PREFACE

“The most original authors of modern times are so, not because they create anything new, but only because they are able to say things in a manner as if they had never been said before”

Goethe

The present study tries to explore and present the world of mergers, amalgamations, acquisitions and takeovers in a comprehensive manner. The study explores the legal, regulatory, social, economic, financial and taxation dimensions of this subject under the covers of one study. It attempts to explore the complex, multi-layered and multi-dimensional world of mergers and acquisitions in a novel way. One of the most vital dimensions and trends in the today’s scenario is the increasing degree of internationalisation of global economy through mergers and acquisitions. This has made mergers and acquisitions an integral part of the new economic paradigm around the entire globe.

Dramatic events in mergers, takeovers, restructuring and corporate control fill the newspaper headlines almost daily. Business restructuring through mergers and acquisitions represent a new industrial force that will lead a country or any economy that practice these arts to new heights of creativity. A company like an organism need to grow and to adapt itself to changing business environment. This make corporate restructuring through mergers, amalgamations and acquisitions inevitable.

Realising the importance of mergers and acquisitions for an economy, Indian companies could not stay behind. Even before nineties. Mergers and acquisitions happened in India but they were quite less. The liberalisation policies introduced in post-1991 lead to high tide of mergers and acquisitions in India. The concept of mergers and acquisitions has caught up like a fire. Mergers, takeovers and alliance talks are heating up in India and growing at a tremendous pace. The opening of Indian economy and thus allowing investors across the globe to enter the Indian economy without restricting them to any particular type of business has lead to high value inbound deals in India. On the other hand, liberalisation of foreign investment and foreign exchange policies accompanied
by rapid economic growth have enabled Indian companies to acquire softer targets in India or abroad and thus leading to high value outbound deals.

In this background, the importance of mergers and acquisition has increased tremendously. As the laws regulating mergers and acquisitions deal with rapidly changing economic situations, they are constantly evolving or changing. When the economic liberalisation process began in the early 1990s the then existing Indian laws and regulations were relatively complex and not so friendly from an investors point of view. To enable Indian companies grow through mergers and acquisitions and compete with the best of the world, Indian laws and regulations have been constantly evolved and liberalised in accordance with international best practices.

Therefore, this study attempts to explore in detail the complex legal and regulatory framework for mergers and acquisitions in India. It studies the journey of laws from Companies Act, 1956 to Companies Act, 2013, FERA to FEMA, MRTP to Competition Act, Takeover Code 1997 to Takeover Code 2011. It also studies the ever evolving taxation laws in India. Thus, the laws have been constantly evolved but much more need to be done in this regard. So the lacunas in the laws have been highlighted and suitable amendments suggested.

The study highlights the uncertainty and the setback to Indian mergers and acquisitions in 2012 created as a result of retrospective tax amendments introduced to counter judgement of Supreme Court in Vodafone case. The concept of GAAR and its implication on reconstruction exercises such as mergers and acquisitions has also been explored. Indian companies see ‘going global’ as a strategic priority. The process of liberalisation which was accelerated in India due to its obligation to WTO lead to high tide of cross-border mergers and amalgamations in India. The thesis attempts to highlights lacunas in our foreign exchange laws and takeover norms in the light of fallout of major cross-border deal Bharti-MTN.

Emergence of India as an intellectual and technological superpower has also raised several intellectual property issues in mergers and acquisitions. An effort has been made in this thesis to address key intellectual property issues in mergers and acquisitions. The study also highlights the human resource dimensions in mergers and acquisitions as
many mergers fail to create value due to non-integration of human resources in mergers and acquisitions as happened in the case of Air India-India Airlines mergers.

As various legislative provisions regarding mergers and amalgamations have become an inseparable part of the corporate jurisprudence with the help of judicial perception, that’s why judicial perception at various steps have been given due weightage. The judiciary has also played a very important role in paving the way for mergers and acquisitions in India through its judgement in Hindustan Lever Limited-Tomco case, Ion Exchange Ltd. case or Vodafone Case. That’s why this thesis explores the perception of both legislature and judiciary towards promoting mergers and acquisitions in India.