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Mergers and Acquisitions in India: An Analysis of the Current Legal Landscape with Special Reference to Zomato – Uber Eats and ZEEL Merger

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ABSTRACT

Corporate Restructuring is a process wherein a company or companies try to reorganize their capital structure or its operational structure. It helps the company in achieving various goals such as efficiency, economic growth, maintaining stability, expansion of company's working areas and obtaining the requisite funds. There are various forms of corporate restructuring such as mergers and amalgamations, disinvestment, slump sale etc. It even includes buy back of shares under Section 68 of the Companies Act of 2013, as it helps in reorganization of the capital. The study is proposed to be done with the aim of understanding the concept of mergers and acquisitions and study its legal compliances along with analyzing them with recent and landmark case studies.

Keywords: *Mergers and Acquisitions, Companies Act, 2013, ZEEL Merger, Zomato, Uber Eats, Competition Act, 2002*

I. INTRODUCTION

Concept of Mergers and Acquisitions

The merger may occur between two companies of equal sizes or between two companies in the same industry or between two completely unrelated companies. It depends entirely on the purpose that the merging company intends to achieve with such merger.

Merger is the method by which two or more companies decide to consolidate and establish a new corporation. A merger is the process by which one firm dissolves and no longer exists. A merging firm is one that preserves its identity after a merger, while a merged company is one that loses its identity as a result of the merger.

"Mergers aim at improving the competitive position of an individual business and maximizing it's contribution to corporate objectives. It also aims at exploiting the strategic assets

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accumulated by a business i.e. natural monopolies, goodwill, exclusivity through licensing etc. to enhance the competitive advantages. Thus restructuring would help bringing an edge over competitors. Competition drives technological development. "[2]

Mergers can be done in various ways either in a cash deal or through payment in shares or a combination of both. When a merger is done by paying completely in cash instead of shares then its known as a **cash merger**. For example, Reliance acquired Hamley's in an all cash consideration for approximately 70 Cr. On the contrary, when a merger is done by providing shares to the stakeholders in the merged entity at a particular ratio decided by both the companies then the merger is known as **stock swap merger** and the decided ratio is known as **stock swap ratio.** Generally companies prefer stock swap mergers as it is easier for companies to pay in shares since it is harder to pay the entire consideration in cash.

Acquisition is a process by which a company acquires majority stake or controlling stake in another company's share capital or voting rights. While a merger is generally based on consent of both the companies, an acquisition can be friendly or hostile. Through takeover, a company is able to acquire all or atleast a substantial amount of assets and liabilities of the acquired company.

Acquisition can be done either by way of a **formal agreement** wherein the terms and conditions are decided by both the companies and the shareholders of the acquired company are offered a suitable price for their shares or in case of a **hostile takeover**, by way of purchasing the shares from the market or by acquiring shares from majority shareholders. In case of an acquisition, the acquiring company also has a choice to choose or pick the assets and liabilities that it wants to acquire.

II. LAWS REGULATING MERGERS AND ACQUISITIONS

While there aren't too many specific provisions that regulate M&A, several provisions of Companies Act, 2013 (herein after the Act) and SEBI regulations provide for certain compliances that are required to be done during various stages of mergers. Although the provisions governing mergers are far more enumerated, there are even lesser provisions that govern acquisitions. The laws that deal and regulate the M&A are as follows –

1. **Companies Act, 2013 –** Majorly provisions contained under **Chapter XV**[3] of the Act govern all major forms of corporate restructuring. Chapter XV of the act deals with

[2] ICSI, Professional Programme, Study Material, *Corporate restructuring and Insolvency,* July 2017 URL – https://www.icsi.edu/WebModules/Publications/CRVIupdatedtillJune2017.pdf

[3] Companies Act, 2013, Act No. 18 of 2013 (India)

Compromises, Arrangements and Amalgamations and talks about conduction of meetings of creditors, shareholders etc., compliances to be done with concerned authorities etc.

2. **SEBI Regulations –** Other than Companies Act, there are several regulations of SEBI that also deal with the M&A of **listed companies** such as SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015[4] and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011[5].

3. **Competition Act, 2002 –** The Competition Act, 2002 was enforced with the aim to promote competition by regulating and eliminating unfair competition in the market. Thus it also regulates the mergers of entities whose amalgamation could have an appreciable adverse effect on the market and the Competition Commission of India (CCI) is entrusted with the responsibility of preventing such mergers or acquisitions from taking place.

4. **Income Tax Act, 1961 –** The ITA defines the process of amalgamation under **Section 2(1B)** as under –

   a. *"(1B)] —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 in such a manner that— 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;"*[6]

5. **FEMA –** According to the FEMA Rules[7], any transaction that is analogous to a cross-border merger as defined by the Rules will be regarded approved by the RBI. The Guidelines also require the supervising executive or full-time chief and member secretary of the company or companies involved in the cross-border merger to establish a testament responsibility to ensure compliance, as well as the submission prepared to the relevant NCLT in accordance with the unification.

6. **Indian Stamp Act[8] –** Several states impose stamp duties for various transactions in M&A such as Share Purchase Agreement (SPA), Indemnity, Demerger, Merger and Business Purchase Agreement.

[4] Securities And Exchange Board Of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 No.Sebi/Lad-Nro/Gn/2015-16/013

[5] Securities And Exchange Board Of India (Substantial Acquisition Of Shares And Takeovers) Regulations, 2011f. No. Lad-Nro/Gn/2011-12/24/30181

[6] *Supra* Note 2

[7] Foreign Exchange Management (Cross Border Merger) Regulations, 2018, Notification No. FEMA.389/2018-RB

[8] The Indian Stamp Act, 1899, Act No. 2 Of 1899

LEGAL ASPECTS RELATED TO MERGERS

Sections 230 to 240[9] of the Companies Act deal with the provisions and regulatory framework for M&A and provide for various provisions such as holding of shareholders' and creditors' meetings, approvals of concerned authorities etc. The process of merger can, for the purpose of a better understanding, be divided into three stages i.e. –

a. **Preliminary stage** – This is the stage where the process of merger is in its nascent stages and the terms and conditions are drawn between the companies to suit their individual needs. Since this is such an initial stage, there aren't a lot of provisions governing it.

b. **Merger stage** – This stage is the most important stage where the merger is set into motion. This is the stage where permissions are sought from the concerned authorities and meetings are conducted with all the stakeholders to finalize the merger. After this stage, if all the compliances and requirements are fulfilled then the merger is set to be finalized. Most of the provisions govern and regulate this stage.

c. **Post Merger Stage** – This is the stage after the merger has been complete and deals with minimal requirements to be completed post the entities have been merged such as notifying the public about the merger, obtaining and filing certified copies etc.

1. PRELIMINARY STAGE

The process of Merger involves several steps such as drafting of Letter of Intent, negotiations regarding the terms and conditions of the merger and drafting a broader framework, observing whether the Memorandum of the company allows for such merger, formation of valuation report, observing due diligence, and most importantly drafting the Scheme of Arrangement. Thus there are several general steps to follow when the merger is in its nascent stages such as–

- "Evaluation of transaction structure and review of all aspects before taking final decision on M&A involving a scheme of arrangement.
- Review of relevant documents and preparation of project activity plan basis of the shortlisted option.
- Preparation and finalisation of **Scheme of Arrangement**.
- Complete valuation of the companies and obtain valuation reports from Registered Valuer Obtain Fairness Opinion from a registered merchant banker.

[9] *Supra* Note 4

- Call for an audit committee and approve the valuation report in the audit committee.
- Obtain auditors report for (a) scheme being in compliance with the requirements of Accounting Standards (b) scheme being in compliance with the requirements of SEBI circulars/LODR provisions.
- Preparation of secretarial documents in relation to calling of a board meeting and intimation to recognised stock exchange(s), regarding holding of board meeting and outcome board meeting.
- Convene the Board Meeting for approval of the Scheme of Amalgamation and Arrangement and appointment of professionals, etc."[10]

2. Merger Stage And Procedural Compliance Under Various Statutes

- **Under Companies Act, 2013**

Because a merger is primarily a business arrangement, industries that want to merge must file a petition with the National Company Law Tribunal ("NCLT"), which has purview over them, to call conferences of their corresponding stakeholders; or pursue exemption from the creditors and investors. Sections 230 to 240 deal with the regulations about corporate restructuring and M&As. Some of the important sections of Companies Act that are important with respect to M&A are –

- **Section 230[11]** provides the basic framework for regulations of Mergers, Acquisitions and other modes of corporate restructuring. For instance clause 2 of section 230 provides the basic format and requisite documents for filing application of merger before NCLT, whereas "Proviso of Section 230(3) provides for notice relating to compromise or arrangement and other documents to be placed on the website of the company"[12]. Section 230 states –

  "230. Power to compromise or make arrangements with creditors and members.—

  (2) The company or any other person, by whom an application is made under subsection (1), shall disclose to the Tribunal by affidavit—

  (a) all material facts relating to the company, such as the latest financial position of the company, the latest auditor's report on the accounts of the company and the pendency of any investigation or proceedings against the company;

[10] https://bathiya.com/mergers-and-acquisitions-companies-act-framework-and-broad-process/

[11] Companies Act, 2013, Act No. 18 of 2013 (India)

[12] *Ibid.*

(b) reduction of share capital of the company, if any, included in the compromise or arrangement;

(c) any scheme of corporate debt restructuring consented to by not less than seventy-five per cent of the secured creditors in value,

(7) An order made by the Tribunal under sub-section (6) shall provide for all or any of the following matters, namely:—

(a) where the compromise or arrangement provides for conversion of preference shares into equity shares, such preference shareholders shall be given an option to either obtain arrears of dividend in cash or accept equity shares equal to the value of the dividend payable;

(b) the protection of any class of creditors;

(c) if the compromise or arrangement results in the variation of the shareholders' rights, it shall be given effect to under the provisions of section 48;"[13]

- Furthermore, **Section 232**[14] of the Act talks about Mergers and application filed before NCLT for the same, it states –

  "232. Merger and amalgamation of companies.—

  (1) Where an application is made to the Tribunal under section 230 for the sanctioning of a compromise or an arrangement proposed between a company and any such persons as are mentioned in that section, and it is shown to the Tribunal—

  (a) that the compromise or arrangement has been proposed for the purposes of, or in connection with, a scheme for the reconstruction of the company or companies involving merger or the amalgamation of any two or more companies; and

  (b) that under the scheme, the whole or any part of the undertaking, property or liabilities of any company is required to be transferred to another company, or is proposed to be divided among and transferred to two or more companies, the Tribunal may on such application, order a meeting of the creditors or class of creditors or the members or class of members"[15]

[13] https://www.mca.gov.in/Ministry/pdf/CompaniesAct2013.pdf

[14] *Supra* Note 12

[15] *Supra* Note 13

- **Section 233**[16] of the Act on the other hand provides exception to Section 230 and 232 in case of small companies, it states –

  "233. Merger or amalgamation of certain companies — (1) Notwithstanding the provisions of section 230 and section 232, a scheme of merger or amalgamation may be entered into between two or more small companies or between a holding company and its wholly-owned subsidiary company or such other class or classes of companies as may be prescribed, subject to the following, namely:— (a) a notice of the proposed scheme inviting objections or suggestions, if any, from the Registrar and Official Liquidators where registered office of the respective companies are situated
  (b) the objections and suggestions received are considered by the companies in their respective general meetings and the scheme is approved by the respective members or class of members at a general meeting holding at least ninety per cent. of the total number of shares;
  (c) each of the companies involved in the merger files a declaration of solvency, in the prescribed form, with the Registrar of the place where the registered office of the company is situated; and
  (d) the scheme is approved by majority representing nine-tenths in value of the creditors or class of creditors of respective companies indicated in a meeting convened by the company by giving a notice of twenty-one days along with the scheme to its creditors for the purpose or otherwise approved in writing."[17]

- **Section 234**[18] talks about cross border merger i.e. mergers with foreign companies and the regulations guiding it, it states –

  "234. Merger or amalgamation of company with foreign company.— (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."[19]

- **UNDER SECURITY REGULATIONS (SEBI)**

The Securities and Exchange Board of India (SEBI) is the central institution in India for

[16] *Supra* Note 12
[17] *Supra Note 13*
[18] *Supra* Note 12
[19] *Supra* Note 13

regulating firms that are or will be traded on capital market. The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, limit and regulate the purchase of shares, voting rights, and control in publicly traded firms. The SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 establishes a comprehensive framework for regulating a variety of listed securities.

I. The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

"The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 restricts and regulates the acquisition of shares, voting rights and control in listed companies. Acquisition of shares or voting rights of a listed company, entitling the acquirer to exercise 25% or more of the voting rights in the target company or acquisition of control, obligates the acquirer to make an offer to the remaining shareholders of the target company. The offer must be to further acquire at least 26% of the voting capital of the company.

Further, if the acquirer already holds 25% or more but less than 75% of the target company and acquires at least 5% shares or voting rights in the target company within a financial year, it shall be obligated to make an open offer. However, this obligation is subject to the exemptions provided under the Takeover Code.

Further, SEBI has the power to grant exemption or relaxation from the requirements of the open offer under the Takeover Code in the interest of investors and the securities market. Such relaxations or exemptions can be sought by the acquirer by making an application to SEBI."[20]

II. SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

The SEBI (LODR) Regulations, 2015 establishes a comprehensive framework for regulating a variety of shares traded. SEBI has established standards for a public company to follow when applying to the NCLT for sanction of a strategy of amalgamation under the Regulations. The following are some essential sections of the Listing Regulations that apply in the context of a case involving a public company –

- **Filing of scheme with stock exchanges[21]:** Process of filing the proposed scheme with the NCLT (as according to the process given in under CA 2013), every listed company executing or engaging in a scheme of arrangement needs report the draught scheme

[20] Mergers and Acquisitions, Nishith Desai and Associates, May 2020 https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Mergers___Acquisitions_in_India.pdf

[21] Regulation 37(1), SEBI (LODR), 2015

with the appropriate stock exchanges to obtain an evaluation letter or no-objection letter.

- **Compliance with securities law[22]:** The listed firms must guarantee that the plan does not contradict, limit, or override any sections of applicable securities law or stock exchange rules.
- **Change in shareholding pattern[23]:** The pre- and post-arrangement ownership arrangement, as well as the working capital, must be filed with the financial institutions in accordance with the listing authority's or stock exchanges' regulations in the native country where the stocks are traded.
- **Corporate actions pursuant to merger[24]:** All knowledge that has an influence on the listed entity's performance/operation and/or competitively priced information must be provided to the stock markets.

- **UNDER COMPETITION ACT, 2002**

As **Section 6(2)**[25] of the Competition Act, every entity has to notify CCI of a combination that is likely to impact the market, it states –

"(2) Subject to the provisions contained in sub-section (1), any person or enterprise, who or which proposes to enter into a combination, [shall] give notice to the Commission, in the form as may be specified, and the fee which may be determined, by regulations, disclosing the details of the proposed combination, within [thirty days] of— (a) approval of the proposal relating to merger or amalgamation, referred to in clause (c) of section 5, by the board of directors of the enterprises concerned with such merger or amalgamation, as the case may be; (b) execution of any agreement or other document for acquisition referred to in clause (a) of section 5 or acquiring of control referred to in clause (b) of that section."[26]

Furthermore, **Section 43A**[27] of the Act provides the CCI with the power to impose penalties upon the failure to notify it of a combination that is likely to have an impact on the market, it states –

"43A. If any person or enterprise who fails to give notice to the Commission under sub-section(2) of section 6, the Commission shall impose on such person or enterprise a penalty

[22] Regulation 11, SEBI (LODR), 2015
[23] Regulation 69(2), SEBI (LODR), 2015
[24] Regulation 51 of Listing Regulations.
[25] Section 6, The Competition Act, 2002, Act No. 12 of 2003 (India)
[26] https://www.cci.gov.in/sites/default/files/cci_pdf/competitionact2012.pdf
[27] Section 43A, The Competition Act, 2002, Act No. 12 of 2003 (India)

which may extend to one percent, of the total turnover or the assets, whichever is higher, of such a combination."[28]

3. Post Merger Compliances

Once the merger compliances and the requirements of all acts are met the merger almost comes into sanction but there are certain post merger compliances to be fulfilled as well such as obtaining the certified copy of order and filing it with RoC etc. Once the scheme and the merger is finalized, there are a few post merger steps to be completed –

"Petitioning the NCLT and Obtaining Final Order

- Once the Scheme has been agreed by the members and creditors, the Companies shall file a petition in Form no. CAA–5 with the NCLT for sanction of scheme, within 7 days of filing of Chairman's report
- Admission of Petition for fixing the date of final hearing – NCLT
- Response to Notice received from the Registrar of Companies, Regional Director and Official Liquidator and follow-up with them
- Advertisement for Petition to be advertised in the same newspapers as the notice in Form No. CAA–2 was advertised atleast 10 days prior to the scheduled hearing & Filing of Affidavit of Service
- Obtain approval of RBI and all other sectoral regulators as applicable.
- NCLT shall pass an Final Order on the petition in Form no. CAA–7

Post Final Order compliances

- Stamp duty Adjudication as per the State Stamp Duty Acts;
- On receipt of Certified Copies of the Final Order, the Company shall file Certified Copy of Order with the ROC within 30 days of its' receipt in Form INC-28 along with Acknowledgement of payment of Fees to RD and OL for the companies;
- Allotment and credit of Shares to shareholders pursuant to the Scheme of Amalgamation and Arrangement and application to Stock Exchanges for Listing of New Equity Shares issued as consideration;

[28] *Supra* Note 10

- Intimation to Stakeholders w.r.t effectiveness of Scheme of Amalgamation and Arrangement."[29]

III. Case studies

1. Sony Pictures Network – Zee Entertainment Enterprises Ltd.

The merger of India's biggest media conglomerates, Zee Entertainment Enterprises Limited (ZEEL) and Sony Pictures Networks India (SPNI), has got to be one of the biggest multibillion-dollar merger in the media industry. While the merger is still in process, but after the approval from Board and since the news hit the media, the shares of both the companies have seen a constant rise.

Terms and Conditions of the Merger

- While the majority stake of this newly formed entity, post merger, shall rest with the shareholders of SPNL, the CEO and MD of this merged entity shall be Mr. Punit Goenka (current CEO of ZEEL).
- The ratio of shareholding shall be almost 47:53 i.e. SPNL shareholders shall have 52.93% stake in the entity whereas ZEEL shareholders will have the balance of 47.07%. Although the CEO of the company shall be the CEO of ZEEL, the majority of the board shall comprise of member of SPNL.

Legal Aspects

- The companies have signed an initial Letter of Intent and **non binding Term Sheet**. As per the term sheet, the companies had given each other a 90-day time period for conducting **due dilligence** and draft a definitive agreement.
- Therefore, they drafted a **Scheme of Arrangement** that deal with the terms and conditions of the merger and the aspect of the post merger entity.
- "According to the term sheet, the promoter family is free to increase its shareholding from the current - 4% to up to 20%, in a manner that is in accordance with applicable law
- The shareholders of Sony will also infuse growth capital into SPNI as part of the merger such that SPNI has approximately USD1.575 billion at closing, for use in pursuing other growth opportunities."[30]

[29] https://bathiya.com/mergers-and-acquisitions-companies-act-framework-and-broad-process/

[30] https://www.livemint.com/companies/news/zeesony-merger-announced-11632279863626.html

The conflict between Invesco and ZEEL

This merged enitity will be a listed company as well. Both the companies had also achieved the approval of requisite authorities, however, the **small shareholders** of the company, namely Invesco, have raised objections against the arrangement on the grounds of it being against the interests of small shareholders. Invesco has a stake of 18% in ZEEL and had in the beginning of 2020 insisted on removal of 3 directors, inclusive of the CEO Mr. Goenka, and change in the corporate governance policies of the company. Although 2 of these directors had resigned in the following few days after, Mr. Punit Goenka had refused to resign and instead began a talk for merger with Sony.

Invesco further alleged that "the non-binding agreement between ZEEL and Sony gifts a 2 per cent equity stake to the promoters of Zee in the guise of non-compete fee, even though the current managing director and chief executive officer, Punit Goenka, would continue to run the merged entity for the next five years."[31] It further stated, "This is dilutive to all other shareholders, which we consider unfair. At the very least, we would expect such largesse to be contingent on the MD/CEO leaving the said position (thus raising the scenario of non-compete) or be structured in the form of time vesting and performance-linked ESOPs, which we as shareholders welcome as a transparent way to reward performance and leadership."[32]

Since the US based firm was not heard in the shareholder's meeting it took the matter in front of Bombay HC where it alleged that there was a lack of transparency, financial discrepancies and corporate malpractice practised by ZEE when they evaded the request for EGM.

As of now, the merger between SPNL and ZEEL is under process with Invesco being its greatest hindrance, but if the deal comes through then it is predicted to be one of the largest multimedia mergers.

2. Zomato – Uber Eats

In the previous year, in January 2020, Zomato had acquired Uber Eats' India business by offering the stakeholders of Uber Eats an ownership of 9.99% in the company (Zomato). The acquisition was completed by way of an all stock deal for an estimated amount of about USD 350 million, excluding the payment of GST of Rs. 248 Cr. Post the acquisition, Uber Eats had stopped all its functioning and all of its assets were merged with Zomato. "As part of the deal, Zomato issued 76,376 compulsorily convertible cumulative preference shares (CCCPS), each

[31] https://www.business-standard.com/article/companies/zee-sony-merger-deal-not-in-interest-of-small-shareholders-invesco-121101100820_1.html

[32] *Ibid.*

valued at ₹180,153, to Uber India. Subsequently, Uber India Systems transferred the CCCPS to Uber BV, which were later converted into 612,199,100 equity shares, or 9.19% stake, in Zomato."[33]

The intention of such acquisition seems to be the accumulation of market share in the food delivery business. Post this acquisition, there are only two major players in the Indian market, i.e. Swiggy and Zomato, with Zomato having atleast 55% share in the market of most cities.

Uber Eats had concluded the deal in order to cut its losses short and pull itself out of its unsuccessful venture in the food delivery market. While Zomato will absorb most of the employees, Uber Eats has given an assurance to absorb the unemployed employees in its other businesses.

FINANCIAL IMPACT OF THE ACQUISITION

While it looks like Zomato got the better end of the deal by acquiring Uber Eats and getting a majority stake in the market but upon a closer look the deal seems more trouble than it was worth and benefitted Uber Eats more than any party.

As per an article by Fortune India, "The ride hailing app (Uber) has made a double-killing as it not only booked profits in FY20 on the sale of its food delivery business in India, Uber Eats, to Zomato, but is now sitting on mouth-watering returns without having to burn cash in fighting competition. Uber has made 560% or 5.60x return on its investment in Zomato as the country's food delivery startup ended Day 1 with a market cap of ₹98,849 crore with the stock settling 65% higher at ₹126 against its issue price of ₹76.

Post the sellout, in FY20, Uber India booked a profit of ₹703.4 crore, making up for 97.6% of its full-year profit of ₹720.74 crore. Besides, in lieu of ₹1,376 crore, Uber holds a 9.19% stake in Zomato that is now worth ₹9,084 crore (as of July 23).While the deal has fetched gains for Uber, for Zomato the deal is a loss making one as it has written off ₹233 crore as impairment in its books."[34]

LEGAL IMPACT – TROUBLE WITH CCI

Therefore, while all looks hale and hearty for Uber, Zomato, on the other hand, not only made a loss while making the deal due to overvaluation of the issued shares, it also got into trouble with **Competition Commission of India** for this transaction. As the transaction lead to acquisition of majority stake in the delivery business, CCI had issued Zomato a show cause

[33] https://www.fortuneindia.com/investing/zomato-ipo-uber-laughs-all-the-way-to-the-bank/105657
[34] https://www.fortuneindia.com/investing/zomato-ipo-uber-laughs-all-the-way-to-the-bank/105657

notice [as per **Regulation 48[35] of the CCI Regulations, 2009**] for failing to secure official authorization for the transaction.

Thus as per Section 43A, CCI has the authority to impose a hefty fine on Zomato to the extent of 1 percentage of the amalgamated entity's turnover (i.e. Rs.1,994 crore as of FY21) or assets worth Rs.8,704 crore, whichever is more. However, Zomato had addressed the notice in its prospectus by stating that this combination was *not notifiable* and therefore it has not committed any breach. It has also requested an oral hearing before CCI for the same and the matter is still pending thereby leaving the acquisition incomplete. Thus if CCI finds Zomato at fault, then in addition to the other costs of acquisition, it will also have to pay the hefty fine that will be imposed by CCI.

Therefore, upon a closer look it can be seen that Zomato has paid a higher cost of this acquisition than just the stipulated amount due to the additional tax and impairment costs as well as the trouble it has gotten into with CCI due to this transaction. While the benefit of the acquisition is yet to be seen and only time will show if the transaction was beneficial or not, there is one undeniable fact that Uber has lost its battle in the food delivery business in India.

3. Findings Of The Case Studies

- **ZEEL – Sony merger** – The ZEE Sony Merger is the most celebrated and the largest media merger in India. It is also a great example of how far a board can go in order to maintain its position. From what can be seen, Sony got itself a great deal for the price by gaining more channels that have a wide viewer base. ZEE has got more than 120 channels spanning across various interests and languages. ZEE on the other hand, is not at a loss either, not only were the members of the board, more specifically the CEO of the company, Mr. Puneet Goenka, retained their position, the company was also able to get an out from the repercussions it was facing due to the bad governance and messy management. So as of now, the merger seems to be a win-win for all except for small shareholder such as Invesco who continue to complain about how unfair the deal was and how there were better options available.

- **Zomato – Uber Eats –** While the Zomato Uber Eats merger looks like a successful merger when looked at on a superficial basis, however when analysed it shows that not both the sides benefitted equally from this merger. While Uber Eats got what seems to be an overvalued deal, Zomato on the other hand suffered losses from this overvaluation and even had to show an impairment of Rs. 233 crore in its books. Furthermore, because of this

[35] Regulation 48, The Competition Commission of India (General) Regulations, 2009, No. 2 of 2009

transaction it also got into trouble with CCI who had issued a show cause notice against Zomato for entering into a notified combination without notifying it. Although Zomato had sent a reply for the same stating that it was the kind of transaction that need not have been notified, the decision is yet to be made in a hearing that will be scheduled by CCI. If the commission finds it guilty for not notifying then it can impose a hefty penalty "to the extent of 1 percentage of the amalgamated entity's turnover (i.e. Rs.1,994 crore as of FY21) or assets worth Rs.8,704 crore, whichever is more" and may even put the merger in jeopardy. So all in all it seems like the merger was more trouble than its worth as of now. However, if Zomato is able to pull through and perform well then it may be able to cover the extravagant costs that it paid for this merger.

IV. Conclusion

The corporate reorganisation enables the business to continue operating in some capacity. While the company's management tries all conceivable means to keep the organisation afloat, it is sometimes impossible. Even if the worst happens and the firm is forced to dissolve due to financial difficulties, there is still optimism that the divested components will work effectively enough for a buyer to purchase the weakened company and restore profitability. Therefore, the process of corporate restructuring gives a second hope to a company on the brink of its end.

Challenges In M&A

The following challenges are currently faced by the companies in India when considering corporate restructuring through M&A –

1. Functioning in a Global Environment- M&A are most commonly carried out between companies with headquarters in separate countries. This challenges the transmission of practise because managers often believe that their expertise is the greatest and that it applies everywhere, forgetting that performance factors differ by culture.

2. Language obstruction- The greatest obstacle is perceived to be inter-employee communication. Because the amalgamated companies are from separate nations and speak different languages, the personnel of the merged companies appear to be prevented from interacting.

3. Premeditated Planning– Frequently, HR professionals are not sufficiently involved in the evaluation of target firms before agreements are reached. If they are not included in the development of an M&A technique and the early screening of talent and culture, they should play catch-up later on, resolving issues that may have been avoided had they been included earlier.

4. Planning incorporation- A big difficulty is ensuring that the M&A activities have no impact on the new corporate entity. Before the purchase complete, integration planning and operations should begin as soon as possible.

CONCLUSION

The world is in state of flux, driven by forces such as globalisation and rapid technological progress, and as a result, businesses face fierce competition. Firms are employing methods aimed at achieving greater growth by examining both internal and external opportunities. Internally, growth can be achieved through improved management and increased capital investment in existing enterprises. M&A is undoubtedly the most common approach used by companies looking to gain a competitive advantage over their competitors.

M&A as a means of inert expansion are increasingly being employed to restructure top businesses around the world. It is frequently employed as preferred corporate structure instruments to meet a wide range of business goals. It is justified for a variety of reasons, including achieving synergistic benefits, gaining more market dominance, and gaining access to innovative capabilities.

It is clear that India's current merger regulation parameters are insufficient to prevent combinations from having a negative anti-competitive effect. The implicit force of law should be replaced by stated powers granted to CCI in order to strengthen the regulatory process for evaluating combinations. The Zomato case, which comes at a time when the 2020 Draft Bill is about to be passed, has the potential to be a catalyst for revolutionary change in the Indian merger control framework. The addition of Contract Valuation Baselines and their implementation in various industries would necessitate a comprehensive revamp of the current threshold framework; consequently, only true reflection by competition commission can finally change things for the better.

Despite negative research and economic resistance, M&A remain a crucial instrument for a company's growth. The reason for this is that the expansion is not limited by internal resources, there is no drain on working capital, it is appealing as a tax benefit, and, most importantly, it can concentrate the industry, increasing the firm's market strength. In simpler words, mergers are considered as a critical tool used among enterprises to expand their operations and increase profits, with the benefits varying based on the sorts of organisations merged. Indian markets have seen a growing trend in mergers as a result of business amalgamation by large industrial houses, business consolidation by multinationals operating in India, enhanced competitiveness against imports, and acquisition operations.

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