifically decide to merge the target company with itself and carries out all the legal processes required to complete the merger, the target/acquired company continues to exist as earlier. What changes is the entity that now controls its management or policy decisions or the composition of its boards of directors. There are many ways in which control over a company can be acquired. These are:37

1. Acquiring i.e. purchasing a substantial percentage of the voting capital of the target company.

2. Acquiring voting rights of the target company through a power of attorney or through a proxy voting arrangement.

3. Acquiring control over an investment or holding company whether listed or unlisted, that in turn holds controlling interest in the target company.

4. Simply acquiring management control through a formal or informal understanding or agreement with the existing person(s) in control of the target company.

In today’s corporate world, both in India and abroad, acquisition has been well accepted as a growth strategy. Everyday in the newspapers, there is some news about some new acquisition. Therefore, there are umpteen number of examples of acquisitions that can be given.38 However some of the notable acquisitions in the Indian context in the recent past have been listed below:

1. Tata Steel’s acquisition of 100% stake in Corus group. On 30 January 2007 in all cash deal which cumulatively amounted to $12.2 billion. It has been one of the biggest outbound deal by an Indian company.

38 *Id.*, p. 19.
2. Vodafone acquired administering interest of 66.98% in Hutchison-Essar for a total worth of $11.08 billion on 11 February 2007.

3. Daiichi Sankyo acquisition of Indian pharmaceutical major Ranbaxy for $4.5 billion in 2008. The (b) and (c) are the illustrations of major inbound deals in the Indian corporate sector.

1.2.4. Takeovers

Takeover is a general term used to define acquisitions only and both terms are used interchangeably. The takeover can be defined as ‘acquisition of a certain block of equity capital or controlling interest in a company which enables the acquirer to exercise control over the affairs of the company’.\(^39\) \textit{Weinberg and Blank}, pioneers of the law on mergers and takeovers have defined ‘take-over’ as follows:

“A ‘take-over’ may be defined as a transaction or series of transaction whereby a person (individual, group of individuals or company) acquires control over the assets of a company, either directly by becoming the owner of those assets or indirectly by obtaining control of the management of the company.”\(^40\)

They further explain that where shares are closely held (i.e. by a small number of persons), a take-over will generally be effected by agreement with the holders of the majority of the share capital of the company being acquired. But where the shares are held by the public generally, the take-over may be effected (1) by agreement between the acquirer and the controllers of the acquired company (2) by purchases of shares on the stock exchange of (3) by means of a ‘take-over bid’.\(^41\)

Takeover is a part of business strategy whereby an individual, group of individuals or a company, directly or indirectly acquires shares or voting rights in a target company to gain control over the decision-making power of management.\(^42\) Where the shares of the company are closely held by a small number of persons, a takeover may be effected by


\(^{40}\) M.A. Weinberg et al., 1979, p. 3, para 103.

\(^{41}\) \textit{Ibid.}

\(^{42}\) Naresh Kumar, “Corporate Restructuring-Legal and Regulatory Framework in India”, \textit{Chartered Secretary}, October 2011, pp. 1400-1407, p. 1403.
an agreement with the shareholders. However, where the shares of a company are widely held by the general public it involves the process as set out in SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 2011.\textsuperscript{43}

Though, the researcher has tried her best to explain properly the concept of takeover, the concept seems to be comprehensible but it eludes precise definition. It is perhaps for this reason why regulations in most countries have not defined it. Even our SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, has not given a precise meaning to the term takeover. The Bhagwati Committee,\textsuperscript{44} in its Report viewed that attempting a precise definition of takeover would not only be counter productive but also limits the scope of the regulations. It should be left to SEBI to decide whether there be any violation of regulations in a given situation of takeover through investigation and if necessary to take required steps to enforce the regulations.

No doubt, the term takeover and acquisition mean one and the same thing and are used interchangeably. But sometimes, a very minor distinction is made between the two. When an acquisition is forced, hostile or unwilling it is called a takeover, and when managements of acquiring and target companies mutually and willingly agree for the takeover, it is called acquisition or friendly takeover. But overall apart from this minor difference they mean one and the same thing.

To sum up, a company is said to be taken over when the acquiring company or the person is able to nominate the majority of members on the board of directors of the company being acquired, on account of the voting power they command at the shareholders meeting.\textsuperscript{45} If shares totaling 51 percent of the total value of capital are held by the acquirer and his associates, the takeover is complete and the acquirer gets the status similar to that of a holding company. However, in most corporate takeovers, it is

\textsuperscript{43} Ernst and Young, 2011, p. 12.

\textsuperscript{44} Government of India, Justice P.N. Bhagwati Committee Report on Takeovers (Dated 18.1.97), quoted in N.R. Sridharan and P.H. Arvind Pandian, 2010, pp. 994-1039, A Committee was set up by SEBI in November 1995, under the chairmanship of Justice P.N. Bhagwati, former Chief Justice of India, to review the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1994. The term of reference to the committee were:
(a) To examine the areas of deficiencies in the existing regulations, and
(b) To suggest amendments in the regulations with a view to strengthening the regulations and making them more fair, transparent and unambiguous and also protecting the interest of investors and of all parties concerned in the acquisition process (para 6.3 of the above report).

\textsuperscript{45} Ravi M. Kishore, 2002, p.716, para 18.4.
not necessary to acquire 51 percent of the shareholding. There exists a concept called ‘controlling interest’. A controlling interest is that proportion of the total shareholding which results in control of the administration of the company through a majority in the Board of Directors. This could be as low as 5 percent or as high as 51 percent of the total number of shares.\textsuperscript{46}

1.2.5. Types of Takeovers or Acquisitions

Takeover or acquisition can be categorised into following two categories:

(1) \textit{Friendly Takeover/Acquisition}: It is a takeover effected with the consent of target company’s executives or Board of Directors. If the target management is receptive to the acquirer’s proposal, it may endorse the merger and recommend shareholder’s approval.\textsuperscript{47} If the shareholders approve the merger, the transaction is consummated. But if the parties do not reach to an agreement during negotiations, the proposal of merger stands terminated and dropped out.\textsuperscript{48} The directors of the target company may agree right from the start or after early negotiations or even after public opposition to the bid (which may or may not have resulted in an improvement in the terms of the proposed offer) or the directors of target company may actually have approached the acquiring company to suggest the acquisition.\textsuperscript{49}

As this takeover happens through negotiations between two groups, it is also called negotiated takeover or consent takeover. Examples of such takeover are, acquisition of 45 percent controlling interest of Universal Luggage Manufacturing Company Ltd by Blow Plast Ltd. Similarly, Mahindra and Mahindra Ltd, a leading manufacturer of jeeps and tractors acquired a 26 percent equity stake in Allwyn Nissan Ltd.\textsuperscript{50} The recent and most prominent are Daiichi Sankyo acquisition of Ranbaxy and Daiego buying 53.4 percent stake in United Spirits in 2012.

(2) \textit{Hostile Takeover/Acquisition}: When an acquirer company does not offer the target company the proposal to acquire its undertaking but silently and unilaterally pursues

\textsuperscript{46} Ibid.
\textsuperscript{48} J.C. Verma, 2009, p. 74.
\textsuperscript{49} M.A. Weinberg et al., 1979, p. 111. G.D. Newbould in 1970 found that out of 38 mergers and takeovers, in seven mergers and takeovers, the “victim” approached the bidding company.
\textsuperscript{50} I.M. Pandey, 2000, p. 1097.
efforts to gain control against the wishes of the existing management, such acts are considered hostile on the management and thus called hostile takeovers. The takeover of Great Offshore Limited is an example of hostile takeover, where the Bharti Shipyards Limited acquired management control of Great Offshore Limited against the wishes of the Great Offshore Promoters.\footnote{“Mergers, Demergers, Takeovers and Acquisitions – An Indian Perspective”, retrieved from http://www.wirc-icai.org/wirc_referencer/income%20tax%20&%20wealth/2tax/mergers_&_acquisitions.html, accessed on 1 February 2014 at 6.58 pm.} This method normally involves purchasing of small holdings of small shareholders over a period of time at various places. As a strategy, the purchaser keeps his identity a secret. This kind of takeovers are usually referred to as hostile or violent takeovers.\footnote{Ravi M. Kishore, 2002, p. 717, para 18.4-1.} It may also happen that the acquirer firstly approached the target’s management, but the management did not support the proposed takeover for any number of possible reasons, such as too low an offering price, a desire to maintain the firm’s autonomy or a ‘poor fit’ and so on, it can reject the offer. In this case, the acquirer can attempt to gain control of the firm by buying shares from the open market from the financial institutions, or from mutual funds or from the shareholders of the company, who would be willing to part with the shares at a price higher than the prevailing market price.\footnote{Vishal Majhee, “Analysis of Employment Effects of Takeovers and Mergers and Acquisitions”, A Dissertation, Submitted to the Indian Law Institute, 2010, p. 14.} Such acts of the acquirer are known as ‘takeover raids’ in the corporate world. These raids when organised in a systematic form are called ‘takeover bids’. Both the raids and bids lead to merger or takeover. A takeover is hostile when it is in the form of ‘raid’.\footnote{J.C. Verma, 2009, p. 74.} Few instances of hostile acquisitions or takeovers are acquisition of Shaw Wallace, Dunlop, Matter and Platt, and Hindustan Dorr Oliver by Chhabrias, Ashok Leyland by Hindujas and ICIM, Harrison Malayalam and Spencers by Goenkas, Allwyn Nissan Ltd by Mahindra and Mahindra. Tata Tea in 1988 made public offer to takeover Consolidated Coffee Ltd and were successful in acquiring 50% stake.\footnote{Gurminder Kaur, Corporate Mergers and Acquisitions, Deep and Deep Publications Pvt. Ltd., New Delhi, 2005, p. 18.} Above all, the recently consummated Arcelor Mittal deal is an example of hostile takeover, where the LN Mittal group acquired management control of Arcelor against the wishes of the Arcelor management.\footnote{Ernst and Young, 2011, p. 12.}
Hostile acquisitions or takeovers are frequently used in developed markets of US and UK to unlock value for shareholders. They have beneficial impact on the economy. They keep the company management on guard and compel them to perform at higher levels of efficiency. They encourage optimum utilisation of resources. For minority shareholders, hostile takeovers are again beneficial since they ensure that management works for improving shareholders value.

However, hostile acquisitions are fought over long period of time on different battle grounds starting from court room and board room to media with the help of army of professional lawyers, investment bankers, corporate financiers etc.  

Until the SEBI Takeover Code in 1997, Indian corporate managements could freely block transfer of share ownership to potential takeover tycoon. There was no way anyone could try majority stake, outvote existing management at Annual General Meeting and replace it. Even if raider kept on buying in secondary market using intermediary to disguise intentions, the financial institutions sided the existing management.  

But in recent years, due to liberalisation of financial sector as well as opening up of the economy for foreign investors, things have changed. In the new SEBI Takeover Code of 2011 the company’s management can not block shares. Anyone can buy 25% of shares and then after making open offer acquire another 26%. With financial institutions supporting them, they can ouster existing management but only after giving them notice in the form of open offer to take remedial steps, may be in the form of counter offer. So mechanism of takeover in India is such that any management short of 51% could loose control if support of financial institutions is not available or there is less cash to make counter bids.

1.2.6. Bail-out Takeovers

Bail-out takeovers are substantial acquisition of shares in a financially weak company not being a sick industrial company, in pursuance to a scheme of rehabilitation approved by a public financial institution or a scheduled bank (lead institution), who has lent money to the financially weak company.

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57 Gurminder Kaur, 2005, p. 17.
58 Id., p. 18.
The financial institution appraises the financially weak company taking into account its financial viability, the requirement of funds for revival and draws up a rehabilitation package on the principle of protection of interests of minority shareholders, effective revival and transparency. The rehabilitation scheme provides the details of any change in management and may provide for the acquisition of shares in the financially weak company in the following manner:59

- An outright purchase of shares; or
- An exchange of shares; or
- A combination of both

The person acquiring shares shall make a formal offer to acquire shares from the promoters or persons in charge of the affairs of the management of the financially weak company or financial institution.60 After that they shall make a public announcement of their intention for acquisition of shares from the other shareholders of the company.61 In the simplest words, takeover of a financially weak company by a financially stable company to bailout the former is known as bailout takeover.

The acquisition of Satyam Computers by Tech Mahindra is an example of bail out takeover.

1.2.7. Categories or Types of Mergers

Economists classify merger into following four categories:

(1) Horizontal Merger: A horizontal merger occurs when one firm combines with another in its same line of business.62 It is combination of two competing firms belonging to the same industry and are at the same stage of business cycle. When two book publishers or two retail food chain merge with another to gain dominant market share, it is a case of horizontal merger. The main purpose of such merger is to obtain economies of scale from the larger combined unit. The economics of scale are obtained by eliminating duplication of facilities and operations and broadening the product line,
reduction in investment in working capital, elimination of competition through product concentration, reducing advertising costs, increase in market segments and exercise of better control on market. For example, merger of TOMCO with Hindustan Lever Limited in 1993, Arcelor with Mittal Steels in 2006, Bank of Rajasthan with ICICI Bank in 2010.

Horizontal mergers are regulated by the government for their potential negative effect on competition. The number of firms in an industry is decreased by these mergers and this makes it easier for the industry members to collude for monopoly profits. They are also believed by many as potentially creating monopoly power on the part of the combined firm enabling it to engage in anticompetitive practices. Whether horizontal mergers take place to gain from collusion or to increase monopoly power of the combined firm, in the presence of continuing government scrutiny of these mergers, is an empirical question.

Weinberg and Blank Define Horizontal Merger as follows:

“A takeover or merger is horizontal if it involves the joining together of two companies which are producing essentially the same products or services or products or services which compete directly with each other (for example, sugar and artificial sweeteners). In recent years, the great majority of takeovers and mergers have been horizontal. As horizontal takeovers and mergers involve a reduction in the number of competing firms in an industry, they tend to create the greatest concern from an anti-monopoly point of view; on the other hand, horizontal mergers and takeovers are likely to give the greatest scope for economies of scale and elimination of duplicate facilities.”

(2) Vertical Mergers: Vertical merger refer to the combination of two entities at different stages of the industrial or production process within the same industry. For example, in pharmaceutical industry, one could distinguish between research and development of new drugs, the production of drugs and the marketing of drug products
through retail drugstores. If a firm engaged in production of drugs merges with the firm engaged in marketing, it will be a case of vertical merger. It can take following forms:

(i) **Vertical Backward Integration:** Buying a supplier e.g. IBM’s acquisition of Daksh.⁶⁷

(ii) **Vertical Forward Integration:** Buying a customer e.g. Indian Rayon’s acquisition of Madura garments along with brand rights.⁶⁸

There are many reasons why firms might want to be vertically integrated between different stages. There are technological economies such as the avoidance of reheating and transportation costs in the case of an integrated iron and steel producer. Transactions within a firm may eliminate the cost of searching for prices, contracting, payment collecting and advertising and may also reduce the costs of communicating and of coordinating production. Planning for inventory and production may be improved due to more efficient information flow within a single firm. When assets of a firm are specialised to another firm, the latter may act opportunistically to expropriate the quasi rents accruing to the specialised assets.⁶⁹

Also, mergers at global level between Time Warner and Turner is a good instance of vertical integration. Similarly, combining the production unit, Time Warner with the distribution network of Turner broadcasting could create vertical integration.⁷⁰ But at the same time, vertical merger also poses a risk of monopolistic trend in the industry. Weinberg and Blank define vertical merger in the following manner:

“A takeover or merger is vertical whereas one of the two companies is an actual or potential supplier of goods or services to the other, so that the two companies are both engaged in the manufacture or provision of the same goods or services but at different stages in the supply route (for example, where a motor car manufacturer takes over a manufacturer of sheet metal, or a car distribution firm). Here, the object is usually to ensure a source of supply or an outlet for products or services, but the

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⁶⁸ Ibid.


effect of the merger may be to improve efficiency through improving the flow of production and reducing stockholding and handling costs. Where, however there is a degree of concentration in the markets of either of the companies, anti-monopoly problems may arise.”

(3) Congeneric Mergers: A congeneric merger is achieved by acquiring a firm that is in the same general industry but neither in the same line of business nor a supplier or a customer. Congeneric means ‘allied in nature or action’, hence a congeneric merger involves related enterprises. Examples of these mergers include the merger of a machine tool manufacturer with the manufacturer of industrial conveyor systems, merger of banking company with a leasing company as well as insurance companies takeovers of mutual fund companies. The benefit of this type of merger is the resulting ability to use the same sales and distribution channels to reach customers of both business. For instance, merger between Hindustan Sanitary ware Industries Ltd and Associated Glass Ltd is an illustration of congenric mergers.

(4) Conglomerate Mergers: Conglomerate merger is a combination in which a firm established in one industry combines with a firm from an unrelated industry. In other words, firms engaged in two different/unrelated economic business activities combine together. In this kind of merger, the acquiring company is not proposing to expand in its own field of endeavour but in an altogether different sphere.

According to Weinberg and Blank:

“A conglomerate take-over or merger involves the coming together of two companies in different industries i.e. the business of the two companies are not related to each other horizontally (in the sense of producing the same or competing products), nor vertically (in the sense of standing towards each other in the relationship of supplier and buyer or potential supplier and buyer).”

71 M.A. Weinberg et al., 1979, pp. 5-6, Para 107.
77 M.A. Weinberg et al., 1979, p. 6, para 107.
The business of two companies lack any commonality either in their end product or in the rendering of any specific type of service to the society. This is a type of merger of companies which are neither competitors, nor complementaries nor suppliers of a particular raw material nor consumers of a particular product or consumable. The merging companies operate in unrelated markets having no functional economic relationship. A typical example is merging of different businesses as like manufacturing of cement products, fertilisers products, electronic products, insurance investment and advertising agencies. L&T Ltd. and Voltas Ltd. is an example of a conglomerate companies. In the Indian context, takeover of Mohta Steel Industries Limited (MSK) by Vardhman Spinning Mills Limited (VSML) is an illustration of conglomerate merger. In the international arena, Gulf oil’s acquisition of Montgomery Ward illustrates a conglomerate merger.

Conglomerate mergers involve unification of different kinds of business under one flagship company. The basic motive behind these mergers is to reduce risk through diversification. It also enhances the overall stability of the acquirer and improves the balances in the company’s total portfolio of diverse products and production processes. The aim is to bring about stability of income and profits, since the two units belong to different industries as adverse factors in sales and profits arising due to trade cycles may not hit all industries at the same time. These mergers also enable use of spare resources whether of capital or management. A merger with a diverse business also helps the company to foray into varied businesses without having to incur large start-up costs normally associated with a new business. Among conglomerate mergers, three types have been distinguished.

(i) **Product-Extension Mergers**: These mergers broaden the product lines of firms, i.e. when a new product line allied to or complementary to an existing product line is added, it is defined as product extension merger. For example: merger between Hindustan Sanitaryware Industries Ltd and Associated Glass Ltd, Phillip Moriss-Kraft and

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78 The Institute of Company Secretaries of India, 2010, p. 3.
79 Bhasin, December 2006, p. 11.
Pepsico-Pizza Hut are illustrations of product extension merger. In *FTC v. Procter and Gamble*, a manufacturer of soap and detergent acquired a manufacturer of bleach, the court recognised the merger as a product extension merger.

(ii) Geographic Market Extension Merger: A geographic market extension merger involves two firms whose operations have been conducted in non overlapping geographic areas. Examples of such mergers are: Morrison Supermarkets-Safeway and Time Warner-TCI.

(iii) Pure Conglomerate Mergers: In a ‘pure conglomerate’ there are no important common factors between the companies in production, marketing, research and development or technology. In practice, there is a wide range of situations falling short of ‘pure conglomerate’ in which there is some degree of overlap in one or more of these common factors, which have been outlined above. It is suggested by some that in all conglomerate mergers a certain proportion of activity by the acquired company should be allied to that of the acquiring company i.e. it should not be a pure conglomerate merger. In this way, new product activities can be grafted with less hazard on to the expanding company’s total business.

But a conglomerate merger is a complex process that requires adequate understanding of industry dynamics across diverse businesses. These mergers do not usually raise anti-monopoly questions and are thus favoured throughout the world as a means of diversification. But they may do so where it is feared that the firm may abuse its market power, such as by exerting pressure on firms from which some companies in the group purchase supplies to place business with other companies in the group.

(5) Reverse Merger: In the conventional method, the sick company is absorbed by the profitable one (normal merger). On the other hand, if reverse situation takes place, i.e. if sick company extends its embracing arm to the profitable company and in turn absorbs
it in its fold, this action is called reverse merger. In several cases, the survival of a loss making or sick company becomes important for many strategic reasons such as public interest. In such cases, the law does provide encouragement through tax reliefs for the companies which are profitable but get merged with the loss making companies. As such a merger is not a normal or a routine, is called a reverse merger. It gives the profit making company an automatic tax entitlement benefits of carry forward and set-off of losses without complying with provisions of Section 72A of Income Tax Act.

The financial institutions which act as operating agency for the sick company suggests this remedy between two companies in the promoter group, thus attempting to control the growing sickness in a process of quick and enduring solution. If one looks critically at all reverse mergers approved so far, the undercurrent unmistakably is the protection of interest of the financial institutions which have lent money to the sick company and in most cases, the institutions themselves have mooted the idea of reverse mergers to the promoters. Thus, the financial institutions have spearheaded this concept and their support ensures the smooth passage of the scheme before various authorities. In essence, one can say that reverse mergers are rehabilitation-oriented schemes adopted to achieve quick corporate turn around. The reverse merger is by no means a new invention, it flourished in the 1980s. It boomed again in the 1990s with the advent of globalisation and competition.

Reverse mergers are also entered into in many other ways, private company acquiring a public company into its fold either to infuse management dynamism and profits into a public company or for a private company merging into public company to get a quotation on stock exchange without ‘going public’ in a usual way. The other way is large unlisted company, merging into small listed company to maintain the listing. But in the Indian context, the courts have used the reverse merger in the context of merging of healthy unit into sick unit to avail the tax benefits.

It has been noticed that the companies carry out reverse merger to take advantage of the benefits of section 72A, but after a year or so change their names to the one of the healthy company. The merger of Kirloskar Pneumatics Ltd is such an example. The company was merged with Kirloskar Tractors Ltd a sick unit, initially losing its name, but after one year name of Kirloskar Tractors Ltd was changed to Kirloskar Pneumatics Ltd the name prior to merger.\textsuperscript{94}

The credit for expounding this concept goes to the Gujarat High Court which, for the first time, brought out this concept in open in its scintillating judgement in \textit{Bihari Mills Ltd, In re, Manek Lal Harilal Spinning and Manufacturing Company Limited, In re},\textsuperscript{95} In this case, all the contours of this concept are analysed threadbare, apart from providing answers to some important questions that are relevant in the Indian context. The Gujarat High Court has classified in this judgement that the basic principles of reverse merger should satisfy the following conditions:

- Net assets of the amalgamating company are greater than the net assets of the amalgamated company.
- Equity capital to be issued by the amalgamated company pursuant to the acquisition exceeds its original issued capital and
- The control of the amalgamated company goes into the hands of the management of the amalgamating company.

Another illustration is that of healthy Kirloskar Oil Engine Ltd. with Prashant Khosla Ltd. (PKL), a sick company. As procedures under Sec 72A is long, tedious and contentious procedure. Therefore, in order to avoid going to Central Board for Direct Taxes (CBDT) and still having benefits of unabsorbed losses and depreciation- deal was structured in reverse manner. Kirloskar merged into PKL and on the other hand simultaneously PKL is renamed as Kirloskar Oil Engine Ltd. The reverse merger of Chemplast with Urethanes India Ltd paved the way for the speedy rehabilitation of Urethanes India Ltd.

\textsuperscript{94} J.C. Verma, 2008, p. 282.
\textsuperscript{95} (1985) 58 Com Cases 6.
The reverse merger of Godrej Soaps Ltd. (GSL) into loss making Gujarat Godrej Innovative Chemicals Ltd. (GGICL) is another illustration of this kind of merger. The post-merger company restructured its gross profits of Rs. 49.09 crore, which led to reduction of an effective tax burden of Rs. 1.06 crores and net profits of Rs. 48.03 crore. Upon the scheme coming into effect, the name of the transferee company would be changed from GGICL to GSL. This innovative merger was completed with the full blessings of all the leading financial institutions like IDBI, ICICI, IFCI, LIC, UTI, etc.96

To conclude, classification of mergers from economic stand point helps to identify mergers motives. But it is difficult to classify a merger case within one of these categories. In fact, each merger case bears some overlapping characteristics due to which it can be placed in more than one category. Also, economic classification does not serve the purpose when companies are in different lines of business. Hence, a judicious and rigorous analysis is essential to identify merger motives.

1.2.8. Difference between Merger and Acquisition

A fundamental characteristic of merger is that the acquiring company takes over the ownership of other companies and combines their operations with its own operations whereas an acquisition may be defined as an act of acquiring effective control by one company over assets or management of another company without any combination of companies.97 Thus, in an acquisition, two or more companies may remain independent, separate legal entity but there may be change in control of companies.

Mergers and amalgamations are regulated by Companies Act, 1956. Chapter V of Companies Act, 1956 contains statutory provisions relating to mergers and amalgamation from sections 390 to 396A. Whereas the regulatory framework for controlling acquisitions of a company consists of section 372 of Companies Act, 1956, clause 40A and clause 40B of the Listing Agreement and SEBI Takeover Code. Above all, basic difference between a merger and an acquisition is that in case of merger, the entire assets and liabilities of the transferor company are transferred to the transferee

97 I.M. Pandey, 2000, p. 1097.
company, whereas, in case of acquisition the acquirer only gets voting rights in the
target company by virtue of acquiring the shares.

1.2.9. Amalgamation

The term ‘merger’ and ‘amalgamation’ are used interchangeably to denote the fusion or
combination of two or more companies into a single company, where one survives and
the other(s) looses its/their corporate entity, thus being dissolved/wound up without the
process of winding up and the process is carried out through a ‘scheme’ requiring
sanction of the court. However, in the micro sense, merger is different from
amalgamation. While all amalgamations are necessarily mergers, all mergers may not
necessarily be amalgamations as merger may take place in the form of amalgamation or
absorption.

Halsbury Laws of England describe amalgamation as:

“A bending of two or more existing undertakings into one company, the
shareholders of each blending company becoming substantially the
shareholders in the company which is to carry on the blended
undertaking.”

The Supreme Court has tried to explain its meaning in Saraswati Industrial Syndicate
Ltd. V. CIT, as follows:

“Amalgamation or reconstruction has no precise legal meaning. In
amalgamation two or more companies are fused into one by merger or by
taking over by another, when two companies are merged and are so
joined as to form a third company or one is absorbed into one or blended
with another, the amalgamating company loses its identity… The true
effect and character of the amalgamation largely depends on the terms of
the scheme of merger. But there cannot be any doubt that when two
companies amalgamate and merge into one, the transferor company loses
its identity as it ceases to have its business. However, their respective
rights or liabilities are determined under the scheme of amalgamation.”

The new company comes into existence after amalgamation having all the property, rights
and powers and subject to all the duties and obligation, of both the constituent companies.

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100 AIR 1991 SC 70.
Explaining the object of an amalgamation and the scheme of the statutory provision, the Madras High Court observed in *WA Beardsell and Co. P. Ltd. In re*,\(^{101}\):

“The world ‘amalgamation’ has not been defined in the Act. The ordinary dictionary meaning of the expression is ‘combination’. Judging from the context and from the marginal note of Section 394 which appears in Chapter-V relating to arbitration, compromises, arrangements and reconstructions, the primary object of amalgamation of one company with another is to facilitate reconstruction of the amalgamating companies and this is a matter which is entirely left to the body of shareholders, (and) essentially an affair relating to the internal administration of the transferor company. The decision of the body of shareholders ought not to be lightly interfered with.”

The Andhra Pradesh High Court in *S.S. Somayajulu v. Hppc Prudhomme and Co.*,\(^{102}\) that the word ‘amalgamation’ has no definite legal meaning. It contemplates a state of things under which two companies are so joined as to form a third entity, or one company is absorbed into and blended with another company. Amalgamation does not involve a formation of a new company to carry on the business of the old company.

The Madhya Pradesh High Court reiterated *Patrakar Prakashan Pvt. Ltd., In re*,\(^{103}\) that amalgamation is an organic unification or amalgamation of two more entities or undertakings, or fusion of one with the other. There is no bar to more than two companies being amalgamated under one scheme.

It has been laid down by the Supreme Court in *General Radio and Appliance Company Ltd. v. MA Khader*,\(^{104}\) that after the amalgamation of two companies, the transferor company ceases to have any identity and the amalgamated company acquires a new status and it is not possible to treat the two companies as partners or jointly liable in respect of their assets and liabilities. The true effect and character of amalgamation largely depends upon the terms and conditions of the scheme of merger.

Generally, the company which merges or amalgamates is known as ‘amalgamating company’ or ‘transferor company.’ The company into which the amalgamating or

\(^{101}\) (1968) 38 Com Cases 197 (Mad.) at p. 204.

\(^{102}\) (1963) 2 Comp LJ 61 (AP).

\(^{103}\) (1997) 13 SCL 33 (MP).

\(^{104}\) (1986) 2 Comp LJ 249 (SC).
transferor company mergers or amalgamates is known as ‘amalgamated company’ or ‘transferee company’. The corporate identity of the transferor company ceases to exist after the amalgamation.

As per Income Tax Act, 1961, merger is defined as amalgamation under section 2(1 B) with the following three conditions to be satisfied:

- All the properties of amalgamating company(s) should vest with the amalgamated company after amalgamation.
- All the liabilities of amalgamating company(s) should vest with the amalgamated company after amalgamation.
- Shareholders holding not less than 75% in value or voting power in amalgamating company(s) should become shareholders of amalgamated companies after amalgamation.

This does not however include shares already held by shareholders of amalgamating companies in the amalgamated company.

1.2.10. Difference between Merger and Amalgamation

As is evident from the definitions given above the term ‘merger’ and ‘amalgamation’ are quite synonymous and can be interchangeably used and denote the situation when two or more companies, keeping in view their long term business interests, combine into one economic entity to share risks and financial rewards. However, in the micro sense, there is difference between the two.

(1) Meaning: Merger generally refers to a circumstance in which the assets and liabilities of a company (merging company) are vested in another company (the merged company). The merging entity loses its identity and its shareholders become shareholders of the merged company. On the other hand, an amalgamation is an arrangement, whereby the assets and liabilities of two or more companies (amalgamating companies) become vested in another company (the amalgamated company). The amalgamating companies all loose their identity and emerge as the amalgamated company; though in certain transaction structures the amalgamated
company may or may not be one of the original companies. The shareholders of the amalgamating companies become shareholders of the amalgamated company.\textsuperscript{105}

(2) **Scope:** While all amalgamations are necessarily mergers, all mergers may not necessarily be amalgamations as merger may take place in the form of amalgamation or absorption. In amalgamation, at least two companies which are merged go into liquidation, a new company is formed to take over the business of at least two companies which are liquidated, whereas in merger in addition to above case, absorption is also included, where no new company is formed, one company (which goes into liquidation) is absorbed into another which retains its legal entity.

(3) **Purpose:** Merger is commonly used for the fusion of two companies. Merger is normally a strategic vehicle to achieve expansion, diversification, entry into new markets, acquisition of desired resources, patents and technology. It also helps companies in choosing business partners with a view to advance long term corporate strategic plans. Mergers are also considered as a revival measure for industrial sickness. Amalgamation is an arrangement for bringing the assets of two companies under the control of one company, which may or may not be one of the original two companies. Amalgamation signifies the transfer of all or some part of the assets and liabilities of one or more existing business entities to another existing or new company.\textsuperscript{106}

The merger also differs from a consolidation, wherein all the corporations terminate their existence and become parties to a new one.\textsuperscript{107}

1.3. **Motives and Reasons for Mergers**

The research literature on M&As deals with the topic of merger motives quite extensively. The reasons why mergers take place are of continuing research. There are always many reasons that appear to apply to each merger but researchers are usually searching for few general principles that would explain broad pattern of merger activity.\textsuperscript{108}


\textsuperscript{106} The Institute of Companies Secretaries of India, 2010, pp. 10-11.


\textsuperscript{108} Gurminder Kaur, 2005, p. 37.
Most important motive behind M&As is growth. But apart from growth, there are various other important motives of M&As. Hence, here we will highlight few important motives of M&As with the help of real examples from the Indian context. These motives have been delineated by the researcher by going through the M&A deals happening in India from the starting uptill 2014. Motives are the benefits that a firm perceives from M&As and hence act as a propeller for undertaking them.\(^{109}\) The purpose of the researcher here is to describe the strategies and financial imperatives that have been driving the corporates towards M&As and identify such factors with real life merger cases. The primary motives behind corporate mergers and acquisitions are presented in this section.

\subsection{1.3.1. Synergy}

The primary motivation for most mergers is to increase the value of the combined enterprise.\(^{110}\) Synergism exists whenever the value of a combination is greater than the sum of the values of its parts. In other words, synergism is \(2+2=5\)\(^ {111}\) i.e. if companies A and B merge to form company C, and if C’s value exceeds that of A and B taken separately, then synergy is said to exist. Such a merger is beneficial to both A’s and B’s shareholders. The celebrated HLL-TOMCO merger in 1993 is a case of synergistic merger. HLL which had a powerful presence in the premium soaps with Liril, International Lux, Pears and Le Sancy needed one to target the middle class, TOMCO’s Haman, OK and Moti were perfect. Similarly, TOMCO’s super 501 complemented HLL in the detergent segment.

It is assumed that existing undertakings are operating at a level below optimum. But when two undertakings combine their resources and efforts, they may with combined efforts produce better results than two separate undertakings because of savings in operating costs viz. combined sales offices, staff facilities, plants management, etc. which lower the operating costs.\(^ {112}\) The greater value is ultimately expected to result into higher earnings per share for the merged entity.

\footnotesize{\begin{itemize}
  \item \(^{109}\) Id., p.262.
  \item \(^{110}\) Eugene F. Brigham et al., 1999, p. 797.
  \item \(^{111}\) V.K. Bhalla, 1998, p. 1144.
  \item \(^{112}\) J.C. Verma, 2009, p. 77.
\end{itemize}}
Synergy means working together. The gains obtained by working together by amalgamated undertakings result into synergistic operating gains. These gains are most likely to occur in horizontal mergers in which there are more chances for eliminating duplicate facilities. In the Indian context merger of Hindustan Computer, Hindustan Reprographics, Hindustan Telecommunications and Indian Computer Software Company into HCL Limited exhibited synergy in transfer of technology and resources to enable the company to cut down imports of components at a very high import duty.

Likewise one firm may have a strong research and development (R&D) team whereas the other may have a very efficiently organised production department as happened in the case of Daiichi Sankyo and Ranbaxy deal, the Daiichi Sankyo had a strong R&D department and Ranbaxy had a strong manufactory unit. The merged unit in all the above cases and the other similar ones will be more efficient than the individual firms. And, hence, the combined value of the merged firms is likely to be greater than the sum of the individual entities.\footnote{M.Y. Khan and P.K. Jain, 2009, p. 33.3.} Even Gujarat High Court in \textit{Safal Realty (P.) Ltd., In re},\footnote{(2010) 98 SCL 39 (Guj.).} highlighted the synergies from the merger of Deep Infrastructure (P.) Ltd. and Safal Infrastructure (P.) Ltd.-the transferor companies with Safal Realty (P.) Ltd.-the transferee company. The Court remarked:

“Consolidating all the operations under one company would lead to benefits of economies of the scale, make administration easier and control systems more efficiently. The amalgamated company would be in a position to maximise its profits through optimum utilisation of its resources and minimising administration and operational costs. This will also result in enhancement of financial strength and flexibility. It will also give the amalgamated entity a competitive edge in the market due to enhanced product range, increased research capabilities and establish distribution network. Thus the amalgamation would be in the mutual advantage of both the transferor and the transferee companies.”
There are Five Main Types of Synergies:

(1) **Manufacturing Synergy:** The manufacturing synergy results from combining the core competences of the acquirer company and target company in different areas of manufacturing, technology, design and development, procurement etc. or it could also result from rationalisation of the usage of the combined manufacturing capacities of the both the firms. As an illustration, when Mahendra and Mahendra acquired Jiangling Motors of China, it resulted in manufacturing synergy due to combination to M&Ms design and development strength with low cost manufacturing capabilities of Jiangling.\(^{115}\)

Another illustration of manufacturing synergy is that of Tata Motors acquisition of Daewoo’s Commercial Vehicles Unit (DWCV) which armed Tata Motors with technology of producing commercial vehicles in the 200-400 bhp range. Earlier, it had technology for commercial vehicles upto 200 bhp only.

(2) **Operations Synergy:** A combination of two or more firms may result into cost reduction due to operating economies. Operating synergies arise as a rule from the combination or fusion of individual functional areas within the new company.\(^{116}\) Operating synergies will result from elimination of duplicate channels of distribution, creation of centralised training centre, integration of planning and control system etc.

The transfer of knowledge is another operative synergy that arises in businesses, combinations as different corporate divisions combine their competences and abilities.\(^{117}\) As an illustration, when Kingfisher Airlines acquired Deccan Airways, Jet Airways acquired Sahara Airlines, both were expecting operating synergies through rationalisation of routes, reduction in the combined number of flights on the same routes, sharing of commercial and ground handling staff, reduction in the combined number of airplanes in use and so on.

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\(^{115}\) Prasad G. Godbole, 2009, p. 50.


\(^{117}\) *Ibid.*
(3) **Financial Synergy:** There are many ways in which merger can result in financial synergy and benefits. They are:

(i) **Eliminating Financial Constraint:** A company having financial constraints cannot expand or grow organically or internally. It can grow externally or inorganically by acquiring another company by exchanging of shares instead of paying cash.

(ii) **Surplus Cash:** On the other hand, a company having surplus cash will find an appropriate opportunity to invest its cash. If surplus cash is used to acquire another company, the shareholders wealth may increase through an increase in the market value of the shares.

(iii) **Increase in Debt Capacity:** Debt capacity also increase when two firms combine thereby making their earnings and cash flows more stable and predictable. This enables them to borrow more than they could have as individual entities. In fact, merged firms often can obtain lower rates than could be obtained if each firm borrowed individually.

(iv) **Lowering of the Financing Costs:** Since, the probability of insolvency is reduced due to financial stability and increased protection to lenders, the merged firm should be able to borrow at a lower rate of interest. Moreover, a merged firm is able to realise economics in floatation and transaction costs related to an issue of capital. Issue costs are saved when the merged firm makes a larger security issue.

When R.P. Goenka’s Ceat Tyres sold off its tyre cord division to Shriram Fibres Ltd. in 1996 and its fiberglass division to FGP Ltd, it was with the aim to achieve financial synergies.

(4) **Managerial Synergy:** If one of the companies has more efficient and skilled management then the other company can get benefit of the highly efficient and skilled management which will result in managerial synergies. This may occur if the existing management team, which is performing poorly is replaced by a more effective

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118 I.M. Pandey, 2007, p. 676.
119 Pooja Chaudhary, July 2010, p. 952.
121 I.M. Pandey, 2007, p. 676.
management team. Often a firm, plagued with managerial inadequacies, can gain immensely from the superior management that is likely to emerge as a sequel to the merger.\textsuperscript{122} The badly managed companies are often the ones benefiting the most from M&As because it is often the only way that incompetent managers can be ousted. In other words, top management of one company can use its skill to help improve the performance of another company. For example, in HLL-TOMCO merger, HLL ensured that merger becomes a success by duplicating its excellent management practices in TOMCO.

**5. Marketing Synergy:** These synergies occur when merged organisation benefits from common distribution channels, sales administrators, advertising, sales promotion and warehouse facilities.\textsuperscript{123} It also involves leveraging on the brand equity of one of the two companies to push the sale of the other company’s products.\textsuperscript{124} When Dilip Pirmal Blow Plast acquired Universals Luggage, the idea was to use the common distribution channel and sales force to push both the companies products, which were targeted at the same market segments except for pricing differences and thereby effect a substantial savings in sales force and other marketing costs.\textsuperscript{125} Similarly, the Industrial Credit and Investment Corporation of India (ICICI) acquired Indian Tobacco Company, ITC Classic and Anagram Finance to obtain quick access to a well dispersed distribution network.\textsuperscript{126}

### 1.3.2. Growth

M&As are motivated with a view to sustain growth or to accelerate growth. Expansion and growth through M&As is less time consuming and more cost effective. Instead of going through the time consuming process of internal growth or diversification, the firm may achieve the same objective in a short period of time by merging with an existing firm. In addition, such a strategy is often less costly than the alternative of developing the necessary production capability and capacity.\textsuperscript{127} Construction of new facilities takes time and it may be more profitable to acquire the existing facilities of another

\begin{footnotesize}
\textsuperscript{122} Prasanna Chandra, 1993, p. 293.
\textsuperscript{123} Gurminder Kaur, 2005, p. 267.
\textsuperscript{124} Prasad G. Godbole, 2009, p. 50.
\textsuperscript{125} Id., p. 51.
\textsuperscript{126} Gurminder Kaur, 2005, p. 267.
\end{footnotesize}
company.\textsuperscript{128} Growth is essential for sustaining the viability, dynamism and value-enhancing capability of a company and also one the most important motive behind M&A activity.

1.3.3. Enhanced Profitability Due to Economies of Scale

Economies of scale arise when increase in the volume of production leads to a reduction in the cost of production per unit. Merger may help to expand volume of production without a corresponding increase in fixed costs. Thus, fixed costs are distributed over a large volume of production causing the unit cost of production to decline.\textsuperscript{129} These economies of scale arise because of more intensive utilisation of combined production capacities, distribution channels, research and development facilities, data processing systems, etc. as pooling of the resources will definitely bring about economies of scale.

It is found that economies of scale are most predominant in horizontal mergers as the same kind of resources are available in the merging companies which can be utilised intensively.\textsuperscript{130} Economies of scale are one of the most common reasons advanced for entering into mergers.\textsuperscript{131} For example, the merger of TOMCO with HLL was with a view to bring about substantial economies of scale due to better utilisation of combined production capacities, distribution channel, purchasing set up, research and development facilities, etc.

1.3.4. Diversification of Risk

The M&A route serves as an effective tool to diversify into new business. M&As are motivated with the objective to diversify the activities so as to avoid putting all the eggs in one basket and obtain advantages of joining the resources for enhanced debt financing and better serviceability to shareholders. Such transactions result in creating conglomerate organisation.\textsuperscript{132} Diversification implies growth through the combination of firms in unrelated businesses. It is argued that it can result into reduction of total risk

\textsuperscript{129} I.M. Pandey, 2007, p. 675.  
\textsuperscript{130} Vishal Majhee, 2008, pp. 28-29.  
\textsuperscript{132} J.C. Verma, 2009, p. 77.
through substantial reduction of cyclicity of operations. Total risk will be reduced if the operations of the combining firms are negatively correlated.\(^{133}\) All the businesses go through cycles. When a firm operates in many businesses, the downs in one can be compensated by the ups in another.\(^{134}\)

Moreover, the combination of management and other systems strengthen the capacity of the combined firm to withstand the severity of the unforeseen economic factors that could otherwise endanger the survival of individual companies. But critics hold that diversification caused by merger of companies does not benefit the shareholders as they can get better returns by having diversified portfolios by holding individual shares of these companies.\(^{135}\) An example of diversification through mergers to reduce total risk and improve profitability is that of RPG enterprises (Goenka group). The group started its takeover activity in 1979. It comprises a large number of companies, most of which have been taken over. The strategy has been to look out for any foreign disinvestment, or any cases of sick companies, which could prove right target at low takeover prices. In 1988, RPG took over ICIM and Harrisons Malayalam Limited.\(^{136}\)

### 1.3.5. Tax Considerations

Many mergers are motivated by the aim of achieving benefits and concessions under direct and indirect tax laws of the country. In the Indian context, savings in tax are the most important motivation behind the mergers. In 1970 and 80’s most mergers in the Indian context took place to avail the tax benefit. Tax laws of our country allow a company to carry forward its losses and set up them against its future earnings. But a loss making or sick company may not be in a position to earn sufficient profits in future to take advantages of the carry forward provision. If it combines with a profitable company, the combined company can utilise the carry forward loss and save taxes.\(^{137}\) These benefits are mainly by virtue of Section 72A of the Income Tax Act, 1961 which

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\(^{133}\) I.M. Pandey, 2000, p. 1101.


\(^{135}\) J.C. Verma, 2009, 77-78.

\(^{136}\) I.M. Pandey, 2000, p. 1102.

\(^{137}\) Ibid.
contains provisions relating to carry forward and set off accumulated loss and unabsorbed depreciation allowance in amalgamation.

A number of companies in India have merged to take advantage of this provision. An example of a merger to reduce tax liability is the absorption of Ahmedabad Cotton Mills Limited (ACML) by Arbind Mills in 1979, ACML had an accumulated loss of Rs. 3.34 crores. Arbind Mills saved about Rs. 2 crores in tax liability for the next two years after the merger because it could set-off ACML’s accumulated loss against its profits. Yet another example of a merger induced by tax saving in 1990’s is that of Godrej soaps with Gujarat Innovative Chemicals. The post merger company restructured its gross profits of Rs. 49.08 crores which lead to reduction of effective tax burden of Rs 1.05 crores.\textsuperscript{138} Merger of ailing Rohit Mills with health Arbind Mills gave a tax break of Rs. 22.21 crores to Arvind Mills.\textsuperscript{139}

\textbf{1.3.6. Increase in Market Power and Market Entry}

Acquiring Companies with good manufacturing and distribution network or established brands gives the advantage of increase in market power and gaining market leadership. Example of this is Tata-Corus merger. In this case Tata steel had a capacity of around 5 million tones before merger whereas Corus had a capacity of around 22 million tones. Its acquisition of Corus in 2007 made it fifth largest global steel company from fifty-sixth global steel company. Thus increase in market power is one of the frequent given reason for mergers as competition inevitably leads to lower prices and lower profits.

Through M&As, the market leaders can further consolidate their position as happened in the merger of Arcelor-Mittal. Mittal steel was already global market leader in steel but when it acquired Arcelor, the second largest steel company in the world, it left its competitors like Nippon (now second largest steel producer) far behind.

Entry into new market and market penetration are another important motives of M&As. Market Penetration means developing new and large markets for a company’s existing products. Market penetration strategy is generally pursued within markets that are

\textsuperscript{138} \textit{Ibid.}
\textsuperscript{139} Gurminder Kaur, 2005, p. 275.
becoming more international and global. Cross-border mergers are a means of becoming or remaining major players in such markets. To gain access to new markets, they prefer to merge with a local established company which knows behaviour of market and has established customer base.\textsuperscript{140} For example, Vodafone’s acquisition of Hutchison Essar was with a view to gain entry into Indian market, Daiichi Sankyo acquired Ranbaxy for this purpose only. Earlier Whirlpool Corporation entered or penetrated into Indian market by acquiring Kelvinator India. Coca cola while re-entering Indian market in 1993 acquired Parle’s Thums up, Gold Spot and Limca brands, which were quite established in Indian market to gain nationwide bottling and marketing network.

1.3.7. Access to Inputs and Technology

In a vertical merger with backward linkage, a company can acquire source of raw material which will ensure consistent supply. Thus M&A help us with access to raw materials, to technology, latest innovations and cheap and productive labour. The inability to keep pace with the changing technology or to graduate to a higher technology are important motives for mergers. Further, the rising costs of R&D along with uncertainties of technological change have forced many firms to co-ordinate with each other in global markets through various combinations and strategic alliances to fund research expenditure for new products.\textsuperscript{141} For example, Ranbaxy agreed for its deal with Daiichi Sankyo so that it could utilise its highly advanced and well-developed R&D facilities. In generalised context also in pharmaceutical sector, the large R&D costs required to develop new generation of drugs is considered the major driving force for the recent spate of M&A activity in the pharmaceutical sector. The Compaq computers hold in the lower end product segment and Digital’s strength in mini computers was brought together by Compaq-Digital merger. Similarly, when a new and important application gradually gains on existing products – as in the case of electronic locomotion over steam locomotion the best way out for a company making traditional products is to be acquired or merged by the producer of the new equipment, by selling

\textsuperscript{140} Id., p. 273.
\textsuperscript{141} Ibid, p. 278.
its goodwill and other usable assets. Mergers based on product innovations will increase with the march of progress in inventions. This applies with special force to science based industries.\textsuperscript{142}

1.3.8. Global Competitiveness

Globalisation and liberalisation have forced various business entities to restructure themselves by way of mergers, demergers and acquisitions. In a free competitive and globalised world, it is necessary for a company to be placed in such a manner that it is in position to compete with the best in the world.\textsuperscript{143} This could easily be achieved through mergers and amalgamations. The challenged posed by hyper competitive capitalism and globalisation have thrown Indian industry in excel or exit environment and has demanded that Indian industries also restructure. They have to increase their capacity, induct new technology and develop export markets, if they want to compete with MNCs with vast resources, advanced technology and enviable managerial skill. Thus, to acquire global competitive strength, cross-border mergers and amalgamation are being resorted to. The acquisition of Tetley Tea, the world’s largest tea brands by Tata Tea was with a view to achieve global competitive strength.

1.3.9. Other Benefits

In addition to above major benefits, a few others can also be delineated.

(1) \textit{Free Cash Flows:} Through mergers surplus funds of one company could finance the plans of the company without it. Thus, mergers offer an effective way to ensure smooth cash flow. An example of this is Unilever group 1996 (merger of BBLIL and Lever) which was formed with sole motive of allowing surplus funds of Lever to travel freely to boost the plans of BBLIL. This shows that mergers not only allow companies to pool management resources and manpower but also enable them to gain economic advantages by re-deploying financial resources.

(2) \textit{Complementary Internal Fund Flows:} Seasonal or cyclical fluctuation in funds flows sometimes may be reduced or eliminated by merger. If so, financial synergism as

\textsuperscript{142} Nicholas A.H. Stacey, 1966, pp. 34-35.
a result of merger will result in reduction of working capital requirements of the combined firms compared to those standing alone.\textsuperscript{144}

\textbf{(3) Revival of a Sick Unit:} If a viable unit has become sick, it can be merged with a healthy unit for its revival. In India, BIFR (Board for Industrial and Financial Reconstruction) approves such mergers. BIFR found revival of ailing companies through the means of merger with healthy company as the most successful route for revival of their financial health.\textsuperscript{145} On the other hand, it also allows the healthy unit to reap the benefit of the hidden potentials of the sick unit.

\textbf{(4) Balancing Product Cycle:} Combining with a complementary industry to compensate for the boom and doom in a product cycle might be a good strategy for an organisation. For example, if the main product is seasonal-say sugar—it will be beneficial to add another non-seasonal product, say ceramics, in the organisational fold.\textsuperscript{146} Thus, balancing product cycle, is an important motive for M&As.

\textbf{(5) Personal Motives:} Most of the people view that M&As are based on economic reasons only but the reality is that, many M&As are based more on manager’s personal motives. Sometimes, top management enter any merger to satisfy their egos as business leaders like power and more power is attached to running a larger corporation than a smaller one. No executive would admit that egos are the primary reason behind many mergers, but egos do play a prominent role. Mergers enhance the power and prestige of the existing management by adding glamour and greater interest to the company.\textsuperscript{147} Further, it has been observed that executive salaries are highly correlated with company size the bigger the company, the higher the salaries of its top officers. This too could play a role in corporate acquisition programs.\textsuperscript{148} The human resources or the managerial staff feels motivated by the assurance of growth as a result of M&As.

\textbf{(6) Combining Complementary Resources:} Complementary goods are those whose usefulness increases when they are used together. Some obvious examples are cigarettes and matches, peanut butter and jelly etc. In M&As, gains from combining

\begin{footnotesize}
\textsuperscript{144} V.K. Bhalla, 1998, p. 1145.
\textsuperscript{145} Gurminder Kaur, 2005, p. 279.
\textsuperscript{146} Ravi M. Kishore, 2002, p. 718, para 18.5-1.
\textsuperscript{148} Eugene F. Brigham, 1999, p. 799.
\end{footnotesize}
complementary resources occur if each acquires something that the other has more cheaply than it could have if acted on its own.

An example is the large computer software company that acquires a software firm with a unique program but where the latter is too small to produce and market it on a large scale. The large firm gets the unique program that would cost much more if it tried to produce it on its own and the small firm gets the production and marketing expertise that it lacks.\textsuperscript{149}

(7) **Resource Transfer:** In many cases, resources are unevenly distributed across firms and the interaction of target and acquiring firm resources can create value through combining scarce resources.

(8) **Acquisition of Valuable Intellectual Property Rights:** It is worth mentioning that intellectual capital has become critical to the industry. Indeed, in the ‘new economy’ brand names i.e. trademarks, service marks and patents are as important as the goods and services in connection with which they are used in creating a competitive advantage. Acquiring a well established company will enable the acquirer company to use its precious intellectual property rights such as brand name, trademarks, patents and designs etc. and gain immense benefits.

(9) **General Gains:** In addition to above purposes or motives of mergers, few general gains can be further highlighted:

- To improve earning per share.\textsuperscript{150} To avoid unhealthy competition by acquiring the competitor. It is said if you can’t fight them, join them.

- To arrest downward trend in the industry by taking-over business belonging to a young and potential industry.

- To reduce gestation period for new business.

- To improve its own image and attract superior managerial talents to manage its affairs.

- To offer better satisfaction to consumers.

\textsuperscript{149} Emphraim Clark, 2002, p. 612.

\textsuperscript{150} For further details, see, Ephraim Clark, 2002, pp. 613-614.
1.4. Advantages of Mergers and Acquisitions

As we have already discussed the multitude of gains and motives of M&A, there are certain advantages which accrue to the organisation, shareholders, promoters, managers and consumers. They will be discussed hereunder:

(1) Benefit to the Organisation: Mergers and takeovers are permanent form of combinations which vest in management complete control and provide centralised administration which are not available in combinations of holding company and its partly owned subsidiary.¹⁵¹ These are the general advantages which accrue to the organisation besides multitude of gains already discussed in the previous topic.

(2) Benefit to the Shareholders: The shareholders of the acquired firm benefit the most in the form of huge increments in wealth which result from the premium paid by the acquirer company to induce acceptance of the merger or takeover. The acquirer company usually has to offer price more than the book value of shares to induce shareholders to sell their shares. Moreover, when information about a potential takeover trickles in the market, price of the target company stock moves upwards. On the other hand, shareholders of the buying company gain premium in the long run with the growth of the company not only due to synergy but also due to ‘boots trapping earnings’.¹⁵²

(3) Benefits to the Promoters: Promoters gain from mergers as they lead to increase in size of the company. A company having shortage of funds can easily grow through this route. A private limited company can be converted into public company without contribution of much wealth by the promoters and without loosing control. In the mergers of HCL as quoted previously, only Hindustan Reprographics Ltd. was a public company whereas the other three were private limited companies. The promoters of the Hindustan Computers were allotted shares worth Rs. 1.27 crores on merger in a new company called HCL. This gave them an 86% stake in HCL’s equity of Rs. 1.48 crore shares. This gain was against their original investment of meagre Rs. 40 lakhs in

¹⁵¹ J.C. Verma, 2009, p. 79.
Hindustan Computers and they did not invest any money extra in getting shares worth Rs. 1.27 crores.\textsuperscript{153}

\textbf{(4) Benefits to Consumers:} As we have already discussed, mergers lead to economies of scale i.e. consumers get quality goods at lower prices. As M&As also enable an organisation access to better technology, the consumer will get new innovative products at competitive prices. This will raise their standard of living and quality of life.

\textbf{1.5. Disadvantages of Mergers}

Merger of two companies in the same field may result in reduction in the number of competing firms in an industry and dilution of competition in the market, adversely affecting consumers’ interest. In a merger or amalgamation, an individual competitor, be it an actual or potential competitor, may get eliminated or a large unit may take into its fold an efficient and growing medium or small–sized undertaking. Another adverse feature can be that the larger undertaking consequent on merger, may exercise a market power to the detriment of its customers and suppliers.\textsuperscript{154} In some cases, mergers may have negative impact on human resources as there is retrenchment of certain employees and the result is unemployment in the economy.

Yet another adverse feature that can surface is, if a large undertaking after merger because of the resulting dominance becomes complacent and suffers from deterioration over the years in its performance can be prejudicial to public interest.\textsuperscript{155} Therefore, mergers can result in acquisition of enormous economic strength by the resultant undertakings, discouragement of new entrants in the markets, elimination of healthy competition, dictation of prices by the large merged undertakings and the exercise of dominance by the merged entities. i.e. it creates a monopoly position in the market. Such monopolies affect social and political environment to tilt everything in their favour to maintain their power and expand their business empire. But this situation can be handled by formulating a suitable anti-trust policy. Moreover, in a free economy, a monopolist does not stay for a longer period as other companies enter into the field to reap the benefits of high prices set in the by the monopolist. This enforces competition

\textsuperscript{153} J.C. Verma, 2009, p. 80.
\textsuperscript{155} \textit{Ibid.}
in the market as consumers are free to substitute the alternative products.\footnote{J.C. Verma, 2009, p. 81.} Therefore it is difficult to generalise that mergers affect the welfare of the general public adversely or favourably. Every case of merger has to be viewed distinctly in the background of surrounding circumstances.

1.6. Evolution and Trends of Mergers and Acquisitions in India

Today, mergers and acquisitions are widely used as a mode of corporate restructuring all over the industrial countries, but the historical development of the mergers has been characterised by various important and discontinuous periods of intense activity.\footnote{George C. Phillippatos, \textit{Financial Management}, Holden Day Inc., San Francisco, 1973, p. 625.} International mergers and acquisitions (M&As) movements are usually associated with the behaviour of US firms over the last century. Merger activity has been identified by various authors in terms of waves of clustering activities of US firms and their behaviour during various periods.\footnote{J. Fred Weston et al., 1990, p. 8.} Most of them have classified them into five phases. Each of these major merger movements was more or less dominated by a particular type of merger and occurred when the economy sustained high rates of growth and coincided with particular development in business environment.\footnote{\textit{Ibid.}} But if we study those merger movements here, it will broaden the scope of the thesis. As the study focuses on M&As in India, so let's study and focus our attention on evolution and trends of M&As in India during various periods. No major study has been done on this topic in India. But my research aims to fill the lacuna in this field. Evolution of M&As in India are classified into three phases which are as follows:

1.6.1. Mergers and Acquisitions during Pre-independence Period in India

Due to colonial past, the picture is not too clear about the pre-independence times, still whatever information the researcher could collect is reproduced here. During the colonial period, Indian business activities remained suppressed due to exploitative policies of the British rule, however Indian industrial empire vanished from the industrial activities of the pre-independence era.\footnote{Anil Kumar Kanugo, \textquotedblleft Internationalisation of Indian Firms and Overseas Investment: A Key Strategy\textquotedblright, retrieved from www.freit.org/WorkingPapers/ForeignInvestment/FREIT384.pdf, accessed on 1 February 2014 at 7.30 pm.} M&A activities were very rare in the
pre-independence era. But that situation changed after the post-war period (i.e. the Second World War). M&As have played an important role in the transformation of the industrial sector in India since the Second World War period. The economic and political conditions during the Second World War and post-war periods gave rise to a spate of M&As.\textsuperscript{161} The inflationary situation during the wartime enabled many Indian businessman to amass income by way of high profits and dividends and black money.

This led to wholesale infiltration of businessmen in industry during war period giving rise to hectic activity in stock exchanges. There was a craze to acquire control over industrial units in spite of swollen prices of shares. The practice of cornering shares in the open market and trafficking of managing agency rights with a view to acquire control over the management of established and reputed companies had come prominently to light. The net effect of these two practices, viz. of acquiring control over ownership of companies and of acquiring control over managing agencies, was that large number of concerns passed into the hands of prominent industrial houses of the country.\textsuperscript{162} As it became clear that India would be gaining independence, British managing agency houses gradually liquidated their holdings at fabulous prices offered by Indian business community. Besides, the transfer of managing agencies, there were a large number of cases of transfer of interests in individual industrial units from British to Indian hands. Further, at that time, it used to be the fashion to obtain control of insurance companies, for the purpose of utilising their funds to acquire substantial holding in other companies. The industrialists also floated banks and investment companies for furtherance of the objective of acquiring control over established concerns.\textsuperscript{163}

In the run up to independence, the Indian industry began to feel that the private sector will play a key role in accentuating the growth of the Indian economy.

1.6.2. Mergers and Acquisitions during Post-independence Period in India

Although there were quite a few number of M&As in the period immediately following independence, the restrictive policy regime of 1960s and 1970s deterred M&A activity


\textsuperscript{162} Rabi Narayan Kar, 2006, pp. 48-49.

\textsuperscript{163} Id., p. 49.
in India. The policy regime was too restrictive in nature under Indira Gandhi administration since 1966. Old controls returned with more restrictive and complex new regulations. To prevent unhealthy practices entering into its economic systems which are detrimental to public welfare, a series of governmental regulations were introduced for controlling the operations of large industrial organisation in the private sector. Important regulations among these were the Industrial Development and Regulation Act, 1951, Monopolies and Restrictive Trade Practices Act, 1969 and Foreign Exchange Regulation Act, 1973. The MRTP Act imposed strong measures to curb the economic power of top business houses. According to this Act, a company or a firm has to follow a pressurised and burdensome procedure to get approval for M&As. The MRTP Act regulated on the expansion of an enterprise, establishment of new enterprise, division of undertakings, consolidation of undertakings, acquisition and transfer of shares of undertakings in order to check concentration of economic power, control the growth of monopolies and prevent various restrictive trade practices likely to result from the operation of economic system.

In this pre reform era, splitting of capacities was encouraged due to licensed raj even at the cost of economics of scale and other related benefits. FERA also looked upon takeovers with contempt by putting lot of restrictions on foreign investments coming in India. As a part of highly restrictive foreign exchange monitoring process, every proposal had to be placed before an inter-ministerial committee on joint venture for approval. Thus the anti-big government policies and regulations of the 1960s and 1970s seriously deterred M&As.

Due to the existence of strict government regulations, Indian companies were forced to go to new areas where capabilities were difficult to develop in the short run. In pursuit of this growth strategy, they often change their organisation and basic operating

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characteristics to meet the diversified businesses and management. All these initiatives were aimed at curtailing the power of the big business houses and dealing with the adverse consequences of the absence of price competition among the established business groups.

But in some cases, Government encouraged M&As. For instance, new provisions granting tax relief were introduced in the Finance Bill of 1967. In addition to that Government encouraged M&As for sick units also. For example, the National Textile Corporation took over a large number of sick textile units and the nationalisation of life insurance business in 1956 lead to the formation of Life Insurance Corporation in 1956 which took over 243 insurance companies.

But in 1970’s a number of mergers took place to avail tax benefits due to introduction of new provisions granting tax relief in the Finance Bill of 1977. The introduction of Section 72A in the Income Tax Act in 1978 led to takeover of sick units by profitable ones. Section 72A allows profitable company (with whom sick company has merged) to carry forward the accumulated losses of sick companies. An example of a merger to reduce tax liability is the absorption of Ahmadabad Cotton Mills Ltd. (ACML) by Arbind Mills in 1979. ACML had an accumulated loss of Rs. 5.34 crores. Arbind Mills saved about Rs. 2 crore in tax liability for the next two years after the merger because it could set off ACML’s accumulated loss against is profit. Another example of takeover is of Sidhpur Mills by Reliance in 1979.

However, it is found that most of the mergers centered around takeover of sick industrial undertaking because of staggering industrial sickness and fiscal and other incentives offered to revive the financial health of such sick industrial undertakings. Mergers between two profit-making companies which occurred simply for economic reasons were not common. But these policies which were introduced to promote public welfare hampered the economic growth of our economy. Our economy lagged far behind as compared to other economics of the world. So our government has to review its entire policy framework and introduced economic liberalisation measures.

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168 Rabi Narayan Kar, 2006, p. 50.
169 Id., p. 49.
170 I.M. Pandey, 2000, p. 1102.
171 Gurminder Kaur, 2005, p. 28.
1.6.3. Post-1990 Period

Though in the mid-seventies, the Government initiated certain liberalisation measures like progressive loosening of import controls and permission to Indian companies to raise foreign currency loans abroad and initiation of little steps towards liberalisation in the post-1985 period, the real opening up of the economy started with the statement of Industrial Policy made on 24th June 1991. In the era of globalisation and market economy, the Industrial Policy Resolution of 1956 was found out of tune. The new industrial policy of 24th July 1991 envisaged liberalisation and competitive environment. Its main thrust has been to unfetter the spirit of enterprise and expose the economy to greater competition, internal and external. The new industrial policy was in drastic diversion to 1956 policy. The basic changes in the new policy relate to industrial licensing, foreign investment and technology collaboration, the role of public sector and the future treatment of large industrial houses governed by the MRTP Act.\textsuperscript{172} The Industrial policy statement issued by the Government of India on the 24th July 1991 stated:

“The attainment of technological dynamism and international competitiveness requires that enterprises must be enabled to swiftly respond to fast changing external conditions that have become characteristics of today’s industrial world. Government policies and procedures must be geared to assisting entrepreneurs in their efforts. This can be done only if the role played by the government were to be changed from that of only exercising control to one of providing help and guidance by making essential procedures fully transparent by eliminating delays”.\textsuperscript{173}

This resulted in the introduction of changes in policies relating to industrial licensing, foreign investment, technology imports and governmental ownership of industry. The reforms also encompassed scrapping of monopolistic MRTP Act by deleting most of the sections restricting the expansion of an enterprise, industrial deregulation, changes in FERA, relaxation of regulations governing FDI, foreign capital and technology which

\textsuperscript{173} \textit{Id.}, p. 3.
subjected Indian industry to a major restructuring. This restructuring process is leading to an unprecedented rise in business strategies like mergers, demergers and acquisitions. The present business environment has thus altered radically with the changes in economic policies and introduction of new institutional mechanism. It is now characterised by globalisation, opening up of the economy and necessity for diversification. This industrial transformation has provided a launch pad for the corporates to grow and expand through M&A strategy. With the increasing competition and the economy heading towards globalisation, the corporate restructuring activities are expected to occur at a much larger scale than at any time in the past, and are stated to play a major role in achieving the competitive edge for India in international market place.

The strict government regulations of 60’s and 70’s could not fully stop M&A activity prior to 1990s in India. Prior to 1990s, M&A strategy was employed by several corporate groups like R.P. Goenka, Vijay Mallya and Manu Chhabria for growth and expansion of the empire in India in the eighties. Some of the companies taken over by RPG group included Dunlop, Ceat Tyres, CESC, KEC International, Phillips Carbon Black etc. Mallya’s United Breweries (UB) group was straddled mostly by M&As, through its acquisition of Best and Crompton, Mangalore Chemicals, Western Indian Enterprises, etc. Not only that, the NRI’s like Swaraj Paul (failed hostile takeover attempt of Escorts and DCM) and the Chabrias (Shaw Wallace, Mather and Platt, Hindustan Dorr Oliver, Dunlop, Falcon Tyres etc.) were also active in takeover bids. Board for Industrial and Financial Construction (BIFR) has also been active in arranging the merger of sick units with healthy ones as part of their revival package.

Since the mid-nineties, the concept of mergers and acquisitions has caught like fire. They have become very popular from all angles, policy considerations, businessman outlook and even consumer point of view. Even though such transactions create

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174 Gurminder Kaur, 2005, p. 2
177 Gurminder Kaur, 2005, p. 4.
monopoly, consumer activities do not oppose them. They have even got a patent form our highest judiciary as mentioned earlier. The Indian economy has undergone major transformation and structural change following the economic reforms introduced by the Government of India in 1991.

In 1991, the restrictive provisions of the Monopolies and Restrictive Trade Practice Act relating to licensing for expansion of enterprises, amalgamations and takeovers of business enterprises, and acquisition of foreign technology and foreign investment were removed. This was done as such restrictions hampered the expansion, diversification and upgradation of technology required for international competitiveness, which had become imperative with the opening up of the economy. The Foreign Exchange Regulation Act (FERA) was substantially altered in early 1993 with the intention of reversing the earlier policy of restricting foreign investment to the activity in which the State took an achieve role in promoting.

All restrictions on FERA companies with respect to borrowing funds or raising deposits in India as well as taking over or holding stakes in Indian companies were removed. Indian companies and Indian nationals were allowed to start joint ventures abroad and accept directorship in overseas companies which was earlier prohibited. This was accompanied by various other reforms in the financial sector. New capital issues were completely deregulated. Private mutual funds and Foreign Institutional Investors (FIIs) were allowed to enter the capital market. The Foreign Exchange Management Act (FEMA) was introduced in 2000 which allowed companies to invest 100 percent of the proceeds of their American Depository Receipts/Global Depository Receipts issues for acquisitions of foreign companies and direct investment in joint ventures (JVs), wholly-owned subsidiaries (WOS) without any profitability condition. Indian parties investing in JVs/WOS outside India were permitted to invest $100 million as against the earlier limit of $50 million. The change in policy regime in 2005 allowed Indian firms to invest in entities abroad up to 200 percent of their net worth without any probability exchange

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178 Id., p. 5.
earning condition. At present, Indian companies are permitted to invest up to 400 percent of their net worth in joint ventures or wholly owned subsidiaries abroad under the automatic route. In the liberalised economic and business environment, ‘size and competence’ have become the focus of every business enterprise in India as companies realise the need to grow and expand in businesses that they understand well. Indian corporates have undertaken restructuring exercising to sell off non-core businesses and to create a stronger presence in their core areas of business interest. Merger and acquisition have emerged as one of the most effective methods of such corporates restructuring and have therefore become an integral part of the long-term business strategy of corporates in India. Three distinct trends can be seen in the mergers and acquisitions activity in India after the reforms in 1991.

In the first wave of M&As (i.e. 1990-95), the Indian corporate houses seem to have been bracing up to face foreign competition. This was a period of intense investment activity. A wave of consolidation swept the Indian industry as companies tried to prepare for the potential aggressive competition in domestic and overseas market through M&As (to achieve economics of scale and scope). In the second wave (i.e. 1995-2000) there was increased activity in consolidation of subsidiaries by multinational companies operating in India, followed by the entry of several multinational companies into Indian markets, through the acquisition route with liberalised norms in place for foreign direct investments (FDI). Evidence shows that almost 40 percent of the inflow of foreign direct investment into India during the second half of 1990s came through cross-border M&As.

It is argued that merger bids by multinationals accelerated in India since the mid-1990s as a result of mismanaged financial sector reforms as well as higher interest rates consequent on poor macro-economic management.\textsuperscript{186} Kumar (2000) argued that such mergers have potential damaging consequences for capital formation, the balance of payments, technology transfer and competition.\textsuperscript{187} The factors influencing foreign acquisitions by Indian firms could be to gain market access for exports, horizontal or vertical integration, capture of brand names, access to technology and global leadership aspirations.\textsuperscript{188}

The third wave of M&As in India evident since 2000 is that of Indian company venturing abroad and making acquisitions in developed and other developing countries, for gaining entry into international market. Indian company have been actively pursuing overseas acquisition in recent years. The opening up of the Indian economy and financial sector, huge cash reserves following some years of great profits and enhanced competitiveness in the global market, have given greater confidence to big Indian companies to venture abroad for market expansion. Surges in economic growth and decreasing interest rate have made financing such deals, cheaper. Changes in regulations made by the finance ministry in India pertaining to overseas investment by Indian companies have also made it easier for the companies to acquire abroad. The last few years have seen Indian corporates in several international acquisition deals in developed and emerging markets.\textsuperscript{189} Example are US based soft drink major Coca-cola bought Parle’s Thums up, Limca and Gold Spot Brands, Gillete taking over Indian Shaving Products and Broke Bond merged with Hindustan Lever.\textsuperscript{190}

Since the 1990s, there has been substantial growth of M&As in the Indian corporate sector. The total number of amalgamations during the period 1975-79 were 156. That figure remained at 156 during next quinquennium (1980-81 to 1984-85) and then fell to

\textsuperscript{186} Ibid.
\textsuperscript{189} Pramod Mantravadi and A. Vidyadhar Reddy, 2007, p. 3936.
\textsuperscript{190} T.V. Lakshminarayan, “Corporate Marriages now made in India”, \textit{The Tribune}, 4 April 2000, p. 10.
113 during the period 1985-86 to 1989-90. However, facilitated by changes in the policy environment, the number of mergers rose sharply to 1034 during the period 1990 to 2000. Even if year wise data from the period 1990 to 1999 is seen, the number of mergers has sharply increased from 44 in 1990 to 324 in 1995 to 422 in 2000.

The number of M&As which were just 291 in 1990-95, rose to 743 in 1995-2000 and 1370 in 2000-06. Thus, it is evident that this trend is sharper since the latter half of the 1990s. Another visible trend is that mergers account for around one-third of total M&A deals in India. It implies that takeovers or acquisitions are the dominant feature of M&A activity in India, similar to the trend in most of the developed countries.

Thus, it is clear that the structural adjustment programme and the new industrial regime adopted by the Government of India allowed business houses to undertake without restriction any programme of expansion either by entering into a new market or through expansion in an existing market. Indian industries experienced shocks after the initiation of liberalisation of the economy in 1991. Post-liberalisation Indian industrial sector witnessed substantial rise in M&A activity in the industrial and financial sectors of the economy. The giant Hindustan Lever Limited employed M&A as an important growth strategy by merging with TOMCO. The Ajay Piramal group has almost entirely been built up by M&As. The south based, Murugappa group built an empire by employing M&A as a strategy. Some of the companies acquired by Murugappa group includes Parry Agro Industries, Coromondal Fertilisers, Bharat Pulversing Mills, Sterling Abrasives, Cut Fast Abrasives etc. Ranbaxy Laboratories limited and Sun Pharmaceutical Industries have also grown through M&As. During the

197 Gurminder Kaur, 2005, p. 29.
decade of nineties, there has been plethora of M&As happening in every sector of Indian Industry. Not to forget the M&As in known and big industrial houses like Reliance (the famous RIL-RPL merger and RNLR-Reliance Power merger), Tata group and Birla Group. Thus following the liberalisation and deregulation of Indian economy in 1991, organisations are passing through a phase of change as never witnessed before. The new business environment has provided Indian organisations an opportunity to become global organisations through M&As and expansion plans.

1.6.4. Recent Emerging Scenario

The present era in M&As is driven by the desire of Indian Industries to go global and with standing global competition. The Indian Corporate sector has realised that if M&As are planned and executed properly can provide great opportunity of growth, cost saving, technology up gradation and capturing market beyond the national boundaries.

The increased competition in the global market has prompted the Indian companies to go for mergers and acquisitions as an important strategic choice. Among the different Indian sectors that have resorted to mergers and acquisitions in recent times, telecom, finance, FMCG, construction materials, automobile and steel industry are worth mentioning. With the increasing member of Indian Companies opting for M&As, India is now one of the leading nations in the world in terms of M&As. Acquisition of foreign companies by the Indian businesses has been the latest trend in the Indian corporate sector. Favourable government policies, buoyancy in economy, additional liquidity in the corporate sector and the dynamic attitudes of the Indian entrepreneurs are the key factors behind the changing trends of M&A in India. Some of the prominent acquisitions by Indian companies in the recent past are as follows:

201 Ibid.
Outbound Deals

- On January 30, 2007, Tata Steel purchased 100% stake in Corus at 608 pence per share at $12.2 billion. The deal is the largest Indian takeover of a foreign company. The combined entity will be world’s fifth largest producer of steel. The acquisition of Corus is a redefining deal in the steel industry and will pave the way for Tata’s steel growth over the next several decades.202

- In February 2007, Aluminum and Copper major Hindalco Industries acquired Canadian Company Novelis for $ 6 billion. The acquisition made Hindalco the global leader in aluminum rolled products and one of the largest aluminum producers in Asia.203

- Tata Motors in March 2008 acquired luxury auto brands Jaguar and Land Rover from Ford Motors for $ 2.3 billion.

- The Oil and Natural Gas Corporation took control of Imperial Energy Plc for $2.8 billion in 2009.

- Dr. Reddy Lab acquired Betapharm through a deal worth $597 million.

- Videocon acquired Daewoo Electronics Corporation for $729 million.

- One of the India’s Largest IT companies HCL Technologies Ltd acquired the British based Axon group Plc’s SAP consulting firm for $0.662 billion in an all cash deal. The deal has catapulted HCL into the top 15 global players in the Enterprise Application Services (EAS) business.204

- In June 2010, Bharti Airtel acquired the African assets of Kuwaiti telecom operator Zain for $10.7 billion. The deal made Bharti Airtel the fifth-largest mobile operator of the world with operations across 18 countries.205

204 Ernst and Young, 2010, p. 8.
205 For details, see, Ernst and Young, 2010 p. 8; also see “Bharti Seeks Funds for Zain buyout”, The Tribune, 28 May, 2010, p. 17, also see “Bharti Airtel Bets Big on Africa”, The Tribune, 1 July 2010, p.16.
In August 2010, Airtel announced its intention to acquire Telecom Seychelles to further strengthen its African operations. It acquired 100% state in Telecom Seychelles for $62 million.\textsuperscript{206}

In June 2012, Piramal Healthcare acquired US-based Decision Resources Group (DRG) for about Rs. 3400 crore to strengthen its position in the research and consulting services space.\textsuperscript{207}

**Inbound Deals**

- In 2007, Vodafone acquired 66.98 percent stake in Hutichson-Essar for $11.08 billion.

- Marking the largest-ever deal in the Indian pharma industry, Japanese drug firm Daiichi Sankyo in June 2008 acquired the majority stake of more than 52.5 percent in Ranbaxy for over Rs. 15000 crore ($4.5 billion). The deal made the combined company 15\textsuperscript{th} biggest drug maker globally.\textsuperscript{208}

- Japanese Telecom giant NIT Docomo picked up a 26 percent stake in Tata Teleservices for about $2.7 billion in November 2008. As a result of the alliance, the partners expect to expand mobile communication operations in the fast growing Indian mobile market, aiming to increase operating revenue and achieve steady business growth.\textsuperscript{209}

- Abott Laboratories acquired healthcare solution business of Piramal Healthcare Ltd. for $3.72 billion.

- In June 2011, the UK’s BP bought 30 percent stake in Reliance Industries oil and gas blocks for $7.2 billion. It was termed as historic and transformational as it will combine BP’s world-class deep water exploration and development capabilities with Reliance’s project management and operations expertise.\textsuperscript{210}

\textsuperscript{206} “Now Airtel to Acquire Telecom Seychelles”, *The Tribune*, 12 August 2010, p.15.

\textsuperscript{207} “Piramal to buy US firm for 3400 crore”, *The Tribune*, 17 May, 2012, p. 15.


\textsuperscript{209} Ernst and Young, 2010, p. 9.

\textsuperscript{210} For further details, see, “Reliance Industries, BP Sign $7.2 billion deals”, *The Tribune*, 22 February 2011, p. 15.
• It August, 2010, Cairn Energy agreed to sell its majority stake to Vedanta in a deal that is valued at $9.6 million. The cabinet nod to deal on 30 June 2011 sent a positive signal to foreign investors.211

• In 2012, Diageo Plc agreed to pick up 53.4% stake in United Spirits in a multi-structured deal for a total of Rs. 11,166.5 crores.212

• On 24 April 2013, Abu-Dhabi based Etihaad Airlines announced its decision to purchase 24% stake in Jet Airways for Rs. 2058 crores.213

M&A Deals between Indian Companies

• HDFC Bank acquired Centurion Bank of Punjab for $ 2.4 billion in one of the largest mergers in financial sector in India in February 2008.

• Merger of Bank of Rajasthan with India’s largest private sector bank in an all share deal valued at about Rs. 30.41 billion in May 2010 which gave ICICI Bank sustainable competitive advantage over its customers in Indian banking.214

• RNLR born out of demerger of Dhirubai Ambani’s Reliance in 2005 merged with Reliance Power in a mega Rs. 50,000 crore deal in July 2010. The combined entity had over 60 lakh shareholders-the largest for any entity in the world.215

• Mahindra and Mahindra acquired 55.2% stake in the Reva Electric Car Company Ltd. of Bangalore for Rs. 45 crore. The buyout has made the Mahindra group a strong global player in the electric vehicle space.216

• Satyam which was on the brink of collapse after the fiasco created by Ramalingam Raju in January 2009 was acquired by Tech Mahindra, a unit of

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213 For further details, see, “Jet-Etihad Stake Sale being Examined: PMO”, The Tribune, 3 July 2013, p. 1; also see, Vibha Sharma, “Jet-Etihad Deal Cleared, but with Some Riders”, The Tribune, 30 July 2013, p. 2.
Mahindra and Mahindra in April 2009, and renamed as Mahindra Satyam. Tech Mahindra bought the remaining stake in Mahindra Satyam at about $1 billion in 2012 and became India’s fifth largest software exporter. This deal has fully integrated the two companies.\(^{217}\)

- In a biggest ever merger in the Indian Pharmaceutical Industry, Sun Pharmaceuticals acquired Ranbaxy from its Japanese parent Daiichi Sankyo in a deal valued at $4 billion.

- In the biggest acquisitions in the Indian e-commerce segment, Flipkart acquired leading fashion e-tailer Myntra.com in deal estimated at about $300 million in May 2014.\(^{218}\)

As we have seen, year 2007 was a remarkable year for Indian M&A market with many prominent deals like Tata-Corus, Hindalco-Novelis, Vodafone acquiring Hutchison Essar etc. taking place. This vibrancy in M&A environment was due to positive regulatory mechanism, globally accepted business processes and a robust and optimistic investment climate.\(^{219}\)

But in 2008-09, there was a slump in M&A activity. Euro zone crisis and a recession in the world economy had an impact on Indian economy also. That phase was only temporary and our M&A deals revived back. The M&A database captured showed that substantial acquisition of shares deals which were 71,531.8 crore in 2008-09 rose to 598 deals of Rs. 1.4 lakh crore in 2009-10 and further to 608 deals of Rs. 1.9 lakh crore. The average deal size rose from Rs. 234 crore in 2009-2010 to Rs. 319.7 crore in 2010-2011.\(^{220}\) The number of deals rose to 1235 in 2011-12 but deal value was Rs. 1.76 lakh crore only.\(^{221}\) This means lot of small deals taking place. The average deal size for

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\(^{218}\) For further details, see, Deepa Kurup, “Flipkart Buys Out Myntra for $300 m”, The Hindu, 23 May 2014, p. 14.


financial year 2012 declined to US $ 86.6 million, a significant reduction when compared to financial year 2011 which stood at US $ 143 million. The financial year 2012 has not been so encouraging at the global level, with the decline in number of deals as well as a decline in the size of the larger deals. The highest amount paid for a deal stood at just Rs. 5,747 crore in 2012-13 as compared to Rs. 22,295 crores in the preceding year. The number of mergers also declined significantly during 2012-13. They fell by 37.2 percent from 282 in 2011-12 to 177 in 2012-13. This was the lowest number of mergers to have taken place in the last 14 years. Thus financial year 2012-13 was not so encouraging for the Indian economy with drop in volume and value of M&A deals.

Table 1.1: Data on Mergers and Acquisitions (2008-2013).

<table>
<thead>
<tr>
<th>Year</th>
<th>Acquisitions (Rs. crores)</th>
<th>Number of Acquisitions</th>
<th>Number of Mergers</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008-09</td>
<td>71,531.08</td>
<td>N.A.</td>
<td>N.A.</td>
</tr>
<tr>
<td>2009-10</td>
<td>1,39,920.99</td>
<td>598</td>
<td>229</td>
</tr>
<tr>
<td>2010-11</td>
<td>1,94,400.61</td>
<td>608</td>
<td>213</td>
</tr>
<tr>
<td>2011-12</td>
<td>1,75,195.15</td>
<td>1220</td>
<td>282</td>
</tr>
<tr>
<td>2012-13</td>
<td>1,15,815.17</td>
<td>966</td>
<td>177</td>
</tr>
</tbody>
</table>


If we see the Table 1, we can see that, value of M&A deals was highest in financial year 2006-07 and 2007-08. But soon recession in US and Euro zone crisis lead to decline in M&A activity in 2008-09 and 2009-10. But in 2010-11 and 2011-12 Indian economy recovered. But again 2012-13 saw a decline in M&A activity. Global economic headwinds such as uncertainties pertaining to the Euro zone and the slow recovery of the US economy has marred M&A activity in financial year 2012.\footnote{Ernst and Young, “Transactions 2012: Maturing M&A markets”, retrieved from \url{http://www.ey.com/publication/rwliassets/transaction_2012_Brochure_Final.pdf}, accessed on 15 January 2013 at 12.42 pm.} This was aggravated by bad news at home such as slowdown in reforms, rising interest rates, the depreciating rupee slow GDP growth and last but not the least the uncertainty created by retrospective tax amendments introduced as a result of Supreme Court’s judgement in Vodafone case and introduction of GAAR.
But the negative investors sentiment, lead to postponement of GAAR till 2016. As a result, the M&A activity which declined in 2012 again surged up in 2013. The first half 2013 review by Thompson Reuters revealed that India’s overall merger and acquisition activities surged by 12.13 percent compared to the first half of 2012.\(^{225}\) The major deals happening during this period were Appollo Tyres acquisition of US based Cooper Tire and Rubber Co. for 14,500 crore, Unilever, British parent increasing stake in Indian arm i.e. Hindustan Unilever by 14.78 percent to 51.55 percent for $ 3.573 billion\(^{226}\) and the Jet-Etihad deal etc. Moreover, as regards 2014, data from industry tracker merger market showed an increase of 47% in the value of deals between January and June this year as compared to first six months of the previous year.\(^{227}\) Thus, India Inc. is growing up for a season of mergers and acquisitions, with major deals taking place both domestically and abroad. This shows that though high inflation, currency devaluation, corruption and governance related issues remain a concern, the long-term economic fundamentals of the country are intact.

With the fiscal deficit, weak capital market, depreciating rupee level and Euro Crisis, the current macro-economic environment is challenging both at national and global level.\(^{228}\) There is a little bit decline in M&A activity in last few years but the growth story of India continues on the back of domestic demand and consumption as seen in 2013 and first half of 2014. Thus, post-1991 was the period of de-regulation, de-control, de-licensing, de-canalisation and de-bureaucratisation of industry and trade.

India is projected to register a growth rate of over 7% in the current fiscal, which indicates that Indian companies are positive about their business prospects. Though high inflation, global slowdown, currency devaluation, corruption and governance related


\(^{226}\) This deal, accounted for 40.1 percent of inbound M&A in terms of value. For further details, see, “Indian mergers and acquisitions down 6.8 percent to $23.8 billion so far this year: Report,” retrieved from http://profit.ndtv.com/news/corporates/article-indian-mergers-and-acquisition-down-6.8_percent_to_23.8_billion-so-far-this_year-report-328112, accessed on 22 November 2013 at 2.02 pm.


issues remain a concern, the long-term economic fundamentals of the country are intact which is a positive sign.

Amidst these structural changes, Indian M&A is clearly witnessing some key trends in recent times. A clear trend that is emerging now is the strategic shift in the behavioural pattern of Indian entrepreneurs, who are now more willing to sell a part or whole of their stake to exit their business to foreign players.\textsuperscript{229} i.e. focus of deal activity shifting from outbound to inbound. The reason for this trend reversal is the weak Indian rupee which has made Indian businesses attractive. The premium or attractive valuations from foreign players had made the Indian businesses look attractive. Attractive valuations from foreign players, given the significant growth opportunities in India are prompting Indian entrepreneurs to evaluate exits. Moreover, there is significant shift in attitude and behaviour of Indian entrepreneurs who have the open mind to evaluate strategic buyers to exit their age-old businesses and this trend is expected to continue. Few successful exits in the recent past by the Indian promoters include Daiichi-Ranbaxy and Abott-Piramal. British Petroleum’s equity stake in Reliance Industries is one of the largest deal of 2011, which demonstrates the desire of Indian promoter group to bring in foreign technology and capital to enhance business capabilities.\textsuperscript{230} The acquisition of 53.4 percent stake in United Spirits for Rs 11,166.5 crore by Daiego in a multi-structured deal, is expected to provide relief from the heavy losses faced by the Kingfisher Airlines. Another such prominent deal is Vedanta acquisition of Cairn India. Another reason for this trend could also be the relatively stable Asian economy in comparison with few others uncertain European economies.\textsuperscript{231}

These were trends of M&A during various periods of Indian corporate history. To conclude, we can say that Indian business environment has altered radically with the changes in economic policy and introduction of new institutional mechanism post-1990s. Major legislative changes and removal of restrictions has lead to a substantial size in M&A activity in the industrial and financial sector of the economy. Companies

\textsuperscript{229} Ibid.  
\textsuperscript{230} Ibid.  
are being taken over, units are being hived off, joint ventures tantamount to acquisitions are being made on.\textsuperscript{232}

As India Inc becomes increasingly coveted as an M&A destination, it also becomes more susceptible to vagaries and uncertainty of the global economic climate.\textsuperscript{233} Current lines are clearly challenging (both from the economic and regulatory perspectives) which could pose a challenge to M&A environment in India, however, the long term outlook on M&A in India remains robust.

However, there is a silver running in this dark cloud of economic woes. The weak rupee has made the Indian business attractive and is likely to further prompt an increase in inbound acquisitions. Furthermore, due to dormant equity markets, several PE investors are likely to take the M&A route to exit their investments. To add to this, some Indian companies with strong balance sheets are expected to make outbound acquisitions, since valuation in developed markets are relatively low due to the global economic slowdown.\textsuperscript{234}

In my views, merger waves will continue in India in the upcoming years and India’s M&A environment would continue to grow stronger and bigger in years to come. As Western economies continue to show signs of weaknesses, Indian corporate sector should aim at seizing this time and opportunity to strengthen India’s market position, while expanding its global footprint.

\textbf{1.7. Significance of the Study}

Dramatic events in mergers, takeovers, restructuring and corporate control fill the newspaper headlines almost daily. Merger and takeover issues have become central public and corporate policy issues. Restructuring through M&As represent a new industrial force that will lead the major economies of the world that practice these arts


to new heights of creativity and productivity. They have become a sort of necessity and need of the modern financial and economic environment. In this competitive era of technological change, Indian industrialists have realised that M&As are the best way to compete with overseas companies.

In view of the significance of M&As in today’s highly competitive, liberalised and globalised world, an attempt is being made to study M&As in the Indian scenario. The study will benefit academic researchers and students of corporate law as it has made a detailed analysis of all the legal concepts and laws on M&As in India.

It will serve the society by pinpointing the shortcomings in the laws on mergers and acquisitions in India and suggesting suitable modifications. The study will prove to be immense help to business executives who are considering a merger or acquisition proposal by pinpointing problem areas which lead to failure of mergers such as non-integration of human resources. Lastly, the study will also serve the legal community especially the corporate lawyer by providing the detailed discussion on procedural requirements, laws and judicial pronouncements of the courts from time to time.

1.8. Object and Purpose of the Study

Around the globe, a restructuring wave in the form of mergers, amalgamations, takeovers and acquisitions is sweeping the corporate sector the world over. Mergers and acquisitions have become universal practices in the corporate world covering different sectors within a nation and across the globe for securing survival, growth, expansion and globalisation of the enterprise and to achieve multitude of objectives mentioned before. M&As are strategic decisions leading to maximisation of a company’s growth by enhancing its production and marketing operations. Indian corporate sector is not left behind and have realised and used M&As to play a major role in achieving competitive edge for India in international market place. Therefore, the foremost object and purpose is to study the historical trends, recent scenario and motives of M&As in the present economic scenario in India.

Involvement of social interests in the economic activities implies application of law with a view to regulate the activity to ensure safeguard of general public interest. But the legal and regulatory provisions governing M&As are myriad and complex involving
high degree of experience and skill. Therefore, the primary and basic objective of the study is to analyse the various legal enactments, regulations and rules framed there under which regulate M&A activity in India. Various laws will be critically analysed to bring forth the lacuna in them. The study also intends to make certain suggestions to remove those lacunas so that M&As can be carried out more smoothly and conveniently as they give dramatic boost to an economy. The study will make a humble attempt to suggest requisite improvements in our newly implemented competition regime in India to give an impetus to merger and acquisition activity in India.

A lot of research has been done abroad on various issues concerning mergers and acquisitions. No doubt, few studies have been done in India but they have left many vital issues concerning mergers untouched. For instances, the issue of due diligence and audit of intellectual property assets in M&As vis-à-vis intellectual property laws in India, evolution and trends of M&As in India during various periods including merger waves, the concept of cross-border mergers in the light of fallout of Bharti-MTN deal, the new takeover regime i.e. Takeover Code, 2011 and its ramification for M&A deals and the last but not the least, the nascent competition regime and its impact on M&A have not been much explored in India. The present study aims to fill these voids. The study will also touch upon highly controversial issues such as Vodafone tax dispute and GAAR.

Above all, the study also intends to explore an altogether untouched subject i.e. our newly enacted Companies Act, 2013. As we all know, Companies Act is the primary legislation regulating mergers and amalgamations in India, so this study will explore the journey from provisions regulating mergers under Companies Act 1956 to Companies Act 2013 highlighting appropriate judicial rulings which lead to some of those changes. Last but not the least, the kernel objective of this effort is to make available between the covers of one study the salient, though scattered literature on this subject. It is hoped that this study will fill the vacuum efficiently.

1.9. Review of the Existing Literature

No one can complete one’s research without reviewing existing literature on the subject because to study present and make analysis for the future, the study of the past is
cardinal as it provides guidance and exhibits points which need particular attention. It also enables us to pinpoint the research gap on the subject so that we as a legal researcher can fill that gap and our research can be fruitful for the future researchers. Although there are number of books, articles, working papers, newspapers articles and magazine articles on the subject but some of these are too important without which the study would be incomplete which are discussed below.

Books

S. Ramanjum in his book *Mergers et al.*\(^{235}\) gives detailed exposition to provisions of Companies Act, 1956 drawing parallels with English Companies Act from which many provisions in the Indian Act have been derived. The author has given commentaries of renowned authors on company law such as Charlesworth, Gower and Palmer. The narration of Indian Companies Act is highlighted by extensive extracts of relevant Indian precedents, which impart a more definitive contour to an important and a somewhat imprecise piece of legislation. It explains the concept of reverse merger and amalgamation under SICA through Board for Industrial and Financial Reconstruction. The author delves into the amalgamation of banking and government companies. The author also highlights the taxation aspects of amalgamation, hiving-off business, demergers, reduction of capital and buy-back of shares. The valuation, accounting and secretarial practice in relation to amalgamation is well highlighted. Last but not the least, the author has done detailed case studies on Tata’s acquisition of Corus in the form of financial structuring of Overseas Acquisition-Tata’s approach. It highlights the complete story of Tata Group (acquisitions like Corus and Jaguar Land-Rover), and gives us a glimpse into the strength of Tata Group in executing the acquisition and running all the groups companies across several continents. The author has also covered the biggest story in the annals of Indian corporate history-the revival and resurrection of Satyam by its acquisition by Tech Mahindra.

Rachna Jawa in her book entitled *Mergers, Acquisition and Corporate Restructuring in India*\(^{236}\) deals with the structural changes in Indian Industries post-liberalisation.

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period. The increase in number of M&A deals also accompanies the increase in value of such deals. The author also concludes that M&A has also assumed added significance in view of disinvestment policy of the Government of India. The author has highlighted in brief the legal and regulatory framework for mergers and acquisitions in India as well as in developed countries like United Kingdom, Europe and USA. More importantly, this book contains ten case studies of restructuring through mergers and acquisitions that have taken place in India during the last decade. The work based on extensive statistical exercises, brings out the major issues that actually crop up in a restructuring exercise. The book has also given a brief review of prominent national and international works and research in the field of mergers and acquisitions.

R.K. Singh in his book *Amalgamation and Merger of Companies and the WTO-An Indian Perspective*, attempts to make a comprehensive study of the issues arising out of amalgamation and merger of companies in India in the WTO regime as well as in the perspective of other ventures regulating international trade and commerce. With the onset of reforms to liberalise the Indian economy in July 1991, a new chapter has been started and after the formation of WTO which has a great impact on all the sectors of the Indian economy, new challenges are emerging though new heights are also in sight. However, the book while examining the impact of WTO has also examined a number of other collateral issues like historical perspective, statutory framework for mergers and amalgamation, the role of corporate governance in mergers and amalgamation. Lastly, the role of courts and tribunals in mergers and amalgamation as well as social and humanitarian aspects on protection of shareholder and employees during merger and amalgamation is analysed.

The Institute of Company Secretaries of India in its *Handbook on Mergers Amalgamations and Takeovers Law and Practice*, reiterates the fact of rise of corporate restructuring activities in the light of liberalisation, globalisation and the increasing competition. This handbook disseminates information on myriad of legal and

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regulatory provisions, taxation, accounting, financial and judicial aspects of mergers, takeovers as well as demergers. The book also includes practical tips, frequently asked questions and specimen schemes, orders and model resolutions for the benefit of users. The third edition of the book has also included a chapter on due diligence required in merger and acquisition transaction.

**Kamal Ghosh Ray** in his book titled *Mergers and Acquisitions: Strategy Valuation and Integration*, ²³⁹ presents various conceptual and critical aspects of the subject in a systematic way. The book provides a detailed account of the financial aspects, including the valuation of company, business, strategic approaches to M&A, principles of valuation, techniques of valuation. It has compared the business valuation standards of North America with that of India. It has also dealt with the accounting for mergers and acquisitions and importance of due diligence in mergers and acquisition. The author has also highlighted the most critical aspects of M&As i.e. the post-merger integration. The author has also made detailed case studies of ABB-Flakt merger, Grasim’s Acquisition of L&T Cement Plants and the acquisition of Indo Rama Textiles Limited by Spentex Industries Limited.

**Prasad G. Godbole** in his book *Mergers, Acquisitions and Corporate Restructuring*, ²⁴⁰ states that the significance of mergers, acquisitions and corporate restructuring cannot be over emphasised in a rapidly changing economic environment and consequent pressure on companies to cope with the emerging challenges. The main objective of the book is to enrich the students with all strategic, legal, accounting, taxation, funding and valuation concepts and issues relating to M&As and corporate restructuring in the Indian and global context. A number of numerical examples have also been given to enable the reader and a commerce student to easily understand the legal accounting and taxation concepts of mergers and acquisitions. The book is divided into five sections. Section one contains the basic concept of corporate restructuring followed by various forms of corporate restructuring, motives behind M&As, synergies

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from an M&A activity and various tactics involved therein. Section two focuses on some important laws governing mergers, acquisitions and corporate restructuring. Section three contains the main accounting and taxation norms relating to M&As. Section four explains the concept of funding of acquisitions, mobilisation of borrowed funds and management buyouts. Section five has four real life case studies Tata-Corus, ICICI-ICICI Bank, Birlas acquisition of L&T and demerger of tower business of RCOM and RTL into RITL.

**Seth Dua and Associates** in their book *Joint Ventures and Mergers and Acquisition in India*,\(^\text{241}\) state that foreign corporations have adopted both the organic and the inorganic route to establish their business enterprises in India. The books deals with company law issues in mergers and acquisitions, contractual issues, exchanges control issues, labour and employment issues, and taxation issues in mergers and acquisitions. The book is not intended to be a commentary on the provisions of Indian law as such, but instead acts as a guide to an attorney as well as to a person unacquainted with the laws of India. A foreign investor may also need to look at the dispute resolution mechanism, available in India to resolve disputes, if any, between the joint venture partners. A chapter in the book has been devoted to anti-trust, competition and consumer law issues in mergers. Provisions of MRTP Act and Competition Act relevant to mergers and acquisition have been analysed.

**Ernst and Young** in their book *Master Guide to Mergers and Acquisitions in India: Tax and Regulatory*,\(^\text{242}\) states that to add to the success of a deal, efficient tax and regulatory planning is essential and this book provides an outline for the both. Alongside with that, the book provides an insight into the role and concerns of the private equity investor in the Indian market today, as well as the key issues to be considered by a company when contemplating a cross-border merger-inbound and outbound- with an Indian company. The book also deals with a concept which the researcher has not found elsewhere i.e. tax due diligence. The book outlines the parameters and necessity of a comprehensive tax due diligence report when undertaking


any corporate transaction. Moreover, with the advent of Direct Tax Code, which will be effective in the near future, will significantly affect the Indian regulatory regime. The book provides an insight into anticipated changes by highlighting key provisions that have been clarified/changed in the new code such as CFC rules etc, and their possible impact going forward. The book provides a comprehensive outline of the key tax and regulatory factors to be considered while undertaking corporate transaction in India such as merger/amalgamation, buy back of shares, capital reduction, slump sales, itemised sales etc.

J.C. Verma in his book, *Corporate Mergers Amalgamation and Takeover, (Concept, Practice and Procedure)* reiterates that around the globe, corporate mergers and amalgamations as well as acquisitions and takeovers have become universal practices in the corporate world covering different sectors within the nations and even across the borders for securing survival, growth, expansion and globalisation of the enterprise and achieving multitude of objectives. In this background, the importance of mergers, amalgamations, restructuring, acquisitions and takeovers has increased. The author has divided book into separate parts viz; introduction, corporate mergers and amalgamations, acquisitions and takeovers and the case studies on the topic have been organised under a separate section. Moreover, important judicial pronouncement on corporate mergers as well as acquisitions have been highlighted in a separate section. The fifth edition of the book which the researcher has gone through also deals with the human aspects of mergers, demergers, splits, hiving-off business, valuation of shares and exchange ratio, reverse mergers, funding for mergers and takeovers, post merger reorganisation, employee’s stock option scheme, insider trading and buy back of securities. The book has made an indepth study on all the above topics. But this book came in 2008, in the past six years, a lot of changes have taken place in laws on mergers and takeovers. New Companies Act, Takeover Code, new Combination Regulations etc. have come up. The book, no doubt a comprehensive study lacks all the above matters. It does not deal with competition and taxation aspects of mergers and acquisitions.

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Sridharan and Pandian in *Guide to Takeovers and Mergers*²⁴⁴ deal with law on mergers and amalgamation with reference to corporate and tax laws and also focusing on contemporary issues like the Takeover Code, demergers, accounting standards AS-14 issued on the subject. The book begins with history of the law on mergers and amalgamations. The law on mergers and takeovers has been explained along with decision of various courts and tribunals. Various chapters of the book have been written in the order in which the event unfolds in the case of mergers and amalgamations. The book also delves with the powers of BIFR for revival of sick companies, important provisions of income-tax act on mergers and amalgamation, sales or value added tax as well as excise implications of mergers and amalgamations. A chapter of the book is devoted to amalgamation of banking companies as well as producer companies each.

D.P. Mittal in his book *Competition Law and Practice*²⁴⁵ makes a section-wise analysis of Competition Act as all the provisions of the Act have now been enforced. The Competition Commission has been set up and fully functional. The author states that encouraging competition rather than curbing monopolies should be the aim and object of the law. But the MRTP Act focuses on the latter. Therefore it became obsolete in the light of international economic developments and was replaced by Competition Act, 2002. Far reaching amendments made by Competition Act, 2007 have been incorporated.

H.K. Saharay in his book *Textbook on Competition Law*²⁴⁶ studies the background of competition law in different parts of the world including Europe, U.K., U.S.A., Australia and India. It has traced the development of competition law in India with the help of the report of High Level Committee on Competition Policy and Law-the Raghavan Committee. The book also contains section-wise commentary of Competition Act 2002 alongwith the relevant case law. The author subscribes to the views of the Hon’ble Court in Steel Authority of India’s case that the main objective of competition

law is to promote economic efficiency using competition as one of the means of assisting the creation of market responsive to consumer preferences.

**Vinod K. Singhania and Kapil Singhania** in their book *Direct Taxes Law and Practice*\(^{247}\) is a comprehensive book on the subject of direct taxes. It makes the reader aware of the nature and scope of the main provisions of the direct taxes. The authors also delves on how a statutory provision has been interpreted by different courts of law on different occasions. The whole income-tax act has been explained along with suitable illustrations. The book has been helpful to the researcher in properly understanding the provisions of income-tax act impacting mergers, amalgamations and acquisitions. A chapter of the book has been devoted to business restructuring through amalgamation, demergers and slump sale and provisions of income-tax act impacting such business restructuring.

**M.A. Weinberg, M.V. Blank and A.L. Greystoke** in their book *Weinberg and Blank on Takeovers and Mergers*\(^{248}\) is considered as the most authentic book on the topic for its lucid explanation of various concepts such as mergers, takeovers, takeover bid and various category of mergers and takeovers. The concept of control of a company has been given detailed exposition through its meaning, classification and advantages of control to the controllers of the company and the law regarding abuse of the control Weinberg and Blank in their book had identified four main classes of motives of takeovers and mergers. The book also highlights the choice of form of mergers or takeovers for a company planning to do so. The author has categorised the methods for takeover into four categories- acquisition for cash, exchange of shares, acquisition of the undertaking or shares of both companies by a new company and lastly acquisition of minority held shares of a subsidiary by the parent. The rights and duties of directors, their companies and other persons in regard to mergers and takeovers are also discussed. Lastly, the book also highlights the defences available to the target company against the take-over bid. But the book has made an authentic and comprehensive


analysis of issues relating to mergers and takeovers keeping in mind the law in United Kingdom.

**Nicholas A.H. Stacey** in his book *Mergers in Modern Business*\(^{249}\) has carried out both retrospect as well as prospect for mergers in UK. The book was written in 1966. The author says that past few years of industrial reconstruction has brought with it numerous mergers after a lengthy period of tranquility. Though many mergers were carried out in 1920s and 1930s, these were mainly defensive in character. The author categorises pre-war mergers as defensive in intent, post-war mergers were aimed at superior asset utilisation and more recent ones at concentration. But the merger of the future are likely to have integration as their principal motive. The book traces primarily the growth and trends of mergers in UK. But necessary references to position in USA and other European countries are also found at appropriate places. The author also highlights the structure of mergers and reasons for mergers. The benefits and advantages of post merger integration are also discussed. He emphasises the need to encourage research in this area, which could help industrialists and merchants to maximise on their endeavours.

**K.R. Sampath** in his book *Law and Procedure for Mergers/Joint Ventures Amalgamations Takeovers and Corporate Restructure*\(^{250}\) attempts to bring out the provisions of the Indian law relating to the ‘birth’ of a company i.e. formation and registration of a company, causes for its ‘illness’ i.e. deficiency or inefficiency in its management, finance, labour, human resources, technology or market, ways and means for its improved health i.e. diversification, restructure, amalgamation, mergers, demergers, takeovers and management buyouts, growth i.e. non-organic growth by acquisitions or organic i.e. from within. The author has discussed reconstruction of companies through mergers, amalgamation, demergers, takeovers. The issues of rehabilitation of sick industrial companies, valuation of shares, due diligence, corporate governance, bank mergers, foreign investment in joint ventures etc in India are also discussed. The author has quoted at the relevant places, the legal provisions as far as


possible. Certain related legislations, rules, forms, legal procedure and compliance requirements are also referred to. Draft outlines of relevant schemes are also given at appropriate places.

Anand G. Srinivasan in his book *Law Relating to New Takeover Code 2011* elaborately discusses the SEBI (Substantial Acquisitions of Shares and Takeovers) Regulations, 2011 by making comparison with SEBI (Substantial Acquisition of Shares and Takeover) Regulation 1997. The author also quotes decision of SEBI and SAT at appropriate places. The author also gives the report of the Takeover Regulation Advisory Committee (TRAC) at the end of his book. The author is of the view that considering the growing level of M&A activity in India and the increasing sophistication of takeover market, it had become necessary to review the 1997 Code. So SEBI constituted the TRAC and based on the recommendations of TRAC, Takeover Code 2011 was notified.

Rabi Narayan Kar in his book, *Mergers and Acquisitions of Enterprises* examines the issues and trends of mergers and acquisitions of business enterprises in India in the post-1991 period. For this purpose, it also draws upon the experience of selected developed countries in this regard. It tries to identify the trends of mergers and acquisitions for different sectors of the Indian industry and the reasons thereof. This book also investigates empirically the impact of mergers and acquisitions on performance of corporate entities. For this purpose, micro level analysis for the selected companies has been carried out to investigate the impact of mergers and acquisition on the basis of financial variables. This book also tries to empirically probe the impact of mergers and acquisitions on share price behaviour of selected Indian companies. Lastly, a detailed study of the merger and acquisition process of one selected company i.e. Ranbaxy has been carried out to understand the process of integration and its success. But this book, does not carry any legal aspects of mergers and acquisitions and is better suited to the requirements of students of business economics.

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R. Santhanam in his book, *A Guide to Amalgamation of Companies with Special Reference to Tax Planning*\(^{253}\) highlights and illustrates the various requirements of company law, law relating to monopolies and restrictive trade practices and tax implications of amalgamations of companies. This book also contain judicial pronouncements of the courts. In addition to these, valuation and accounting aspects of amalgamation has also been dealt with. But widespread economic reforms undertaken since 1991, significantly changed the economic environment of the country and made provisions of Monopolies and Restrictive Trade Practices Act inadequate and obsolete. Considering the requirements of time, Competition Act 2002 was enacted. Provisions of Company Law and Income Tax Act have also been changed. Accounting procedures have also undergone changes with the introduction of AS-14 issued by Institute of the Chartered Accountants of India. Therefore, this book could not take into account the recent and upcoming developments in the field of mergers and acquisitions in India as no updated edition has been published.

Gurminder Kaur in her book, *Corporate Mergers and Acquisitions*\(^{254}\) makes an attempt to empirically evaluate the post merger performance of the merged companies using the value-added metrics, namely, Economic Value Added, Market Value Added and Return on Net Wealth, to ascertain whether mergers have resulted in value addition for shareholders or not. For this, the author had taken a sample of 223 companies which merged during the period of 1990-2000. This study also tries to identify the motives of corporate mergers in India as avowed in their merger schemes. This study also focuses on measuring the performance of merged companies before and after the merger in terms of their motives. A very brief discussion on legal and regulatory framework for mergers and acquisitions in India has also been taken. A brief discussion on Competition Act 2002 has also been taken, but important amendments were made to the act in 2007 and no updated edition of the book has been brought.


Max M. Habeck, Fritz Kroger and Michael R. Tram in their book, *After the Merger*,\(^{255}\) point out that value creation is the main motive of the companies involved in mergers. They have pointed out the problem areas where the merging companies fail miserably and mergers fail to create value. In order to handle these problem areas the companies should set the stage for post-merger integration before the deal closes. This book offers an especially powerful blueprint on how post-merger integration should be done from the practical experiences of merging companies globally. They have highlighted the seven strategies for successful post-merger integration which can also be called ‘Seven Rules of Mergers Success’. Companies with mergers in mind-no matter what their size-would do well to consider these principles before signing on the dotted line.

J. Fred Weston, Kwang S. Chung and Susan E. Hoag in their book, *Mergers, Restructuring and Corporate Control*,\(^{256}\) provide conceptual framework of mergers so as to increase one’s understanding of events of mergers and corporate restructuring. The authors deal in mergers and other forms of restructuring from the US perspective. They try to analyse through empirical study the mode of payment in merger, reasonable premium one may expect from a bidder and effect on share price if firm engages in stock repurchase or makes a stock or debt issue. This book enables its reader to form an opinion on public policy towards mergers and acquisitions that should be adopted in US. It tries to provide answers to the question-whether US form of restructuring is good for business, economy, investors, consumers and workers through case studies of important mergers in US.

V.S. Kaveri in his book *Financial Analysis of Company Mergers in India*,\(^{257}\) made the first pioneering attempt in India to measure the success of company mergers in the context of revival of corporate sickness by making a careful and indepth financial analysis. This study conducted an indepth analysis of nine specific cases of mergers that took place during the period 1975-84. It attempted to measure the effectiveness of

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mergers by comparing actual performance of mergers vis-à-vis various expectations laid down in respect of mergers.

**Enrique R. Arzac** in his book, *Valuation for Mergers, Buyouts and Restructuring*, presents a comprehensive approach to corporate valuation. It treats in detail the valuation of mergers, acquisitions and leveraged buyouts, the assessment of asset restructuring options and recapitalisation plans. It contains valuation procedures, examples for the different types of transactions and contractual arrangements commonly encountered in practice. It also discusses the theoretical underpinnings and the research evidence that justifies the recommended procedures. But this book takes into account the tax laws, other legal practices and accountancy methods prevalent in the US. Indian perspective is lacking.

**Articles**

**Amit Ghosh** in his article “The Mechanics of Mergers and Acquisitions” agrees that acquisitions, mergers and amalgamations have become strategic devices in the hands of more and more firms not only to stay in competition but also to extend their dominance. This article takes a passing view of the factors contributing to mergers and acquisitions before briefly outlining the requirements under the prevailing company law, tax laws and accounting standard especially focusing on amalgamations. As the discussion on the subject would not be complete without touching the issue of financing of mergers and the commonly used methods of determining the share exchange ratio. The author has also briefly touched the human resource perspectives in mergers and acquisitions.

**Shubham Khare and Niharika Maske** in their article “An Analysis of Mergers, Amalgamations and Acquisition under the Competition Act, 2002” touches on a very important issue of mergers, amalgamations and acquisitions under the Competition Act, 2002. The author is of the view that combinations whether in the form of merger/
amalgamation or acquisition are very important for a developing economy like India as they provide a number of advantages from financial growth of the corporations to market extension to diversification of business, to improve profitability and to achieve economics of scale. The article elaborates on the purpose of Competition Act. It also makes an effort to analyse the provisions of Competition Act, 2002 that govern the regulation of combinations (mergers, acquisitions and amalgamation of enterprises) and the potential conflict that would result by the proposed notification of the substantive provisions of the Act with respect to mergers, acquisition and amalgamations, with other Indian laws and regulations especially the Companies Act 1956 and the Securities and Exchanges Board of India (Substantial Acquisition of Shares and Takeovers) Regulation 1997.

P.L. Beena in his article “Trends and Perspectives on Corporate Mergers in Contemporary India”\textsuperscript{261} says that the corporate sector in India has witnessed a substantial growth of mergers and acquisitions since the 1990s. The new economic environment has facilitated M&As since the 1990s. The author highlights the policy reforms of 1990s and their impact on M&As from a period ranging from 1990-2006. The research paper concludes that a large number of mergers were between firms belonging to the same business groups and product lines with a view to increase their respective controlling blocks and market power. The average performance of acquiring firms based on all indicators during 1990-2005 was relatively better than that of a manufacturing sector as a whole. The author in his study does not find significant evidence of improvement in their performance in terms of various parameters during post-merger phase as compared to the pre-merger period. The study argues that it is not efficiency-related factors that influenced M&A activities in the Indian corporate sector. It is rather the growth of the firm in terms of their asset size, market share and the strengthening of the controlling bloc. The author highlights the need of an appropriate competition policy to address the possible anti-trust implications of overseas mergers for India as well as to deal with M&As among Indian enterprises.

Reeti Sonchhatra in her article “Regulation of Mergers under Indian Competition Law”\textsuperscript{262} has analysed in brief the various legislations regulating mergers in India such as MRTP Act, 1969, Companies Act, 1956 and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997. The author also touches upon the laws with respect to merger regulation in US, EU and UK. But the major focus of her study is the merger regulation under Indian Competition Act, 2002. The author emphasises on the need to have a single window system for regulation of mergers for all the countries. There should be single competition law for all countries.

Darshan Kumar in his article “Amalgamation of Companies”\textsuperscript{263} has elaborately discussed the meaning of amalgamation by quoting various texts and judicial pronouncements of English and Indian courts. The Part one delves on meaning of amalgamation, whereas Part two explains the taxation implications of amalgamations. In views of the author, amalgamation has far reaching effects on the assessment of both the amalgamating and the amalgamated companies. Amalgamation benefits not merely the shareholders but the industry in general, consumers and the exchequer. Therefore, a consistent and practical approach on the subject should be adopted to encourage it.

Karan Gupta in his article “Income Tax Aspects of M&As”\textsuperscript{264} writes that mergers and acquisitions have been the principal tools of corporate restructuring for a very long time. Fulfilling the requirements of company law alone is not sufficient for claiming various tax benefits and exemptions which are specifically provided to amalgamated companies. The fulfillment of conditions mentioned under section 2(1B) of Income Tax Act 1961 will enable the amalgamated company to avail the benefits stipulated under the Income Tax Act. According to the author, available tax benefits may lead to more and more consolidation activity which may lead to the revival of the economic health of the country. The tax benefits of the mergers would gain in importance as the economy opens ups and on a domestic front facilitate the functioning of many defunct companies.

\textsuperscript{263} Darshan Kumar, “Amalgamation of Companies”, Taxation, April 1976, pp. 1-11.
K.R. Chandratre in his article “Legal, Regulatory and Procedural Aspects of Amalgamations”\(^{265}\) explains the meaning of amalgamation with the help of various judicial pronouncements. The amalgamation of companies involves compliance with a number of statutory requirements involving elaborate and cumbersome procedures. The procedure for complying with the multifarious requirements are enumerated in step by step easy to understand manner in this article. The procedure for amalgamation under Company (Court) Rules 1959 is discussed here under. In addition to this, the author also deals with contentions issues involved in mergers such as share exchange ratio, appointed date and effective date and amalgamation through BIFR under SICA.

Vikas Varma in his article “Company Law Issues in Mergers”\(^{266}\) seeks to raise certain legal issues involved in the whole process of mergers/amalgamation in India. The mergers and amalgamations in India are effected under the provisions of the sections 390 to 396A of the Companies Act, 1956. The author highlights the companies that are eligible for merger in India, the position of foreign companies and unregistered companies, the need of approval to a scheme of amalgamation form the shareholders, creditors and financial institutions. The authors also emphasises in brief the duties of court in sanctioning a scheme of amalgamation and effect of the sanctioning of the scheme. The author also highlights through various judicial pronouncements, the persons entitled to raise objection to scheme of amalgamation. Various provisions of company law as well as certain judicial pronouncement has been highlighted at various places in the article. The authors says that court has not only the power to sanction the scheme but also to supervise it and make necessary modifications to it under section 392 of the Companies Act.

T.V. Ganesan in the article “Impact of Various Legislations and Regulatory Measures on Mergers and Acquisitions”\(^{267}\) writes that Indian legal system consists of various legislature and regulations, some of which have a great bearing on M&A. The author

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has discussed the provisions of the Companies Act 1956, SEBI Takeover Code 1997, Takeover Code 2011, Competition Act 2002 and its impact on M&A, Impact of Direct Taxes Code and Companies Bill 2009 on M&A Transactions, the impact of FDI policies on M&As has also been looked into. Any acquisition or merger cannot be accomplished unless all the procedural requirements passed by the laws of the land are fulfilled. The author has made an attempt to state the impact of various legislations and regulatory measures on M&As.

Pramod Mantravadi and A. Vidyadhar Reddy in their article “Relative Size in Mergers and Operating Performance: Indian Experience”\(^{268}\) are of the view that in today’s globalised economy, mergers and acquisitions are being increasingly used the world over as a strategy for achieving a larger size and asset base, faster growth in market share and for becoming more competitive through economies of scale. One of the important factors that could affect the outcome of a merger is the relative size of the acquiring and the acquired companies. This paper studies the impact of the mergers on the operating performance of acquiring companies by examining some pre-and post merger financial ratios with a sample of firms chosen from all mergers involving public limited and traded companies in India between 1991 and 2003. The result suggest that relative size does make some difference to the post-merger operating performance of acquiring firms, when the acquiring and acquired firms are of different relative sizes as measured by market value of equity.

Rajesh Relan in his article “Revamp of the Takeover Code in the Offing”\(^{269}\) has analysed the amendments suggested by Takeover Regulations Advisory Committee (TRAC) in its 139-page report. The article was written in 2010 when Takeover Code 2011 had not come into existence. According to the author, the TRAC in its report to the SEBI has proposed sweeping changes which would mark a paradigm shift in the takeover of listed companies. This write up makes a journey through the proposed amendments. The author opines that TRAC has strived to strike a balance between the


interest of the promoters, the acquirers and the minority shareholders. He makes an appraisal of proposed changes which according to him are laudable and would go a long way in the protection of the interests of the public shareholders.

**T.V. Ganesan** in his write-up on “SEBI’s New Takeover Code, 2011 and its Impact on Corporate India” studies and highlights the important features and aspects of the new Takeover Code and their impact on corporate India. The impact of changes in Takeover Code on acquirers, promoters and investors is highlighted. Offers for which public announcement has been made under the repealed regulations shall continue and would be completed under the repealed regulations. According to the author, the new Takeover Code is going to change the landscape of corporate India, would facilitate competition and encourage investment.

**Ajay Halder** in his article “Merger and Amalgamation: Judicial Inroads” views that as a matter of fact judiciary plays an important role in the sanction of merger and amalgamation. Therefore, the main purpose of the present paper would be to make an enquiry into the role of judiciary in the process of merger and amalgamation. The author has highlighted the judicial angle through four aspects. The first aspect deals with courts role in sanction of merger and amalgamation, second aspect deals with part played by the court in determining commercial merit of the scheme, third aspect concerns with effective date of amalgamation and the final issue deals with court’s power to dispense off with special procedure which may be required for amalgamation.

**Tahir Ashraf Siddique** in his article “Pertinent Intellectual Property Issues in Mergers and Acquisitions: An Analysis” attempts to analyse the various issues relating to intellectual property transfer in a merger and acquisition deal. The author emphasises on the importance of intellectual property valuation in mergers and acquisitions. He highlights the intellectual property valuation issues in mergers and acquisitions. The article recognises certain key areas that firms need to focus in their Intellectual Property

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Due Diligence. It also endeavours to examine the post-merger issues arising on account of transfer of intellectual property assets in mergers and acquisitions. Finally, the article identifies certain case laws that has developed in United States in this area and lessons for Indian transaction lawyers for cases that may come up in future.

**C.S. Balasubramaniam** in his article “An Appraisal of SEBI Takeover Code, 2011”\(^\text{273}\) has examined the concept of takeover, its objectives and modes. According to the author, the SEBI introduced a formal Takeover Code in 1997 which helped set basic rules for mergers and acquisitions in the nascent market scenario for such transactions. But the rules left scope for interpretation leading to many disputes. That’s why SEBI did a further review of the Takeover Code in 2002. The new Takeover Code, 2011 based on the recommendation of the Takeover Regulations Advisory Committee (TRAC) headed by Shri Achutan, has made a paradigm shift towards global best practices as is evident from a number of changes made. In this article, it has been attempted to have an appraisal of the main revisions in the new Takeover Code, analyse them and bring out the emerging issues for further discussions.

**Anni Singh and Himani Sharma** in their article “Cross-Border Mergers and Acquisitions: Indian Companies Aiming to be World Leaders”\(^\text{274}\) states that realising the economics of scale to be gained as well as privatisation, globalisation and deregulation acting as the necessary catalysts, cross-border M&As have increased in frequency. The authors explained the modes of inbound investments i.e. a foreign company wanting to start operations in India as well as Indian Companies while making outbound investment. The authors emphasise that Indian companies have a long way to go. An Indian Company is not permitted to merge with a foreign entity, this prohibition should be removed in order for companies to be able to explore all possible restructuring options. The recommendations of J.J. Irani Committee to remove the long drawn procedures for sanction of mergers should be followed as it can go a long way in eliminating the obstructions to mergers in India.


Sayantan Gupta in his article “Cross-border Mergers and Acquisitions in India”\textsuperscript{275} gives an overview of the cross-border mergers and acquisitions in India and the applicable Indian laws such as Companies Act, 1956, Competition Act, 2002, the tax laws, the Foreign Exchange Management Laws and the Securities Laws. He discusses at length overseas direct investments which have been playing a part in the cross-border deals. He finally examines the various transactional issues to which thought be given by any company proposing to have a cross-border merger with a foreign company or acquire its assets for finalising an acquisition. He also gives a gist of reforms suggested by J.J. Irani Committee on laws on mergers in India. At last, he says that mergers and acquisitions come in various forms and investor needs to understand what best suits their needs.

Renuka Medury and Rinie Nag in their article “Cross-Border Mergers: Implications under the Competition Act, 2002”\textsuperscript{276} have attempted to delineate the contours of the application of the Indian Competition Act to cross-border mergers. The authors have first analysed the provisions relating to mergers under the existing Act and the transition from the earlier Monopolies and Restrictive Trade Practices Act, in terms of paradigm shift. In second part, they have made an analysis of the definitional aspect of cross-border mergers. In the third part, they have examined the scope of extra-territorial application to competition laws in today’s globalised society, with reference to both Indian and foreign laws.

A. Jayagovind in his article “Look at vs. Look Through: Legal Implications of Vodafone Judgement”\textsuperscript{277} analyse in detail the judgement of the Hon’ble Supreme Court in Vodafone’s Case. The case has generated intense public debate mainly because of fiscal implications. According to the author, the case provides us a broad-picture of modern corporate strategies and the legal responses thereto. This case was appeal from the judgement of Bombay High Court in Vodafone International Holdings B.V. v.  

Union of India. Look through and look at represent two distinct approaches adopted by our courts while analysing the issues arising out of these corporate strategies. From this point of view, these judgements could be a good case study of the interface between law and business strategies. The Bombay High Court followed look-through approach whereas the Supreme Court adopted look-at approach. According to the author, look-at and look-through approaches may appear as distinct from each other when literal interpretation is narrowly understood i.e. when a text or transaction is treated in isolation from the overall context but merge with each other when the text or transaction is interpreted in the context understood in the broad sense of the term.

Bhagwan Jagwani in his article “Rising Trend of Cross-Border Mergers and Acquisitions in Global Corporate Restructuring”278 focuses on the prominence of cross-border mergers and acquisitions as a form of global corporate restructuring. The article highlights the rising trend of cross-border M&A activity, its preference by companies across the globe and in India. The article also shows the rising trend of contribution of cross-border M&A in the total FDI inflows in our country. It also focuses on the impact of cross-border M&A on firm’s performance and future prospects of cross-border M&As as a corporate restructuring strategy.

Sachin Goyal in his article “Merger Control Regime in India”279 has discussed the provisions of Competition Act, 2002 dealing with mergers and acquisitions alongwith the Combination Regulations 2011. According to the author, with enforcement of provisions related to mergers and acquisitions as provided in Competition Act, 2002, Indian economy has entered into a new era of merger control regime in line with the rest of the world. While this regime is decades old for EU and US, it is pretty new for Indian corporates and economy as a whole. At the heart of the regime is the fundamental principle that M&A deals which are likely to adversely affect competition in the market in India will not be permitted to be consummated.

Divi Jain in her article “Impact of Mergers and Employees of the Company”
highlight the fact that although the merging entities give a great deal of importance to
financial matters and the outcomes, human resource issues are the most neglected ones.
The studies show that most of the mergers fail to bring out the desired outcomes due to
people related issues. The author highlights that the impact on the employees range
from anger to depression. The usual impact is decrease in the morale, motivation and
productivity leading to merger failure. The M&A leads to stress on the employee, which
is caused by the differences in human resource practices, uncertainty in the
environment, cultural differences and differences in organisational structure and
changes in the managerial styles. The authors also offers solution to the above problem.
The author also make few case studies of successful human resource management in
M&A.

V. Mariappan in his article “Mergers and Acquisitions: The Human Issues and
Strategies” attempts to study the human resource responses to mergers and
acquisitions. The article has touched upon some of the important human issues in
mergers and acquisitions and thrown some light on managing the human resource
responses. According to the author, at the root of the failure of many mergers and
acquisitions is the fact that managements have failed to address the broader human
relations issues during the critical period leading up to or following merger or an
acquisition. But these human issues could be handled smoothly with the help of well
thought out and planned strategies.

Amitabh Robin Singh in his article “A Substantial Step Forward: Mergers and
Amalgamations in the Companies Act, 2013” has discussed some of the new
concepts introduced in this legislation. In this article, the author will focus on the major
ramifications of the companies Act 2013 on mergers and amalgamations in India. The
author concludes the Companies Act, 2013 is progressive on many fronts such as from

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permitting to allow Indian Companies to merge into foreign companies and settling the law on mergers between subsidiaries and holding companies.

**Amit Kumar and Arvind Giriraj** in their article “Mergers and Acquisition Transactions: Examining in Role and Relevance of Intellectual Property” 283 study the increasing importance of intangible assets in the context of mergers and acquisitions. The author explains the techniques of valuation of intellectual property in M&A. He also highlights the procedure of transfer of intellectual property in the name of the new owner and technicalities involved in the transfer. All business whether large or small can add significant value and revenue by exploiting the full potential of their valuable intangible assets.

**T.K.A. Padmanabhan** in his article “Incidence of Stamp Duty on Amalgamation” 284 explains the stamp duty implications with regard to amalgamation. According to author, amalgamation under the Companies Act 1956 has all the trappings of a sale and the amalgamation order of the court is an instrument which requires to be stamped under the Indian Stamp Act, 1899. The author quotes the judgement of the Supreme Court in Hindustan Lever’s case clearly settling the law as to the nature of the order sanctioning an amalgamation. The author says that it is high time that the Indian stamp Act is amended to make this legal issue more clear so that unnecessary litigation is avoided.

**Bijesh Thakker and Gautam Bhatt** in their article “Key Issues in a Cross-Border Mergers and Acquisitions Transaction” 285 have emphasized that cross-border deals are becoming a regular feature of the Indian mergers and acquisitions landscape. The article highlights in brief the key regulatory and legal issues to be considered in a cross-border mergers and acquisitions deal in India by a foreign company.

**T.V. Lakshminarayan** in his article “Corporate Marriages Now Made in India” 286 has highlighted the high tide of mergers and acquisitions in India after the liberalisation

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policies of nineties by giving illustrations of mega deals that have taken place between Indian companies and their foreign counterparts. He states that how Indian companies are being encouraged to go global by Indian government by regular liberalisation of its policies. As many multinationals entered India, Indian companies are also encouraged by Indian government to play the same game abroad and become Indian multinationals in the process.

David G. Fubini, Colin Price and Maurizio Zollo in their article “The Elusive Art of Postmerger Leadership”\textsuperscript{287} are of the view that integrating two companies following a takeover or merger has become a highly sophisticated exercise in recent years. They state that while many combinations extract short-term financial synergies efficiently, they may ultimately fall short of creating a truly healthy new company with strong brands and customer relationship, motivated employees and a thirst for innovation. They also suggest the means for CEO and other senior managers to attain the elusive goal. They have to focus on five issues: move quickly to mould the top team, communicate the corporate story, establish a performance culture, championing the interests of key external stakeholders and balancing speed with time to reflect on and absorb integration specific learning.

1.10. Research Gap

A lot of research has been done abroad on various issues concerning mergers and acquisitions. A few studies which have been done in India have left many vital issues concerning mergers untouched. This study aims to full that vacuum efficiently. For instance, the researcher could not find any concrete research on the issue of due diligence of intellectual property assets in mergers and acquisitions vis-à-vis intellectual property laws in India. The Competition Act is in its nascent stage and its impact on M&As has not been explored much in India. Moreover, the impact of new combination regulations on M&As has not been studied. The researcher could not find much literature on trends of mergers and acquisitions during various periods of history and the mergers waves in India. Except for a few brief studies here and there, the concept of

cross-border mergers with its various implications has not been explored to depth in India. Last but not the least, the researcher could not find any literature on the newly enacted Companies Act 2013 and its impact on mergers and amalgamations. The study will also highlight the lacunas and areas of concern in all the laws on M&As as updated till date. This exercise has not been done before also and that too in such a comprehensive manner and under one roof. Therefore, this study aims to fill these voids.

1.11. Data Base and Methodology

The present study is mainly doctrinal. Doctrinal research has been done by researcher using descriptive, analytical and critical methods of research. Sources of analytical study are books of both national as well as international authors, national and international journals, articles, newspaper articles, newspaper reports, business magazines, projects reports, unpublished Ph.D. thesis and dissertations etc. Besides the above mentioned sources, various judicial pronouncements on the subject are thoroughly surveyed and critically analysed. To make the findings of the study to reach a meaningful conclusion, an attempt is being made to discuss, examine and critically evaluate different provisions of Companies Act, 1956, Companies Act, 2013, Competition Act 2002 and Combination Regulations there under, FEMA and regulations thereof and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. Thus, critical method of research is used along with descriptive and analytical to find out lacunas in present laws and regulations.

To analyse the trends of mergers, data is collected from monthly review of Indian economy by Centre for Monitoring Indian Economy (CMIE), World Investment Report (WIR) of United Nations Conference on Trade and Development (UNCTAD) and various other surveys.

1.12. Hypothesis of the Study

The hypothesis involved in the study are:

- **H₁**: The post-1991 liberalisation policies and removal of restrictions has lead to substantial rise in merger and acquisition activity in the industrial and financial sector of the economy.
• **H3:** Our old Companies Act, 1956 did not meet the requirements of today’s globalised world and its successor the Companies Act, 2013 also raises certain areas of concern.

• **H3:** No doubt, our competition law is progressive and forward looking but still there are certain areas in it which need deliberation and further modification.

• **H4:** SEBI Takeover Code has been overhauled recently but certain loopholes still exist.

• **H5:** Uncertainty created by retrospective tax amendments introduced to overcome the judgement of Supreme Court in Vodafone case and introduction of GAAR has hampered merger and acquisition activity in India.

• **H6:** The lack of uniformity of acceptance of a single stand point throughout the country on levy of stamp duty on property transferred through amalgamation has created a lot of confusion & litigation and high stamp rates are a hurdle to merger and acquisition activity in India.

• **H7:** Though overall role of courts is supervisory, in a scheme of merger or amalgamation, but the approval is not a mechanical act and the courts do not merely act as rubber stamp.

• **H8:** One of the reasons for the failure of merger or acquisition transaction is the non-integration of human resources of both the transferor and the transferee company.

• **H9:** Proper and timely due diligence, valuation and audit of intellectual property rights before entering into merger and acquisition is indispensable for its success.

**1.13. Research Questions**

The present study makes an attempt to provide answers to the following questions:

1. Does the procedural and regulatory framework for mergers and acquisitions promotes corporate restructuring through mergers or acquisitions or does it require further amendments?
2. What are the reasons that motivate a company to merge or acquire with special reference to India?

3. What are recent emerging trends in the field of mergers and acquisitions?

4. What are the implications of new Takeover Code for the acquisitions and takeovers in the corporate sector?

5. Is the competition policy enacted by our legislature promotes or hinders M&A activity in India?

6. What are the taxation implications of mergers and acquisitions in India?

7. Do retrospective tax amendments and general anti-avoidance rules have lead to the downfall of M&A activity in India?

8. Do the courts merely act as a rubber stamp in sanctioning a scheme of amalgamation?

9. Why the valuation and due diligence of IPRs has gained significance in M&A deals nowadays?

10. Why many mergers fail even after accomplishing all the steps in the deal successfully?

11. How the courts have dealt with disputes regarding share exchange ratio in mergers and acquisitions?

1.14. Chapterisation Plan

The study is divided into seven chapters:

Chapter-I: Introduction

This chapter introduces us to the complex world of mergers and acquisitions in India. The chapter gives us a detailed exposition of various concepts involved in M&As. It also studies extensively the motives, advantages and disadvantages of mergers. It also traces the evolution and growth of M&As during various periods of history to the recent emerging scenario.
Chapter-II: Legal and Regulatory Framework for Mergers and Amalgamations

This chapter throws light on the provisions of Companies Act, 1956 i.e. (section 391 to 396A) regulating mergers and amalgamations in India along with cases. It traces the journey of regulatory framework for mergers and amalgamations from 1956 Act to the recently enacted Companies Act, 2013. Judiciary has always played a very important role giving new expositions to this dynamic concept. A separate section has been devoted to this. A separate section has also been devoted to the important changes introduced by the Companies Act, 2013.

Chapter-III: Legal and Regulatory Framework for Takeovers and Acquisitions in India

This chapter highlights the law on takeovers/acquisitions in India. Legal and regulatory framework for takeovers/acquisitions comprises of the Listing Agreement, provisions of Companies Act, 1956/Companies Act, 2013 and most importantly the SEBI (Substantial Acquisitions of Shares and Takeovers) Regulations, 2011. The Regulations aim to protect the interest of investors in M&A transactions. The important provisions of the regulations have been analysed by quoting judgements of Supreme Court, High Courts and Securities Appellate Tribunal. But still the Regulations raise certain areas of concern which need to be deliberated upon. This chapter attempts to highlight those grey areas in the Regulations.

Chapter-IV: Competition Act and its Impact on Mergers and Acquisitions

This chapter will focus on transformation and evolution of our anti-trust legislation from MRTP Act, 1969 to our newly enacted Competition Act, 2002. As a critical step to implementing the merger control regime, the commission also notified the Combination Regulations 2011. The relevant provisions of the Competition Act alongwith these Regulations which complete the merger control framework in India are discussed alongwith the relevant cases.

Chapter-V: Taxation Aspects of Mergers and Acquisitions

This chapter studies the tax implications of mergers as well as acquisitions separately. Various tax benefits available to a company on amalgamation under Income Tax Act,
1961 are highlighted with special reference to revival of sick companies through section 72A. The highly controversial issue in Indian taxation history-Vodafone tax dispute and its implications are studied. The impact of GAAR and transfer pricing on M&As is also highlighted. Last but not the least, the issue of levy of stamp duty on property transferred through amalgamation is also analysed.

Chapter-VI: Emerging Dimensions in the Field of Mergers and Acquisitions

This chapter highlights the new and the emerging dimensions in the field of M&As in India. First of all, the dimension which has gained prominence post-2000 is the rise in cross-border mergers and acquisitions in India. The researcher has made an important case study in this chapter, Bharti-MTN deal fallout which brought forward many lacunas in our laws. Second, is the increasing importance of due diligence, valuation and audit of intellectual property rights in mergers to ensure their success. Third, the importance of human resources in M&As have been highlighted. The failure of Air India-Indian Airlines merger due to lack of integration of human resources has brought human resources issues in limelight in any M&A transaction. The approach of judiciary in protecting interest of employees in scheme of merger is also analysed.

Chapter-VII: Conclusions and Suggestions

This chapter concludes the whole study. It also highlights the areas of concern in various laws regulating mergers and acquisitions while forwarding a blue print of proposals so that laws regulating M&As further promote corporate restructuring through mergers and acquisitions.