M & A - ??

2.3.7 Mergers, Amalgamations and Acquisitions

Third Semester

M.A.(Corporate Law)

NALSAR University of Law

In collaboration with EBC

Business = Profit?

- What is Company?
- Why do people do business through companies?
- What are the types of companies?
- How to start, run and end(!) a company?
- Can we alter a company?
  - Capital
  - Structure
  - Business

Corporate Restructuring

- "…Changes in economic policy and economic changes affect the fortunes of business as assumptions and conditions in which corporate enterprises function are altered. Corporate enterprise must be armed with the ability to be efficient and to meet the requirements of a rapidly evolving business reality."
- "…Corporate restructuring is one of the means that can be employed to meet the challenges and problems which confront business. The law should be slow to retard or impede the discretion of corporate enterprise to adapt itself to needs of changing times and to meet the demands of increasing competition. The law as it has evolved in the area of mergers and amalgamations has recognized the Importance of the Court not sitting as an Appellate Authority over the commercial wisdom of those who seek to restructure business."

- Justice D Y Chandrachud in re Ion Exchange (India) Limited (2001) 105 Comp Cases 115 (Bom.) {para 26}

Why Corporate Restructuring?

- Growth/ Strategy for Growth
- Growth can be
  - Organic or
  - Inorganic
- Do businesses need to grow?
- Should law accommodate for the same?
- Should law regulate the growth strategies or routes?

Considerations in the context of Growth

- In a market economy, businesses/ companies are forced/ made to consider a host of factors in their attempt to grow, some of the those are:
- Buy or Build – Which is cheaper?
- Economies of Production – Achieved or not?
- Value of the Target – Unique? Does it facilitate growth?
- Issues of cash flow
- Optimisation of profit – Possible? Acheievable?

What is Corporate Restructuring?

- A restructuring process undertaken by a company!
- Redesigning?
  - What?
- Consolidating?
  - What?
- Comprehensive Process
- Aimed at
  - Short Term
  - Long Term

Why?

- Use surplus resources (say cash)
- Increase the market share
- Reduce risk
- Diversification of business
- Tax related considerations
- Become competitive, locally and globally
- Business Inter-dependence related factors
- Enhance Shareholders value
- Stay relevant in everchanging technological world

Only financial?!

How?

- By purchase of Assets
- By purchase of Shares
- By exchange of Shares for Assets
- By exchange of Shares for Shares

M&A - Kinds

- Merger
- Amalgamation
- Demerger
  - Spin-offs
  - Splits
    - Split-ups
    - Split-offs
- Acquisition
  - Business Transfer
    - Slump Sale
  - Share purchase / Takeover
- Joint Venture/ Strategic Alliance
- Consolidations
- Buy-outs

Merger - Types

- Horizontal
- Vertical
- Congeneric
- Conglomerate
- Reverse

Laws to be considered

- Companies Act, 2013
  - along with relevant rules – Share Capital and Debentures; Compromises, Arrangements and Amalgamations
  - NCLT rules
- Competition Act, 2002
- Income Tax Act, 1961
- FEMA, 1999
- Accounting Standards
- Law relating to IPR
- Stamp Acts
- IBC, 2016
- SEBI ??