CHAPTER - II

INTRODUCTION
It was the 18th-Century Scottish philosopher Adam Smith who first identified Economics as a great moving force in the history of mankind. Today, it sometimes appears that making money is the sole motivation for human activity. Business and financial affairs dominate news bulletins and newspaper headlines. Aggressive entrepreneurs have become the heroes of the age. Commercial ethics have attracted the kind of debate that used to be attached to religion. The U.S presidential election became a contest not between ideologies but between managers. Such is the climate that national pride in Britain and the United States is now closely related to the exchange rate values of the pound and the dollar. It once was thought that states too sophisticated to fight each other would make war through sport. The real international battle ground these days is the boardroom. The weapon is the takeover and merger.

Indian corporate sector too has been witnessing exciting developments in the recent years with hectic activity in the stock exchanges on unpredictable lines. Changes in ownership of industrial units on a negotiated basis and through buying of equity shares of select companies from the stock market have been an outstanding feature in the recent years. It all began with the acquisition of strategic parcels of equity shares in foreign owned and Indian companies by non-resident Indians through package deals. Though the efforts of the
Swaraj Paul and section groups to get an entry into the managements of profitably functioning companies did not quite succeed. But the Swaraj Paul group has considerable interest in erst while FERA tea companies. Many changes in ownership in this sector has gone unnoticed. In subsequent years non-resident Indians and the prominent industrial groups in the country have been active in changing Indian corporate profile. The financial institutions will, of course, have the final say where they are the major shareholders. But even they have not been effective, in cases where their stakes are less than those of the new entrants.

These developments have caused concern among the managements of well established industrial units even where they own 30-40 percent of the equity capital and have the support of the financial institutions. Driven by the fear that the acquisition of strategic block of shares out of floating stocks by the new entrants, the existing managements with less than 26 percent stake in their companies have rushed to augment their holdings through purchases from the stock market or on a negotiated basis from the state industrial development and financial corporations.

The fears in this regard have been responsible for a spurt in the scrips of companies where the managements effect purchases for safeguarding their positions. The manipulative operations in such equities with a paucity of floating stocks have led to speculative rise in prices for realising gains at the top levels. Such transactions have led to a big increase in the quotations for many scrips.
These and other forms of activity in the stock markets and corporate sector have created a new awareness among Indian investors, entrepreneurs and non-resident Indians. The rating of equities of established companies is being attempted with entirely different concepts which have no relevance to current yield or net worth based on book value or even earnings per equity share. The advantages in this regard have been forcefully brought out by the deals relating to sale of Investments and real property. Some industrial units have also been disposing of their unprofitable divisions, trade investments or other assets for securing additional resources. At the same time, a number of sick units have become viable with better management and additional financial resources after being taken over by strong companies. Such acquisitions have not only gone to increase the stature of the absorbing industrial units but have led to profitable diversification of activities. Similar integration of operations has been successfully adopted by some industrial enterprises under merger schemes.

The expansion of existing business activities are closed by licensing or other restrictions. Diversification seems to be the only available option. The liberalisation of government policies in recent years has brought with it its own logic for diversification. Opportunities are opening up in areas that appeared closed before, and diversification has taken on a new allure.
FINANCIAL RECONSTRUCTION SCHEMES:

In a proposal to the Finance Ministry, the Board for Industrial and Financial Reconstruction has pointed out that the existing law imposed limitations under the Sick Industries (special provisions) Acts as a constraint in the matter of the Board framing a scheme for revival or rehabilitation of the sick companies.

This is so under the present provisions of the Act. A healthy company merging with a sick company is allowed to do so and avail the benefits of set-off or carry-forward of losses of a sick company only if it continues to carry on the activity of the sick company.

However, in many cases, it has been found that carrying on the activity of the sick company would not be useful and the healthy company itself may become sick. But, diversification or discontinuance of certain activities of a sick company may be to the advantage of both.

There are already several proposals for merger of healthy companies with sick companies with Board for Industrial and Financial Reconstruction. It is felt that amendment to the Act will enable the Board to frame the schemes for rehabilitation with speed.
The Board for Industrial and Financial Reconstruction has proposed that a new provision be made in the Sick Industrial Companies Act to allow it to issue interim directions to a company, its Board of Directors and employees not to indulge in particular acts of commission or omission.

The interim directions could be issued to restrain a company from disposing of its assets or otherwise dealing with its properties or taking other prejudicial actions.

It has been pointed out that in the absence of powers to issue interim directions, the Board is in a helpless condition to prevent actions, which prejudicial or omissions on the part of companies, their directors and employees.

The Board for Industrial and Financial Reconstruction has also sought powers to order denial of Financial Assistance to persons and companies in certain cases for a period of ten years for misuse of powers or mismanagement of the affairs of the companies.

It is felt that making provisions for such powers in the Act will help in taking timely preventive action regarding potentially sick companies.
MERGER EFFORTS IN GOVERNMENT MANAGED TEXTILE UNITS

Mergers of some of the loss-making mills of the National Textile Corporation and tapping of Japanese credit for the modernisation of some of the viable mills are under consideration of the government as part of an overall strategy to contain the losses of the corporation. The National Textile Corporation is now looking after 109 nationalised and 15 managed mills which account for 29 percent of the weaving capacity of the organised cotton textile industry in the country. For a number of reasons, it incurred a loss of Rs.263.43 cores last year.

The review of the National Textile Corporation was taken up by the Parliamentary Consultative Committee. Presently National Textile Corporation's case, the Chairman of the Corporation Mr Ajit Singh said the organisation was functioning under severe resource constraints brought about by a heavy shortfall in margin money requirement, a debt-equity ratio of 3:1 compared to the standard norm of 1:1 inadequate bank finance and short falls in the reimbursement of accumulated cash losses. The problem was compounded by the fact that nearly 32 per cent of the total expenditure went to the payment of wages against 14 per cent expenditure in the private sector.
Mr Singh pointed out that 56 composite mills concentrated in Uttar Pradesh, West Bengal, Maharashtra and Ahmedabad were responsible for nearly 85 per cent of the losses of the corporation. He therefore, made a strong plea for the speedy resolution of National Textile Corporation's Working capital problems, provision of adequate capital investment and substantial reduction in power and wage bills in order to make the corporation viable. Further, he pointed out that lack of modernisation was posing a serious problem to the corporation since 90 per cent of its looms were at least 30-40 years old. The National Textile Corporation had estimated the modernising 124 of its mills would involve an investment of over Rs.1000 crores. Against this, funds made available during the seventh plan were to the tune of Rs.117 crores only. It is against this background that the proposal was mooted for the merger of sick mills into the viable ones so that existing infrastructure could be utilised optimally.

NORMS FOR TAKEOVER OF FIRMS:
There has been some speculation in corporate circles lately that the trend of take-overs and mergers would increase in the coming months since many of the established companies are planning to go in for Mega issues to raise money from the public. Sanctions for as much as Rs.4000/- crores have already been accorded to these companies by the Controller of Capital issues. In fact, many of these companies do not have clear-cut investment proposals for the money to be raised
from the public. There is some apprehension that this money may be utilised by these companies either to take over other companies or to tend to aligned concerns which may not be allowed to raise resources on their own.

In a major effort to thwart clandestine take-over bids, the Government recently announced steps to ensure greater transparency in inter-company transactions through an amendment to the listing agreement between companies and stock exchanges. The new norms include stipulation for informing the stock exchanges of significant holdings and public announcements of take-over offers. The new norms, however, exempt the public sector Financial Institutions Board for Industrial and Financial Reconstruction cases and court induced management changes.

SUBSIDIARIES

Mergers of industrial enterprises functioning on unrelated lines are also becoming popular. Some big enterprises are promoting subsidiaries. There are instances where these subsidiaries have been merged with the parent companies for avoiding inter-corporate problems and reducing tax liability.

MERCHANT BANKING DIVISIONS

Merchant Banking Division in foreign banks in India have started gearing up on mergers and acquisitions. Some foreign banks are already in the process of forming a team to concentrate on Indian deals. Other aggressive foreign banks
are building a database on companies, products and markets to be ready for merger and acquisitions boom when it arrives. In contrast, Indian merchant banks continue to concentrate only on new issues management. However, private sector merchant banks help their clients in buying and selling off corporate assets. Some of these banks are also acting as advisors to their clients in transferring the existing industrial units to a group of entrepreneurs.

**INDIAN LAWS**

The provisions of company law and the law relating to monopolies and restrictive trade practices seek to regulate and control corporate mergers, acquisition of shares, controlling powers of companies and absorptions. Section 72-A of Income-tax relates to mergers of companies.
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The above advertisements, which appeared in "Business India" clearly indicate that how take-over mania is sweeping the Indian corporate sector. A corporate raider silently creeps up on an unsuspecting victim and gradually gobbles it up. It is presumed that, undervaluation of stocks of fairly progressive companies is what inspires take-over deals, in the first place. More often the raiders are attracted by the strong and steady cash flow of companies to be acquired since many stock prices appear attractive, when measured against company's liquidation or break-up values.

**IMPORTANCE OF THE STUDY**

One does not know, if merger or restructuring of companies is going to lead to positive results, viz. increased profits, productivity, enhanced exports, improved plant facilities and quality of products. One can understand, if a sick unit, but a viable one is merged or bought over by any large, progressive and healthy enterprise to pull it out of the malaise and make it profitable. Some Indian industrialists are opting to become non-resident Indians to get out of the clutches of Foreign Exchange Regulation Act, which hampers off-share takeover deals. It is also a good thing, if non-resident Indians and experienced Indian industrialists are bringing into the country new technologies, urgently needed foreign exchange, high-tech products and provide modern management and marketing skills. But, merely acquiring well managed enterprises just to gamble in the share market.
through 'JUNK BONDS' is indeed dangerous. Another means adopted by some companies for growing big, as quickly as possible, is acquiring smaller units.