DITRECTORATE OF DISTANCE EDUCATION
NALSAR University of Law, Hyderabad

Post-Graduate Diploma in
Financial Services & legislations

MODULE III

CROSS BORDER MERGER & ACQUISITION ACTIVITIES

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BASIC CONCEPTS

- MERGER
- AMALGAMATION
- DEMERGER
- ACQUISITION/TAKEOVERS
- CROSS BORDER MERGERS

CROSS BORDER MERGERS & ACQUISITION

- Inbound
- Outbound
- FEMA Regulations

  - Overseas Direct Investments (ODI)

  - Foreign Direct Investments (FDI)

Why Cross Border M&A [RATIONALE]

- Globalisation
- Global Market
- New Technology
- Economies of Scale
- Efficiency in sourcing
- Cost Reduction / Growth
- Diversifying and spreading the Risks wider

ISSUES / CONCERNS

- Political Challenges
- Cultural Issues
- Legal/Tax
- Due Diligence

PROCEDURE/COMPLIANCES

- Companies Act

  - Section 230, 232, 234

- Competition Act

  - Assets Threshold

  - Adverse effect on competition

REGULATORY FRAMEWORK

- Companies Act
- FEMA Regulations
- Competition Act
- IT Act
- IBC (Insolvency & Bankruptcy code)
- FDI / ODI Regulations

INBOUND MERGERS

- Acquisition of foreign company shares by an Indian company
- Issue of shares shall be in accordance to Foreign Exchange Management (transfer and issue of foreign security) Regulations.
- Borrowings of foreign company should conform within 2 years to FEMA Regulations.

- Issuance of shares/securities
- Assets/Liabilities vests in Indian entity
- Prohibited Assets should be sold. Borrowings should be cleared. (per regulation)
- Valuation as per a registered valuers report.

OUTBOUND MERGERS

- Companies Act 2013 provides for Outbound Merger. (Indian company merging with a foreign entity)
- Guided by ODI regulations – holding of securities of foreign company by existing Indian shareholders (shares as consideration)
- NCLT to approve the scheme.
- Office of Indian company would be treated as branch office of foreign company.

ACQUISITIONS

- Share Acquisition
- Asset Acquisition

  - Tax Implication

  - Cherry Pick of Assets

  - Stamp Duty implications

FINANCING EQUITY ACQUISITION FUNDING

- Banks are not permitted to fund equity acquisitions.
- NBFC's / PE Players / MFs through non-convertible Debentures.
- Pricing of equity as per Regulations
- Transfer/issue of shares from Resident to Non-Resident.

SECURITY FOR FUNDING

- Shares
- Inventory
- Receivables
- IPR
- Real Property

RESTRICTIONS ON FOREIGN INVESTMENT (Sectoral)

- Lottery Business
- Atomic Energy
- Gambling/Betting
- Real Estate (land)

SECTORAL CAPS

- Automatic Route
- Approval Route

TRANSACTIONAL CHALLENGES IN M&A’s

- Due Diligence Process
- Representations and Warranties
- Hold Backs / Escrows
- Regulatory Approvals / Costs
- Share Holder Approval
- Creditors Approval
- NCLT Approval / time and cost
- SEBI Regulations

INDIAN MNC's

- Tatas –
  - Corus Steele (UK)
  - Korean Daewoo
  - Tetley
  - Jaguar / Land Rover
- Mahindra / WIPRO / Sundaram Fasteners / Cadilla / Hindalco

have done Outbound Acquisitions

INDIAN ACQUISITIONS ABROAD

- Tata Steel's – Corus acquisition for USD 12 Billion was a value destroyer for Indian Shareholders
- Tatas – Indian hotel corporation invested 2.62 Billion USD in Bermuda based Orient Express, devalued by more than 80%.
- RILs acquisition of German Polyester company – Travira – 440 crore investment – files bankruptcy. RIL writes off entire investment.

FOREIGN ACQUISITIONS IN INDIA

- Jet-Etihad deal
  - FIPB approval
  - RBI approval
  - CCI approval
  - SEBI approval

  For 24 % investment

  The company is now grounded

TATA - DOCOMO

- DOCOMO’s investment in Tata tele services had to be written down by 50%
- Despite an agreement in place, DOCOMO had to go for arbitration.
- RBI objected to enforcement of award.
- Delhi HC upheld the arbitral award.