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A Study on Challenges in Cross Border Merger and Acquisition vis-a-vis Daiichi-Ranbaxy-Fortis healthcare deal

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ABSTRACT

In India, incidences of cross-border mergers and acquisitions have significantly increased over the past three decades. When it came to cross-border transactions, the Indian economy was not particularly friendly, either before or after independence. In terms of these transactions, India has experienced a huge transformation especially with the introduction of liberalization policy in 1991, which has opened doors of Indian economy for the rest of the world. It is currently one of the most often used restructuring methods worldwide as it comes with various advantages for foreign countries and host country as well. These days, all countries in the world—not just India—have a substantial interest in executing cross-border deals. But, in India, even with so many groundbreaking regulations, such as the Foreign Exchange Management Act of 1999, Sec 234 of The Companies Act, 2013, Cross Border merger rules, considerable criticism to these deals still arises from the restricted government policies, inadequate due diligence, taxation issues, complex legal procedures and many more. In this paper, the author has examined the history and evolution of cross-border regulations and cases. It mostly focused on difficulties arosed from the inadequate due diligence from these deals. The author has also analyzed well-known cases of inbound merger and acquisitions in India, like the Daichi -Ranbaxy- Sun Pharma and Fortis- IHH Berhad, Malaysia deal. It additionally addresses the lessons learned by India from the past deals as well as potential solutions for it.

Keywords: *Cross Border mergers and acquisitions, LPG policy, Inbound merger, Fortis – IHH deal, Daichi- Ranbaxy.*

I. INTRODUCTION

As we know that globalization and liberalization has impacted the world economy in different ways, it enabled the transfer of knowledge, labor, products, cash flow, services in for one country to another[3]. Not only this, it has provided the ease of corporate restructuring around the

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[3]K.S. Reddy, Yu Li and En Xie, *Economic Transition and Cross-border Mergers & Acquisitions: The Indian Experience among BRICs* 18 JOURNAL OF COMPARATIVE INTERNATIONAL MANAGEMENT ,23-53

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world. It made the whole world a global family. Not every country in sufficient in all resources so it trades with each other to fill that scarcity. So many corporates around the world also coming together, strengthening the ties and cooperating with each other. It has facilitated the various corporate restructuring deals between countries bagged by various advantages and benefits. If we observe the statistics today, almost all the countries in the world are getting involved in one or other restructuring deals. It gives them an easy access to the market and public of the host country. The deals range from merger, acquisitions, joint ventures, strategic alliances, slump sale, demergers etc. The most common are the mergers and acquisitions (thereinafter called as M&A).

If we speak of India, it has seen tremendous revolutionary changes post 1990 after introduction of LPG (Liberalization, Globalization and Privatization) introduced by then Finance Minister Dr. Manmohan Singh. It has changed the entire scenario of cross border deals in India. Before these policies the Indian economy was a stringent economy and highly regulated but after that it opened doors for many countries to invest in our economy[4].Even after introducing, it took three decades for India to completely settle down for cross border deals. The world has seen a slow and steady cases of cross border deals even pre or post covid as well, but nothing has stopped it from happening[5].The department for promotion of industry and internal trade (DPIIT) also issued an advisory for opportunistic merger and takeover during pandemic to support Indian companies[6].

Cross border M&A under various Indian laws means various corporate restructuring deals between companies inside and outside India. If any country is willing to invest in India, it has to be notified by Indian government followed by the compliance with the Indian law or *vice versa*. The cross border is largely of two types, Inbound and outbound mergers[7]. Earlier only the inbound mergers were allowed and outbound mergers were restricted but now Indian laws has eased both. Cross Border M&A is not a new phenomenon in our economy, it has its roots before and after independence as well[8].There are several reasons why a corporation chooses to

(2015).

[4]Kumar N, *Liberalisation, Foreign Direct Investment Flows and Development: Indian Experience in the 1990s* 40(14) ECONOMIC AND POLITICAL WEEKLY,1459–1469 (2005).

[5]Cyril amarchand blogs, https://corporate.cyrilamarchandblogs.com/2020/04/covid-19-and-ma-in-india-navigating-risks-and-understanding-opportunities (Last visited august 29,2023).

[6]Ministry of Corporate and Industry, Review of Foreign Direct Investment policy for curbing opportunistic takeovers and acquisitions of Indian companies due to current covid 19 pandemic , 5(5) /2020 FDI policy (issued on 17th April, 2020).

[7]Kanika Dhingra1, Sheeba Kapil, *Determinants of Cross-Border Inbound and Outbound Mergers and Acquisitions* 6 AUSTRALIAN JOURNAL OF BUSINESS AND MANAGEMENT RESEARCH, 45–61 (2021).

[8]Manish Popli, Ashutosh Kumar Sinha, *Determinants of early movers in cross-border merger and acquisition wave in an emerging market: A study of Indian firms* PACIFIC JOURNAL OF MANAGEMENT,1075-1099 (2014).

merge across international borders in India, following are some of the different motivations that were deduced from various cross-border deals, including technological advancement, government initiatives, financial support, branding, competitive advantage, resource transfers, local market competition, organizational restructuring, efficiency improvements, synergies and global market leadership[9].

II. History of FDI equity and cross border deals in India

The Cross-border deals in India at the time of Independence does not have a long and a good history. The primary reason was the Britishers which ruled us for nearly 200 years. It has left imprints in the minds of Indians and as result they were not able to come up with the terms of economic independence. All the deals which were happening outside the country with the big corporates mainly for the 'Captive consumption'.

After India gained Independence in 1947, government enacted so many legislations to improve the condition of the foreign capital in India such as Industrial Development and Regulation Act, 1951, Foreign Exchange Management Act, 1947[10]. Also, during 1961 government issued a list of industries where foreign investment was welcomed. Again in 1969, The Monopolies and Restrictive Trade Policies Act was enacted which put restrictions on various cross border deals. Again, the Foreign Exchange Regulation Act, 1975 was enacted but it failed miserably[11]. The Indian government's failed attempt to attract foreign direct investment was followed quickly by the government's realization of its significance.

Followed by this, The Foreign Exchange Management Act of 1999 was passed by the Indian government in 1999, and it has made possible for foreign investors to make huge investments. Then starting from 1999- 2023, Indian economy has witnessed various cross Border mergers like Tata Motors and JLR[12] Tata Steel and Chorus[13]Hindalco and Novelist[14] Bharti Airtel and Zain[15]Daichi Ranbaxy[16]and many more. Now the situation is very liberal. Almost in all the

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[9]Vanita Tripathi , Ashu Lamba, *What drives cross border mergers and acquisitions* 8 JOURNAL OF STRATEGY AND MANAGEMENT, 384-414 (2015).

[10]Reserve Bank of India, https://m.rbi.org.in/scripts/Bs_viewcontent.aspx?Id=3623 (last visited December 2nd 2022).

[11]Id.

[12]Tata motors, https://www.tatamotors.com/press/tata-motors-completes-acquisition-of-jaguar-land-rover/ (last visited Sept 2nd ,2023).

[13]Tata Steel, https://www.tatasteel.com/media/newsroom/press-releases/india/2007/tata-steel-completes-62bn-acquisition-of-corus-group-plc/ (last visited 5th Sept,2023)

[14]Hindalco, https://www.hindalco.com/about-us/our%20companies#:~:text=Acquired%20by%20Hindalco (last visited sept 5th, 2023).

[15]S dhir, *Integration of knowledge and enhancing competitiveness: A case of acquisition of Zain by Bharti Airtel*, JOURNAL OF BUSINESS RESEARCH 674-684 (2020).

[16]Business Standard, https://www.business-standard.com/article/companies/sun-pharma-buys-ranbaxy-from-japan-s-daiichi-114040700737_1.html (last visited August 28th, 2023)

sectors the foreign entities can invest up to 100% other then some prohibited sectors which government has reserved for itself. From the year 2000-2023, the FDI equity came from various countries around the world Mauritius, Singapore, USA, Netherland, Japan, UK, UAE, Cayman's Island, Germany and Cyprus[17].There are various sectors in which there was the highest investment like automobile, Pharmaceuticals, Construction, computer software and hardware etc. Foreign direct investment is now hitting the Indian economy from all directions.

III. Analysis of various laws in India dealing with cross border deals

There are various laws which govern Cross border deals in India mainly, The Companies Act, 2013 and The Companies (Compromise and Arrangement) Rules, 2016, The Foreign Exchange Management Act, 1999, Foreign Exchange Management (Cross Border Merger) Rules, 2016, FDI policy, Foreign Exchange Management (Non debt instrument) Rules, 2019.

(A) The Companies Act, 2013 read with the Companies (Compromise and Arrangement Rules), 2014

In the past, The Companies Act of 1956 also contained laws relating to cross-border mergers as well, but they were not comprehensive and came with the limitations. However, on April 13, 2017 government notified the section 234 in the Companies Act, 2013. Its range was expanded.

Sec 234 of The Companies Act, 2013 states that,

"1) The provisions of this Chapter unless otherwise provided under any other law for the time being in force, shall apply mutatis mutandis to schemes of mergers and amalgamations between companies registered under this Act and companies incorporated in the jurisdictions of such countries as may be notified from time to time by the Central Government:

Provided that the Central Government may make rules, in consultation with the Reserve Bank of India, in connection with mergers and amalgamations provided under this section.

(2) Subject to the provisions of any other law for the time being in force, a foreign company, may with the prior approval of the Reserve Bank of India, merge into a company registered under this Act or vice versa and the terms and conditions of the scheme of merger may provide, among other things, for the payment of consideration to the shareholders of the merging company in cash, or in Depository Receipts, or partly in cash and partly in Depository Receipts, as the case may be, as per the scheme to be drawn up for the purpose".

The above mentioned section clearly states that a foreign company or vice versa can merge into

[17]Foreign Direct Investment ,https://dpiit.gov.in/foreign-direct-investment/foreign-direct-investment-policy (last visited sept 7th, 2023).

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any Indian Company. The only drawback here is that the government notifies the countries, we can invest only up companies in that jurisdiction only. Also, government can make rules regarding cross border merger with the consultation with Reserve Bank of India. Rule 25A of Compromise and arrangement rules also states that it has to follow sec 230[18] – 232[19] which deals with the permission from NCLT in case of Compromise and Arrangement that includes the mergers and acquisitions.

(B) Foreign Exchange Management (Cross Border Merger) rules 2018[20]

Under these rules, it stated the definition of inbound, outbound merger and various compliances related to it. The provisions related to inbound mergers is that when an Indian company wishes to transfer the securities to resident outside India then it has to follow various entry routes, reporting requirements, pricing guidelines, NDI rules.

If their resident in India, a person can acquire or hold any security in accordance with Foreign Exchange Management (Transfer or issue of any Foreign Security) Regulations, 2004 for these securities, there has to be a fair market price as per scheme prescribed by the act and foreign management regulations.

(C) Foreign Exchange Management (Non Debt Instrument) Rule, 2019[21]

Rule 19 of the Foreign Exchange Management (Non Debt Instrument) Rule, 2019 whenever the scheme of Merger is approved by tribunal , the transferee company should comply with the compliances, proper sectoral caps, entry routes and investment limits along with it has to comply with SEBI (Listing obligations and disclosure requirement) 2015.

(D) SEBI (Listing obligations and disclosure requirements) Regulations, 2015.

Regulation 19 – Draft scheme of arrangement or scheme of arrangement.

Rule 19 of the Non-Debt Instruments Rules states that listed companies that are involved in mergers and acquisitions must adhere to SEBI regulations. Before submitting the scheme of arrangement to NCLT, it is required under regulation 37 to have a non-objection certificate from the relevant stock exchange. Additionally, the corporation must submit the documentation to stock exchanges after approving the program. The aforementioned letter of no objection is valid for six months after it is issued. The scheme of arrangement must be submitted within those six

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[18]The Companies Act,2013 , sec 230
[19]The Companies Act,2013 , sec 232
[20]Reserve Bank of India, https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=11235&Mode=0 (last visited 25th august, 2023).
[21]Income tax, https://incometaxindia.gov.in/Documents/Provisions%20for%20NR/FEM-Non-debt-Instruments-Rules-2019 (last visited august 4th, 2023).

months.

(E) The Competition Act, 2002

As is well known, the government enacted the The Competition Act, 2002 to encourage competition in the Indian market. Its main objective is to encourage competition and eliminate any monopolistic tendencies that businesses may have in the market. It determines whether a corporation, acting alone or in concert with others, is having a materially negative impact on competition or whether the agreements they are engaging into are pro or anti-competitive. As a result, whenever a merger and acquisition involving a foreign firm is involved, CCI approval is required under Sections 5[22] and 6[23]. It contains the approval of Competition Commission of India in case of various combinations.

(F) Insolvency and bankruptcy code (IBC) , 2016

A ground-breaking code on insolvency and bankruptcy in India was enacted by the government in 2016. It deals with every activity that was time-consuming and laborious prior. Since the introduction of the IBC , every corporation looking to exit has adopted this strategy in several cases. Cross-border mergers and acquisitions have increased as a result of IBC due to the availability of certain exemptions and concessions to the nations in terms of open offer and other exclusions[24]. It promoted the ease of doing business for India.

IV. Due diligence and its importance in cross border deals

The International Business Standards Association defines due diligence as "The investigative process of collecting and analysing adequate, relevant data before making a decision, with the aim of understanding advantages, disadvantages and risks associated with a decision". Due diligence in context of a company is all about knowing the company from in and out. There are many significant risks involved in the M&A process. When one is dealing with another company, no organisation wants to face unexpected surprises or roadblocks. It is very important to know what kind of deal you are getting into and what the possible outcomes may be. To combat this, the process of due diligence is carried out – a systematic way of checking the truthfulness and fairness of a deal. So, the decision will be taken rationally.

The failure of mergers and acquisitions can be attributed to a number of factors. Inadequate due diligence is one of the most significant causes. Therefore, it is crucial for the buyer to perform

[22]The Competition Act, 2002, 5.
[23] The Competition Act, 2002, 6.
[24]Mondaq, https://www.mondaq.com/india/securities/646098/foreign-mergers-exemption-from-open-offer (last visited July 8th, 2023).

due diligence on the target in order to learn about all the risks involved and what would happen to the seller if those risks were to be taken. The main purpose of due diligence is to mitigate risks and negotiate the best deal for the organization. There are various types of due diligence processes, including financial, commercial, intellectual property right, customer, employee, management, legal compliances, litigation, taxation, cyber security, environmental, insurance, and other due diligence processes. It is a time consuming process but makes a lot of difference it is done meticulously. It has been observed that so many deals in India and cross border was a failure because of Inadequate due diligence. The most infamous Daiichi and Ranbaxy is the biggest example of this kind of failure.

- **Daichi-Ranbaxy-Sun Pharma Deal (2008- 2014)**[25]

When it comes to M&A deals, there are only a few particularly contentious transactions that have a significant impact on the Indian economy. One such agreement is the Daichi -Ranbaxy Sun Pharma acquisition[26]which is a glaring example of failure when the buyers undertake insufficient due diligence. As a result, it was distinct from past transactions because Sun Pharma bought Ranbaxy during a very turbulent period for Ranbaxy. It was acquired at a time when Ranbaxy was dealing with significant losses and substantial allegations from the US Food and Drug Administration (USFDA)[27]. This transaction occurred at the ideal time as merger and acquisition arrangements are being considered by businesses worldwide, particularly pharmaceutical companies. This deal was a great lesson to firms outside and inside India to be diligent as buyers as well as sellers.

- **Detail analysis of the Deal**

The analysis of this deal has been divided into four parts, first part dealing with the history of Diachii-Ranbaxy,the corporate restructuring deal between them and the consequences there of. Second Part is all about Sun Pharma taking over Ranbaxy and the timelines, third part deals with various consideration in the deals. Fourth part deals with concluding remarks.

Established in 1961 by two brothers Ranbir and Gurbax Singh, Ranbaxy was a pharmaceutical company. It was a public listed company, listed on BSE, NSE and Luxemburg stock Exchange listed in 1972[28]. In comparison to other pharmaceutical companies, the corporation has

[25] Paul, J and Bhawsar P, *Japanese acquisition in India's Ranbaxy*, 21 COMPETITIVENESS REVIEW,452-470 (2011).
[26] Chadha A,*Daiichi Sankyo's generic (mis) adventure: the Ranbaxy takeover* 2 EMERALD EMERGING MARKET CASE STUDIES 1-10 (2012).
[27] Banerjee Souvik, *Ranbaxy: What Went Wrong with the First Indian Pharmaceutical Multination*al 7 AKGIM JOURNAL 35-37 (2017).
[28] *Supra* 26.

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throughout the years reached unprecedented heights of success and became pioneer company in India in the pharmaceuticals industry[29].It basically manufactured affordable medicines with good team of Indian scientists[30].It expanded to more than 46 countries namely USA, Brazil, Canada, Mexico, Peru, equador, Columbia, Europe, Lithuania, Belgium ,Bulgaria, France, Germany, Ireland, Poland, Romania, Spain, Russia, Morocco and many others[31]. It also developed a number of manufacturing sites and had a reach to around 125 countries[32]. It has a sizable American base which has increased its popularity world-wide. The Taonsa Plant was the first plant to begin exporting goods to the USA. Before this transaction, it has also bought a number of other businesses, including Rima Pharmaceuticals, Cardinal Drugs, krebs biochemical, Allen SpA, Terapia, B Tab Pharmaceuticals[33] and others from around the world[34]. It entered into a contract with a Japanese pharmaceutical company called 'Daiichi' in 2008[35], bought the bulk of the business's shares from the promoters, Chief executive officers and managing director Malvinder Singh citing the financial difficulties in Ranbaxy[36].Around 34.8% stake in Ranbaxy for $2.4 bn[37] and then proceeded with an open offer in accordance with the takeover rules. The combined entity was valued at 30 billion.[38]

But soon the problem started when Daichii came to know that Ranbaxy has committed various irregularities in their manufacturing process and also in quality Control of various drugs, consequently the questions were raised by USA. Therefore over 30 generic drugs were banned by USA from exports from dewas (Madhya Pradesh) and paonta sahib (Himachal Pradesh)[39] over quality issues[40]. It also pleaded guilty of some felony charges by USA government[41]. Later all the facilities of Ranbaxy was banned from the US market. Also company was also facing problems due to various accounting practices[42]. Daiichi were unable to cope up with this pressure anymore, consequently, the Ranbaxy was taken over by the Sun Pharma in

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[29]Paul J and Bhawsar, *Japanese acquisition in India's Ranbaxy* 21 COMPETITIVENESS REVIEW 452-470 (2011).
[30] *Supra* 26
[31] *Supra* 29
[32] *Supra* 26
[33] *Supra* 29.
[34] Nishith Desai, https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Ma%20Lab/Sun_Pharma (last visited sept 10, 2023.
[35] SSRN, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1415972 (Last visited July 14, 2023).
[36] Sudip Chaudhary, *Ranbaxy sell out- reversal of fortunes,* 43 ECONOMIC AND POLITICAL WEEKLY, 11-13, (2008)
[37] *Supra* 26.
[38] *Supra* 26.
[39] *Supra* 35.
[40] BBC, https://www.bbc.com/news/business-26917569 (Last visited on 4th august, 2023).
[41] *Supra* 34
[42] *Supra* 26.

2013[43]which looked like its revival from this turbulent situation for Ranbaxy.

- **Important Timeline for this deal Sun Pharma and Daiichi deal**

6th April, 2014 – Board Resolution was passed for both the companies[44]

13thMay ,2014- Daiichi submitted the FDI proposal [45]

11thJuly, 2014- Approval from the Stock Exchanges

22nd August 2014- Court Convened the EGM – Shareholders of Sun Pharma

19th September, 2014- Court Convened the EGM – Shareholders of Ranbaxy

5th December 2014- CCI approval

Dec-Jan, 2014 - Merger Completed [46]

Various terms and conditions of the Contract between Daichii and Sun Pharma [47]

1. After the merger takes place the shareholding Pattern of the Sun Pharma will get changed , The Promoters of sun Pharma will keep the highest shares i.e. 55%, Daichii will keep 9% shares along with the right to nominate one director with this. 14 % and 22% shares will be kept by shareholders of Sun Pharma and Ranbaxy's public shareholding.
2. As Ranbaxy has global investors , their Global depository receipts will get an option to convert it into equity shares or there will be an option to cash out.
3. The terms and conditions in Employee Stock Option Plan for the employees of Ranbaxy will be given ESOP's of Sun Pharma with the same terms and conditions.
4. The amount lying in the debit side of the accounts of Ranbaxy will be adjusted as the section 391-394 of The companies Act and section 52 of The Companies Act, 2013

- **Details of the Various Legal and Regulatory Consideration the Deal**

(A) Under The Companies Act, 2013

Though at the time of the deal almost all the provisions related to the Companies Act, 2013 were notified but the sections related to M&A were not notified. So The section 391-394 of The

43 Reuters,https://www.reuters.com/article/us-daiichi-sankyo-ranbaxy-sunpharma-idUSBREA3600L2014(last visited on august 22nd ,2023).
44Sun Pharma, https://sunpharma.com/wp-content/uploads/2020/12/Press-Release-Sun-Pharma-to-acquire (last visited on may 5th, 2023).
45 *Supra* 34
46 *Supra* 34
47 *Supra* 34

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Companies Act, 1956 were applicable on this deal.

According to this, firstly the board approval was required, after that the approval of the stock exchanges where the shares of the company were listed. After that the approval of the High Court was required. After that High court notifies the date, time and venue for the meeting of the concerned parties and also appoints the chairperson to preside over the meeting. The motion in favour should be at least passed by the shareholders representing 3/4th in value. This deal got the approval from the High court in December.

(B) Under SEBI and Stock Exchanges [48]

As both the Companies were listed companies, they had certain regulatory obligations which further expanded by various SEBI Circulars (Feb 4 and May 21) in clause 5.2, 5.3,5.4,5.11, 5.13 which are as follows :-

Every Listed Company is supposed to lay valuation report in front of their audit committee for their approval. That valuation should be obtained from Independent Chartered Accountant.

The companies has to choose one National wide terminal stock Exchange which will coordinate with the Securities and Exchange Board of India. There has to one observation letter should be obtained from stock exchanges and sent to the shareholders while sending notice to the shareholders and also to the court while applying for the approval. The draft scheme should be published on the website and should also disclose the observation letter within 24 hours.

(C) Under Insider Trading Regulations [49]

There are various disclosure obligations were there on the promoters, directors, officers under regulation 13 of insider regulations required to be made with the stock exchange if their any change in shareholding or voting rights of such persons. But Sun Pharma came under Radar when on April 30th , 2014, the Andhra Pradesh High Court ordered the BSE and NSE not to approve the transactions until the a petition related to insider trading was decided by court. It was filed by some of the investors. They noticed a very unusual price rise in prices of shares.

(D) Under Takeover Code

Sun Pharma was exempted to make an offer pursuant to regulation 10 (1) (d) of SEBI SAST regulations. It was written that "Pursuant to scheme of arrangement involving target company including merger pursuant to an order of court is exempt from requirement to make an open offer.

[48] *Supra* 34

[49] *Supra* 45.

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(E) Under Competition Act, 2002

Under Competition Act, 2002, Sec 5 6 deals with various combinations and regulation of combinations. Under this combination of Ranbaxy and Sun pharma , the show cause notice was issued by CCI for market domination. CCI was of the opinion that that certain drug formulations will disrupt the market as they dominating the market's. On august 28,2014, CCI ordered investigation twice because CCI observed that there is an adverse effect on the competition. Afterwards CCI invited comments and objections and public submitted its views on 25th sept, 2014. Later on dec , 2014 CCI approved the transactions subject to certain conditions such as divestment of 7 brands by Ranbaxy.

- **Pharmaceutical licenses**

The licences issued to the Ranbaxy will be extinguished. Sun Pharma has to apply for the fresh licences again under Drugs and Cosmetics Act 1940 read well done Drugs and Cosmetics rules 1945. Sun Pharma is supposed to get an No objection certificate from Drug Controller general in India general of India for exporting its drugs.

- **Post-Merger Liability**

Post-Merger liability of Ranbaxy will be transferred to Sun pharma. All the debts and liabilities will be transferred to Sun pharma. Though Daichi has given a contract to indemnify the cost and expenses related to the litigation happened in USA. Other than that all the liabilities has been transferred to Sun pharma.

- **Delisting of Ranbaxy**

The shares of Ranbaxy were delisted from NSE and BSE.

This entire transaction served as an excellent instance of how crucial due diligence is in such deals. If we examine the transaction, the justifications offered by the buyers and sellers are nebulous and unclear. Investors were also impacted because they were unaware of the acquisition and were surprised by it. Additionally, the global perception of Indian Pharmaceuticals Company was incorrect. Although the Sun Pharma agreement served as a saviour for Ranbaxy since without it, it would have been difficult for the company to survive.

After a lengthy struggle, the deal was eventually completed and managed to survive. For Daichi, it was a breath of fresh air, and for Ranbaxy, it was a new beginning. The buyers' eyes have been awakened to the value of conducting thorough research and to the need to be wary of the promoters' reputation and background. It has taught all nations a valuable lesson about the importance of being mindful of their rights and obligations anytime they are pursuing such

arrangements.

V. FORTIS HEALTH CARE LTD: IHH BERHAD, MALAYSIA DEAL

- **Introduction of the Companies**

One of the top hospitals in India, Fortis Health Care Ltd has its headquarters in Gurgaon. It all began in Mohali, Punjab, in 1996. Malvinder Singh and Shivinder Singh are the company's promoters. In terms of income and resources, it was one of India's most well-known hospital networks. It also purchased a renowned escorts group, giving it a presence in all of India's main cities. However, it also had to overcome a number of challenges in the most recent years as a result of numerous corporate restructuring agreements.

One of the largest private hospital groups in Asia, IHH health care Berhad Malaysia, was established in 1974 and has its headquarters in Kuala Lumpur. Its geographic reach is extensive, extending to Turkey, India, Singapore, Greater China, and Hong Kong. It operates more than 80 hospitals globally.

- **The Deal**

Everything began in 2008 when Daichi bought Ranbaxy from its promoters Malvinder Singh and Shivinder Singh. However, Daichi soon learned of several irregularities committed by Ranbaxy in the USA and its suspension on a number of exports. The United States forbade exports from Ranbaxy's multiple Indian factories. Additionally, the dispute entered arbitration after the promoters were charged with hiding facts linked to some misconduct; as a result, a Singaporean tribunal awarded Daichi 3600 crores in damages[50]. Daichi filed a case against them in the high court after they failed to pay the aforementioned award, and the high court subsequently ruled that the shares of both promoters be attached.

But Fortis Health Care, through a preferential allocation, issued 23,530,000 equity shares to IHH berhad, Malaysia, on November 13th, 2008. After this acquisition, IHH berhad acquired a 31.1% interest in Fortis, making it its largest stakeholder[51]. As a result, it triggered the requirement for the necessary 26% open offer mandated by SEBI's (SAST) regulations of 2011. However, this scenario came to an end in 2018 when Daichi filed a complaint in the Supreme Court challenging the sale on the grounds that it was in violation of court orders. The open offer by IHH was ordered to be stayed by the Supreme Court[52]. Investors are concerned about the

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[50] Business today, https://www.businesstoday.in/latest/corporate/story/fortis-ihh-healthcare-case-why-is-the-trouble-and-what-next-347979-2022-09-22 (last visited 23rd july, 2023).

[51] The Hindu, https://www.thehindu.com/business/Industry/fortis-accepts-584-million-stake-deal-from(last visited sept 9th, 2023).

[52] Indian Express https://indianexpress.com/article/business/market/fortis-healthcare-sinks (last visited august 21,

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deal's prospects because it has been put on hold since that time.

- **Situation at present**

IHH has come forward, shown its support, and remains entirely ready to participate in India's market. It is currently awaiting SEBI's approval before moving forward with the open bid[53] and taking over the business[54].

VI. CONCLUSION

According to the analysis of the aforementioned two transactions, the investors who have been waiting for the deal's conclusion for the past four years are the most affected party in Fortis - IHH deal. This has had an effect on both investors and India's reputation internationally. Two foreign companies—Daichi and IHH Berhad Malaysia—were involved in the picture, and despite the fact that they had committed no wrongdoing, they were treated abhorrently. The fact that the promoters duped Daichi twice raises serious concerns about the reliability and integrity of Indian pharmaceutical companies. It has affected India's standing internationally. This acquisition served to emphasize the significance of conducting thorough due diligence. Though Indian market and regulator is continuously and tirelessly working to build the strong corporate governance principles but it is still a tough path. Also it is very important for the companies to give more time to their due diligence process because it serves as a foundation for the success of the M&A deals. Parties generally out of fear of cost and time usually ignore the process but it has to be looked very intensely. These two deals served an important lesson for the companies who are interested in these deals.

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[53] Money control, https://www.moneycontrol.com/news/business/ihh-will-soon-float-open-offer-for-fortis (last visited sept 8th, 2023).

[54] Mint, https://www.livemint.com/companies/news/ihh-healthcare-says-fortis-remains-its-main-platform-for-growth-in-india-11668356728977.html (last visited sept 8th, 2023).

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