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Navigating Corporate-Evolution: An Analysis of Mergers and Acquisitions with the Introduction of Companies Act of 2013

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ABSTRACT

Mergers and acquisitions have long been the most preferred means of dynamic company growth. It is widely utilised in India to restructure businesses. The New Companies Act was passed in 2013, bringing many changes in terms of provisions but also aiming to 'simplify the overall process of acquisitions, mergers, and restructurings, facilitating domestic and cross-border mergers and acquisitions', and thus making Indian companies more appealing.This article provides an overview of how the corporate world evolved in the area of mergers and acquisition via the implementation of the Companies Act, 2013.

Keywords: Mergers and acquisitions(M&A), Corporate Social Responsibility(CSR), Key Managerial Personnel(KMP), One person company(OPC), Initial public offering(IPO), Securities and Exchange Board of India(SEBI),Ministry of Corporate Affairs(MCA).

INTRODUCTION

In terms of Mergers and acquisitions, India is one of the leading countries since the majority of Indian companies choose *Mergers and Acquisitions*. M&A agreements have surged in India since 1999, particularly following liberalisation. The introduction of the Companies Act in 2013 was a watershed moment in Indian corporate law history. The *Companies Act,2013,* as introduced, has 29 chapters, 479 sections, and 7 schedules, since then, the MCA has gradually transitioned from the *Companies Act, 1956* to the New Act. In comparison to the new act, not only are new concepts introduced, but portions have also been altered. The Companies Act of 2013 introduced new concepts such as Woman Director, CSR, KMP and in Articles of Association(AOA) an Entrenchment clause was introduced, as well as new types of companies, namely OPC, Associate Company, and Small Company along with a new notion of 'Dormant Company' has been established. Along with these and other improvements, certain critical adjustments have been made to merger and acquisitions too.

As per the Companies Act, 2013- a *'merger' is combining of two or more businesses into one*, with the anticipated outcome being not only the consolidation of the individual entities' assets and liabilities, but also the organisation of such entities into one firm, where when one company purchase another company it is accquisition.[1] Let's examine the influence of new Companies Act of 2013 provisions on mergers and acquisitions.

OLD CONCEPT-NEW CHANGE:-

With the introduction of the new Act there are some changes made to the prior existed concepts like in the case of the following:-

TREASURY STOCKS ABOLISHED-

A corporation is expressly forbidden under Section-77 of the Companies Act, 1956 from shares issuing to self or through its own holding company. Nonetheless, if trustees made the subscription, the Section proviso permitted a company to buy or subscribe for fully paid shares in its own name or in its holding company, or to be held via or for the sake of the company's employees, involving any director who holds a salary or employment with the company. Companies used treasury stocks to control voting rights and cash flows. The 2013 Act removed these treasury stocks, which was a significant development.

[1]*Mergers, acquisitions and combinations*. Available at: https://www.icsi.edu/media/webmodules/CSJ/May/17ArticleJayBhaveshParekh.pdf (Accessed: 22 February 2024).

Section 233(10) and Section 232(3)(b)] proviso of the Companies Act, 2013 now ban companies from owning shares in their own or any trust's name. The benefit companies receive from indirectly owning shares that give them voting power as well as liquidity is eliminated under the new legislation. This aligns with the new 2013 Act's goal of increasing corporate openness and responsibility.

Currently, no particular legislation in India expressly authorises or prohibits the formation of trust shares or treasury stock. As a result, many mergers/amalgamations between holding subsidiaries or group businesses include the transfer of cross-holdings of shares to a trust established for the benefit of the transferee firm. These shares are maintained alive, and the Board of Directors may sell them to raise revenue as needed.

THE CONCEPT OF REVERSE MERGERS OR BACKDOOR IPO-

Reverse mergers, in which a privately held firm buys most of the shares of a publicly listed company prior merging with it, are the merger of an operating private company with a dormant public company. Reverse mergers have been widely employed by private corporations to go public rather than the usual IPOapproach, or as an alternate way to become a public company. The phrase 'Reverse Mergers' is not defined in either the old or the 2013 Acts. The Companies Act of 1956 made no particular rules for Reverse Mergers.

Reverse mergers were handled under Section 394 read with Section 391 (1956 Act), which was applied to other mergers also and along with it was completed through the procedure of gaining High Court permission. *Godrej Soaps* is a well-known example of a reverse merger in India, with a profit of INR 437 crore,the business eventually opted to reverse and combine with *Gujarat Godrej Innovative Chemical Limited*, a loss-making company. The merger created a firm called *Godrej Soaps Limited*, which became profitable and had a turnover of INR 60 crore.[2]

Section 232(3)(h) of the Companies Act of 2013 addresses the reverse mergers, albeit it doesn't use the term'reverse merger'. The amendments adopted under the 2013 Act are:

- In the event of a merger between a listed and an unlisted Company, the shareholders of the listed company will have the opportunity to exit.
- Shareholders those who want to be out of the transferee business will get the value of their shares and other benefits based on a preset calculation or valuation technique.
- Unless the resulting entity goes through the listing procedure it won't be listed automatically.
- Compliance with the rules established by the SEBI for valuation, such as obtaining a No objection certificate.

According to the current scenarios, reverse mergers are not forbidden, but they are closely monitored by the Companies Act 2013 and SEBI.

CROSS-BORDER MERGER-

Cross-border M&A have played an important part in the growth of the Indian economy throughout the years, allowing international investors to enter the market, introduce new technology and experience, and generate new employment possibilities for local people.

As per the Companies Act of 1956, It was allowed to merge an Indian company with a foreign corporation, but not to merge a Foreign company with an Indian company because prior an Indian Company could be the "transferee Company" but not the "Transferor Company," as The 1956 Act's Section 394(4)(b) defined the transferee company as "company incorporated under the Act."

Section 234 of the Companies Act of 2013, permits Cross-Border Mergers and two-way restructuring, was announced by the MCA on April 13, 2017. Additionally, the merger or amalgamation of a foreign business with a firm, and vice versa, is governed by *Rule 25A of the Companies (Compromises, Arrangements, and Amalgamations) Amendment Rules, 2017*[3]. The well-known but contentious 2013 cross-border merger and purchase agreement between Etihad Airways and Jet Airways is a prime example.

Changes made under the 2013 Act are:

- Outbound Mergers are permissible but with RBI prior clearance required.
- The New 2013 Act prohibits cross-border mergers to specific niche.
- The Central government will periodically update jurisdictions.

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[2] *Understanding the rationales for reverse mergers in India* (2022) *IMI Insights*. Available at: https://imiinsights.wordpress.com/2022/04/24/understanding-the-rationales-for-reverse-mergers-in-india-2/ (Accessed: 22 February 2024).

[3] *Cross-border merger framework in India: Limited efficacy?* (2023) *S&R Associates*. Available at: https://www.snrlaw.in/cross-border-merger-framework-in-india-limited-efficacy/ (Accessed: 17 February 2024).

- Additionally, the Section gives the Central Government the authority to work along with the Reserve Bank of India to create regulations for these kinds of Mergers and Amalgamations.
- Any other extant legislation furthermore governs these cross-bordermergers.
- Anyhow, The foreign company would need to get prior clearance from the Reserve Bank of India.

The new legislation is mute on handling international court rulings, which may be an issue for nations that do not have equivalent laws to India.

THERE IS NO SPECIFIC THRESHOLD-

The Companies Act of 1956 provided no specified threshold restrictions for objecting to a plan of compromise or arrangement. The 1956 Act increased the possibility of pointless complaints as it allowed the tribunal to consider and accommodate those who disapproved of a compromise or agreement while approving it.

The Companies Act of 2013 establishes minimum standards for plan objections where The 2013 Act's addendum to Section 230(4) outlines the minimal justifications for voicing any objections.

The modifications implemented by The 2013 Act are:

- Members can only submit objections if they own at least 10% of the shares.
- As per the most current audited financial accounts, creditors who possess at least 5% of the total amount of outstanding debt may file an objection.
- After receiving the notice of the meeting within 30 days,any sort of objection must be presented to the meeting chair.

However, in accordance with the 2013 Act, if creditors who account for at least 90% of the total amount of outstanding debt consent in writing, the National Company Law Tribunal ("NCLT") may waive the requirement for a creditors' meeting.

NEW ACT-NEW CONCEPTS:-

The Companies Act of 2013 introduced some new concepts as provisions, such as the following:

FAST-TRACK MERGERS-

According to Section 233 of the Companies Act of 2013, a court's consent isn’t necessary for Mergers and Amalgamations between two or more Small Companies, Holding companies and their Wholly-owned subsidiaries, or any other businesses that may be prescribed. It is necessary to notify both the official liquidator and the ROC, and to bring any grievances or recommendations to the members' attention where prior as per the 1956 Act, court permission was mandatory for every merger or amalgamation.

This provision is beneficial for quick mergers or amalgamations of small businesses since it shortens the time required for court proceedings, which speeds up case settlement. It may also be used to merge a holding company with its fully owned subsidiary. Some of the most well-known fast track mergers to date are *Stanley Black & Decker India Pvt. Ltd., Glint Infraprojects Pvt. Ltd., and Township Developers India Ltd.*. Certainly, fast track mergers are a laudable and welcome move towards more expansion and breadth with greater simplicity.

REGULATORY APPROVALS-

Another new concept pertains to Section 230(5) of the Companies Act, 2013, which mandates that the notice of scheme and accompanying documentation be sent to the regulators of Income Tax, Reserve Bank of India, SEBI, and Competition Commission of India (if relevant). The regulators have 30 days from the date of receipt to reply to the notice, failing which it will be presumed that they have no objections to the proposals.[4] This provision appears to contemplate both national and state government bodies.

CONCLUSION-

The way corporate restructuring is carried out in India will change significantly as a result of the New approved sections. The new Act are intended to simplify and increase transparency of the procedure which is indeed in its process. Moreover, the NCLT's authority over these cases will guarantee uniformity and expedite the procedure. The 2013 Act gives several business restructuring strategies that were previously sanctioned by courts formal

[4] *Corporate restructuring cover.p65 - ICSI*. Available at: https://www.icsi.edu/media/portals/0/CORPORATE%20RESTRUCTURING.pdf (Accessed: 02 March 2024).

standing. The new Companies Act is a welcome step towards modernising Indian company law and aligning it with global standards. It has surely enhanced the company's decision-making powers and included clauses that give minority shareholders extra rights and safeguards.