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*Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.*



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*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

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# **MERGERS AND ACQUISITIONS IN INDIA: A LEGAL SNAPSHOT**

AUTHORED BY: MRIDUL KALIKA & SAKSHI GOEL

## **INTRODUCTION**

Mergers and Acquisitions (M&A) in India have gained significant momentum over the past few years, driven by various factors such as economic growth, regulatory reforms, and technological advancements. M&A transactions in India are governed by various laws, regulations, and guidelines, which provide a legal framework for the conduct of these transactions. In this article, we will discuss the key legal aspects of M&A in India and relevant case studies.

## **LEGAL FRAMEWORK FOR M&A IN INDIA**

The Companies Act, 2013, is the primary legislation governing M&A in India. The Act provides for various forms of business combinations, such as mergers, amalgamations, and acquisitions. The Act also lays down the procedures for conducting these business combinations and the conditions for their approval.

In addition to the Companies Act, SEBI regulations also play a crucial role in M&A in India. SEBI is the regulatory body for the securities market in India, and it has issued regulations for takeovers, delisting, and other aspects of M&A. The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, govern the acquisition of shares and control of Indian companies. The regulations provide for a mandatory tender offer (MTO) in case of acquisition of shares or voting rights exceeding a certain threshold.

## **KEY LEGAL ASPECTS OF M&A IN INDIA**

1. **Approvals and Clearances:** M&A transactions in India require various approvals and clearances from regulatory authorities, such as the Competition Commission of India (CCI), Reserve Bank of India (RBI), and SEBI. The CCI approval is required for transactions that exceed a certain threshold, and the RBI approval is required for foreign investment. The SEBI approval is required for listed companies, and the approval is

granted based on various factors, such as the impact on the share price, the disclosure of material information, and the compliance with SEBI regulations.

2. **Valuation and Fair Price:** The Companies Act, 2013, and SEBI regulations provide for the valuation of shares and the determination of the fair price in M&A transactions. The fair price is determined based on various factors, such as the book value, earnings, and comparable transactions. The SEBI regulations provide for the appointment of a registered valuer for the valuation of shares in M&A transactions.
3. **Disclosure Requirements:** M&A transactions in India are subject to various disclosure requirements. The Companies Act, 2013, and SEBI regulations require the disclosure of various details of the transaction, such as the terms and conditions, the consideration, and the impact on the financials of the companies involved. The disclosure requirements are intended to ensure transparency and protect the interests of the shareholders, creditors, and other stakeholders. The disclosure requirements also provide for the filing of various documents, such as the scheme of arrangement, the letter of offer, and the due diligence report, with the regulatory authorities.
4. **Employee Benefits and Social Security:** M&A transactions in India are also subject to various employee benefits and social security requirements. The Companies Act, 2013, and the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, provide for the transfer of employee benefits and the continuation of social security benefits in M&A transactions. The regulations provide for the payment of gratuity, provident fund, and other benefits to the employees of the transferor company. The regulations also provide for the continuation of medical, insurance, and other benefits to the employees of the transferor company.
5. **Dispute Resolution:** M&A transactions in India may also give rise to disputes, which may be resolved through various dispute resolution mechanisms, such as arbitration, mediation, and litigation. The Arbitration and Conciliation Act, 1996, governs the arbitration proceedings in India. The regulations provide for the appointment of an arbitrator, the conduct of the arbitration proceedings, and the enforcement of the arbitration award.

## **CASE STUDIES**

### **Case Study 1: Tata Steel-Corus Acquisition**

In 2007, Tata Steel, an Indian steel company, acquired Corus Group, a European steel company,

for \$12.1 billion. The acquisition was one of the largest M&A transactions in India at that time. The transaction required various approvals and clearances from regulatory authorities, such as the European Commission, the UK High Court, and the RBI. The transaction was structured as a scheme of arrangement under the UK Companies Act, 2006, and was approved by the shareholders of both companies. The transaction was completed in April 2007, and Tata Steel became the world's sixth-largest steel company.

### **Case Study 2: Flipkart-Walmart Acquisition**

In 2018, Walmart, an American retail giant, acquired a majority stake in Flipkart, an Indian e-commerce company, for \$16 billion. The transaction was one of the largest M&A transactions in India and required various approvals and clearances from regulatory authorities, such as the CCI, the RBI, and SEBI. The transaction was structured as a share purchase agreement, and Walmart acquired the shares of existing shareholders, including investors, founders, and employees. The transaction was completed in August 2018, and Flipkart became a subsidiary of Walmart.

### **Case Study 3: Vodafone-Idea Merger**

In 2018, Vodafone, a British telecommunications company, merged its Indian operations with Idea Cellular, an Indian telecommunications company, to create India's largest telecom operator, Vodafone Idea Ltd. The merger was one of the largest M&A transactions in India and required various approvals and clearances from regulatory authorities, such as the CCI, the RBI, and SEBI. The merger was structured as a scheme of arrangement under the Companies Act, 2013, and was approved by the shareholders of both companies. The merger was completed in August 2018, and Vodafone Idea Ltd became the largest telecom operator in India.

### **Case Study 4: HUL-GlaxoSmithKline Consumer Healthcare Acquisition**

In 2020, Hindustan Unilever Limited (HUL), an Indian consumer goods company, acquired GlaxoSmithKline Consumer Healthcare (GSKCH), a British consumer healthcare company, for INR 31,700 crore (approximately \$4.6 billion). The transaction was one of the largest M&A transactions in the Indian consumer goods sector and required various approvals and clearances from regulatory authorities, such as the CCI, the RBI, and SEBI. The transaction was structured as a scheme of arrangement under the Companies Act, 2013, and was approved by the shareholders of both companies. The transaction was completed in November 2020, and GSKCH became a wholly-owned subsidiary of HUL.

The acquisition helped HUL to strengthen its position in the Indian consumer goods market and expand its portfolio of health and wellness products. The acquisition also provided GSKCH with a strong platform for growth in the Indian market.

### **Case Study 5: Reliance Industries-Future Group Acquisition**

In 2020, Reliance Industries, an Indian conglomerate, acquired the retail and wholesale business of Future Group, an Indian retail company, for INR 24,713 crore (approximately \$3.4 billion). The transaction was one of the largest M&A transactions in the Indian retail sector and required various approvals and clearances from regulatory authorities, such as the CCI, the RBI, and SEBI. The transaction was structured as a slump sale under the Income Tax Act, 1961, and was approved by the shareholders of both companies. The transaction was completed in August 2020, and the retail and wholesale business of Future Group became a part of Reliance Retail Ventures Limited, a subsidiary of Reliance Industries.

The acquisition helped Reliance Industries to strengthen its position in the Indian retail market and expand its retail footprint across the country. The acquisition also provided Future Group with a strong platform for growth and a stable financial partner.

These case studies illustrate the complexity and diversity of M&A transactions in India. The success of these transactions depends on various factors, such as the strategic fit between the companies, the regulatory approvals, and the integration of the businesses. By understanding the legal framework and the key legal aspects of M&A in India, the companies can navigate the complex M&A landscape and achieve their strategic objectives.

## **CONCLUSION**

M&A transactions in India are governed by various laws, regulations, and guidelines, which provide a legal framework for the conduct of these transactions. The Companies Act, 2013, and SEBI regulations provide for the procedures for conducting M&A transactions and the conditions for their approval. M&A transactions in India are subject to various approvals and clearances from regulatory authorities, such as the CCI, RBI, and SEBI. The transactions are also subject to various disclosure requirements, valuation and fair price requirements, and employee benefits and social security requirements. The case studies of Tata Steel-Corus, Flipkart-Walmart, and Vodafone-Idea illustrate the complexities and challenges of M&A transactions in India. The

success of M&A transactions in India depends on various factors, such as the strategic fit between the companies, the valuation of the target company, the regulatory approvals, and the integration of the businesses.

M&A transactions in India have the potential to create significant value for the shareholders, employees, and other stakeholders. The transactions can help the companies to achieve their strategic objectives, enhance their market position, and improve their financial performance. However, M&A transactions also involve various risks and challenges, such as cultural differences, integration issues, and regulatory hurdles.

To mitigate these risks and challenges, it is important for the companies to conduct thorough due diligence, negotiate fair and reasonable terms, and ensure compliance with the applicable laws and regulations. The companies should also communicate effectively with the stakeholders, such as the shareholders, employees, and customers, to ensure their support and cooperation.

In conclusion, M&A transactions in India are complex and challenging, but they also offer significant opportunities for growth and value creation. The success of M&A transactions in India depends on various factors, such as the regulatory environment, the economic conditions, and the strategic fit between the companies. By understanding the legal framework and the key legal aspects of M&A in India, the companies can navigate the complex M&A landscape and achieve their strategic objectives.

While the legal framework for M&A in India provides a solid foundation for the conduct of these transactions, there is always scope for improvement. Here are some suggestions to improve the laws governing M&A in India:

1. **Simplify the Regulatory Process:** The regulatory process for M&A transactions in India can be complex and time-consuming. The regulatory authorities should streamline the process and reduce the timelines for approvals and clearances. This will help to reduce the transaction costs and increase the efficiency of the M&A process.
2. **Clarify the Valuation and Fair Price Requirements:** The valuation and fair price requirements in M&A transactions can be subjective and discretionary. The regulations should provide clear and objective criteria for the determination of the fair price. This will help to reduce the disputes and uncertainties in the M&A process.
3. **Promote Cross-Border M&A:** The Indian government should promote cross-border

M&A transactions by providing incentives and simplifying the regulatory process. This will help to attract foreign investment and enhance the competitiveness of the Indian companies.

4. **Encourage Mergers and Consolidations:** The Indian government should encourage mergers and consolidations in various sectors, such as banking, insurance, and telecommunications, to create larger and stronger entities. This will help to improve the efficiency and competitiveness of the Indian economy.
5. **Strengthen the Dispute Resolution Mechanisms:** The dispute resolution mechanisms in M&A transactions in India can be slow and inefficient. The regulations should provide for faster and more effective dispute resolution mechanisms, such as arbitration and mediation. This will help to reduce the transaction costs and increase the confidence of the investors in the Indian M&A market.
6. **Encourage Minority Shareholder Protection:** The regulations should provide for stronger protection of the rights and interests of the minority shareholders in M&A transactions. This can be achieved by providing for mandatory buyback or exit options for the minority shareholders, increasing the disclosure requirements, and enhancing the role of independent directors.
7. **Promote Transparency and Disclosure:** The regulations should promote transparency and disclosure in M&A transactions by requiring the companies to provide clear and accurate information to the shareholders, creditors, and other stakeholders. This will help to reduce the information asymmetry and increase the confidence of the investors in the Indian M&A market.
8. **Simplify the Tax Regime:** The tax regime for M&A transactions in India can be complex and uncertain. The regulations should simplify the tax regime and provide for clear and predictable tax rules. This will help to reduce the transaction costs and increase the efficiency of the M&A process.
9. **Encourage Private Equity and Venture Capital Investments:** The Indian government should encourage private equity and venture capital investments by providing incentives and simplifying the regulatory process. This will help to attract more foreign investment, promote entrepreneurship, and create more job opportunities in India.
10. **Strengthen the Insolvency and Bankruptcy Code:** The Insolvency and Bankruptcy Code (IBC) is a key legislation governing the insolvency and bankruptcy of companies in India. The regulations should strengthen the IBC by providing for faster and more efficient resolution of insolvency and bankruptcy cases. This will help to improve the ease

of doing business in India and increase the confidence of the investors in the Indian M&A market.

By implementing these suggestions, the Indian government and the regulatory authorities can improve the legal framework for M&A in India and make it more conducive for the conduct of these transactions. This will help to attract more foreign investment, promote economic growth, and create more job opportunities in India.

