DITRECTORATE OF DISTANCE EDUCATION
NALSAR University of Law, Hyderabad

Post-Graduate Diploma in
Financial Services & legislations

MODULE IV

Technicalities of Mergers & Acquisitions

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MR Rajaram

COMPANIES ACT

S. 230 / 232 deals with compromises / Arrangements / Amalgamations.

PROCEDURE

- MOA to provide for Mergers and Amalgamation.
- Approval of proposal by the BoD.
- Appointment of Valuers
- Consider Valuation Report
- Approve Scheme
- Voting through postal ballot

- Notice of Meeting

- Government (ROC/RD)
- Stock Exchanges (Listed Companies)
- Income Tax Authorities
- Sectoral Regulators (IRDAI/RBI)
- Competition Commission
- Official Liquidator

TWO STEP PROCESS

STEP 1 - Application to NCLT

STEP 2 – Company Petition

STEP 1 - Application to NCLT

- Application to convene meeting of shareholders and Creditors (Secured/unsecured)
- Details of the company/Rationale/advantages of the proposed scheme.
- Approval of the proposal by the BoD.
- Valuation Report.

- NCLT to consider and convene the meetings of share holders and creditors.
- Fix the date, time and place of the meeting.
- Appoint chairman of the meetings and fix their remuneration. (Varied practices)
- Appoint Scrutinizer and fix remuneration.
- Order publishing of the details of the meeting in English and Vernacular papers.
- Fix the time by which chairman should submit his report of the results of the meeting.
- Order giving notice to Govt. (ROC/RD/OL), Tax authorities and applicable sectoral regulators.

- Company to
  - send notice to shareholders and creditors / explanatory statement by registered / speed post and conduct the meeting through Postal Ballot / physical meeting.

  - Conclude the meeting and assist the chairman in filing his report to NCLT.

STEP 2 – COMPANY PETITION

- Company to file a petition with NCLT along with
  - Scheme / affidavit
  - Chairman Report
  - Notices sent to statutory authorities
  - News paper publications.
  - MOA / AOA

- NCLT will consider the petition and direct News paper publication calling for objections from all stakeholders.

- Govt. (ROC/RD/OL), Tax Authorities, Stock Exchanges, applicable sectoral regulators to file their objections (if there are) and approvals.

MATTERS FOR CONSIDERATION BY NCLT

- Affected parties in any scheme.
  - Owners (Shareholders)
  - Creditors (Vendors / Bankers)
  - Community (Govt.)
- If no objection form the above stakeholders NCLT will Approve the scheme.

MERGER OF FINANCIAL INSTITUTIONS

- Banking companies – important role in economy.
- Failure of banking system leads to chaos / failing economy.
- Deals with the money of depositors and has to be protected.
- Trust deficit leads to run on the bank.
- Highly regulated.

- Mergers / Acquisitions spur growth
- Technology / branch network and cost reduction – motivating factors for M&As

REGULATORY FRAMEWORK

- Voluntary amalgamation between pvt. sector banks.
- Compulsory amalgamation of public sector banks.
- Merger between public sector banks.
- Acquisition of banking companies by govt.

- Voluntary merger – 2/3rd members must approve.
- Dissenting shareholders will be paid for the shares at a valuation done by RBI.
- RBI is the authority to approve the merger between banking companies.
- Merger between banking company and a non banking company, RBI Approval is not needed.

- Compulsory merger
  - To protect interest of depositors
  - Expeditious resolution
- RBI will intervene and direct the merger.
  - Moratorium
  - Investigate and Complete the process.

Global Trust Bank merged into Oriental Bank of Commerce.

Acquisition of Yes Bank.

- Other provisions
  - RBI Caps on acquisition of shares of banking companies (individual holding at 5%)
  - Merger of Co-operative banks with states / RBI provides guidelines. (Punjab & Maharashtra Co-operative bank ltd.)

DUE DELIGENCE

- Why is DD important?
  - Get to know the details of business,
  - Conformation of facts
  - Find out hidden risks
  - Identify potential deal breakers / avoid bad transactions.
  - Validation of assumptions.
  - Negotiate the price.

- Operational DD
  - plant locations and machinery, capacity, product quality, testing facilities.
- Tax DD
  - Whether all returns are filed, no under reporting of tax liabilities, un-absorbed losses, disputed tax liabilities.
- Financial DD
  - Projections, past track record, business potential
- Legal DD
  - IP Related issues / infringement, pending litigation, material contracts and compliances.

- DD will unearth the hidden truth with may otherwise not be visible.
- Gives comfort and prepares you for probable future liabilities.
- “Buyer Beware” is applicable hence DD become an important aspect in M&A.


Thank
you