ISSUES AND CHALLENGES FACED BY BUSINESSES IN MERGERS AND ACQUISITIONS IN INDIA

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ABSTRACT

Mergers and acquisitions (M&A) are complex corporate transactions that bring together two or more businesses, presenting a range of strategic, financial, and operational challenges. Companies embarking on M&A face several challenges, such as the integration of cultures, systems, and processes, managing employee retention and morale, regulatory compliance, and negotiating the terms of the deal. This article highlights some of the common challenges that companies face during the M&A process and offers insights into how organizations can overcome them. It explores the critical factors that influence the success of M&A transactions, such as effective communication, due diligence, alignment of strategic goals, and post-merger integration planning. Overall, this article emphasizes the importance of thorough preparation, careful planning, and effective execution to mitigate the challenges and maximize the benefits of M&As. By articulating some of the landmark cases of merger and acquisition in India.

Keywords: Mergers and Acquisitions, Strategic growth, corporate transaction, foreign exchange.

INTRODUCTION

Mergers and acquisitions are corporate transactions in which two or more companies combine their businesses to form a single entity. These transactions are typically undertaken to achieve economies of scale, reduce competition, expand geographic reach, or improve profitability. Mergers and acquisitions can take several forms, such as a consolidation of two equal companies or the acquisition of one firm by another. They require careful planning and due diligence to ensure that the transaction is successful and creates long-term value for shareholders. While mergers and acquisitions can bring significant benefits to companies, they also involve risks and challenges that must be carefully managed to avoid negative outcomes. Mergers and acquisitions (M&A) are crucial strategies for businesses aimed at expanding their operations, diversifying their products, acquiring new technology, and opening up new growth

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opportunities. In India, the M&A market has been gaining momentum in recent years, driven by factors such as economic liberalization, increasing competition, globalization, and technological advancements.

MERGER:- A merger takes place when two companies decide to combine their operations, assets, and liabilities to form a new entity. In a merger, both companies surrender their stock, and shareholders receive shares in the new entity. The combination of two ownership and management creates new ownership. There are several sectors in India where mergers happen like in banking sector, telecom sector, entertainment sector, pharmaceutical sector, etc. a recent example of a merger was in the telecom sector between Vodafone and Idea. Where they merged and form an identity called (Vi)

ACQUISITION:- A merger takes place when two companies decide to combine their operations, assets, and liabilities to form a new entity. In a merger, both companies surrender their stock, and shareholders receive shares in the new entity. An acquisition occurs when an acquiring company purchases the securities, assets, or management control of another company to gain control over its operations, products, or services. A recent case of the acquisition was of Tata group and airline company Air India in January 2022. Where Tata group acquired air India in a successful bid of 21.7 billion dollars. For a 100% stake in the company

REASON FOR MERGER AND ACQUISITION:- [1]

Strategic growth: Mergers and acquisitions (M&A) can be a way for companies to accelerate their growth and expansion into new markets. By acquiring another company, they can gain access to new customers, products, or technologies that can help them achieve their business goals.

1. Synergies: Mergers and acquisitions can help companies achieve operational synergies, such as cost savings through economies of scale, better procurement, and distribution efficiencies. By combining resources and eliminating redundancy, companies can achieve greater efficiency and profitability.

2. Diversification: M&A can help companies diversify their business portfolios and reduce their overall business risk. Acquiring companies in different industries or geographies can help

[1] Dashmeet Kaur, 'What are the top 5 reasons for merger and acquisition?' (swarit advisors) , December 2019 https://swaritadvisors.com/learning/what-are-the-top-5-reasons-for-merger-and-acquisition/

companies expand their revenue base and reduce their dependence on any one product, market, or geography.

3. Talent acquisition: In some cases, M&A can help companies acquire talented employees who have specific skills or expertise that are critical to the company's success. By acquiring talent through M&A, companies can save time and money in hiring and training new employees.

4. Consolidation: Mergers and acquisitions can also be driven by consolidation, where companies in the same industry merge to create a larger entity with greater market share and bargaining power. Both

Mergers and Acquisition transactions can take several forms, including the purchase of assets, amalgamation, consolidation, and vertical and horizontal integration. The purpose of M&A can range from expanding the market share, entering new markets, acquiring new technologies, or improving efficiency and profitability.

LAWS GOVERNING MERGERS AND ACQUISITIONS IN INDIA:-[2]

In India, mergers and acquisitions (M&A) are regulated by several laws and regulatory authorities. The main laws and regulations governing M&A in India are:

1. Companies Act, 2013: This is the primary law that governs the incorporation, management, and dissolution of companies in India. The Act contains provisions related to mergers, amalgamations, and acquisitions of companies.

2. SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011: This regulation is enforced by the Securities and Exchange Board of India (SEBI) and provides guidelines for the acquisition of shares and takeovers of listed companies.[3]

3. Competition Act, 2002: This Act is enforced by the Competition Commission of India (CCI) and regulates mergers and acquisitions that may have a bearing on competition in the Indian market.

[2] Companies act, 2013

[3] K.srinivasa reddy, 'Regulatory framework of mergers and acquisitions: A review of Indian statutory compliances and policy recommendations' (emerald insight), March 2016 https://www.emerald.com/insight/content/doi/10.1108/IJLMA-03-2015-0013/full/html?skipTracking=true%20%20Read%20more%20at:%20https://taxguru.in/company-law/merger-acquisition-india-issues-challenges.html

4. Foreign Exchange Management Act (FEMA), 1999: This Act is enforced by the Reserve Bank of India (RBI) and regulates foreign investment and foreign exchange transactions in India.

5. Insolvency and Bankruptcy Code, 2016: This Act provides the framework for the insolvency and bankruptcy of companies in India.

REGULATORY AUTHORITIES:- The regulatory authorities involved in the M&A process in India are

1. Securities and Exchange Board of India (SEBI): SEBI regulates M&A involving listed companies in India.

2. Competition Commission of India (CCI): CCI reviews M&A transactions to ensure that they do not create anti-competitive practices in the Indian market.

3. Reserve Bank of India (RBI): RBI regulates foreign investment and foreign exchange transactions related to M&A.

4. Ministry of Corporate Affairs (MCA): MCA is responsible for the administration of the Companies Act, which governs the M&A process.

Overall, the M&A process in India is tightly regulated to ensure that the interests of shareholders, consumers, and the economy are protected.

ISSUES AND CHALLENGES FACED BY BUSINESSES IN MERGER AND ACQUISITION:- Despite the potential benefits of M&A, businesses in India face several issues and challenges in the process. some of these challenges are.

REGULATORY HURDLES: One of the most significant challenges faced by businesses in M&A deals is navigating the complex regulatory framework in India. M&A transactions in India are subject to multiple regulations, including company law, securities laws, and competition law. The procedure for obtaining regulatory approvals can be time-consuming and cumbersome, involving multiple government agencies and departments. For instance, a merger or acquisition involving a listed company requires approval from the Securities and Exchange Board of India (SEBI), stock exchanges, and the Competition Commission of India (CCI). The delays and uncertainties associated with regulatory approvals can impact the deal structure and valuation.

CULTURAL DIFFERENCES: Mergers and acquisitions involve combining different organizational cultures, which can pose significant challenges. Cultural differences can lead to conflicts among employees, management, and stakeholders. For example, the management style and decision-making processes of the acquiring company may differ from those of the acquired company, leading to resistance to change, lack of trust, and communication breakdowns. [4]

INTEGRATION ISSUES: Integrating two or more companies after a merger or acquisition can be a daunting task, particularly when dealing with large organizations. Integration issues can range from IT systems, operational processes, and human resources to supply chain management and customer retention. A poorly executed integration can result in disruptions to operations, loss of key personnel, and customer dissatisfaction, which can impact the long-term success of the merger or acquisition.

VALUATION CHALLENGES: Valuing a business accurately is essential for a successful merger or acquisition. However, valuing a business in India can be challenging due to the lack of transparency in financial reporting, discrepancies in accounting practices, and non-standardized valuation methods. Additionally, the valuation of the acquired company may also be influenced by regulatory restrictions on foreign investments and currency fluctuations.

LEGAL RISKS: Mergers and acquisitions involve taking on legal risks associated with the acquired company's liabilities and obligations. The acquiring company must conduct thorough due diligence to identify potential legal risks, such as pending litigation, tax disputes, environmental concerns, and contractual obligations. Failing to identify such risks can expose the acquiring company to significant financial and reputational losses.

ADVANTAGES AND DISADVANTAGES OF MERGERS AND ACQUISITIONS:- [5]

ADVANTAGES

1. Synergy: Companies combine their resources and expertise to increase their potential and capabilities to generate revenue. As the two companies merge all their assets their important

[4] DealRoom by M&A Science https://dealroom.net/case-studies/how-paylocity-modernized-their-diligence-management-with-dealroom

[5] SAC ATTORNEYS LLP, 'Advantages and disadvantages of merger and acquisition' https://www.sacattorneys.com/amp/advantages-and-disadvantages-of-mergers-and-acquisitions.html

resources and the experts of both companies come under one umbrella in one organization. As a result, they all work on a single project in synergy for better output.

2. Economies of scale: Mergers and acquisitions bring about cost savings through shared resources, increased efficiency, and the elimination of redundancy. By combining the resources funds and capital of both companies the new entity holds an extra edge over its competitor in the market. And as the result, they hold some extra edge in taking risks and further steps in the growth of the business in the market.

3. Market share: By merging or acquiring Companies can expand their market share as they get the consumer of the companies and creates a further large consumer base, which translates into increased profits and revenue.

4. Diversification: Companies can diversify by acquiring businesses in different industries, which helps them to mitigate risk and volatility.

5. Benefit from tax: companies can also merge to get away from the high taxes of government. A highly profit-making company merges with a loss-making company to get away from the high tax slab by showing the losses of the other company.

DISADVANTAGES

1. Integration issues: After a merger or acquisition, companies face integration issues such as culture clashes, communication barriers, and management conflicts. The two companies coming from working under different organizations to working under one organization creates differences of opinion and different styles of working which in some cases creates low efficiency and lower output.

2. Loss of talent: A merger and acquisition may result in the loss of top talent from the acquired company, in some cases efficient employee or an expert leaves the company which can adversely affect the success of the merger. As a result, it creates an adverse effect on the output of the company.

3. Regulatory hurdles: Mergers and acquisitions may face regulatory hurdles and must be approved by various regulatory bodies before they can be completed. For eg. (SEBI) (MCA)

4. Financial risk: A merger or acquisition is a significant investment of money, time, and expertise, and if it fails to deliver results, it can harm a company's bottom line.

LANDMARK CASES OF MERGER AND ACQUISITION[6]

- Vodafone and Hutchison Essar: In 2007, Vodafone acquired a controlling stake in Hutchison Essar, a telecom company in India, for $11.1 billion. The deal faced regulatory challenges, but Vodafone eventually received approval to complete the acquisition.
- Tata Steel and Corus Group: In 2007, Tata Steel acquired Corus Group, a steel company in Europe, for $12.1 billion. The acquisition made Tata Steel the fifth-largest steel producer in the world.
- Bharti Airtel and Zain: In 2010, Bharti Airtel acquired Zain, a telecom company in Africa, for $10.7 billion. The acquisition allowed Bharti Airtel to expand its operations in Africa and become the fourth-largest telecom company in the world.
- Hindustan Unilever and GlaxoSmithKline Consumer Healthcare: In 2013, Hindustan Unilever acquired GlaxoSmithKline Consumer Healthcare, a consumer goods company in India, for $3.8 billion. The acquisition allowed Hindustan Unilever to diversify its product portfolio and expand its presence in the Indian market.
- Walmart acquiring Flipkart: the American multinational retail corporation acquired 77% of shares in Flipkart by successfully beating amazon in the bidding war by 16 billion US dollars. As a result, Walmart entered to compete with Amazon in the Indian e-commerce market.
- Zomato acquiring uber eat's: the Indian online food delivery giant zomato successfully acquired the American company uber's food delivery service for 350 million US dollars. And created a monopoly in the business. Also reduced the loss faced by uber eats in the past recent years.

CONCLUSION

In my concluding words I would like to address that despite the challenges and issues associated with M&A deals in India, they remain a popular strategy for companies looking to grow and expand their businesses. To mitigate these challenges, businesses must conduct thorough due diligence, seek expert advice and guidance, and plan for effective integration strategies. Moreover, having a clear understanding of the regulatory environment, cultural

[6] Divi Dutta, 'Mergers and Acquisition in India -A brief overview' (July 2022) mondaq https://www.mondaq.com/india/corporate-and-company-law/1210798/mergers-and-acquisitions-in-india--a-brief-overview#

differences, valuation challenges, and legal risks can help companies navigate the M&A process successfully.