CHAPTER-VIII

INSTITUTIONAL FRAMEWORK OF AMALGAMATIONS

Takeovers or acquisitions in the free market economy are taken up without any regulation by the State. Of course, there are voluntary Codes like the City Code on Takeover/Mergers. The Wall Street corporate raiders known in the world of acquisitions/takeovers, however, operate by buying sizeable chunks of equity in the open market operations. In India, apart from the tax considerations involving direct tax laws, there is a supervision of the amalgamation proceedings by a number of institutions like Company Law Board and Monopolies and Restrictive Trade Practices Commission. Various parties having direct and indirect interests in amalgamations can also approach the various Courts of Laws, as is the practice the world over.

Broadly speaking, we can discuss the institutional framework (cf. Diagram No.I) in terms of three distinct branches portraying the legal environment, the investment environment and the operational environment of effecting mergers/acquisitions/takeovers.
Diagram 1: Institutional Framework for Amalgamation in India

- INVESTMENT ENVIRONMENT
- OPERATIONAL ENVIRONMENT
- LEGAL ENVIRONMENT

- NORTHERN INDIAN COMPANIES
- MNCs
- INVESTED INDIAN COMPANIES
- TRANSFERRED COMPANY
- AMALGAMATED COMPANY
- RBI
- PUBLIC FINANCING INSTITUTIONS
- CORPORATE INVESTORS
- INVESTORS
- STOCK EXCHANGE
- SOCIAL ACCOUNTABILITY
- CONSUMERS, SUPPLIERS, WORKERS

- COMPANY LAW BOARD
- MRTPC
- COURTS
8.1. Legal Environment:

Apart from judiciary's general sway over the functioning of artificial citizens like companies special bodies have been created to regulate corporate behaviour. These are:

A. Company Law Board (C.L.B.)

According to Section 17 of the Company's Act 1956, the memorandum of company can be altered to accommodate new business only with the consent of the Company Law Board (C.L.B.). In event of such complaints as non-transfers of shares traded in the equity markets, the affected party may approach the C.L.B. Similarly, various constituents of the public at large like investors, suppliers, consumers and workers can also bring to the notice of the C.L.B. any complaints with regard to the procedure of amalgamations. With the recent controversy on Swaraj Paul affair, Narsimhan Committee has suggested more powers to the Board. Even while approaching the Court the various affected corporate entities are supposed to get a clearance report from the Board. All companies registered under Indian Companies Act, 1956 cannot amalgamate without clearance from the C.L.B. The
amendments currently being taken up in Companies Act, may increase the role of C.L.B. further in regulating the growth strategies of Indian private corporate sector.

B. Monopoly and Restrictive Trade Practices Commission (MRTPC).

Monopoly and Restrictive Trade Practices Commission (MRTPC) has been created under the MRTPA, 1969. The Section 20(a) & (b) define a dominant undertaking (or a monopoly house) and Section 23 makes explicit the various provisions with regard to mergers, amalgamations and takeovers with regard to dominant undertakings defined in the Section 20. Any scheme for merger and amalgamation of a monopolistic undertaking can be accomplished with the express sanction of the Court or the Central Government. The Central Government is supposed to act on the advice of MRTPC in case of identified dominant undertakings. MRTPC comes into picture either on the request of Central Government or that of the affected parties. The approval of C.L.B. is applicable to all companies registered in the Indian private corporate sector whereas MRTPC supervises or intervenes on the directives from Central Government in the proceedings of amalgamation only in the case of the large undertakings having assets more than Rs.100 crores. There are various
penalties defined in the MRTPA, 1969 for the companies which amalgamate without the permission of the Central Government. However, Central Government, of late, is not taking MRTPC into confidence while clearing most of the amalgamation applications of big business.

C. Courts:

There is a provision for the intervention of Courts in amalgamation under the Indian Companies Act, 1956, under Section 391. A scheme of arrangement under Section 391 is a scheme which requires the sanction of the Court. The mere fact that a scheme of amalgamation has been approved by the Board of Directors does not make it obligatory for the Court to grant sanction in the scheme of amalgamation. The Court is vested with the powers to issue directions about the transfer of assets and liabilities of the amalgamated company. The High Court sanction is mentioned in details under Section 394 and the Court receives reports from the C.L.B., or the Registrar of the Companies to the effect that the affairs of the Companies have not been conducted in a manner prejudicial to the interests of its members or to the public interest. Sections 17 and 18 of Companies Act lay down how the companies amalgamating shall go about amending the memorandum of association and this process is subject to the jurisdiction of the
Court. Cases with regard to the transfer of shares can also be taken up with the Courts if either of the parties is not satisfied. Courts can be brought into picture in multifarious ways as was evidenced in Shaw Wallace case and Swaraj Paul affair.

8.2. Operational Environment:

There are certain clearances related to the business transactions or contracts involved in the amalgamation proceedings. R.B.I. and Stock Exchanges are the two main intervening institutions between the Board of Directors and investors.

A. Reserve Bank of India (R.B.I.).

With the enactment of foreign exchange Act, 1973, R.B.I. becomes a party to all deals in foreign exchange in the amalgamation process. As is evident from the Diagram, the negotiated deals of purchases of the large bulks of shares may be conducted by the parent companies of the subsidiaries of multinationals between themselves with the non-resident Indians or with the Indian companies. If any payments are to be sought from the department of R.B.I. In the cases of Swaraj Paul, R.B.I. came into picture very prominently in the takeover bid. With N.M.'s entering the takeover scene, the role of R.B.I. has assumed significant proportions.
India is a mixed economy that has all characteristics of a capitalistic economy. We have 14 stock exchanges functioning in the various parts of the country which serve as the primary as well as secondary markets for equity performance shares as well as debentures. Stock exchange operations have been carried out to bring about the change of ownership of the equity holdings which ultimately, determines the control of a company. Though open market operations are not very conducive to smooth takeovers or amalgamations in India, the contending parties often buy shares in the open market operations also. Bajaj had been acquiring the shares of Ashok Leyland in the various stock exchanges of the country, but Hindujas were able to wrest the control of the company by clinching a deal with the foreign collaborators of Ashok Leyland. Similarly, the buying spree of shareholdings by the agent of Swaraj Paul was noted with concern by the managements of Escorts and D.C.M. The managements were able to take preventive measures to foil the bid of takeovers by the Non-Resident Indian.

In fact, the loopholes in the company law in India became all the more evident when Escorts and D.C.M. management refused transfer of shares in the
name of Swaraj Paul though he had acquired these shares in the open market operations. But dispersed shareholders do acquire the right of becoming members of general body of a corporate entity by buying shares in the market and their proxies are collected by the contending parties in an amalgamation bid. In the West, open market operations in takeover bids are very popular. Various stock exchange reforms are being initiated in India and it is assumed that in future stock exchanges shall play a more active role in acquisitions, mergers and takeovers.

8.3. Investment Environment:

The financial stakes involved in the amalgamation bids are institutionalised. The table 8.1 gives the pattern of ownership of corporate securities by the categories of investors. The investments in Indian private sector do not come from household savings directly but they are channelised through the financing and other institutions.¹

². Public Financing Institutions.

a predominant entity in the company finances of India.
## Table 8.1

<table>
<thead>
<tr>
<th>Category of Owners</th>
<th>Paid-up Value of Holdings</th>
<th>%age to Total</th>
<th>Market value of Holdings</th>
<th>%age to Total</th>
<th>%age Increase in Col. (4) over Col. (2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Individuals</td>
<td>522.64</td>
<td>37.58</td>
<td>1,094.47</td>
<td>35.45</td>
<td>109.41</td>
</tr>
<tr>
<td>2. Government and Semi-Government Bodies</td>
<td>20.77</td>
<td>1.49</td>
<td>53.85</td>
<td>1.74</td>
<td>159.27</td>
</tr>
<tr>
<td>3. Financial Institutions</td>
<td>357.19</td>
<td>25.68</td>
<td>722.72</td>
<td>23.41</td>
<td>102.33</td>
</tr>
<tr>
<td>4. Joint-Stock Companies</td>
<td>469.62</td>
<td>33.77</td>
<td>1,169.86</td>
<td>37.89</td>
<td>149.11</td>
</tr>
<tr>
<td>5. Trusts and Charitable Institutions</td>
<td>16.97</td>
<td>1.22</td>
<td>40.44</td>
<td>1.31</td>
<td>138.30</td>
</tr>
<tr>
<td>6. Others</td>
<td>3.66</td>
<td>0.26</td>
<td>6.15</td>
<td>0.20</td>
<td>68.03</td>
</tr>
<tr>
<td><strong>TOTAL (1 to 6)</strong></td>
<td><strong>1,390.85</strong></td>
<td><strong>100.00</strong></td>
<td><strong>3,087.49</strong></td>
<td><strong>100.00</strong></td>
<td><strong>121.99</strong></td>
</tr>
</tbody>
</table>

These institutions frequently operate through the open market operations. The convertibility clause to acquire equity for default in paying loans by the various private sector companies also make these institutions own equity. In fact, at the time of new issues also, a certain proportion of shares is allotted to these institutions and they also acquire shares in the under-writing process for issue of various series of shares of the existing companies. On an average, one/fourth of the equity shares in every private sector organisation is in the name of the institutions like IDBI, ICICI, IFCI, UTI, GIC, and LIC. The promoters of the companies do not have such big holdings in the equity capital of the companies. So even when the promoters are willing to transfer their shareholdings to any other party and an amalgamation bid may not succeed, if the public financing institutions resist.

The role played by LIC in the Escorts and D.C.M. affairs and the role of these institutions in takeover of Shaw Wallace has been discussed in details in the cases reported earlier.

B. Corporate Investors.

Inter-corporate investment is a very well known phenomenon in the 'house' dominated corporate scene of India. Sometimes, there are direct investments
by the flag company of a house in all other companies of the group, at others, a number of companies through a circular chain weave together the inter-corporate investment linkages in such a manner, as to keep the control of various companies in the group in the hands of the holding company for the group. In fact, majority of the amalgamation bids or mergers became successful in Indian corporate world on account of these linkages. These linkages between TISCO, ITC and Tinplate have been discussed in Chapter-IV. In case of Shaw Wallace also, buying out the equity holdings of a multinational corporation by Chhabrias enabled them to wrest the control of the company. The deal between Bajaj and the multinational corporate investors failed, that is why Bajaj was not able to takeover Ashok Leyland.

Apart from the dominant institutions discussed above in the amalgamation bids, various agencies like the ones administering direct taxes also come into play in making an amalgamation success or failure. Ultimately, public at large (which includes the workers and consumers apart from small investors) can also initiate an action with the various legal agencies like C.L.B., MRTPC, Courts and the Central Government.
So it can be seen from the network of institutions created for monitoring amalgamation bids, that the climate for such moves succeeding becomes much more restrictive than it is in the free market economies. This prolongs the time taken in maturation of an amalgamation deal and, sometimes, when a healthy company is taking over a sick company in order to nurse later back to health, such delay may prove fatal.

8.4. Types of Amalgamations in India:

Institutional arrangements or structures devised for managing business are not devoid of the social influences. Lot of debate has been carried on the relative popularity of particular type of business organisations in India. Starting from family proprietorships, business developed into extended family concerns. The Indian corporate sector did not go through a prolonged partnership phase due to the institution of joint family system. As already suggested, the Joint Stock Company system when it became popular in India had a superstructure imposed on it. The superstructure was that of managing agency system. With the phenomenon of 'houses' and interconnected undertakings, the amalgamation moves in Indian private sector of industry had a complexion quite different from that of the Western Corporate World.
There are certain other developments which have to be noted with regard to the environment of amalgamations in India. With the independence, a large number of British companies started withdrawing their stakes in India. At the same time, we observe that after the adoption of import substitution strategy in mid-50's, some multinationals based in USA and other Western countries found it profitable to locate their units even for manufacturing sophisticated products in India. Later, with the enactments of FERA, restrictions were imposed on multinationals having high stakes in the Indian ventures. They were supposed to dilute their equity in their India based subsidiaries. Meanwhile, some of the Indians had made fortunes for themselves in the countries of the West. When the balance of payments situation worsened in India, these Non-Resident Indians (NRI's) were welcomed into India with a number of tax concessions for bringing the much needed foreign exchange.

With the abolition of managing agency system and enactment of the MRTPA, 1969, the amalgamation wave caught up in the Indian corporate private sector. Once the concealed connections of various corporate entities were unearthed by the reports of Enquiry Commissions, business houses thought it proper to
make the interconnections more explicit so that the entities could be brought under the control of the same set of managers/promoters. Various types of amalgamations as contrasted with the legal types discussed in the Legal Environment of Amalgamations are categorised according to the initiators of moves on merger, acquisitions and takeovers as per institutional framework discussed earlier.

1. Legalising the Inter-connections in House Companies.

As we have discussed in the first case of largest corporate giant of India, TISCO, the acquisitions and mergers were prompted for securing more explicit economic ties among the same house companies. Of course, there were some technical reasons as well for these moves. The basic understanding, while reconstructing the relationships between the TISCO, ITC and TCIL, were the fact that all these companies were earlier under the corporate umbrella of the same managing agency TATA Sons Private Limited. The Managing Agency System allowed the holding companies to exercise express control over the operation of all these corporations. The abolition of the system was creating difficulties. In fact, very large number of cases reported by the reports of MRTPC Act under Section 23 relate to big business houses like Karam Chand
Thapars, Birlas and TATAs. Most of the orders were passed in the early 70's immediately after abolition of managing agency, but the trend is still continuing as is indicated by the case discussed in Chapter-IV.

2. Disinvestments by Multinationals.

The acquisitions or takeovers on the Indian corporate sector became common after the enactment of Foreign Exchange Regulation Act, 1973. The multinationals were required to become minority partners in the equity holdings, in case they were not operating in the industries using high technology. Some of the multinationals were not able to retain effective control on the management of the subsidiaries and as such they thought it proper to disinvest their entire shareholdings in the companies. They found buyers for these shareholdings among the established businessmen in India. Once the Indian businessmen acquired sizeable chunks of equity holdings, they, with the help of the dispersed shareholders, wrested the control of the management. In the case of Tinplate, we find that TISCO was able to wrest the control of management completely only after having acquired the shareholdings of Burmah Shell. Sometimes, the multinationals were also forced to part their holdings in the Indian
subsidiaries on account of the reasons which had nothing to do with the Indian environment. The operation of the parent companies or the subsidiaries of the companies in countries other than India, prompted these actions.

3. Restructuring by Multinationals.

When a company, like Unilevers, had stakes in more than one company in India or found it profitable to acquire stakes in more companies, it started behaving in the same manner as native business house in the Indian Corporate World. We find that Hindustan Levers, the main subsidiary of Unilevers in India, started taking over a very large number of existing small sector or medium sector enterprises in the Seventies. Later, Unilever had acquired control over Brooke Bond and Lipton, companies manufacturing tea, through deals which were clinched away from India in Europe. When FERA, 1973 was enacted rather than disinvesting they restructured their business in such a manner as to avoid the minority shareholdings provision in the low technology consumer goods industry and retain only that business with Hindustan Levers which could be passed on as operations in high technology. The exercise, precisely, is known as restructuring rather than amalgamation but does result
in re-alignment of management control for certain operational areas of the corporate group. This type of restructuring, however, is not very common in the Indian Private Corporate Sector.

4. Takeovers by Non-Resident Indians.

In the early 80's, the balance of payments situation of Indian economy deteriorated and the Government had to devise plans for investments by affluent Indians abroad. With the general wave of liberalisation in the economy, in the wake of IMF loan, the multinationals as well as Non-Resident Indians found India as an attractive market and started locating production units in free trade zones specially created for taking up exports primarily. In fact, the phrase 'takeover bids' was not heard of frequently by casual observer of business scene till Swaraj Paul made an ambitious bid to takeover two established companies like D.C.M. and Escorts. This was a bid that failed, but discrete operations taken up by Manu Chhabria and Hinduja with the help of public financing institutions succeeded. It is interesting to note, that the Non-Resident Indians who are not very well acquainted with the Indian market started new ventures only in the free trade zones for expanding their businesses in the domestic market. They had adopted
a strategy of acquiring control of certain existing business entities as far as needs of domestic market was concerned.

5. Takeover with the help of Public Financing Institutions.

Public financing institutions were set up for providing long and medium term loans to the Indian industry. Most of the business units set up in India availed of the loan facilities provided by these term lending institutions.

In fact, no amalgamation bid can succeed without the express or explicit support by the consortium of public financing institutions which is conveyed through the nominee directors of the institutions on Corporate Boards. It is pertinent to note here that the Boards of public financing institutions like IDBI, IFCI, ICICI, etc. have the nominees of big business houses, and the appointment as well as functioning of the nominee directors on various boards of Indian private corporate sector companies is not devoid of the influence exercised by the above said directors of financing institutions. If any of the big business directors show an active interest in the success or failure of a particular amalgamation bid it can be an important consideration in the amalgamation failing or fructifying.
6. **Amalgamations Proposed by Professionals.**

Hindustan Levers was able to takeover small garment manufacturing units due to the better marketing expertise available with the company. TATAs were also able to manage their business better through occasional transfers of the technical/managerial personnel from one of the managed entities to another. Even the loan and other finances needed for the modernisation plans in one of the amalgamated units could not become available from term lending institution, if the unit survived as an independent entity. However, professional managers react to takeovers in divergent manners as is evidenced by S.P. Acharya's stubborn resistance to the takeover by Chhabrias and Sahneys equally enthusiastic support of the takeover by Hindujas.

7. **Temporary Taking-over by Public Financing Institutions.**

As we observed in the case of Shaw Wallace, the government-sponsored institutions had to takeover the management of the company once corporate war started between S.P. Acharya and the takeover tycoon Manu Chhabria. In a general body meeting of Shaw Wallace shareholders where Chhabrias and Acharyas both had put up their nominees for being elected as Directors of the company, the public financing institutions managed to
get the nominees of both the warring parties defeated. The nominees of the institutions got themselves elected to the Board in the same meeting. But this phenomenon of public financing institutions directly managing Shaw Wallace did not last long. With the corporate raids becoming routine affair in corporate world we can expect to watch many such situations in future also.


With the given equity structure of Indian corporations, it is not difficult for State or Government to takeover corporations even without a special law, but the Government in India has scrupulously avoided any such takeovers and in fact, the talk of public institutions acting as a consortium is limited to paper. However, by enacting special acts, the Government has taken over the management of major banks, a large number of sick textile industries and some other companies whose very existence was threatened by prolonged strikes, lock-outs or the conflict among the dominant shareholders. We do not discuss the desirability or the modus operandi of such amalgamations which are a genre to be discussed in exclusive studies.
Conclusion

Despite the concept of public interest in the amalgamation of companies, the big corporations in India are using amalgamations for both tax planning and tax avoidance. In this context, a large number of institutions/agencies of the public sector have miserably failed in ensuring fair play and have played partisan roles, at the behest of ruling political interests, as has been alleged in case of state controls and state regulations of the economic functions, too many controls rather than checking the malpractices by the private business, in general, allow the big business to use the state machinery to further their own interests at the cost of the smaller business entities. Moreover, too many clearances involved in business deals result in delaying the process of amalgamations and this delay varies from one year to three years in most of the cases, and the purposes for which these moves are initiated, are defeated. The inefficient capital market and the rigged stock exchange operations are the two main problems afflicting the bright prospects of company mergers in India. The professed aims of amalgamation like expansion, diversification, entry into new market and acquisition of desired resources, patents and technology can be best served by a perfect capital market rather than the present regulated process of amalgamations.
REFERENCES
