

MERGER AND ACQUISITION: DECRYPTED FOR BEGINNERS

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With so many new Mergers and Acquisition taking place the term M&A has become common in all Law Schools and at the same time it offers a good avenue of business to all upcoming Corporate Lawyers and at the same time for simplifying the Corporate Jargon of M&A to all commoners I am just giving an Introduction to this topic and cannon fodder for further research to everyone interested in it.

- **Merger:**

The term Merger has not been defined in Companies Act 2013, therefore, it becomes necessary to understand it general perspectives. The Oxford Advanced Dictionary defines 'Merger' as :

the act of joining two or more organisation or businesses into one. Just to interpret it in legal terms it means when the Assets and Liabilities of a company are vested or transferred to another existing company.

With the Merger sorted out moving on to Acquisition

- **Acquisition:**

Acquisition in simple terms is a process by which a person obtains a particular thing but when we talk of it with regards to Companies; it is one company or a person or a group of persons acquiring interest in another company this may be to rescue the company from financial distress i.e. Bailout, without the company's consent i.e. Hostile takeover. Lastly, there is a simple type of Acquisition too i.e. where the company permits a company or a person or a group of persons to acquire a part of it.

There are primarily two modes of acquisition:

A] Acquisition of securities B] Acquisition of Assets

A. Acquisition of securities:

The securities include preference shares, equity shares and all instruments of debt i.e. Debentures, Depository slips, Bonds (as and when issued) etc. but generally speaking the only security that interests the investors of another company are its equity shares as it allows the acquirer to exercise his rights in the Management of the Company.

The acquisition of equity shares may be either by acquiring new freshly issued shares by any Company or by purchasing them from the existing shareholder through a purchase of the same from any share market i.e. Bombay Stock Exchange (BSE) or National Stock Exchange (NSE)

B. Acquisition of Assets:

It simply means acquiring Assets of a company and it is generally done by purchasing the same from that company.

- **Authorities which Govern Mergers, Amalgamation and Demerger in India:**

1. Securities Exchange Board of India (SEBI): They have their own regulations in this regard SAST Regulations 2011.
2. Tax Authorities
3. Reserve Bank of India (RBI)
4. Foreign Investment Promotion Board
5. Competition Commission of India
6. High Court

NOTE: Except High Court, all the other authorities come into the picture as and when required.

For example when Merger involves a Public Limited Company then permission from SEBI is required or when one of the entity is a foreign company then permission from Foreign Investment Promotion Board is required.

- **Procedure of Merger, Amalgamation and Demerger in Brief**

1. Preliminary Steps.
2. Proposal to Target Co.
3. Valuation Process.
4. Scheme of Merger.
5. (BOD) Board of Directors Negotiation (Among themselves); of both Merging Companies.
6. BOD Approval of both Companies.
7. Inform Stock Exchange (Only in case of Public Limited Company).
8. Apply to High Court.
9. Meetings of members & creditors.
10. Obtaining Consent.
11. Petition to Court.
12. Final Court Order.
13. File Order with Registrar of Companies.
14. Transfer of Assets and Liabilities.
15. Post- Merger Integration.

NOTE: For details on the procedural part of Merger read S.391 to S.396 of Companies Act 1956 as they are currently applicable but after Notification by Central Government Chapter XV of Companies Act 2013, Section 230-240 shall become applicable.

- **Types of Merger:**

In all, there are basically 7 types of Merger.

1) Horizontal Merger:

Occurs between companies operating in the same industry and are competitors.

2) Vertical Merger:

Occurs between Companies operating in the same industry but at a different level in a supply chain. It aids in lowering transaction costs

3) Co generic Merger:

Occurs between entities engaged in related industries but having no common product
Ex: Merger between a company involved in Movie Distribution and the other in Movie Production.

4) Conglomerate Merger:

Occurs between entities engaged in completely unrelated industries

5) Cash Merger:

Occurs when Shareholders of merging company i.e. Transferor Company are given Cash instead of shares in the merged entity.

6) Triangular Merger:

Occurs when there is an agreement between three parties i.e. Transferee Company, Subsidiary of Transferee Company and Transferor Company.

7) Reverse Merger:

Occurs when shareholders of a Private Limited Company purchase shares in Public Limited Company and by reason of this transaction the Private Company and the Public Company merge with each other.

- **Amalgamation:**

Amalgamation has been defined in Section 2(1)(b) Income Tax Act 1961 as

"amalgamation", in relation to companies, means the merger of one or more companies with another company or the merger of two or more companies to form one company (the company or companies which so merge being referred to as the amalgamating company or companies and the company with which they merge or which is formed as a result of the merger, as the amalgamated company) in such a manner that- (i) all the property of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of the amalgamation; (ii) all the liabilities of the amalgamating company or companies immediately before the amalgamation become the liabilities of the amalgamated company by virtue of the amalgamation; (iii) shareholders holding not less than nine-tenths in value of the shares in the amalgamating company or companies (other than shares already held therein immediately before the amalgamation by, or by a nominee for, the amalgamated company or its subsidiary) become shareholders of the amalgamated company by virtue of the amalgamation, otherwise than as a result of the

acquisition of the property of one company by another company pursuant to the purchase of such property by the other company or as a result of the distribution of such property to the other company after the winding up of the first- mentioned company

But in simple terms Amalgamation means the consolidation of one or more companies with a separate company or the merger of two or more companies to form one company. Though per se it may sound similar to Merger, the difference lies in the fact that in case of Merger the transferring Company loses its existence but in case of Amalgamation this does not happen a company is not absorbed by another company but merely they become one entity. This entity may be a combination of two.

For example: When firm A and B join their assets and liabilities and the new firm may be A&B

OR

Two entities come together and form a new firm or company

For example: When firm A and B join their assets and liabilities and the new firm may be an entirely new entity C

- **Demerger:**

De-merger means when where the transferor or demerging Company splits and divides a specific part of its business and transfers it to another company i.e. Transferee Company.

After demerger, both Companies simultaneously exist though the transferee company owns the business division.

- **Glossary**

1) Transferor Company and Transferee Company (Merger):

Transferor Company is the company which merges into resultant company and transfers all its assets and liabilities. Once a merger is completed the transferor company ceases to exist.

The resultant merged company is called *Transferee Company* and it exists after the merger.

2) Transferor Company and Transferee Company (Demerger):

a) Transferor Company: The Company which transfers its business division to other company.

b) Transferee Company: The Company which purchases the business division

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