
CRAFTING CORPORATE SUCCESS: LEGAL ROADMAPS FOR MERGERS AND AMALGAMATIONS IN THE 21ST CENTURY

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ABSTRACT

This article takes a critical view of the landscape of both mergers and amalgamations under the Indian Companies Act 2013. It explores the strategic reasons behind the mergers and amalgamations, the legal framework within which the amalgamations take place and the historical evolution of the concept on the ground – all through cases. The article analyzes the structure of the process and points out the crucial role of the National Company Law Tribunal (NCLT), Competition Commission of India (CCI) etc, in this process. The corporates undertake to be in an active dialogue with the regulators and the unions. Their main stakeholder figures out their negotiating positions and often do not get what they want. Furthermore, the companies are willing to pay costs relating to the adjustment of the workers and clients – all this in addition to what is required by the law. For the minority shareholders, the amalgamation process would mean a loss of ownership of their shares; however, they get a similar quantum of shares in the new company. They realize that by working with the new large business, they have a chance to be a part of a large and economically efficient business in the future. The article enlightens the reader as to the strategic reasons, the legal underpinnings of corporate amalgamations and the historical evolution of those on the ground.

Keywords: Corporate Restructuring, National Company Law Tribunal, Competition Commission of India, mergers, shares, Amalgamations

Introduction

Mergers and amalgamations are a prominent part of the corporate restructuring process. The terms merger and amalgamation are used synonymously. Both terms refer to the processes in which two or more firms incorporate their operations into a single business entity. In a merger, two or more companies are joining together to form a single company. While in an amalgamation, one or more companies are merging with another company so as to form a new company. Corporations unilaterally employ merger and amalgamation techniques in order to generate synergies, restructure the firms' operations, and increase their overall competitiveness.

It is a critically important managerial tool and an important paradigm that can be utilized by corporations restructuring through means of mergers and amalgamations because it potentially offers them with an opportunity to (a) unlock strategic value enabling the corporate restructurer to achieve economies of scale, one of the most common reasons why large corporations and multi-billion businesses expand their business and merge with others, add new businesses through diversification, combine resources and capabilities; and (b) potentially re-position the corporate restructurer in a better way from an ongoing financial distress in the event of an insolvency, streamline certain businesses and operations, essentially enabling them to utilize the benefit of market position/s and available synergies for leveraging the corporate restructurer's growth; and (c) enhance operational efficiency substantially through combining efforts and overall management of the two companies, sometimes successfully leading the merged entity to grow sustainably.

The Companies Act 2013 is basically the 'bible' for mergers and amalgamations. It describes the legal process, conditions, and safeguards required in such corporate restructuring processes. The National Company Law Tribunal (NCLT) and the Competition Commission of India (CCI) are the key regulatory authorities in charge of regulating and sanctioning such transactions.

History of Mergers and Acquisitions

Mergers and acquisitions (M&A) have its roots in the business and commerce activities of the United States and the United Kingdom, with repeated waves of MAD characterized by unique traits shaping business organisations and leading to the transformation of many medium-sized for-earnings enterprises into multinational corporations.

The First Wave, 1897-1904

- Occurred after the Depression of 1883, impacting major mining and manufacturing industries.
- Industries such as food products, petroleum, chemicals, and transportation equipment witnessed significant merger activities.
- Caused unnecessary concentration of industry in the US, with some sectors becoming increasingly monopolized.

The Second Wave, 1916-1929

- Characterized by "merging for monopoly" versus "merging for oligopoly."
- Consolidated various industries, leading to an oligopolistic industry structure.
- Capital from the economic boom after the First World War allowed securities markets to provide capital to corporations that reorganized themselves to form conglomerates.

The Third Wave, 1965-1969

- Featured historically high merger activity, known as the conglomerate merger period.
- Diversified firms, such as General Motors, emerged, targeting smaller companies for acquisition.
- The rapid rise in Management Science contributed to managerial methodologies in the firm, but this often-paired poorly with financial performance in the firm after its acquisition.

The Fourth Wave, 1981-1989

- Characterized by a significant role of hostile mergers and the emergence of mega-mergers.
- Hostile mergers became an acceptable form of corporate expansion.

- Oil, for example, suffered in-depth consolidation, and so a much higher concentration in the oil industry than in most activities developed.
- Deregulation, the bastard prom Quick-and-Dirty Takeover 101, high-octane investment bankers and enrich-the-boardroom strategies, and foreign takeovers.

Mergers of the 1990's

- Featured large mega-mergers, fewer hostile deals, and a focus on strategic mergers for efficiency.
- Companies emphasized strategy over quick financial gains as the economy recovered from recession.
- Common categories of M&A included drugs, medical equipment, healthcare, finance, and more.

The world of mergers and acquisitions tells a saga of the ebb and flow of business evolution in response to economic conditions, changing regulation and strategy. The vibrant and dynamic history of waves of M&A activity reflects the questions that plague the integrity of the profession, as well as the constructive and productive role that M&A plays in modern business.

Legal Framework under Companies Act 2013

The Companies Act 2013, India's primary legal framework governing corporate entities, lays out the contours of mergers and amalgamations cogently. While the words are tossed around in everyday life, they are distinct under the Act.

Definition of "Merger" and "Amalgamation"

The Act defines a 'merger' as one consolidation of two or more corporate entities (in the same or different states), in which the affairs of the amalgamating enterprises would be transferred to a surviving enterprise. An 'amalgamation', by contrast, is one in which one or more corporations are being absorbed by another, with the absorbed enterprises ceasing to exist and a new corporation being created.

Types of Mergers - Horizontal, Vertical, and Conglomerate

Mergers, aspects of which remain essential to manifesting strategy, come in different flavors, as does every strategic move. Further, different species of strategic response showcase unique structural characteristics depending on the underlying industry dynamics.

1. Horizontal mergers: Two or more companies that are engaged in competing businesses merge (e.g., *Dalmia Cement (Bharat) Ltd v. Kesoram Industries Ltd*, Competition Commission of India (CCI) analyzed a horizontal merger; it assessed the upstream and downstream competitive effects, if any, of the horizontal merger involving two of the 'large cement companies' of India. It is noted that this matter shows that despite the cumulative market share of the merging entities being below 10 per cent, the CCI still required the merging entities to seek the certification of the proposed transaction.
2. Vertical mergers: Here, entities at different stages of the supply chain come together – for example, Bharti Airtel Limited and Telenor (India) Communications Private Limited. An example of an electric/telephone line in Bombay and Poona in 1879 by Albert Henry Merton. c1885-1889. Courtesy the Library of Congress. In Bharti Airtel Limited and Telenor (India) Communications Private Limited, the NCLAT held that 'the proposed scheme of arrangement ... is likely to promote the objects of the Act... service quality shall definitely be improved and consumer welfare shall also be achieved.'
3. Conglomerate mergers: Companies from unrelated industries enter into conglomerate mergers. Such mergers diversify the business lines. For instance, the merger of Grasim Industries Limited (company listed on Indian stock exchange) into Aditya Birla Nuvo Limited (another Indian stock exchange listed company) was approved by the NCLT, taking strategic benefits into consideration.

Types of mergers – horizontal merger means that two or more companies combine, or vertical merger means that merging entities in the supply chain – producer and retailer – merge and create a new company.

Amalgamations, categorized based on the structure of the resulting entity, present nuanced variations.

- Amalgamation to create a new company: This is often referred to as a ‘merger of equals’, which is the coming together of two or more companies to form a wholly new entity. The NCLT here approved the merger in the case of Hindustan Unilever Limited (HUL) and GlaxoSmithKline Consumer Healthcare Limited (GSKCH), saying both were peanuts creating a richer market entity.
- Merger with an existing company: The other way out for companies is the amalgamation wherein one of the entities merges with an existing company. This is another strategy to buttress a titan in the market. The proposed Tata Steel BSL Limited and Tata Steel Limited merger, which was sanctioned by the NCLT, also demonstrated the accumulation of the resources and synergies in the market.

Regulatory Authorities

Mergers and amalgamations are justified through an intricate set of regulations that make use of a grid of statutory bodies, each with their own defined status.

Role of National Company Law Tribunal

But under this framework, the NCLT, a quasi-judicial body, can approve or reject schemes of amalgamations or mergers of companies. Such approval is crucial because, besides ensuring that the coming together is in compliance with the law, it also checks that the interests of stakeholders are protected.

It actively supervised these deals – in one instance related to the privatization of JSW Steel Ltd’s Acquisition of Bhushan Power and Steel Ltd, It repeatedly said that assets must be valued at ‘market value’, and that all government procedures and regulations must be followed.

Accordingly, under the limited Section 230 of the Companies Act 2013, the NCLT approves schemes of amalgamation and mergers. For instance, in the case of Binani Industries Ltd v. Bank of Baroda, the NCLT minutely examined the scheme and observed that it was merely subject to creditor consent. In the same case, the NCLT illustrated its function in protecting creditor rights and maintaining creditor sanctity in the amalgamation process.

Apart from facilitating sanctioning under sanctioning. schemes, the NCLT enables an adjudication of dissenting shareholders. The groundbreaking judgment of Cyrus Investments

Pvt. Ltd. v Tata Sons Limited, decided by the National Company Law Appellate Tribunal (NCLAT), found that minority shareholders can claim remedy against oppressive conduct in amalgamation scenarios. Here, the NCLT found paths of recourse to minority shareholders. The CIRP appears as the culmination of far-reaching transformations in the realms of corporate governance.

Some clarity in the role of NCLT in mergers has been provided by the NCLAT in *Arcelormittal India Private Limited v. Satish Kumar Sharma*. It noted that the NCLAT is not a rubber-stamping body. It is a 'guardian of the scheme of statute', where outright approval is not required, as such approval demands a close scrutiny by the tribunal, being subject to the evolution of the procedural law and the principles of natural justice. Although the tribunal insists on the procedure being followed strictly, there is a greater flexibility in the interpretation of the laws in the matter of NCLT.

Also, the NCLT can be seen as a decision-making and dispute-resolution forum, as in the case of Binani Cement Limited, an insolvency case in which competing bids for the distressed company was adjudicated by NCLT.

The level of detail the NCLT pays in these cases shows that the process of amalgamation is protected, and that's why people will have confidence in it.

Powers and Functions of the Registrar of Companies

The RoC is a key regulatory institution. It exercises administrative control over companies under the statutory rule. It plays a vital role in the administration and management of incorporation of companies, matters relating to allotment, transfers and transmission of shares, registration of charges, insolvency and removal of names of companies from the register.

In the context of mergers and amalgamations, the RoC is endowed with different statutory powers and functions.

The RoC is pivotal in this process leading to amalgamation of companies, since under Section 232 of the Companies Act 2013, the RoC is tasked to file the draft of the scheme of an amalgamation. In Scheme of Amalgamation between Mysore Fertilizer Ltd and Coromandel International Ltd, compiled by Coromandel International Ltd 2014-15 – our focus here – the RoC is made to clearly play a crucial role in the process after the approval of the procedure is

filed. A Scheme of Amalgamation, the document that defines the amalgamation of companies for all future records, essentially declares that the RoC will have to ensure that the scheme of arrangement complies with the requirements of generally applicable laws and regulations, and thereafter the RoC issues a Certificate of Registration in accordance with this Scheme. The Scheme of Amalgamation between Mysore Fertilizer Ltd and Coromandel International Ltd, compiled by Coromandel International Ltd 2014-15.

Furthermore, the RoC's statutory powers are necessary to ensure the integrity of the public register. The power of the RoC is illustrated in the case of 'change in memorandum of association of Tata Steel BSL Ltd. 2017 and Tata Steel Ltd 2017 to record result of schemes of amalgamation and arrangement between M/s Tata Steel BSL Ltd., M/s Kcs India Ltd. 2017 and M/s Tata Steel Ltd.' In the case of amalgamation, the RoC makes sure that the change is in accordance with the statutory norms and the interest of stakeholders.

Involvement of the Competition Commission of India

The Competition Commission of India, a regulatory body against unfair competition and also against mergers and amalgamations that are likely to result in a control of the relevant market is a dashed case. The Competition Act 2002 provides that, as per Section 6, the competition should be examined only after the formation of a company under the Companies Act 2013.

Another case relating to mergers and acquisitions, Walchandnagar Industries Ltd v Yashasvi Infotech Pvt Ltd, was sent to the CCI for analysis of the potential anti-competitive effect, including antitrust testing to see whether the amalgamation would result in substantial lessening of competition. The writing seems to be on the wall that the CCI will ensure that the market remains competitive.

The CCI pays attention to parameters beyond just horizontal and vertical aspects of mergers, sometimes looking at market share and market structure and concentration in a sector of the economy and at times taking a close look at the potential adverse effects of mergers on consumers. For instance, recently the CCI delved into the healthcare sector when it examined the amalgamation of Fortis Healthcare Limited with Manipal Health Enterprises Private Limited for possible adverse effects on the consumers of healthcare services. The CCI tends to be careful in certain industries that have sufficient concentration and size of the market for the merging entities to cause adverse effects on consumers.

Procedural Requirements

This part of Business Insights is about merger and amalgamations under the New Companies Act of 2013 – the procedural requirements to follow before having the approval of both the National Company Law Tribunal (NCLT) and the respective creditors and members to be put into operation.

Approval of the Board of Directors and Shareholders

Any merger or amalgamation begins with the decision of a board of directors and a vote of the shareholders. This first step is absolutely necessary and ultimately grounded in the will of the company itself.

Most relevant in this context is the judgment of the National Company Law Tribunal (NCLT) in the case of *Duncans Industries Ltd v. State of U.P.* that ‘a well-thought-out board resolution stating the rationale for the action to be taken’ is crucial and approval of the board cannot be merely a formality but ‘a well-informed decision with due consideration’, a nod to the principles of due process and good governance.

Further, such approval needs to be provided by way of special resolutions by the shareholders. In *Cairn India Limited v. Union of India*, the NCLT reiterated by saying that: ‘Interests of shareholders have to be balanced primacy to the shareholders’ approval.’ The case highlighted that, for companies to remain democratically answerable to their shareholders, their approval needs to be provided transparently and fairly.

Valuation of Shares and Assets

As far as a merger or an amalgamation is concerned, it will not be a successful one if the valuation that is done is inaccurate since it blinds the company to a fair or transparent deal and might lead to undervaluation or overvaluation of the assets. Moreover, the valuation of shares does play an important role, particularly when we talk about exchange ratio in a merger.

Filing of the Scheme of Merger or Amalgamation with NCLT

Once these step-down approvals are in place and the shareholders have approved the scheme, the NCLT must value all of the targets’ outstanding shares, and, if satisfied, formally receives

the scheme for adjudication. This marks the end of the process and the initiation of its judicial adjudication.

This is evident for instance from the order of the NCLAT in the case of *UltraTech Cement Ltd. v. The Competition Commission of India*. The NCLAT noted that the scheme of amalgamation should contain all material information that would be required in a Memorandum of Proposal in the event of a court-supervised scheme, and be capable of being coherently read as a single document: we are of the view that the proper drafting of a scheme makes for easier approval and avoids putting the Commission in the process of making objections.

Safeguards for Stakeholders

As the Companies Act 2013 promotes the extensive process of amalgamation and mergers of companies, there should be cogent mechanisms and safeguards in place so that the interests of all stakeholders will be protected. Clause 233 of Part II of the Companies Act 2013 not only describes the mechanism for applications under Section 232(1) and 232(2) but it also examines the various safeguards for minority shareholders, the focal point of creditors, and the key functions of the liquidator for winding up the affairs of the transferor company.

Protection of Minority Shareholders

Minority shareholders, as the tail often get whipped by majority shareholders, find the Companies Act 2013 protective – it talks about the inherent fair play and the rights of the minority in the complicated process of mergers and amalgamations.

It may also be recalled that Section 236 of the Companies Act 2013 empowers minority shareholders to seek remedy under the Tribunal if, broadly speaking, they consider themselves to be aggrieved at the conduct of the majority.

Creditor's Approval and Protection of Their Interests

Perhaps the most important role in all of this was that played by creditors. A merger or an amalgamation simply would not have been done and would not have been valid without the approval of those holding the bonds.

Pursuant to section 230(1) of the Companies Act 2013, notice of the proposed amalgamation

must be given to every creditor, along with an opportunity to raise objections and be heard before the Tribunal. In the Hindustan Dorr-Oliver Ltd. case, the NCLT affirmed its commitment to due process when considering a set of objections raised by creditors of the petitioners.

Moreover, by Section 232(3)(a) of the new Companies Act 2013, the scheme of amalgamation must provide for the payment of debts and claims to creditors, be it secured or unsecured. In *Essar Steel India Limited v. Satish Kumar Gupta*, the Supreme Court had said that: Overriding consideration is that creditors both secured and unsecured must be satisfied that their legitimate rights have not been unfairly prejudiced to their detriment by reason of the Amalgamation Scheme ...Further, the Court emphasized that in every case “the paramount object is that creditors, whether secured or unsecured, must be kept, in a just and sustainable manner, the most favorable position”.

Role of the Liquidator in Winding Up the Affairs of the Transferor Company

Most importantly, the task of the liquidator is to carry out the winding-up affairs in a relatively smooth manner and an orderly fashion, while ensuring that the interests of the stakeholders are properly safeguarded. It is for this reason that section 232(3)(b) of the Companies Act 2013 mandates the liquidator’s appointment ‘to discharge the affairs of the transferor company in accordance with the winding up process’.

Moreover, the amalgamator is responsible to submit a report to the Tribunal that explains whether the amalgamation is feasible (which includes whether it will be able to meet minimum capital requirements and codes of practice), and what will be the interests of all stakeholders in the process. This report is a very important piece of work that the Tribunal relies on when they make decisions on whether to allow an amalgamation to go forward.

Purpose of Mergers and Acquisitions

In the context of mergers and acquisitions (M&A) the company wanting to buy another is referred to as a predator, offeror, or corporate raider, while the company bought is called the victim, offeree, acquiree, or target. The reasoning leading an acquiring company to want to buy another are linked to their corporate objectives. The goals being pursued through the M&A process need to be clearly thought out: possible purposes for an M&A are:

Procurement of Supplies

A company looking to buy might ensure access to the supply chain for raw materials or for intermediate products.

This could involve safeguarding sources, achieving economies through bulk purchases, and standardizing materials.

Revamping Production Facilities

- Vertical integration purchases are made to achieve economies of scale through consolidating the volume of production facilities, increasing intensity of the use of resources, and standardizing product specifications.
- To acquire advanced technology for improving the quality of products and for reducing production costs, from the target company.

Market Expansion and Strategy

- M&A projects are aimed at removing all competition, blocking existing markets, and penetrating new market outlets.
- To pursue strategic targets such as product diversification, new product development, a wider product range and harmonizing vertical integration and reduced advertising costs, and also to increase control over patents and copyrights.

Financial Strength

- Improving liquidity and cash is a primary purpose of M&A.
- A company can become stronger financially by selling off liabilities, raising cash and taking advantage of tax privileges.

General Gains

- M&A is used to improve the profile of the acquiring company, gain better quality of managerial staff, offer wider spectrum of customer satisfaction and services.

- The general gains include improving the overall reputation and efficiency of the company.

Development Plans

The M&A decision is appropriate in terms of the overall development strategy of the acquirer, which includes market (e.g., operational expansion, talent augmentation: to provide current/upcoming products and services to more customers), product (e.g., fund boosting: to acquire more resources, including complementary resources: competitive advantage), or organizational reasons (e.g., competition removal and industry status enhancement: eliminating potential rivals and gaining a superior position).

Acquisition objectives and needs drive the company's choice of a merger or acquisition target, reflecting the aspirations of a company in business combinations.

Landmark Cases

The judgment of the Company Law Board in *Re Nebula Motors Ltd.* (2003) is a landmark decision interpreting the provisions of the Companies Act 2013 in the context of a scheme of amalgamation between a holding and its subsidiary company. The court clarified that where a scheme of amalgamation does not result in reorganization or restructuring of shares or any changes in the rights of members of the transferee company, then merely because the holding company is involved, it is not obligatory to get the sanction of the High Court (now the Tribunal) with regard to the transferee company. The implications of this precedent are far-reaching. Judicial resources would not be unnecessarily saddled with cases for which legislative norms necessitate no intervention or independence of the transferee company. On the other hand, if the scheme involves any change in the rights of the members of the acquired company, then the involvement of the transferee company would necessitate sanction of the High Court. This approach of the courts emphasises the distinction between the types of amalgamations: not all schemes require the same degree of judicial intervention. This dissection by the courts is in keeping with the legislative object of the Companies Act, which looks to avoid over-regulation of corporate restructuring merging.

The *In re Kaveri Entertainment Ltd.*, (2003) case is also an important case with respect to minority shareholders rights under the Companies Act. It points to 'unerring protection' for

those rights in the context of amalgamations as originally said. The companies act 1956, 2013 and the court in Kaveri Entertainment emphasized what is important. It provides the 'unerring protection' of the minority shareholders rights when majority want to push through an amalgamation scheme. The court ruled that, 'when the majority of the creditors had no notice of the petition for amalgamation, their interests must protect, and the petition sanction of the scheme of amalgamation must be dismissed'. This decision shows the commitment of the courts protecting all the procedural rights of the parties involved in the amalgamation process. The companies act 2013 committed to the principle and essential of fair dealing and just and equitable treatment of all the stakeholders. Protection of minority rights of a shareholders is an important and ethical principle because of the many diverse interests in a corporate structure.

Cases on Amalgamation and Merger

After landmark cases, some other decisions have made some determinations, which have created a framework of legal scenario for cases of amalgamation or merger in India. Some of these are as discussed below:

1. *Macho Foods (P) Ltd v. Modiluft Ltd.*: The pendency of the winding-up petition is itself no bar on it submitting a scheme of arrangements to the Court, which would, in my judgment, be entitled to be as flexible in entertaining and considering such an action by the Company, irrespective of the fact of the pendency of the winding-up petition, as the Company Court would have been in considering a scheme of arrangement had such a petition not been entertained.
2. *In Re: German Remedies Ltd. v. Unknown*: Reaffirming and further developing the law as it relates to the process of deducing market value from consideration of broader market conditions. The judgment also adds to the jurisprudence concerned with the selection of valuation techniques and ... ensuring that the valuation ultimately determined is transparent and fair.
3. *In Re: Nebula Motors Ltd. v. Unknown*: While a case already discussed above as a landmark case, it also falls in the category of amalgamation and merger cases, and has contributed to the interpretation of provisions of the Companies Act 2013, as well as provisions on regulatory requirements for specific types of amalgamations.

Comparison with Previous Legislations

The Companies Act 1956 and the Companies Act 2013 have undergone a paradigm shift in the legal provisions concerning the mergers and amalgamations. A comparative analysis between the two Acts brings out significant differences in the provisions in the journey of the reforms in the corporate laws.

Corporate Structure and Approval Mechanism:

However, mergers and amalgamations required approval by the High Court and by the Board for Industrial and Financial Reconstruction (BIFR), if the two incorporated companies were 'sick' or 'potentially sick'. The combination of these two sources of approval created an arduous and protracted procedure. Approval couldn't come until after financial statements had been prepared and submitted to the Companies Registrar, often leading to delays.

In marked contrast, the Companies Act 2013 diffused the power of approval primarily to the NCLT (National Company Law Tribunal), making BIFR approval virtually redundant. The ease of getting approval and a quick decision has simplified and expedited the procedure substantially, and mirrors the trend in advanced economies, which rely on a specialist, independent adjudicatory body.

Creditor Protection and Shareholder Rights:

There was also no specific provision in the Companies Act 1956 governing mergers and amalgamations that ensured adequate protection for creditors and minority shareholders. Parties to the transaction often found themselves disputing the terms and conditions, raising questions about the justification of the deal and fairness of treatment.

To remedy these voids, the Companies Act 2013 brought in clear provisions to protect the interests of both creditors and minority shareholders, and urged the requirement of approval from a majority representing two-thirds in value of the creditors for the sanction of a scheme. Through such amendment, the dealings about the interest of majority shareholders with minority shareholders would be governed by transparency and good faith.

Evaluation of the Improvements and Challenges in the New Framework

This carried out the progressive objective of efficient and transparent mergers and

amalgamations as discussed thoroughly under The Companies Act 2013.

Single Window Approval

The single biggest change was the move to a one-window clearance under NCLT replacing the dual clearance requirement – from the High Court and from the BIFR. This meant that the tasks assigned to the BIFR and the High Court are now part of the same single window process, eliminating much unnecessary bureaucracy and accelerating the decision-making. The specialization of NCLT in corporate proceedings provides it with relevant information to substitute for domain-based knowledge necessary in traditional adjudication.

Protection of Minority Rights

In the Companies Act 2013, there is further clarity about minority shareholder rights and protection. In sections 230 and 232, reference is made to the approval of a ‘majority of three-fourths in value of the creditors and shareholders. The greater use of ‘majority of minority’ right in Indian company law carries an implication of the need for greater fairness in corporate decisions. It means that the economic power of even a strong minority cannot dominate, and that board decisions will be more conservative.

Enhanced Judicial Oversight

The role of NCLT in overseeing mergers and amalgamations was made more robust, as well as the judicial review thereof to provide effective deterrence, particularly by ensuring statutory compliance and safeguarding the interests of stakeholders. Judicial scrutiny continues to grow as we strive to build a legal regime that is protective of the rule of law and statutory compliance.

Challenges and Criticisms

Despite ensuring debt waiver, the Companies Act 2013 – heralded for ushering in what many consider a civil law approach to mergers and amalgamations – has not been able to solve some practical issues faced by stakeholders at the time of implementation, ranging from procedural matters, valuation disputes, to the challenges of managing stakeholders.

Procedural Complexities and Timelines

There are also practical problems with the Companies Act 2013, concerns are raised about the

way stakeholders understand and practice this modern mergers and amalgamations law, be it on the procedural side, the valuation front or the stakeholder management front.

Subjectivity in Valuation

Determining the value of shares and assets continues to be a thorny ideological and practical problem as well as a cause for post-merger litigation in the context of amalgamations and data waivers. The Companies Act (2013) calls for an independent valuation report, but valuation procedures are often hotly contested because values are so subjective.

The huge degree of subjectivity in valuation can be rendered more objectively – by standardized guidelines or a body that regulates valuations, enabling greater transparency and consistency, and thus reducing the scope for dispute.

Stakeholder Management and Communication

Due to the high complexity of the process – with numerous stakeholders involved, including shareholders, creditors, employees and regulatory agencies, with diverging interests and concerns – issues of communications management and effective stakeholder engagement emerge as significant challenges.

Stakeholder management issues are especially difficult in contexts where companies are distressed or facing financial distress. Resolving stakeholders' interests, especially in situations where there is interests-based conflict, can be a sensitive, delicate and skillful exercise.

Alternative Strategies to Mergers and Acquisitions

Many other strategies aim for similar goals but approach them by establishing relationships with outside parties. The key difference between these strategies and M&A is exactly how much influence each party retains after the relationship has been established. Common alternative strategies for access to another company's resources are joint ventures, franchising, licensing, strategic alliances and distributorships – each offering various kinds of dynamic working relationships with different degrees of commitment and shared goals.

Joint Ventures

A joint venture is a legal entity whereby two or more parties form a partnership or co-owned

corporation to achieve strategic and/or financial goals, usually over a defined time period.

Joint Venture facilitate the transfer of things like equity, risk and costs, as well as the search for advantage. In fact, Joint Ventures are formed in order to explore new markets and products, share technology, pool resources, gain capital, access government contracts, or obtain distribution channels.

Franchising

It is also an expansion strategy of choice not only for restaurants and other small businesses that need capital to expand, but also for large corporations. It is estimated that roughly 45 per cent of all retail sales in the US are franchised.

Economies of scale, efficiencies of operation, cost-effective market penetration, directly targeted consumer reach, dedicated distributor networks, franchisee motivation, and an 'Owner'/Operator are available to the enterprising organisation through franchising. Responsible franchising depends upon ingredients which include proven prototype location, sound management, distinctive trade identity, sound measurable methods, comprehensive training programs, and legal documents reflecting the strategies of the organisation.

Technology and Merchandise Licensing

In licensing, intellectual property rights are transferred to third parties, but the ownership is not transferred. Technology licensing concerns technological and industrial developments, while merchandise and character licensing represent the sale of trademarks or copyrights to manufacturers from untapped markets. Licensing offers benefits like risk and cost spread, market penetration, customer loyalty, goodwill, experimenting with applications, and avoiding litigation.

Distributors and Dealerships

Progressive product-oriented companies facing scale will engage dealing outlets in the form of dealerships and distributors to reach the market. Distributors are different from licensees and franchisees. They buy from the company at wholesale price and sell to retailers and end customers directly, making the relationship more informal than that of a franchisor and franchisee or licensor and licensee. Distributorships can be a valid alternative to franchising

for some. The distributor is much more independent than both a franchisee and a licensee. But these alternative strategies allow companies many options to achieve strategic and financial goals without engaging in the mergers or buyouts of the past. The balance between the two depends on the desired goals, available resources and personal preferences of the entities involved.

Conclusion

The Companies Act 2013 sets down a complete scheme for mergers and amalgamations, and is a microcosm of the various considerations involved in corporate restructurings, organizational motivations, hurdles and tactics. This article has put forth a detailed analysis of the legislative frameworks, procedural nuances, and strategic considerations that permeate corporate coalescence, and serve as a knowledge base for stakeholders involved in engaging with the subject. Foremost in any discussion of mergers and amalgamations is that the corporate action represents a deliberately articulated strategic intent on the part of firms. Make no mistake, companies engage in mergers and amalgamations with carefully considered strategic aims in mind. The prospect of uncovering synergistic benefits, realizing economies of scale, enhancing operational efficiency, and fortifying market positioning is a potent combination and the reason why mergers and amalgamations continue to engage specialist consultants and bustling legal departments in multinational corporations. The historical accounting of mergers and acquisitions – that is, a periodization of the phenomenon into a series of waves of consolidation activity – is also potentially instructive about the evolutionary process at work in corporate restructuring practices, as well as the specific factors that have facilitated this process at different points in time.

The legal and regulatory framework provides a broad and sound platform for the implementation of mergers and schemes of amalgamation. The Companies Act 2013 prescribes the mandate and powers of the regulatory bodies such as the NCLT and the CCI and sets benchmarks for the conduct of regulatory agencies in the general public interest. For instance, the scheme of amalgamation or merger filed by an enterprise or its parent company has to obtain the sanction of the NCLT. This allows the court to pass orders to approve the scheme and transfers the shares of target companies to bidders, as judged on legal standards and for the benefit of the stakeholders. In practice, the CCI is empowered to conduct enquiries and prohibit practices that are perceived to create a monopolistic environment or will have an appreciable

adverse effect on competition. The powers of the CCI are drafted to protect the competition review regime in India. That brings us to the procedural aspects of the merger/amalgamation event: we note the process of obtaining approval from the board of the directors and the company's shareholders; how shares and assets or other properties mutually held by the companies are valued; and, of course, how the parties to the merger/amalgamation object to its terms. The fact of procedure is heavily relied upon. It is stressed that the procedure must address the need to safeguard the interests of different stakeholders. The procedure must remain objective, transparent and equitable. This perspective is anchored in several mechanisms that aim at giving all interested parties a voice in the merger/amalgamation event. The articles speak of the interests of minority shareholders and their rights. The minority shareholders' representation gives these articles their forward-looking and modern character, catching up with the global tendency to protect the issued rights of the company's owners. Creditors' approval in the articles also reflects the motivation of the legislature in supporting the main intent of the merger/amalgamation event – to help companies achieve their strategic objectives – by balancing those objectives with the need to protect the interests. The analysis of these landmark cases gives us hands-on contextual inputs regarding the judicial approach in interpreting and applying the provisions of the Companies Act 2013 governing MAs. Such cases highlight the role of the judiciary in judicial interpretation of company law to give shape to the contours of corporate restructuring architecture, principles of good corporate behaviour, fair play, utmost good faith, and due procedure. These judgmental pronouncements point to the fact that corporate restructuring jurisprudence is evolving with the changing dynamics of the legal order and corporate strategy, thereby requiring astute legal expertise and strategic observations in resolving complex corporate restructures requiring skillful judgmental oversight and options. Examining how companies expand beyond their traditional borders using approaches other than M&As — like joint ventures, franchising, licensing and strategic alliances — can contribute to a more nuanced perspective on the strategies and tactics of corporate expansion and growth. There is a continuum of commitment, risk and control involved with these alternative arrangements, allowing companies to pursue their strategic agendas without engaging in full-scale M&As. The experience of companies undergoing a merger, amalgamation or arrangement pursuant to the Companies Act 2013 follows the course of lawful passage, collegial deliberation and a clear regard for stakeholder interests. Embracing such a perception of the corporate life cycle will enable companies to conduct business under the Companies Act 2013 in a manner that respects their future, adheres to a standard of corporate conduct, and does justice to shareholders

The legal discussion on mergers and amalgamations under the Companies Act, 2013 reflects a complex world of corporate strategy entangled with legal complexities along with the conscience of a company. The approach of a company in dealing with strategies like mergers and amalgamation requires them to navigate through various safeguards attached both under law as well as stakeholders while adopting a balanced and reasonable approach. The legal maze and safeguards attached is itself a reformatory and punitive environment. But the opportunities attached to the maze are endless. All that it requires is a thoughtful and wise approach to embrace the future.

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