Chapter-II
Conceptual Framework of Merger and Acquisition
2.1 INTRODUCTION

Mergers and acquisitions are among the most effective ways to expedite the implementation of a plan to grow rapidly. Companies in all industries have grown at lightning speed, in part because of an aggressive merger and acquisition strategy. The impact of technology and the Internet has only further increased the pace and size of deals. Buyers of all shapes and sizes have many of the same strategic objectives—to build long-term shareholder value and take advantage of the synergies that the combined firms will create—but each industry has its own specific objectives. Technology companies, in search of new ideas, new products, trained knowledge workers, strategic relationships and additional market share, have been the most acquisitive. Deals in the pharmaceutical industry are driven by the need to put more products into development pipelines and achieve certain economies of scale in combining research and development efforts. Defense industry mergers have been driven by shrinking federal budgets and the need to win private-sector. Deregulation in the energy and financial services industries have just begun to spawn deals driven by the ability to offer a more diversified range of services. Merger-and-acquisition
frenzy has created intense competition for the same target companies, where a premium is placed on price and speed. The fear in many boardrooms is that the company will be left out or left behind if it doesn't move quickly to acquire other businesses. Deals that used to take months to get done now close in a matter of days, especially if no regulatory approvals need to be obtained and no shareholder battles will take place as a condition for getting the deal completed. In this environment, acquisitions are moving so fast and are being bid up so high that the likelihood of problems and errors has increased dramatically. Mergers and acquisitions (M & As) have been a very important market entry strategy as well as expansion strategy. This present era is known as competition era. In this era companies, to avoid the competition, go for merger, and enjoy sometimes monopoly. Corporate India is waking up to the new millennium imperative of mergers and acquisitions in a desperate search for a panacea for facing the global competition. This is hardly surprising as stiff competition is, in a sense, implicit in any bid to integrate the national economy with the global economy. The ongoing process of liberalization has exposed the unproductive use of capital by the Indian corporate both in public and private sectors. Consolidation through mergers and acquisitions (M & As) is considered one of the best ways of restructuring structure of corporate units.
The concept of mergers and acquisitions is very much popular in the current scenario, so it is significantly popular concept, after 1990s, where India entered into the Liberalization, Privatization and Globalization (LPG) era. The winds of LPG are blowing over all the sectors of the Indian economy but its maximum impact is seen in the industrial sector. It caused the market to become hyper-competitive. As competition increased in the economy, so to avoid unhealthy competition and to face international and multinational companies, Indian companies are going for mergers and acquisitions. Basically, a merger involves a marriage of two or more entities. Merger is defined as blending of two or more entity into a single entity. The shareholders of each blending entity will become the substantially the shareholders in the entity which is to carry on the blended entity.

2.2 CONCEPT AND DEFINITION

Merger is defined as combination of two or more companies into a single company where one survives and the other lose their corporate existence. The survivor acquires the assets as well as liabilities of the merged company or companies.

A merger is a combination of two companies where one corporation is completely absorbed by another corporation. The less important company losses its identity and becomes part of the more important
corporation, which retains its identity. A merger extinguishes the merged corporation and the surviving corporation assumes all the right, privileges, and liabilities of the merged corporation. A merger is not the same as a consolidation in which two corporations lose their separate identities and unite to form a completely new corporation.

A merger is a combination of two or more businesses into one business. Laws in India use the term 'amalgamation' for merger. The Income Tax Act, 1961 [Section 2(1A)] defines amalgamation as the merger of one or more companies with another or the merger of two or more companies to form a new company, in such a way that all assets and liabilities of the amalgamating companies become assets and liabilities of the amalgamated company and shareholders not less than nine-tenths in value of the shares in the amalgamating company or companies become shareholders of the amalgamated company.

According to the Oxford Dictionary the expression merger or amalgamation means “Combining of two commercial companies into one” and “Merging of two or more business concerns into one” respectively. A merger is just one type of acquisition. One company can acquire another in several other ways including purchasing some or all of the company’s assets or buying up its outstanding share of stock.

To end up the word “MERGER” may be taken as an abbreviation
which means:

M → Mixing
E → Entities
R → Recourses for
G → Growth
E → Enrichment and
R → Renovation.

- **ACQUISITION:-**
  Acquisition in general sense is acquiring the ownership in the property. Acquisition is the purchase by one company of controlling interest in the share capital of another existing company. This means that even after the takeover although there is change in the management of both the firms retain their separate legal identity.

- **THE FIVE RULES OF SUCCESSFUL ACQUISITION:-**
  By: Peter F. Drucker is as under
  1. Think what you can contribute to the business it is buying not what the acquirer company will contribute to the acquirer.
  2. Common core of unity: The two business must have a common either markets or technology.
  3. Temperamental fit: No acquisition works unless people in the acquiring company respect the product, the markets and the
customers of the company they acquire.

4. Within a year or so the acquiring company must be able to provide top management for the company it acquires.

5. Within the first year of a merger, it is important that a large number of people in management groups of both companies receive substantial promotion across the line that is from one of the former companies to the other.

• **AMALGAMATION:-**

  *Halabury's laws of England* describe amalgamation as a blending of two or more existing undertakings into one undertaking, the shareholders of each blending company becoming substantially the shareholders in the company which is to carry on the blended undertaking.

• **CONSOLIDATION:-**

  Consolidation is known as the fusion of two existing companies into a new entity in which both the existing companies extinguish. Thus, consolidation is mixing up of the two companies to make them into a new one in which both the existing companies lose their identity and cease to exist. The mixes up assets of the two companies are known by a new name and the share holders of two companies become shareholders of the new company. For example, merger of Hindustan Computers Ltd, Hindustan Instruments Ltd, Indian Software Company Ltd and Indian Reprographics
Ltd into an entirely new company called HCL Ltd.

- **COMBINATION:-**
  Combination refers to mergers and consolidation as a common term used interchangeably but carrying legally distinct interpretation. All mergers, acquisitions and amalgamations are business combinations.

- **TAKEOVER:-**
  A takeover generally involves the acquisition of a certain block of equity capital of a company which enables the acquirer to exercise control over the affairs of the company. Normally merger, amalgamation, acquisition, takeover are used interchangeably.

### 2.3 HISTORY OF MERGER AND ACQUISITION

Most of the mergers and acquisitions are an outcome of the favorable economic factors like the macroeconomic setting, escalation in the GDP, higher interest rates and fiscal policies. These factors not only trigger the M & A process but also play an active role in laying the mergers and acquisition strategies between bidding and target firms.

The history of mergers and acquisitions can be traced back to the 19th century which has evolved in different phases mentioned as under:
From 1897-1904

During this period merger took place between the firms which were anti-competition and enjoyed their dominance in the market according to their productivity in sectors like electricity, railways, etc. Most of the mergers during this period were horizontal in nature and occurred between the steel, metal and construction industries.

From 1903-1905

Most of the mergers which took place during the first phase were considered as unsuccessful for not being efficient enough to attain the required competence. The crash was stimulated by the decelerating of the world's financial system in 1903, which was followed by a stock market collapse in 1904. During this phase the authorized structure was not encouraging either. Later the apex judiciary body issued its directive on the anti-competitive mergers stating that they could be de-merged by implementing the Sherman Act.

From 1916-1940

Unlike the preceding phase, this period concentrated on mergers between oligopolies, rather between anti-competitive firms. The mergers and acquisitions process was triggered by the financial boom which was seen after the World War I. The expansion further lead to developments in the fields of science and technology and the emergence of infrastructure
firms which provided services for required growth in railroads and transportation by automobiles. The government strategies laid in 1920s made the corporate ambiance supportive enough for firms to work in harmony. Financial institutions like government and private banks also played a significant part in aiding the mergers and acquisitions process.

The mergers which occurred during 1916-1929 were horizontal or multinational in nature. Most of these industries were the manufacturers of metals, automobile tools, food commodities, chemicals, etc. This phase ended in 1929 with a massive decline in stock market followed by great depression. However, the tax exemptions in 1940s encouraged the conglomerates to involve themselves in M & A activities.

**From 1965-1970**

Most of the mergers from 1965-70 were horizontal mergers and were triggered by elevating stock and interest rates, and stern implementation of anti-trust rules and regulations. During this phase the bidding companies were small in size and fiscal strength than the target companies. These kinds of mergers were sponsored by equities, thereby eliminating the roles of banks which they actively played in investment activities earlier.

In 1968, the Attorney General decided to break the multinationals which resulted in the end of merging activities after that. The decision was
triggered by the inefficient performance of the multinationals. But 1970s saw the emergence of mergers which made their mark by performing effectively. Some of them were INCO merging with ESB, OTIS Elevator with United technologies and Colt Industries with Garlock Industries.

**From 1981-1989**

This phase saw the acquisition of the companies which were much bigger in size as compared to the firms in previous phases. Industries like oil and gas, pharmaceuticals, banking, aviation combined their business with their national and international counterparts. Cross border buyouts became regular with most of them being unfriendly in nature. This phase came to an end with the introduction of anti acquisition laws, restructuring of fiscal organizations and the Gulf War.

**From 1992 till present**

This period was stimulated by globalization, upsurge in stock market boom and deregulation policies. Major mergers were seen taking place between telecom and banking giants out of which most were sponsored by equities. There was a change in the attitude of the industrialists, who opted for mergers and acquisitions for long term profitability rather than short lived benefits. Promising economic trends, investments by corporate and revised government policies motivated the participation of many conglomerates to contribute in the acquisition trend.
Therefore, we can conclude that as long as business entities exist and the economic factors are favorable, the trend of mergers and acquisitions will continue.

2.4 TYPES OF MERGER

There are mainly four types of mergers based on the competitive relationships between the merging parties:

1. Horizontal Mergers
2. Vertical Mergers
3. Conglomerate Mergers
4. Reverse Mergers

1. HORIZONTAL MERGERS:

Horizontal Mergers is a combination of two or more firms in the same area of business. Horizontal merger is a merger of two companies which are essentially operating in the same business. The main purpose of this merger is to obtain economy of scale in production by eliminating duplication of facilities, reducing of competition, reduction of cost, increase in share price and market segments. For example, the merger of ICICI Bank and Bank of Madura is a horizontal merger. But the merger of ICICI bank and Mahindra Tractor it is not a horizontal merger.

Horizontal mergers raise three basic competitive issues. The first is the elimination of competition between the merging firms, which,
depending on their size, may be significant. The second is that the unification of the merging firm’s operations may create substantial market power and could enable the merged entity to raise prices by reducing output unilaterally. The third problem is that by increasing concentration in the relevant market, the transaction may strengthen the ability of the markets remaining participants to co-ordinate their pricing and output decisions. The fear is not that the entities will engage in secret collaboration but that the reduction in the number of industry members will enhance co-ordination of behavior.

2. VERTICAL MERGERS:-

Vertical merger is a combination of two or more firms involved in different stages of production or distribution of the same product. It is a merger of one company with another having different stages of production / distribution process of the same product / service. In short the merging companies are engaged in different stages of production or distribution. The main objective is to increase profitability by the previous distributors. For example, ICICI Ltd With ICICI Bank is an example of vertical merger with backward linkage as far as ICICI Bank is concerned Vertical merger may take the form of forward or backward merger. When a company combines with the supplier of material, it is called backward merger and when it combines with the customer, it is known as forward merger. And their two benefits: first, the vertical merger internalizes all transactions.
between manufacturer and its supplier or dealer thus converting a potentially adversarial relationship into something more like a partnership. Second, internalization can give the management more effective ways to monitor and improve performance. Vertical mergers may also be anticompetitive because their entrenched market power may impede new business from entering the market.

Vertical integration by merger does not reduce the total number of economic entities operating at one level of the market, but it may change patterns of industrial behavior. Whether a forward or backward integration, the newly acquired firm may decide to deal only with the acquiring firm, thereby altering competition among the acquiring firm’s suppliers, customers, or competitors. Suppliers may lose a market for their goods, retail outlets may be deprived of supplies, or competitors may find that both supplies and outlets are blocked. This raises the concern that vertical integration will foreclose competitors by limiting their access to sources of supply or to customers. Vertical mergers may also be anticompetitive because their entrenched market power may impede new businesses from entering the market.

3. **CONGLOMERATE MERGER:-**

Conglomerate merger is an amalgamation of two companies engaged in different line of business, in other words, the merging
companies are engaged in diverse business activities. For example, ICICI Ltd merger with Mahindra tractor and Reliance Industries Ltd. Merged with Reliance Petroleum Ltd. Conglomerate transactions take many forms, ranging from short term joint ventures to complete mergers. Whether a conglomerate merger is pure, geographical or a product line extension it involves firms that operate in separate market. Conglomerate transactions ordinarily have no direct effect on competition. Conglomerate merger can supply a market or demand for firms thus giving entrepreneurs liquidity at an open market price and with a key inducement to form new enterprises. Conglomerate merger also provide opportunity for firms to reduce capital cost and overhead and achieve other efficiencies.

This type of merger may also reduce the number of smaller firms and increase the merged firm’s political power, thereby impairing the social and political goal of retaining independent decision making centre guaranteeing small business opportunities and preserving democratic processes.

4. **REVERSE MERGER:-**

Reverse merger is a merger of an ordinary merger, achieved the same general industry but in the same line of business. In case of a reverse merger a healthy company merges into a financially weak company and the former company is dissolved. For example the merger of machine tool
manufacturer with the manufacturer of industrial conveyor system. The principal change the name of the company to the name of their company and elect their nominees to the board of directors. A private company merged with an existing public company or a subsidiary of a public company. In a reverse merger an operating private company merges with a public company which has no assets or known liabilities.

2.5 **DE-MERGER:**

It has been defined as a split or division. As the same suggests, it denotes a situation opposite to that of merger. Demerger or spin-off, as called in US involves splitting up of conglomerate (multi-division) of company into separate companies. This occurs in cases where dissimilar business are carried on within the same company, thus becoming unwieldy and cyclical almost resulting in a loss situation. Corporate restructuring in such situation in the form of demerger becomes inevitable. Merger of SG chemical and Dyes Ltd. with Ambalal Sarabhai enterprises Ltd. (ASE) has made ASE big conglomerate which had become unwieldy and cyclic, so demerger of ASE was done.

A part from core competencies being main reason for demerging companies according to their nature of business, in some cases, restructuring in the form of demerger was undertaken for splitting up the family owned large business empires into smaller companies. The
historical demerger of DCM group where it split into four companies (DCM Ltd., DCM shriram industries Ltd., Shriram Industrial Enterprise Ltd. and DCM shriram consolidated Ltd.) is one example of family units splitting through demergers. Such demergers are accordingly, more in the nature of family settlements and are affected through the courts order. Thus, demerger also occur due to reasons almost the same as mergers i.e. the desire to perform better and strengthen efficiency, business interest and longevity and to curb losses, wastage and competition. Undertakings demerge to delineate businesses and fix responsibility, liability and management so as to ensure improved results from each of the demerged unit. Demerged Company, according to Section (19AA) of Income Tax Act, 1961 means the company whose undertaking is transferred, pursuant to a demerger to a resulting company.

2.6 DIFFERENCE BETWEEN MERGER AND ACQUISITION

Merger and acquisition is often known to be a single terminology defined as a process of combining two or more companies together. The fact remains that the so-called single terminologies are different terms used under different situations. Though there is a thin line difference between the two but the impact of the kind of completely different in both the cases. Merger is considered to be a process when two or more companies come together to expand their business operations. In such a case the deal
gets finalized on friendly terms and both the companies share equal profits in the newly created entity.

When one company takes over the other and rules all its business operations, it is known as acquisitions. In this process of restructuring, one company overpowers the other company and the decision is mainly taken during downturns in economy or during declining profit margins. Among the two, the one that is financially stronger and bigger in all ways establishes it power. The combined operations then run under the name of the powerful entity who also takes over the existing stocks of the other company. Another difference is, in an acquisition usually two companies of different sizes come together to combat the challenges of downturn and in a merger two companies of same size combine to increase their strength and financial gains along with breaking the trade barriers. A deal in case of an acquisition is often done in an unfriendly manner, it is more or less a forceful or a helpless association where the powerful company either swallows the operation or a company in loss is forced to sell its entity. In case of a merger there is a friendly association where both the partners hold the same percentage of ownership and equal profit share.

2.7 ACQUISITION AND TAKEOVER:

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. 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. When an acquisition is 'forced' or 'unwilling', it is called a takeover. In an unwilling acquisition, the management of the 'target' company would oppose a move of being taken over. But, when managements of acquiring and target companies mutually and willingly agree for the takeover, it is called acquisition or friendly takeover.

Under the Monopolies and Restrictive Practices Act, takeover means acquisition of not less than 25 percent of the voting power in a company. While in the Companies Act (Section 372), a company's investment in the shares of another company in excess of 10 percent of the subscribed capital can result in takeovers. An acquisition or takeover does not necessarily entail full legal control. A company can also have effective control over another company by holding a minority ownership.

2.8 MERGER AND ACQUISITION PROCESS

Merger and acquisition process is the most challenging and most critical one when it comes to corporate restructuring. One wrong decision or one wrong move can actually reverse the effects in an unimaginable manner. It should certainly be followed in a way that a company can gain maximum benefits with the deal.
Following are some of the important steps in the M&A process:

1. **Business Valuation**

   Business valuation or assessment is the first process of merger and acquisition. This step includes examination and evaluation of both the present and future market value of the target company. A thorough research is done on the history of the company with regards to capital gains, organizational structure, market share, distribution channel, corporate culture, specific business strengths, and credibility in the market. There are many other aspects that should be considered to ensure if a proposed company is right or not for a successful merger.

2. **Proposal phase**

   Proposal phase is a phase in which the company sends a proposal for a merger or an acquisition with complete details of the deal including the strategies, amount, and the commitments. Most of the time, this proposal is send through a non-binding offer document.

3. **Planning exit**

   When any company decides to sell its operations, it has to undergo the stage of exit planning. The company has to take firm decision as to when and how to make the exit in an organized and profitable manner. In the process the management has to evaluate all financial and other business issues like taking a decision of full sale or partial sale along with evaluating on various options of reinvestments.
4. **Structuring Business Deal**

After finalizing the merger and the exit plans, the new entity or the takeover company has to take initiatives for marketing and create innovative strategies to enhance business and its credibility. The entire phase emphasize on structuring of the business deal.

5. **Stage Integration**

This stage includes both the company coming together with their own parameters. It includes the entire process of preparing the document, signing the agreement, and negotiating the deal. It also defines the parameters of the future relationship between the two.

6. **Operating the venture**

After signing the agreement and entering into the venture, it is equally important to operate the venture. This operation is attributed to meet the said and pre-defined expectations of all the companies involved in the process. The M&A transaction after the deal include all the essential measures and activities that work to fulfill the requirements and desires of the companies involved.

2.9 **SIGNIFICANCE OF MERGER AND ACQUISITION:**

- **REQUIREMENT OF MERGER AND ACQUISITION:-**

  2+2=5: This equation is the special alchemy of a merger or
acquisition. The key principle behind buying a company is to create shareholder value over and above that of the sum of the two companies. Two companies together are more valuable than two separate companies; this is the main reason behind merger and acquisition.

Sometimes organization can produce goods or services more efficiently if they combine their efforts and facilities. These efficiency gains may come simply of the size of the combined company. Collaborating or sharing expertise may be achieve gains in efficiency or a company might have underutilized assets, the other company can better use. Also a change in management may take the company more profitable. The management of an acquiring company may be motivated more by the desire to manage large companies than by any possible gains in efficiency.

- **MOTIVES BEHIND MERGER AND ACQUISITION:**

Accelerating a company's growth particularly when its internal growth is constrained due to paucity of resources, internal growth requires that a company should develop its operating facilities—manufacturing, research, marketing, etc. But, lack or inadequacy of resources and time needed for internal development may constrain a company's pace of growth. Hence, a company can acquire production facilities as well as other resources from outside through mergers and acquisitions. Specially, for entering in new products/markets, the company
may lack technical skills and may require special marketing skills and a wide distribution network to access different segments of markets. The company can acquire existing company or companies with requisite infrastructure and skills and grow quickly.

This may happen because of:-

(1) **ECONOMIES OF SCALE:-**

Arise when increase in the volume of production leads to a reduction in the cost of production per unit. This is because, with merger, fixed costs are distributed over a large volume of production causing the unit cost of production to decline. Economies of scale may also arise from other indivisibilities such as production facilities, management functions and management resources and systems. This is because a given function, facility or resource is utilized for a large scale of operations by the combined firm.

(2) **OPERATING ECONOMIES:-**

Arise because, a combination of two or more firms may result in cost reduction due to operating economies. In other words, a combined firm may avoid or reduce over-lapping functions and consolidate its management functions such as manufacturing, marketing, R&D and thus reduce operating costs. For example, a combined firm may eliminate duplicate channels of distribution, or crate a centralized training center, or
introduce an integrated planning and control system.

(3) SYNERGY:-

Implies a situation where the combined firm is more valuable than the sum of the individual combining firms. It refers to benefits other than those related to economies of scale. Operating economies are one form of synergy benefits. But apart from operating economies, synergy may also arise from enhanced managerial capabilities, creativity, innovativeness, R&D and market coverage capacity due to the complementarily of resources and skills and a widened horizon of opportunities.

(4) CROSS SELLING: -

For example, a bank buying a stockbroker could than sell its banking products to the stock broker’s customers, while the broker can sign up the bank’s customers for broker’s accounts.

(5) TAXES SAVINGS: -

A profitable company can buy a loss making unit to use the targets tax write offs. In the U.S. and many countries, rules are in place to limit the ability of profitable companies to shop for loss making companies limiting the tax motive of an acquiring company.

(6) GREATER VALUE GENERATION:-

Companies go for Mergers and Acquisition from the idea that, the
joint company will be able to generate more value than the separate firms. When a company buys out another, it expects that the newly generated shareholder value will be higher than the value of the sum of the shares of the two separate companies.

(7) **GAIN IN MARKET SHARE:**

Mergers and Acquisitions can prove to be really beneficial to the companies when they are weathering through the tough times. If the company which is suffering from various problems in the market and is not able to overcome the difficulties, it can go for an acquisition deal. If a company, which has a strong market presence, buys out the weak firm, then a more competitive and cost efficient company can be generated.

Here, the target company benefits as it gets out of the difficult situation and after being acquired by the large firm, the joint company accumulates larger market share. This is because of these benefits that the small and less powerful firms agree to be acquired by the large firms.

(8) **RESOURCE TRANSFER:**

Resource are unevenly distributed across firms and the interaction of target and acquiring firm resources can create value through either overcoming information or combining scarce resources.
• **BENEFITS OF MERGER AND ACQUISITION**

Merger and acquisition has become the most prominent process in the corporate world. The key factor contributing to the explosion of this innovative form of restructuring is the massive number of advantages it offers to the business world.

**Following are some of the known advantages of merger and acquisition:**

1. The very first advantage of M&A is synergy that offers a surplus power that enables enhanced performance and cost efficiency. When two or more companies get together and are supported by each other, the resulting business is sure to gain tremendous profit in terms of financial gains and work performance.

2. Cost efficiency is another beneficial aspect of merger and acquisition. This is because any kind of merger actually improves the purchasing power as there is more negotiation with bulk orders. Apart from that staff reduction also helps a great deal in cutting cost and increasing profit margins of the company. Apart from this increase in volume of production results in reduced cost of production per unit that eventually leads to raised economies of scale.
3. With a merger it is easy to maintain the competitive edge because there are many issues and strategies that can be well understood and acquired by combining the resources and talents of two or more companies.

4. A combination of two companies or two businesses certainly enhances and strengthens the business network by improving market reach. This offers new sales opportunities and new areas to explore the possibility of their business.

5. With all these benefits, a merger and acquisition deal increases the market power of the company which in turn limits the severity of the tough market competition. This enables the merged firm to take advantage of hi-tech technological advancement against obsolescence and price wars.

2.10 LIMITATIONS OF MERGER

Mergers involve the following limitations:

- Elimination of healthy competition
- Striving for bigness
- Concentration of economic power
- Monopoly affecting the customer and suppliers
- Adverse effects on national economy.
WHY MERGER FAILS:-

The main reasons for mergers failure are “autonomy, self-interest, culture clash” all included or lies in leadership. At both implementation and negotiation stages, mergers fail due to failure of leadership. Lack of leadership qualities of managers may cause mergers and acquisitions a failure. Leadership is, thus a crucial management task in strategic restructuring. The following are the reasons for failure of mergers:

- Mergers fail in providing economies of scale.
- Un-utilization or minimum utilization of staff and working hours.
- The inability to appeal country-wide and regionally to refunders.
- **Personal desires**
  - Desire towards authority but not to responsibility.
  - Desire towards to control and commanding/directing the subordinates.
- The people, who are having the negative views on mergers.
- The negative believes of the partners and the people in the society.
- Inefficient and inactive person of a leader or director in merged firm.
- The inability of preparing national policy issues, which are interested by the members in the merged firm.
- The inability of the leader in bridging the cultures within the merged organization.
Lack of leadership qualities of merged organizations’ directors and Partners.

In addition to the above, many mergers fail, which may be broadly classified into the following “seven sins”, which seem to be committed too often by those making acquisitions:

1. Paying too much.
2. Assuming a boom market won’t crash.
3. Leaping before looking.
4. Straying too far afield.
5. Swallowing something too big.
6. Marrying disparate corporate cultures.
7. Counting on key managers staying.

2.11 IMPACT OF MERGER AND ACQUISITION

1. IMPACT OF MERGER & ACQUISITION ON SHAREHOLDERS:-

We can further categorize the shareholders into two parts:

- The Shareholders of the acquiring firm
- The shareholders of the target firm.

SHAREHOLDERS OF THE ACQUIRED FIRM:

The shareholders of the acquired company benefit the most. The reason being, it is seen in majority of the cases that the acquiring company
usually pays a little excess than it what should. Unless a man lives in a house he has recently bought, he will not be able to know its drawbacks. So that the shareholders forgo their shares, the company has to offer an amount more then the actual price, which is prevailing in the market. Buying a company at a higher price can actually prove to be beneficial for the local economy.

SHAREHOLDERS OF THE ACQUIRING FIRM:

They are most affected. If we measure the benefits enjoyed by the shareholders of the acquired company in degrees, the degree to which they were benefited, by the same degree, these shareholders are harmed. This can be attributed to debt load, which accompanies an acquisition.

2. IMPACT OF MERGER & ACQUISITION IN HUMAN DEVELOPMENT EMPLOYEES:-

In the process of consolidation of corporate sector human resource is also considered to be vital and sensitive issue. The UNI Europe estimated that around 13000 jobs have been lost in 10 years as a result of merger and acquisition process. It is a well known fact that whenever there is a merger or an acquisition, there are bound to be layoffs. In the event when a new resulting company is efficient business wise, it would require less number of people to perform the same task. Under such circumstances, the company would attempt to downsize the labor force. If the employees
who have been laid off possess sufficient skills, they may in fact benefit from the lay off and move on for greener pastures. But it is usually seen that the employees, those who are laid off, would not have played a significant role under the new organizational set up. This accounts for their removal from the new organization set up. These workers in turn would look for re employment and may have to be satisfied with a much lesser pay package than the previous one. Even though this may not lead to drastic unemployment levels, nevertheless, the workers will have to compromise for the same. If not drastically, the mild undulations created in the local economy cannot be ignored fully.

3. IMPACT OF M & A ON CUSTOMERS:-

The impact of merger and acquisitions has brought a win situation for the customers; this is because the customers are left with a high range of products with a low range of price. This has become possible because the cost of the production which has been reduced due to the cost reduction process adopted by the banks. Thus, offering a wide range of services at a lower rate. All this has become possible due to the advent of information and technology, which allows them to save cost by operating with fewer branches or without a traditional branches network.
4. THE IMPACT OF THE MERGER OR ACQUISITION ON THE NEW ORGANIZATION:

Mergers and acquisitions immediately impact organizations with changes in ownership, in ideology, and eventually, in practice. Of the three root strategic assets noted above, cultural cohesion is most often the critical asset in the eventual success or failure of the overall deal and the one that impacts the extent to which qualitative talent retention can be attained. Despite the fact that it is increasingly common these days for companies to publish their cultural traits or values, what is listed does not always reflect the actual culture of the place. Anthropologists have long known that the task of learning about a specific group’s culture does not start by asking members themselves to identify the specific traits. In fact, cultural traits are not readily identified by the members of a social group. Understanding the depth of cultural influences that are practiced over time within a specific group or organization requires long periods of reflective observation and the formation of key questions about beliefs, disciplines and innovative problem solving strategies.

5. IMPACT OF MERGERS AND ACQUISITIONS ON TOP LEVEL MANAGEMENT:

Impact of mergers and acquisitions on top level management may actually involve a "clash of the egos". There might be variations in the
cultures of the two organizations. Under the new set up the manager may be asked to implement such policies or strategies, which may not be quite approved by him. When such a situation arises, the main focus of the organization gets diverted and executives become busy either settling matters among themselves or moving on. If however, the manager is well equipped with a degree or has sufficient qualification, the migration to another company may not be troublesome at all.

2.12 Financial Accounting for Merger and Acquisition:

Merger and Acquisition Accounting is done either by Purchase Method or by Pooling of Interests Method as per Accounting Standard-14.

1. POOLING OF INTEREST METHOD :-

This method assumes that the transaction is simply an exchange of equity securities. Therefore the capital stock account of the target firm is eliminated, and the acquirer issues new stock to replace it. The two firm’s assets and liabilities are combined at their book values as of the acquisition data. The end result of a pooling of interests transaction is that the total assets of the combined firm are equal to the sum of the assets of the individual firms. No goodwill is generated, and there are no charges against earnings. A tax free acquisition would normally be reported as a pooling of interests.
But, there are some drawbacks of this Purchase Method. When Merger and Acquisition Accounting is done through this Purchase Method, then there is a chance of over rating the Depreciation Charges. This is because, in Purchase Method, book value of assets are used in accounting, but the book value of assets is generally lower than the fair value if there is inflation in the economy.

2. **PURCHASE METHOD :-**

Under the purchase method assets and liabilities are shown on the merged firm’s at book value or their market values as of the acquisition date. This method is based on the idea that the resulting values should reflect the market value established during the bargaining process. The total liabilities of the combined firm equal the sum of the two firm’s individual liabilities. The equity of the acquiring firm is increased by the amount of the purchase price. Purchase accounting usually results in increased depreciation charges because the book value of most assets is usually less than fair value because of inflation. For tax purpose depreciation does not increase because the tax base of the assets remains the same. Since depreciation under pooling accounting method is based on the old book values of the assets accounting income is usually higher under the pooling method. Some firms may dislike the purchase method because of the goodwill created. The reason for this is that goodwill is amortized over a period of years.
2.13 MERGERS AND ACQUISITIONS LAW:

Every country follows its own set of rules and regulations regarding Mergers and Acquisitions. In some countries like USA and Nigeria there are several strict laws regarding Mergers and Acquisitions, while in countries like Thailand there are no specific laws and regulations to govern Mergers and Acquisitions.

Mergers and Acquisitions Law exists in every country of the world. But, the laws and regulations regarding Mergers and Acquisitions differ from country to country. In US the Mergers and Acquisitions Laws are different from those of Nigeria or Thailand. So, to get a real picture of the Mergers and Acquisitions Law, we have to discuss the Mergers and Acquisitions Laws of different countries.

TAKEOVER AND LISTING AGREEMENT EXEMPTION

CLAUSES 40A AND 40B OF LISTING AGREEMENT:

Clause 40A deals with substantial acquisition of shares and requires the offeror and the offeree to inform the stock exchange when such acquisition results in an increase in the shareholding of the acquirer to more than 10%. Clause 40B deals with takeover efforts. A takeover offer refers to change in management where there is no change in management, Clause 40B of listing agreement will not apply. However, sub clause 13 of amendment of Clause 40B also provides an exemption to the scheme
approved by BIFR. There is no provision under clause 40B for exemption of non BIFR companies.

MERGERS AND ACQUISITIONS LAW IN THE UNITED STATES OF AMERICA:

In the United States of America (USA), Mergers and Acquisitions Law have been generated keeping in mind the interests of the shareholders. To protect the shareholders, US govt. constituted the law that, a merger deal can be finalized only through the process of voting by the Board of directors and voting by the shareholders of the two separate companies. In the USA, there are both state laws and federal laws to administer Mergers and Acquisitions.

STATE LAWS OF USA REGARDING MERGERS AND ACQUISITIONS:

The State Laws determine the process through which any merger or acquisition can be approved in the country. These laws also ensure that, the shareholders of the target firm receive fair value for their shares. In USA, State laws have also been generated keeping in mind the issue of hostile takeover.

These laws protect any target company from Hostile Takeover by providing financial and legal support.
FEDERAL LAWS OF USA REGARDING MERGERS AND ACQUISITIONS:

The Federal Laws keeps a check on the size of the joint firm after a Merger or Acquisition, so that the merged firm cannot develop monopolistic power. The Federal Laws of USA ensure that, no big merged firm involves itself in any business activity which is unlawful.

Just like in the USA, all the other countries have their own laws and regulations regarding Mergers and Acquisitions. In Nigeria, for the approval of any Merger or Acquisition deal, a majority agreement is required to be produced before court. The court sanctions the deal by issuing order. On the contrary, in Thailand, there are no fixed laws and regulations regarding Mergers and Acquisitions. The companies are free to set their own terms and conditions in case of any merger or acquisition.

REGULATIONS FOR MERGERS & ACQUISITIONS IN INDIA:-

Mergers and acquisitions are regulated under various laws in India. The objective of the laws is to make these deals transparent and protect the interest of all shareholders. They are regulated through the provisions of:-

1) THE COMPANIES ACT, 1956:

The Act lays down the legal procedures for mergers or acquisitions:-
Permission for merger: - Two or more companies can amalgamate only when the amalgamation is permitted under their memorandum of association. Also, the acquiring company should have the permission in its object clause to carry on the business of the acquired company. In the absence of these provisions in the memorandum of association, it is necessary to seek the permission of the shareholders, board of directors and the Company Law Board before affecting the merger.

Information to the stock exchange: - The acquiring and the acquired companies should inform the stock exchanges (where they are listed) about the merger.

Approval of board of directors: - The board of directors of the individual companies should approve the draft proposal for amalgamation and authorize the managements of the companies to further pursue the proposal.

Application in the High Court: - An application for approving the draft amalgamation proposal duly approved by the board of directors of the individual companies should be made to the High Court.

Shareholders' and creditors meetings: - The individual companies should hold separate meetings of their shareholders and creditors for approving the amalgamation scheme. At least, 75
percent of shareholders and creditors in separate meeting, voting in
person or by proxy, must accord their approval to the scheme.

**Sanction by the High Court:** After the approval of the
shareholders and creditors, on the petitions of the companies, the
High Court passes an order, sanctioning the amalgamation scheme
after it is satisfied that the scheme is fair and reasonable. The date of
the court's hearing is published in two newspapers, and also, the
regional director of the Company Law Board is intimated.

**Filing of the Court order:** After the Court order, its certified true
copies is filed with the Registrar of Companies.

**Transfer of assets and liabilities:** The assets and liabilities of the
acquired company is transferred to the acquiring company in
accordance with the approved scheme, with effect from the
specified date.

**Payment by cash or securities:** As per the proposal, the acquiring
company exchanges shares and debentures and/or cash for the
shares and debentures of the acquired company. These securities
will be listed on the stock exchange.

(2) **THE COMPETITION ACT, 2002:**

The Act regulates the various forms of business combinations
through Competition Commission of India. Under the Act, no
person or enterprise shall enter into a combination, in the form of an
acquisition, merger or amalgamation, which causes or is likely to cause an appreciable adverse effect on competition in the relevant market and such a combination shall be void. Enterprises intending to enter into a combination may give notice to the Commission, but this notification is voluntary. But, all combinations do not call for scrutiny unless the resulting combination exceeds the threshold limits in terms of assets or turnover as specified by the Competition Commission of India. The Commission while regulating a 'combination' shall consider the following factors:-

- Actual and potential competition through imports;
- Extent of entry barriers into the market;
- Level of combination in the market;
- Degree of countervailing power in the market;
- Possibility of the combination to significantly and substantially increase prices or profits;
- Extent of effective competition likely to sustain in a market;
- Availability of substitutes before and after the combination;
- Market share of the parties to the combination individually and as a combination;
- Possibility of the combination to remove the vigorous and effective competitor or competition in the market;
- Nature and extent of vertical integration in the market;
Nature and extent of innovation;

Whether the benefits of the combinations outweigh the adverse impact of the combination.

Thus, the Competition Act does not seek to eliminate combinations and only aims to eliminate their harmful effects.

The other regulations are provided in the:- The Foreign Exchange Management Act, 1999 and the Income Tax Act, 1961. Besides, the Securities and Exchange Board of India (SEBI) has issued guidelines to regulate mergers and acquisitions. The SEBI (Substantial Acquisition of Shares and Take-over) Regulations, 1997 and its subsequent amendments aim at making the take-over process transparent, and also protect the interests of minority shareholders.

(3) INCOME TAX ACT, 1961:

Income Tax Act, 1961 is vital among all tax laws which affect the merger of firms from the point view of tax savings/liabilities. However, the benefits under this act are available only if the following conditions mentioned in Section 2 (1B) of the Act are fulfilled:

All the amalgamating companies should be companies within the meaning of the section 2 (17) of the Income Tax Act, 1961.

All the properties of the amalgamating company (i.e., the target firm) should be transferred to the amalgamated company (i.e., the
acquiring firm).

- All the liabilities of the amalgamating company should become the liabilities of the amalgamated company, and
- The shareholders of not less than 90% of the share of the amalgamating company should become the shareholders of amalgamated company.

In case of mergers and amalgamations, a number of issues may arise with respect to tax implications. Some of the relevant provisions may be summarized as follows:

**Depreciation:**

The amalgamated company continues to claim depreciation on the basis of written down value of fixed assets transferred to it by the amalgamating company. The depreciation charge may be based on the consideration paid and without any re-valuation. However, unabsorbed depreciation, if any, cannot be assigned to the amalgamated company and hence no tax benefit is available in this respect.

**Capital Expenditures:**

If the amalgamating company transfers to the amalgamated company any asset representing capital expenditure on scientific research, then it is deductible in the hands of the amalgamated company under section 35 of Income Tax Act, 1961.
Exemption from Capital Gains Tax:

The transfer of assets by amalgamating company to the amalgamated company, under the scheme of amalgamation is exempted for capital gains tax subject to conditions namely (i) that the amalgamated company should be an Indian Company, and (ii) that the shares are issued in consideration of the shares, to any shareholder, in the amalgamated company. The exchange of old share in the amalgamated company by the new shares in the amalgamating company is not considered as sale by the shareholders and hence no profit or loss on such exchange is taxable in the hands of the shareholders of the amalgamated company.

Carry Forward Losses of Sick Companies:

Section 72A(1) of the Income Tax Act, 1961 deals with the mergers of the sick companies with healthy companies and to take advantage of the carry forward losses of the amalgamating company. But the benefits under this section with respect to unabsorbed depreciation and carry forward losses are available only if the followings conditions are fulfilled:

1. The amalgamating company is an Indian company.
2. The amalgamating company should not be financially viable.
3. The amalgamation should be in public interest.
4. The amalgamation should facilitate the revival of the business of the amalgamating company.
5. The scheme of amalgamation is approved by a specified authority, and
6. The amalgamated company should continue to carry on the business of the amalgamating company without any modification.

**Amalgamation Expenses:**

In case expenditure is incurred towards professional charges of Solicitors for the services rendered in connection with the scheme of amalgamation, then such expenses are deductible in the hands of the amalgamated firm.

(4) **SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVER) REGULATIONS ACT, 1997:**

On the basis of recommendations of the Committee, the SEBI announced on February 20, 1997, the revised takeover code as Securities and Exchange Board of India (Substantial Acquisitions of shares and Takeovers), Regulations, 1997. The objective of these regulations has been to provide an orderly framework within which substantial acquisitions and takeovers can take place. The salient features of this new takeover code (Regulations, 1997) may be enumerated as follows:

1. Any person, who holds more than 5% shares or voting rights in any company, shall within two months of notification of these
Regulation disclose his aggregate shareholding in that company, to the company which in turn, shall disclose to all the stock exchanges on which the shares of the company are listed, the aggregate number of shares held by each such person.

2. Acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than 5% shares or voting rights in a company- (a) in pursuance of a public issue, or (b) by one or more transactions, or (c) in any other manner not covered by (a) and (b) above, shall disclose the aggregate of his shareholding or voting rights in that company, to the company within four working days of the acquisition of shares or voting rights, as the case may be.

3. Every person, who holds more than 10% shares or voting rights in any company, shall, within 21 days from the end of the financial year, make yearly disclosures to the company, in respect of his holdings as on 31 March each year.

4. No acquirer shall agree to acquire, of acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise 10% or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the Regulations.
5. No acquirer holding, not less than 10% but not more than 25% of the shares or voting rights in a company, shall acquire, additional than 2% of the voting rights, in any period of 12 months, unless such acquirer makes a public announcement to acquire shares in accordance with the Regulations.

6. The minimum offer price shall be the highest of- (a) the negotiated price under the agreement; (b) average price paid by the acquirer for acquisitions including by way of allotment in a public or rights issue, if any, during the twelve-month period prior to the date of public announcement; (c) the price paid by the acquirer under a preferential allotment made to him, at any time during the twelve month period up to the date of closure of the offer; (d) the average of the weekly high and low of the closing prices of the shares of the target company during the 26 weeks preceding the date of public announcement.

7. The public offer shall be made to the shareholders of the target company to acquire from them an aggregate minimum of 20% of the voting capital of the company provided that acquisition of shares from each of the shareholders shall not be less than the minimum marketable lot or the entire holding if it is less than the marketable lot.

8. Within 14 days of the public announcement of the offer, the acquire
must send a copy of the draft letter to the target company at its registered office address, for being placed before the Board of Directors and to all the stock exchanges where the shares of the company are listed.

9. Any person other than the acquirer who had made the first public announcement, who is desirous of making any offer, shall, within 21 days of the public announcement of the first offer, make a public announcement of his offer for acquisition of some or all of the shares of the same target company. Such offer shall be deemed to be a competitive bid. No public announcement for an offer or competitive bid shall be made during the offer period except during 21-day period from the public announcement of the first offer.

10. Upon the public announcement of a competitive bid or bids, the acquirer(s) who had made the public announcement (s) of the earlier offer(s), shall have the option to make an announcement revising the offer or withdrawing the offer with the approval of the SEBI.

11. Irrespective of whether or not there is competitive bid, the acquirer who has made the public announcement of offer, any make upward revisions in his offer in respect of the price and the number of shares to be acquired, at any time up to 3 working days prior to the date of the closure of the offer.

12. No public offer, once made, shall be withdrawn except under the
circumstances mentioned in this regulation, namely-(a) the withdrawals is consequent upon any competitive bid; (b) the offer did not receive the minimum level of acceptances, to which it was subject to; (c) the statutory approvals(s) required have been refused; (d) the sole acquirer, being a natural person has died, and (e) such circumstances as in the opinion of SEBI merits withdrawal.

13. The acquirer shall deposit in an Escrow Account a sum equivalent to at least 25% of the total consideration payable under the offer up to Rs, 100 crores and 10% of the consideration thereafter. Where the acquirer specifies a minimum level of acceptance and does not want to acquire a minimum 20%, the 50% of the consideration payable is to be deposited in Escrow Account.

14. In case, there is any upward revision of offer, consequent upon a competitive bid or otherwise, the value of the Escrow Account shall be increased to equal to at least 25% of the consideration payable upon such revision.

15. In case of a substantial acquisition of shares in financially weak company not being a sick industrial company, the scheme prepared by a financial institutions may provide for acquisition of shares in the financially weak company in any of the following manner (a) outright purchase of shares, or (b) exchange of shares, or (c) a combination of both; provided that the scheme as far as
possible may ensure that after the proposed acquisition, the erstwhile promoters do not own any shares in case such acquisition is made by the new promoters pursuant to such scheme.

16. The person acquiring shares from the promoters of the persons in-charge of the management of the affairs of the financially weak company or the financial institutions shall make a public announcement of his intention for acquisition of shares from the shareholders of the company. Such public announcement shall contain relevant details about the offer including the information about the identity and background of the person acquiring shares, number and percentages of shares proposed to be acquired, offer price, the specified date, the date of opening of the offer and the period for which the offer shall be kept open.

17. No person shall make a competitive bid for acquisition of shares of the financially weak company once the lead institution has evaluated the bid and accepted the bid of the acquirer who has made the public announcement of offer acquisition of shares from the shareholders other than the promoters.

An amendment to the Regulations, 1997 on substantial acquisition of shares and takeovers has been notified on 28, 1998. SEBI had decided to increase the creeping acquisition limited to 5% from the 25 and the threshold limit to 215% from 10%. The rationale for SEBI’s decision to
increase the creeping limit and the threshold limit is difficult to understand. The decision to increase the creeping to 5% and threshold limit to 15% appears to be working against the basic spirit of the takeover code. The increase in creeping acquisition will bring in quiet acquisition without the trigger of making a minimum offer of 20%. In fact the 20% offer was to facilitate the market movements and competitive process and also to keep the management on their toes. The decision to increase the creeping acquisition from 2% to 5% disregards the objective of protection of small shareholders. The decision to increase the threshold limit from 10 to 15% is also difficult to be justified.

(5) FOREIGN EXCHANGE REGULATION ACT 1973 (FERA 1973):

FERA is the primary Indian Law which regulates dealings in foreign exchange. Although there are no provisions in the Act which deal directly with transactions relating to amalgamations, certain provisions of the Act become relevant when shares in Indian companies are allotted to non-residents, where the undertaking sought to be acquired is a company which is not incorporated under any law in India. Section 29 of FERA provides that no foreign company or foreign national can acquire any share of an Indian company except with prior approval of the reserve Bank of India. The Act has been amended to facilitate transfer of shares two non residents and to allow Indian companies to set up subsidiaries and joint ventures
abroad without the prior approval of the Reserve Bank of India.

2.14 MERGER AND ACQUISITION STRATEGIES:

Merger and Acquisition Strategies are significant in order to bring success to a merger or acquisition deal. A sound strategic planning can protect any merger from failure. The important issues that should be kept in mind at the time of developing Merger and Acquisition Strategy are discussed as follow:

Merger and Acquisition Strategies are extremely important in order to derive the maximum benefit out of a merger or acquisition deal. It is quite difficult to decide on the strategies of merger and acquisition, especially for those companies who are going to make a merger or acquisition deal for the first time. In this case, they take lessons from the past mergers and acquisitions that took place in the market among other companies and proved to be successful. Through market survey and market analysis of different mergers and acquisitions, it has been found that there are some golden rules which can be treated as the Strategies for Successful Merger or Acquisition Deal.

These rules or strategies are discussed below:

- Before entering into any merger or acquisition deal, the target company's market performance and market position is required to be examined thoroughly so that the optimal target company can be
chosen and the deal can be finalized at a right price.

- Identification of future market opportunities, recent market trends and customer's reaction to the company's products are also very important in order to assess the growth potential of the company.

- After finalizing the merger or acquisition deal, the integration process of the companies should be started in time. Before the closing of the deal, when the negotiation process is on, from that time, the management of both the companies require to work on a proper integration strategy. This is to ensure that no potential problem crop up after the closing of the deal.

- If the company which intends to acquire the target firm plans restructuring of the target company, then this plan should be declared and implemented within the period of acquisition to avoid uncertainties.

- It is also very important to consider the working environment and culture of the workforce of the target company, at the time of drawing up Merger and Acquisition Strategies, so that the laborers of the target company do not feel left out and become demoralized.

2.15 TAXABLE VERSUS TAX-FREE TRANSACTIONS:

Mergers and acquisitions can be either tax-free or taxable events. The tax status of a transaction may affect its value from both the buyer's and the seller's viewpoints. In a taxable acquisition, the assets of the selling
firm are revalued or "written up." Therefore, the depreciation deduction will rise (assets are not revalued in a tax-free acquisition). But the selling shareholders will have to pay capital gains taxes and thus will want more for their shares to compensate. This is known as the capital gains effect. The capital gains and write-up effects tend to cancel each other out.

Certain exchanges of stock are considered tax-free reorganizations, which permit the owners of one company to exchange their shares for the stock of the acquirer without paying taxes. There are three basic types of tax-free reorganizations. In order for a transaction to qualify as a type A tax-free reorganization, it must be structured in certain ways. In contrast to a type B reorganization, the type A transaction allows the buyer to use either voting or nonvoting stock. It also permits the buyer to use more cash in the total consideration since the law does not stipulate a maximum amount of cash that can be used. At least 50 percent of the consideration, however, must be stock in the acquiring corporation. In addition, in a type A reorganization, the acquiring corporation may choose not to purchase all the target's assets.

In instances where at least 50 percent of the bidder's stock is used as the consideration—but other considerations such as cash, debt, or no equity securities are also used—the transaction may be partially taxable. Capital gains taxes must be paid on those shares that were exchanged for no equity consideration.
A type B reorganization requires that the acquiring corporation use mainly its own voting common stock as the consideration for purchase of the target corporation's common stock. Cash must comprise no more than 20 percent of the total consideration, and at least 80 percent of the target's stock must be paid for by voting stock by the bidder.

Target stockholders who receive the stock of the acquiring corporation in exchange for their common stock are not immediately taxed on the consideration they receive. Taxes will have to be paid only if the stock is eventually sold. If cash is included in the transaction, this cash may be taxed to the extent that it represents a gain on the sale of stock.

In a type C reorganization, the acquiring corporation must purchase 80 percent of the fair market value of the target's assets. In this type of reorganization, a tax liability results when the acquiring corporation purchases the assets of the target using consideration other than stock in the acquiring corporation. The tax liability is measured by comparing the purchase price of the assets with the adjusted basis of these assets.

2.16 MERGER AND ACQUISITION IN INDIA

India in the recent years has showed tremendous growth in the M&A deal. It has been actively playing in all industrial sectors. It is widely spreading far across the stretches of all industrial verticals and on all
business platforms. The increasing volume is witnessed in various sectors like that of finance, pharmaceuticals, telecom, FMCG, industrial development, automotives and metals.

The volume of M&A transactions in India has apparently increased to about 67.2 billion USD in 2010 from 21.3 billion USD in 2009. At present the industry is witnessing a whopping 270% increase in M&A deal in the first quarter of the financial year. This increasing percentage is mainly attributed to the increasing cross-border M&A transactions. Over that increasing interest of foreign companies in Indian companies has given a tremendous push to such transactions.

Large Indian companies are going through a phase of growth as all are exploring growth potential in foreign markets and on the other end even international companies is targeting Indian companies for growth and expansion. Some of the major factors resulting in this sudden growth of merger and acquisition deal in India are favorable government policies, excess of capital flow, economic stability, corporate investments, and dynamic attitude of Indian companies.

The recent merger and acquisition 2011 made by Indian companies worldwide are those of Tata Steel acquiring Corus Group plc, UK based company with a deal of US $12,000 million and Hindalco acquiring Novelis from Canada for US $6,000 million.
With these major mergers and many more on the annual chart, M&A services India are taking a revolutionary form. Creating a niche on all platforms of corporate businesses, merger and acquisition in India is constantly rising with edge over competition.

2.17 TOP 10 INDIAN MERGERS AND ACQUISITIONS OF 2014:

Mergers and acquisitions (M & A) is the area of corporate finances, management and strategy dealing which deals with purchasing and/or joining with other companies. Though the two are often mentioned together, a merger is very different from an acquisition.

A merger, in a nutshell, involves two corporate entities joining forces and becoming a new business entity, with a new name. It usually involves two companies of same size and stature joining hands.

An acquisition, on the other hand, involves one bigger business taking over a smaller company which may be absorbed into the parent company or run as a subsidiary. The company being taken over is referred to as the ‘target company’ in the corporate world.

Here is a list of some of the most happening mergers and acquisitions in India in the year 2014, listed in random order.

1. Flipkart- Myntra
The huge and most talked about takeover or acquisition of the year. The seven year old Bangalore based domestic e-retailer acquired the online fashion portal for an undisclosed amount in May 2014. Industry analysts and insiders believe it was a $300 million or Rs 2,000 crore deal.

Flipkart co-founder Sachin Bansal insisted that this was a “completely different acquisition story” as it was not “driven by distress”, alluding to a plethora of small e-commerce players either having wound up or been bought over in the past two years. Together, both company heads claimed, they were scripting “one of the largest e-commerce stories”.

2. **Asian Paints- Ess Ess Bathroom Products**

Asian paints signed a deal with Ess Ess Bathroom products Pvt Ltd to acquire its front end sales business for an undisclosed sum in May, 2014.

“The company on May 14, 2014 has entered into a binding agreement with Ess Ess Bathroom Products Pvt. Ltd and its promoters to acquire its entire front-end sales business including brands, network and sales infrastructure,” Asian Paints said in a filing to the BSE on Wednesday. Ess Ess produces high end products in bath and wash segment in India and taking them over led to a 3.3% rise in share price for Asian paints.
3. **RIL- Network 18 Media and Investments**

Reliance Industries Limited (RIL) took over 78% shares in Network 18 in May 2104 for **Rs 4,000 crores**. Network 18 was founded by Raghav Behl and includes moneycontrol.com, In.com, IBNLive.com, Firstpost.com, Cricketnext.in, Homeshop18.com, Bookmyshow.com while TV18 group includes CNBC-TV18, CNN-IBN, Colors, IBN7 and CNBC Awaaaz.

4. **Merck- Sigma Deal**

One of the leading Indian manufacturers, Merck KGaA took over US based Sigma-Aldrich Company for **$17 billion in cash**, hoping the deal will help boost its lab supplies business. Sigma is the leading supplier of organic chemicals and bio chemicals to research laboratories and supplies groups like Pfizer and Novartis with lab substances.

5. **Ranbaxy- Sun Pharmaceuticals**

Sun Pharmaceutical Industries Limited, a multinational pharmaceutical company headquartered in Mumbai, Maharashtra which manufactures and sells pharmaceutical formulations and active pharmaceutical ingredients (APIs) primarily in India and the United States bought the Ranbaxy Laboratories. The deal is expected to be completed in December, 2014. Ranbaxy shareholders will get 4 shares of
Sun Pharma for every 5 Ranbaxy shares held by them. The deal, worth $4 billion, will lead to a 16.4 dilution in the equity capital of Sun Pharma.

6. TCS- CMC

Tata Consultancy Services (TCS), the $13 billion flagship software unit of the Tata Group, has announced a merger with the listed CMC with itself as part of the group’s renewed efforts to consolidate its IT businesses under a single entity. At present, CMC employs over 6,000 people and has annual revenues worth Rs 2,000 crores. The deal was inked a few days back. TCS already held a 51% stake in CMC.

7. Tata Power- PT Arutmin Indonesia

India’s largest private power producer, Tata Power, purchased 30% stake in Indonesian coal manufacturing firm for Rs 47.4 billion. Earlier this year, they sold off 5% of its stake in PT Arutmin Indonesia (Arutmin) and PT Kaltim Prima Coal (KPC) for Rs. 250 billion due to falling coal prices globally. It plans to sell the remaining 25% stake for $ 1 billion soon too.

8. Tirumala Milk – Lactalis

The largest dairy player in the world, Groupe Lactalis SA, acquired the 18 year old Hyderabad based Tirumala Milk products for a whopping Rs 1750 crore ($275 million) in January, 2014. Founded in 1896 by D Brahmanandam, B Brahma Naidu, B Nageswara Rao, Dr N
Venkata Rao and R Satyanarayana, Tirumala is the second largest private dairy company in South India. Lactalis acquired 100% of their shares.

9. **Aditya Birla Minacs- CSP CX**

Aditya Birla Nuvo Ltd (ABNL) owned ABNL IT & ITeS Ltd. was sold to a Canadian based technology outsourcing firm marking Aditya Birla’s exit for the IT industry. The deal was chalked out with a group of investors led by Capital Square Partners (CSP) and CX Partners (CXP) for $260 million (approximately Rs. 1,600 crore).

10. **Sterling India Resorts- Thomas Cook India**

Billionaire Prem Watsa owned Thomas Cook India bought the Sterling Resorts India for Rs 870 crores in, marking Thomas Cook’s entry into the hospitality sector. Thomas Cook had earlier acquired Ikya Human Solutions in 2013.

2.18 **PROBLEMS OF MERGER AND ACQUISITION IN INDIA**

It's a well known fact that a good number of mergers fail because of various factors including cultural differences and flawed intentions. Most companies when sign an agreement often get a create a bigger picture of their expectations as they believe in pure concept of higher capital gains when two are combining together. This belief is not always true as conditions in the market and economy often the operation and functioning of any company.
The history of merger and acquisitions have revealed that almost two thirds of the mergers taking place experience failure and feel disappointed on their own terms and predefined parameters. At times even the motivation driving the mergers can prove to be intangible. There are many factors contributing to the failure and elements that are problems of mergers and acquisition. There are many aspects that should be understood and analyzed before signing an agreement because even one small mistake in taking a decision can completely dump both the companies with an irreversible impact.

Some of the prominent issues with regards to failure of M&A are as follows:

A flawed intention in terms of unethical motivation or high expectations can eventually lead to failure of the merger. If any company desires high capital gain along with glory and fame irrespective of the corporate strategy defined to fulfill the requirements of the company, the merger fails.

Any kind of agreement based completely on the optimistic stock market condition can also lead to failure as stock market is an uncertain entity. In such cases more risks are involved with the prevailing merger.

Cultural difference is also a big problem in case of a merger. When two companies from different corporate cultures come together it becomes
a really challenging task to integrate the cultures of both the companies. It is certainly difficult to maintain the difference and move ahead for success without any kind of integration.

2.19 RECENT MERGERS

Global M&A is one of the most happening and fundamental element of corporate strategy in today's world. Many companies around the world have merged with each other with a motive to expand their businesses and enhance revenue. In the span of few years there are many companies coming together for betterment across the globe. Recent mergers and acquisitions 2011 are Lipton Rosen & Katz in New York, Sullivan & Cromwell LLP in New York, Slaughter & May in London, Mallesons Stephen Jaques in Sydney, and Osler Hoskin & Harcourt LLP in Toronto. Even in India merger and acquisition has become a fashion today with a cut throat competition in the international market. There are domestic deals like Penta homes acquiring Agro Dutch Industries, ACC taking over Encore Cement and Addictive, Dalmia Cement acquiring Orissa Cement, Edelweiss Capital acquiring Anagram Capital. All these are recent merger and acquisition 2010 valued at about USD 2.16 billion.

Apart from these there are other successful mergers in India as follows:

- Tata Chemicals took over British salt based in UK with a deal of US $13 billion. This is one of the most successful recent mergers and acquisitions 2010 that made Tata even more powerful with a strong
access to British Salt's facilities that are known to produce about 800,000 tons of pure white salt annually.

Merger of Reliance Power and Reliance Natural Resources with a deal of US $11 billion is another biggest deal in the Indian industry. This merger between the two made it convenient and easy for the Reliance power to handle all its power projects as it now enjoys easy availability of natural gas.

Airtel acquired Zain in Africa with an amount of US $ 10.7 billion to set new benchmarks in the telecom industry. Zain is known to be the third largest player in Africa and being acquired by Airtel it is deliberately increasing its base in the international market.

ICICI Bank's acquisition of Bank of Rajasthan at about Rs 3000 Crore is a great move by ICICI to enhance its market share across the Indian boundaries especially in northern and western regions.

Fortis Healthcare acquired Hong Kong's Quality Healthcare Asia Ltd for around Rs 882 Crore and is now on move to acquire the largest dental service provider in Australia, the Dental Corp at about Rs 450 Crore.
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