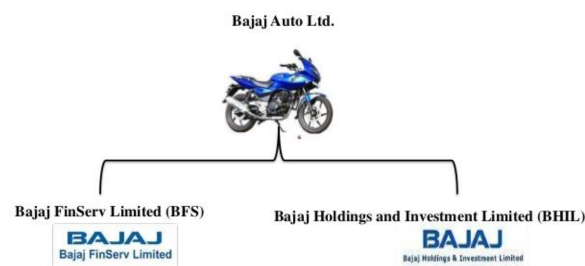
Ch. 2 Merger and Amalgamation, Corporate Demerger and Reverse Merger

Merger is the combination of two or more companies which can be merged together either by way of amalgamation or absorption. The combining of two or more companies, is generally by offering the stockholders of one company securities in the acquiring company in exchange for the surrender of their stock.

Demerger is a form of corporate restructuring in which the entity's business operations are segregated into one or more components. A demerger is often done to help each of the segments operate more smoothly, as they can focus on a more specific task after demerger.



Reverse merger take place when a profit-making parent company merges into a loss-making subsidiary company.

Aspects of Merger and Amalgamation

Legal Aspect of Merger and Amalgamation:

The Regulatory Framework of Mergers and Amalgamations covers

1. The Companies Act, 1956 2. Companies (Court) Rules, 2016 3. Income Tax Act, 1961

4. SEBI: Listing Agreement 5. The Indian Stamp Act, 1899 6. Competition Act, 2002

1. **Companies Act, 1956** Chapter V of Companies Act, 1956 comprising Section 390 to 396A contains provisions on 'Arbitration, Compromises, Arrangements and Reconstructions'.

- Section 390 contains interpretation of certain expressions used in Section 391 and 393
- Section 391 is relating to the power of the company to compromise or to make arrangement with its creditors and members.
- Section 393 deals with regard to information as to compromises and arrangements with creditors and members.
- Section 394 deals with facilitation of reconstruction and amalgamation of companies.

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- Section 394A deals with a notice to be given to the Central Government in respect of applications under Section 391 and 394.
- Section 395 deals with provisions regarding the power and duty to acquire shares of shareholders dissenting from scheme or contract approved by majority shareholders.
- Section 396 contains provisions as to the power of the central government to provide for amalgamation of companies in national interest.
- Section 396 A deals with preservation of books and papers of amalgamated companies.

2. **Companies Rules, 2016** Rules 3 to Rule 29 contains provisions dealing with the procedure for carrying out a scheme of compromise or arrangement including amalgamation or reconstruction.

3. **Income Tax Act, 1961** The Income Tax Act, 1961 covers aspects such as tax reliefs to amalgamating/amalgamated companies, carry forward of losses, exemptions from capital gains tax etc.

4. **SEBI** Under the Listing Agreement Under Clause 24(f) of the Listing Agreement, where the scheme of merger or demerger involves a listed Lesson 2 Mergers and Amalgamations – Legal and Procedural Aspects 15 company, it is necessary to send a copy of the scheme to the stock exchanges where the shares of the said company are listed to obtain their No Objection Certificate (NOC).

5. **Indian Stamp Act** It is necessary to refer to the Stamp Act to check the stamp duty payable on transfer of undertaking through a merger or demerger.

6. **Competition Act, 2002** The provisions of Competition Act and the Competition Commission of India (Procedure in regard to the Transaction of Business relating to Combinations) Regulations, 2011 are to be complied with.

Procedural aspect of Merger and Amalgamation

The companies are required to obtain following approvals in respect of the scheme of amalgamation:

(i) **Approval of Board of Directors:** The first step in carrying out amalgamation is approval of scheme of amalgamation by the Board of both the companies. Board resolution should, besides approving the scheme, authorise a Director/Company Secretary/other officer to make application to court, to sign the application and other documents and to do everything necessary or expedient in connection therewith, including changes in the scheme.

(ii) **Approval of Shareholders/Creditors** Members' and creditors' approval to the scheme of amalgamation is sine qua non for Court's sanction. Without that the Court cannot proceed. This approval is to be obtained at specially convened meetings held as per court's directions [Section 391(1)].

(iii) **Approval of the Stock Exchanges** As per Clause 24(f) of the Listing Agreement all the listed companies are required to file the scheme of merger or amalgamation with all the stock exchanges where it is listed at least one month prior to filing it with High Court and obtain its No Objection to scheme.

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(iv) **Approval of Financial Institutions** The approval of the Financial Institutions, trustees to the debenture holders and banks, investment corporations would be required if the Company has borrowed funds either as term loans, working capital requirements and/or have issued debentures to the public and have appointed any one of them as trustees to the debenture holders.

(v) **Approval from the Land Holders** If the land on which the factory is situated is the lease-hold land and the terms of the lease deed so specifies, the approval from the lessor will be needed.

(vi) **Approval of the High Court** — Both companies (amalgamating as well as amalgamated) involved in a scheme of compromise or arrangement or reconstruction or amalgamation are required to seek approval of the respective High Courts for sanctioning the scheme.

(vii) **Approval of Reserve Bank of India** Where the scheme of amalgamation envisages issue of shares/cash option to Non-Resident Indians, the amalgamated company is required to obtain the permission of Reserve Bank of India subject to conditions prescribed under the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2000.

(viii) **Approvals from Competition Commission of India (CCI)** The provisions relating to regulation of combination as provided under Sections 5 and 6 of the Competition Act, 2002 would also be required to be complied with by companies, if applicable. These provisions would be effective from June 01, 2011.

Economic Aspects of Merger and Amalgamations

1.**Market Leadership** The amalgamation can enhance value for shareholders of both companies through the amalgamated entity's access to greater number of market resources. With the addition to market share, a company can afford to control the price in a better manner with a consequent increase in profitability.

2.**Improving Economies of Scale** One of the most frequent reasons for merger is to improve the economies of scale. Economies of scale may be obtained when increase in volume of production leads to a reduction in cost of production per unit. They are generally associated with the manufacturing operations, so that the ratio of output to input improves with the volume of operations.

3.**Operating Economics** Apart from economies of scale, a combination of two or more companies may result in reduction of costs due to operating economies. A combined company may avoid overlapping of functions and facilities. Various functions may be consolidated and duplicate channels may be eliminated by implementing an integrated planning and control system.

4.**Financial Benefits** A merger or amalgamation is capable of offering various financial synergies and benefits such as eliminating financial constraints, deployment of surplus cash, enhancing debt capacity and lowering the costs of financing. Mergers and amalgamations enable external growth by exchange of shares, releasing thereby the financial constraint.

5.**Acquiring a New Product or Brand Name** Acquiring a new product is different from acquiring a brand name. A company may be able to build a brand name for a particular line of

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business, reputation and goodwill associated with a brand name of the company could be advantageously exploited.

6.**Diversifying the Portfolio** Another reason for merger is to diversify the company's dependence on a number of segments of the economy. Diversification implies growth through the combination in unrelated businesses. Such diversification helps to widen the growth opportunities for the company and smoothen the ups and downs of their life cycles.

7.**Strategic integration** Considering the complementary nature of the businesses of the concerned companies, in terms of their commercial strengths, geographic profiles and site integration, the amalgamated entity may be able to conduct operations in the most cost effective and efficient manner.

8.**Synergies** Synergy refers to a situation where the combined entity is more valuable than the sum of individual combining firms (2+2=5). The combination of operations can create a unique level of integration for the amalgamated entity spanning the entire value chain in the line of business. This enables the amalgamated entity to achieve substantial savings on costs and significantly enhancing its earnings potential.

9.**Taxation or Investment Incentives** A company, which has incurred losses in the past, can carry forward such losses and offset them against future taxable profits and reduce tax liabilities. Such a company when merged with a company with large taxable profits would help to absorb the tax liability of the later.

Accounting Aspects of Merger and Amalgamations

Accounting Standard (AS)-14 recognizes two types of amalgamation:

(a) Amalgamation in the nature of merger.

(b) Amalgamation in the nature of purchase.

Amalgamation in the nature of merger: Shareholders holding not less than 90% of the face value of the equity shares of the transferor company (other than the equity shares already held therein, immediately before the amalgamation, by the transferee company or its subsidiaries or their nominees) become equity shareholders of the transferee company by virtue of the amalgamation. The consideration for the amalgamation receivable by those equity shareholders of the transferor company who agree to become equity shareholders of the transferee company is discharged by the transferee company wholly by the issue of equity shares in the transferee company

An amalgamation should be considered to be an amalgamation in the nature of purchase, when these amalgamations are in effect a mode by which one company acquires another company and hence, the equity shareholders of the combining entities do not continue to have a proportionate share in the equity of the combined entity or the business of the acquired company is not intended to be continued after amalgamation.

consideration for amalgamation

The consideration for amalgamation means the aggregate of the shares and other securities issued and the payment made in the form of cash or other assets by the transferee company to the shareholders of the transferor company. In determining the value of the consideration,

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assessment is made of the fair value of its various elements. The consideration for the amalgamation should include any non-cash element at fair value. The fair value may be determined by a number of methods. For example, in case of issue of securities, the value fixed by the statutory authorities may be taken to be the fair value. In case of other assets, the fair value may be determined by reference to the market value of the assets given up, and where the market value of the assets given up cannot be reliably assessed, such assets may be valued at their respective book values.

Goodwill on Amalgamation Goodwill arising on amalgamation represents a payment made in anticipation of future income and it is appropriate to treat it as an asset to be amortised to income on a systematic basis over its useful life. Due to nature of goodwill, it is difficult to estimate its useful life, but estimation is done on a prudent basis. Accordingly, it should be appropriate to amortise goodwill over a period not exceeding five years unless a somewhat longer period can be justified.

Financial Aspects of Merger and Amalgamations

In any merger or amalgamation, financial aspects of the transaction are of prime importance. It denotes the benefits in terms of financial benefits, i.e., increase in productivity, improved profitability and enhanced dividend paying capacity of the merged or the amalgamated company, which the management of each company involved in this exercise would be able to derive. Each amalgamation or merger is aimed at the following financial aspects:

(a) To pool the resources of all the companies involved in the exercise of amalgamation or merger so as to achieve economies of production, administrative, financial and marketing management.

(b) To secure the required credit on terms from financial institutions, banks, suppliers, job workers etc.

(c) To cut down cost of production, management, marketing etc. by effecting savings in all spheres with the combined strength of qualified and competent technical and other personnel.

(d) To reinforce the united research and development activities for product development to ensure a permanent, dominant and profitmaking position in the industry.

(e) To improve productivity and profitability in order to maintain a regular and steady dividend to the shareholders.

(f) To concentrate on the core competence of the merged or the amalgamated company.

(g) To consolidate the resource base and improve generation, mobilisation and utilisation of physical, financial, human, knowledge, information and other important tangible and intangible resources.

An important aspect in the scheme of mergers and amalgamations relates to the valuation of shares to decide the exchange ratio. Objections have been raised about the method of valuation even in cases where the schemes had been approved by a large majority of shareholders and the lending Financial Institutions. The courts have declared their unwillingness to engage themselves on a study of the fitness of the mode of valuation.

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Taxation Aspects of Merger and Amalgamations

The word 'amalgamation' or 'merger' is not defined any where in the Companies Act, 1956. However, Section 2(1B) of the Income Tax Act, 1961 defines the term 'amalgamation' as follows: "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—

1. 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;

2. 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;

3. shareholders holding not less than three-fourths in value of the shares in the amalgamating company or companies 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.

Thus, for a merger to be qualified as an 'amalgamation' for the purpose of the Income Tax Act, the above three conditions have to be satisfied.

Carry forward and set off of accumulated loss and unabsorbed depreciation allowance Under Section 72A, a special provision is made which relaxes the provision relating to carrying forward and set off of accumulated business loss and unabsorbed depreciation allowance in certain cases of amalgamation.

Capital gains tax is leviable if there arises capital gain due to transfer of capital assets. The word 'transfer' under section 2(47) of the Act includes the sale, exchange or relinquishment of the asset or the extinguishment of any rights therein or the compulsory acquisition thereof under any law or in a case where the asset is converted by the owner thereof into, or is treated by him as, stock-in-trade of a business carried on by him.

Amortisation of Preliminary Expenses The benefit of amortisation of preliminary expenses under section 35D are ordinarily available only to the assessee who incurred the expenditure. However, the benefit will not be lost in case the undertaking of an Indian company which is entitled to the amortisation is transferred to another Indian company in a scheme of amalgamation within the 10 years/5 years period of amortisation.

Expenditure on Amalgamation Section 35DD provides that where an assessee being an Indian company incurs any expenditure, on or after the 1st day of April, 1999, wholly and exclusively for the purposes of amalgamation or demerger of an undertaking, the assessee shall be allowed a deduction of an amount equal to one-fifth of such expenditure for each of the five successive previous years beginning with the previous year in which the amalgamation or demerger takes place.

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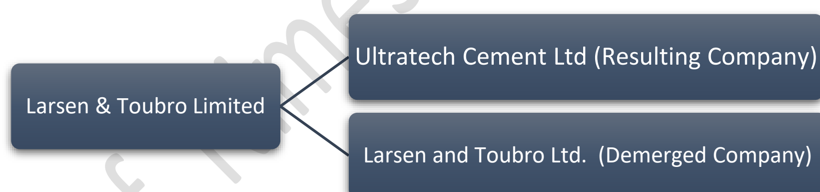
Expenditure on know-how Section 35AB(3) of the Income-tax Act provides that where there is a transfer of an undertaking under a scheme of amalgamation or demerger and the amalgamating or the demerged company is entitled to a deduction under this section, then the amalgamated or the resulting company, as the case may be, shall be entitled to claim deduction under this section in respect of such undertaking to the same extent and in respect of the residual period as it would have been allowable to the amalgamating company or the demerged company, as the case may be, had such amalgamation or demerger not taken place.

Demerger

Companies have to downsize or 'contract' their operations in certain circumstances such as when a division of the company is performing poorly or simply because it no longer fits into the company's plans or to give effect to rationalisation or specialisation in the manufacturing process. This may also be necessary to undo a previous merger or acquisition which proved unsuccessful. This type of restructuring can take various forms such as demerger or spin off, split off, etc.

According to section 2(19AAA) of Income Tax Act 'demerged company' means the company whose undertaking is transferred, pursuant to a demerger, to a resulting company.

Resulting Company According to section 2(41A) of Income Tax Act 'resulting company' means one or more companies (including a wholly owned subsidiary thereof) to which the undertaking of the demerged company is transferred in a demerger and, the resulting company in consideration of such transfer of undertaking, issues shares to the shareholders of the demerged company and includes any authority or body or local authority or public sector company or a company established, constituted or formed as a result of demerger.



TYPES OF DEMERGER

1.**Partial Demerger** In a partial demerger, one of the undertakings or a part of the undertaking or a department or a division of an existing company is separated and transferred to one or more new company/companies, formed with substantially the same shareholders, who are allotted shares in the new company in the same proportion as the separated division, department etc. bears to the total undertaking of the company.

2.**Complete Demerger** In the first case, i.e. in the case of partial demerger, the existing company also continues to maintain its separate legal identity and the new company, a separate legal identity, carries on the separated or spun off business and undertaking of the existing company. In a complete demerger, an existing company transfers its various divisions, undertakings etc. to one or more new companies formed for this purpose. The existing company is dissolved by passing a special resolution for members' voluntary winding up and also authorising the liquidator to transfer its undertakings, divisions etc.

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WAYS OF DEMERGER

Demerger could be affected by either of the following three ways:

- Demerger by agreement between promoters; or
- Demerger under the scheme of arrangement with approval by the court under section 391;
- Demerger under voluntary winding up and the power of liquidator.

1.**Demerger by agreement:** Demerger may take place by agreement between promoters of the demerging company. The principle company may spin off its specific undertaking to the resulting company. All the property, liabilities and issues of principle company, transferred to the resulting company immediately before demerger, becomes the property, liabilities and issue of the resulting company.

2. **Demerger under a Scheme of Arrangement** The law with respect to a scheme of demerger or division is the same as it is with respect to a scheme for a reconstruction, amalgamation or merger. In case of amalgamation, a scheme of amalgamation is required to be got approved by the respective High Courts of the amalgamating and amalgamated company. A company can be demerged or split into, through a scheme of demerger or division with the sanction of respective High Courts under the provisions of the Companies Act, 1956. The Memorandum of Association of the Company must contain provisions of demerger or split in order to accomplish the same.

3. **Demerger and Voluntary Winding up** A company, which has split into several companies after division can be wound up voluntarily pursuant to Section 484 to 498 of the Companies Act, 1956.

Section 494 of the Companies Act provides that where a company (referred to as the transferor company) is proposed to be or is in the course of being wound up voluntarily; and the whole or any part of its business or property is proposed to be transferred or sold to another company (referred to as the transferee company); the liquidator of the transferor company may, with the sanction of a special resolution of that company conferring on the liquidator either a general authority or an authority in respect of any particular arrangement, receive, by way of compensation or part compensation for the transfer or sale, shares, policies, or other like interests in the transferee company, for distribution among the members of the transferor company; or enter into any other arrangement whereby the members of the transferor company, may, in lieu of receiving cash, shares, policies or other like interests or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

Legal/procedural Aspects of Demerger

Scheme must be within company's powers The court cannot sanction a scheme of compromise or arrangement which is beyond the powers of the company as defined in its Memorandum of Association. In such an event, the company should first take steps for alteration of the relevant clauses in its Memorandum and thereafter propose a scheme of compromise or arrangement and make an application for the court's sanction.

1. **Preparation of scheme of demerger**: Prepare a scheme of demerger in consultation with all interested parties and have the same approved in principle by the Board of Directors of the

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company at a meeting. Appoint an expert for valuing the shares to determine the share exchange ratio. Engage an advocate for the preparation of scheme and for appearing subsequently before the High Court. In case of listed companies, the stock exchanges where the shares are listed should be intimated.

2. **Application to court for direction to hold meetings of members/creditors:** Both the companies should make an application under Section 391(1) of the Companies Act, 1956 to respective High Courts for an order to convene and hold meeting(s) of members/creditors or any class of them, by a Judge's summons supported by an affidavit. A copy of the proposed scheme of demerger should be annexed to the affidavit as an exhibit thereto.

3. **Obtaining court's order for holding meetings of members/creditors:** On receiving a petition the court may order meeting(s) of the members/ creditors of the company, to be called, held and conducted in a prescribed manner. Once the ordered meeting(s) is/are duly convened, held and conducted and the scheme is approved by the prescribed majority in value of the creditors or number of members, as the case may be, the court is bound to sanction the scheme.

4. **Holding meeting(s) of members/creditors**: Pursuant to the directions, the meeting(s) should be held. The chairman of the meeting, or where there are separate meetings, the chairman of each meeting, shall report the result thereof to the court. The report shall state accurately the number of creditors or class of creditors or the number of members or class of members, as the case may be, who were present and who voted at the meeting either in person or by proxy, their individual values and the way they voted.

5. **Reporting the result of the meeting by the Chairman to the court:** The result of the meeting must be decided only by taking poll and by separately counting the votes in favour and against the resolution. The chairman of the meeting should within the time fixed by the court or where no time has been fixed, within seven days after the conclusion of the meeting, report the result of the meeting in the prescribed Form 39 to the Court. (Rule 78)

6. **Petition to the court for sanctioning the scheme of demerger:** When the scheme of demerger has been approved by the required majority of shareholders/ creditors, i.e. majority in number representing three-fourths in value of the creditors, or class of creditors, or members or class of members, as the case may be, present and voting either in person, or, where proxies are allowed, by proxy, at the meeting, a petition must be made to the court for sanctioning the scheme of demerger.

7. **Obtaining order of the court sanctioning the scheme:** Obtain an order of the court sanctioning the scheme of demerger. Where the Court sanctions the compromise or arrangement, the order shall include such directions in regard to any matter and such modifications as the Judge may think fit.

8. **Court's order on petition sanctioning the scheme of demerger:** Section 394 of the Act provides that where the application is made to the court under Section 391 for the sanctioning of a scheme proposed between a company and its shareholders and it is shown to the court:

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REVERSE MERGER

In a reverse merger, a healthy company merges with a financially weak company. The main reason for this type of reverse merger is the tax savings under the Income-Tax Act, 1961. Section 72A ensures the tax relief, which becomes attractive for such reverse mergers, since the healthy and profitable company can take advantage of the carry forward losses/of the other company. The healthy units loses its name and surviving sick company retains its name. In the context of the Companies Act, 1956 there is no difference between a merger and a reverse merger. It is like any amalgamation. A reverse merger is carried out through the High Court route. However, where one of the merging companies is a sick industrial company in terms of the Sick Industrial Companies (Special Provisions) Act, 1985, such merger has necessarily to be through the Board for Industrial and Financial Reconstruction (BIFR). On the reverse merger becoming effective, the name and objects of the sick company (merged company) may be changed to that of the healthy company.

To save the Government from social costs in terms of loss of production and employment and to relieve the Government of the uneconomical burden of taking over and running sick industrial units, Section 72A was introduced in Income Tax Act, 1961.

Salient features of reverse mergers under Section 72A

1. Amalgamation should be between the companies and none of them should be a firm of partners or sole proprietor. In other words, partnership firm or sole-proprietary concerns cannot get the benefit of tax relief under Section 72A merger.

2. The companies entering into amalgamation should be engaged in either industrial activity or shipping business or hotel with another company or banking business under Section 5(c) of the Banking Regulation Act, 1949 or Public Sector Companies engaged in the business of operation of aircraft. In other words, the tax relief under Section 72A would not be made available to companies engaged in trading activities or services.

3. After amalgamation, the "sick" or "financially unviable company" shall survive and the other income generating company shall extinct. In other words, essential condition to be fulfilled is that the acquiring company will be able to revive or rehabilitate having consumed the healthy company.

4. One of the merger partner should be financially unviable and have accumulated losses to qualify for the merger and the other merger partner should be profit earning so that tax relief to the maximum extent could be had.

5. Amalgamation should be in the public interest i.e. it should not be against public policy, should not defeat the basic tenets of law, and must safeguard the interest of employees, consumers, customers, creditors and shareholders apart from the promoters of the company through the revival of the company.

6. Accumulated loss should arise from "Profits and Gains from business or profession" and not be loss under the head "Capital Gains" or "Speculation".

7. The company should make an application to the "specified authority" for requisite recommendation of the case to the Central Government for granting or allowing the relief.

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MEANING AND CONCEPT OF TAKEOVERS

Takeover, an inorganic corporate growth device whereby one company acquires control over another company, usually by purchasing all or a majority of its shares. Takeover implies acquisition of control of a company, which is already registered, through the purchase or exchange of shares.

Takeovers usually take place when shares are acquired or purchased from the shareholders of a company at a specified price to the extent of at least controlling interest in order to gain control of that company.

Ordinarily, a larger company takes over a smaller company. In a reverse takeover, a smaller company acquires control over a larger company. The takeover strategy has been conceived to improve corporate value, achieve better productivity and profitability by making optimum use of the available resources in the form of men, materials and machines.

The objects of a takeover may inter alia be

(i) To effect savings in overheads and other working expenses on the strength of combined resources;

(ii) To achieve product development through acquiring firms with compatible products and technological/manufacturing competence, which can be sold to the acquirer's existing marketing areas, dealers and end users;

(iii) To diversify through acquiring companies with new product lines as well as new market areas, as one of the entry strategies to reduce some of the risks inherent in stepping out of the acquirer's historical core competence;

(iv) To improve productivity and profitability by joint efforts of technical and other personnel of both companies as a consequence of unified control;

(v) To create shareholder value and wealth by optimum utilisation of the resources of both companies;

(vi) To achieve economy of numbers by mass production at economical costs;

(ix) To increase market share;

(x) To achieve market development by acquiring one or more companies in new geographical territories or segments,

KINDS OF TAKEOVER

(i) **Friendly Takeover:** Friendly takeover is with the consent of taken over company. In friendly takeover, there is an agreement between the management of two companies through negotiations and the takeover bid may be with the consent of majority or all shareholders of the target company. This kind of takeover is done through negotiations between two groups. Therefore, it is also called negotiated takeover.

(ii) **Hostile Takeover:** When an acquirer company does not offer the target company the proposal to acquire its undertaking but silently and unilaterally pursues efforts to gain control against the wishes of existing management.

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(iii) **Bail Out Takeover:** Takeover of a financially sick company by a profit earning company to bail out the former is known as bail out takeover. There are several advantages for a profit making company to takeover a sick company. The price would be very attractive as creditors, mostly banks and financial institutions having a charge on the industrial assets, would like to recover to the extent possible. Banks and other lending financial institutions would evaluate various options and if there is no other go except to sell the property, they will invite bids. Such a sale could take place in the form by transfer of shares. While identifying a party (acquirer), lenders do evaluate the bids received, the purchase price, the track record of the acquirer and the overall financial position of the acquirer. Thus a bail out takeover takes place with the approval of the Financial Institutions and banks.

CROSS BORDERS TAKEOVERS

Cross Border Takeover is a much sort after term in recent years. Competitiveness among the domestic firms forces many businesses to go global. There are various factors which motivate firms to go for global takeovers. Apart from personal glory, global takeovers are often driven by market consolidation, expansion or corporate diversification motives. Also, financial, accounting and tax related matters inspire such takeovers

The firms engaged in Cross borders takeovers can be of three types:

— First, firm incorporated in one country listed in different countries including its own e.g. ARCELOR.

— Second, firm incorporated in one country listed exclusively in a foreign country e.g. TELVENT.

— And lastly, firms incorporated in one country listed in more than one foreign country e.g. EADS.

Expansion and diversification are one of the primary reasons to cross the border as the domestic markets usually do not provide the desired growth opportunities. One has to look outside its boundaries and play out in the global arena to seek new opportunities and scale new heights. Such companies have already improved profitability through better cost management and diversification at the national field. Another main reason for cross border takeovers is to attain monopoly. Acquirer company is always on the look out for companies which are financially vulnerable but have untapped resources or intellectual capital that can be exploited by the purchaser.

Globalization has certainly helped in the recent spurt in cross border takeovers. The key feature of globalization is that it integrates world economies together. Many nations have opened their economies and made laws and regulations that attract new companies to come into the country.

There are various benefits of cross border takeovers. Firstly, they provide newer and better technology. It also provides employment opportunities as the firm is bigger than before and more employees are to be inducted in the merged company. It generally enhances the market capitalization of the combined entity.

Global takeovers are complex processes. Despite some harmonized rules, taxation issues are mainly dealt within national rules, and are not always fully clear or exhaustive to ascertain the tax impact of a cross border merger or acquisition. This uncertainty on tax arrangements

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sometimes require seeking of special agreements or arrangements from the tax authorities on an ad hoc basis, whereas in the case of a domestic deal the process is much more deterministic.

Take Over Defences A hostile tender offer made directly to a target company's shareholders, with or without previous overtures to the management, has become an increasingly frequent means of initiating a corporate combination. As a result, there has been considerable interest in devising defence strategies by actual and potential targets.

Defences can take the form of fortifying one self, i.e., to make the company less attractive to takeover bids or more difficult to take over and thus discourage any offers being made. These include, inter alia, asset and ownership restructuring, anti-takeover constitutional amendments, adoption of poison pill rights plans, and so forth

1.Adjustments in Asset and Ownership Structure

Firstly, consideration has to be given to steps, which involve defensive restructuring that create barriers specific to the bidder. These include purchase of assets that may cause legal problems, purchase of controlling shares of the bidder itself, sale to the third party of assets which made the target attractive to the bidder, and issuance of new securities with special provisions conflicting with aspects of the takeover attempt.

A second common theme is to create a consolidated vote block allied with target management.

2. Crown Jewel

The central theme in such a strategy is the divestiture of major operating unit most coveted by the bidder commonly known as the "crown jewel strategy". Consequently, the hostile bidder is deprived of the primary intention behind the takeover bid. A variation of the "crown jewel strategy" is the more radical "scorched earth approach". Vide this novel strategy, the target sells off not only the crown jewel but also properties to diminish its worth.

3. The Packman Defence

Under this strategy, the target company attempts to purchase the shares of the raider company. This is usually the scenario if the raider company is smaller than the target company and the target company has a substantial cash flow or liquidable asset.

4. Targeted Share Repurchase or "Buyback"

This strategy is really one in which the target management uses up a part of the assets of the company on the one hand to increase its holding and on the other it disposes of some of the assets that make the target company unattractive to the raider. The strategy therefore involves a creative use of buyback of shares to reinforce its control and detract a prospective raider.

5. Golden Parachutes

Golden parachutes refer to the "separation" clauses of an employment contract that compensate managers who lose their jobs under a change-of-management scenario. The provision usually calls for a lump-sum payment or payment over a specified period at full and partial rates of normal compensation.

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6. Anti-takeover amendments or "shark repellants"

As with all amendments of the charter/articles of association of a company, the anti-takeover amendments have to be voted on and approved by the shareholders. The practice consists of the companies changing the articles, regulations, bye-laws etc. to be less attractive to the corporate bidder.

7. Poison Pill Defences

A controversial but popular defence mechanism against hostile takeover bids is the creation of securities called "poison pills". These pills provide their holders with special rights exercisable only after a period of time following the occurrence of a triggering event such as a tender offer for the control or the accumulation of a specified percentage of target shares. These rights take several forms but all are difficult and costly to acquire control of the issuer, or the target firm. Poison pills are generally adopted by the Board of Directors without shareholder approval. Usually the rights provided by the poison pill can be altered quickly by the board or redeemed by the company anytime after they become exercisable following the occurrence of the triggering event.

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