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Challenges in Cross Border Mergers

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Challenges in Cross Border Mergers

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Background

Allured by the purchasing power of the largest population in the world and the potential to access cheap skilled and unskilled labour, non-Indian companies are eager to take the leap and enter the Indian market by way of mergers with Indian companies. However, while a merger may be a relatively defined and homogenised process to enter the market, the process of amalgamations and mergers is a difficult arrangement to reverse. Companies looking to take this step should be thorough in their research and due diligence, since the law governing cross border mergers maintains a conscious lacuna for de-merger and restructuring of Indian companies resulting in one or more non-Indian companies. Thus, an amalgamation of an Indian company with a non-Indian company once attained is difficult to undo by design. Nonetheless, as one of the top five manufacturing countries in a rapidly globalising economy, cross

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border mergers and acquisitions into and out of India are steadily on the rise, despite the caveats.

This chapter deals with the complexities of cross border mergers under Indian laws. A scheme of arrangement in respect of a cross border merger requires, in addition to the steps followed for a domestic merger, approval from the Reserve Bank of India, alongside other regulatory bodies, income tax authorities and the Competition Commission of India. Listed companies additionally require approval from the Securities and Exchange Board of India.

Introduction to the Companies Act

Prior to 2013, the Companies Act 1956 (the 1956 Act) was the governing legislation for corporate bodies and transactions. In relation to cross border mergers, the 1956 Act only permitted these mergers where the transferee company in a scheme of arrangement was a company registered in India. This implied that a merger or acquisition of a non-Indian company by an Indian company, was not permitted under the 1956 Act. The Act also lacked specific provisions relating to valuation of non-Indian companies in a merger. This resulted in limiting cross border mergers and amalgamations only to the influx of business by a foreign company registered outside India into Indian companies, and a wide discretion conferred upon the courts in relation to standards for valuation of non-Indian companies in a cross border merger. The Companies Act, 2013 (the Companies Act) was formulated to fill the lacuna in corporate governance and to lend clarity in procedure, as compared to the 1956 Act. Chapter XV of the Companies Act, as compared to the 1956 Act, has widened the scope for international mergers and amalgamations.

Chapter XV of the Companies Act prescribes the general process for successful sanction of a scheme for mergers or amalgamations available to companies in India.

Key provisions of the Companies Act relating to cross border mergers

Section 234

Section 234 of chapter XV is a new addition to the law governing mergers, which did not have any corresponding provision in the 1956 Act. Section 234 along with

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Rule 25A of the Company (Compromise, Arrangements and Amalgamations), Rules 2016 (Merger Rules) provide the framework for cross border mergers. Section 234 provides for the course of a merger or amalgamation between one or more foreign companies with one or more Indian companies. The interpretation of this section has the following aspects:

- This section applies the said chapter XV to a scheme of merger between a non-Indian and Indian company (ie, the steps to be followed by the merging companies shall be the same that two Indian companies follow to merge). However, the section also provides that any additional laws that may be applicable, including the laws of the country where the non-Indian company to the merger is registered, in order to sanction the said scheme of arrangement, are also to be adhered in the case of these cross-border mergers.
- The section confers powers upon the central government and Reserve Bank of India to implement rules to regulate procedure for sanctioning a scheme of merger between non-Indian companies and Indian companies, in addition to or as an alternate to the provisions under this chapter, as they may deem necessary.
- The provision further deals with payment of consideration for implementing the scheme of merger. The scheme of arrangement may have various provisions including (but not limited to) provisions for payment of consideration to shareholders. These provisions of the merger scheme require approval from the Reserve Bank of India, prior to submission of the scheme before the National Company Law Tribunal for approval. The terms of such a scheme may stipulate the manner in which the consideration should be provided to shareholders: in the form of money, depository receipts or both, subject to rules formulated by the Reserve Bank of India as applicable to cross border transactions.

Additionally, what is not mentioned also must be considered. The language in this section specifically refers to mergers between companies, signifying that other restructuring and demerger schemes are not within the scope of this section. This entire section and the Merger Rules distinctly exclude any reference of the words restructuring or demerger. Although the mode of sanctioning a scheme of merger under this section is substantially similar to a

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domestic merger, the aspect of reconstruction and demerger is intentionally not covered under this section.

To elucidate, in the case of Sun Pharmaceutical Industries Ltd,[2] the company wished to transfer some of its investment undertakings from India to its overseas wholly-owned subsidiaries, resulting in a change of the holding structure of these overseas subsidiaries. After much deliberation, the Indian courts concluded that the lack of legislation with regards to dissolution, reconstruction or demerger of an Indian company having international implications or, a restructuring of an Indian company resulting in one or more non-Indian companies appears to be intentional. The courts in India are of the view that since this legislative void is intentional, it cannot be filled by judicial action. Thus, even though entering the Indian market through mergers and amalgamation is facilitated, the scope for reversing this amalgamation or merger is restricted.

Key aspects relating to Merger Rules

- While the section 234 provides for the applicability of the entire Chapter XV to cross border mergers, the Merger Rules, however, limit the applicability to sections 230 to 232 only.
- Reference to section 233 relating to fast-tracked mergers has not been included in the Merger Rules, indicating that Cross Border Mergers are not eligible for fast-tracking even if all requirements under section 233 are fulfilled in regard to related companies, small companies, etc.
- The National Company Law Tribunal, for ordering a shareholder or creditor meeting, requires all the relevant facts to be stated, including the valuation report made in accordance with internationally accepted principles as per the Merger Rules. The valuer (from a non-Indian jurisdiction) for a scheme of merger should be a member of a recognised professional body and must conduct this valuation in accordance with internationally accepted principles. The responsibility for ensuring this compliance is with the transferee company and a declaration must be submitted

2 Sun Pharmaceutical Industries Ltd. No.38/NCLT/AHM/2019

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to the Reserve Bank of India by this transferee company to that effect. This declaration must state that the requisite valuation stipulations, as required under Rule 25A of the Merger Rules, have been followed by the non-Indian transferor company.

- If a certificate of valuation or any other audit, as required for the sanctioning of a scheme of arrangement, is not filed with the necessary information or in line with the standards prescribed, the entire scheme is liable to be dismissed.[3] The Companies Act allows for the immediate dismissal of a scheme of merger merely due to the possibility of a violation of accounting standards.[4] A dismissal on this ground would require that the whole process for the merger (including board approval, stipulated shareholder and creditor meetings, etc) will have to be undertaken afresh, pursuant to rectification of these audits or valuation reports.
- In relation to a Cross Border Merger where the transferor company is an Indian company, the jurisdiction in which the non-Indian company to such merger is incorporated, should adhere to the following requirements:
    - countries/territories whose securities market regulators are signatories to the International Organization of Securities Commission's Multilateral Memorandum of Understanding or countries and territories whose securities market regulators have signed a bilateral Memorandum of Understanding with Securities and Exchange Board of India;
    - countries and territories whose central bank is a member of the Bank for International Settlements; and
    - countries and territories not identified by the 'Financial Action Task Force' as either having strategic money laundering issues or issues relating to or financing of terrorism.

  Any country identified by the Financial Action Task Force as a jurisdiction that has not made sufficient progress to address deficiencies or has not committed to an action plan to address various deficiencies laid out by the Financial Action Task Force, is also blacklisted, and companies being

3 *Information Mosaic Software Pvt Ltd* CA/CAA/132/ND/2017 (23 March2018) [New Delhi]

4 *Reliance Communications Ltd Re*, (2009)94 SCL 219: (2010) 1 Comp LJ 239.

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registered in such jurisdictions cannot be the transferee company in a cross border merger with an Indian company. As such the sub-rule bars any outflow of Indian investment or assets to dubious destinations.

Foreign exchange regulations relating to cross border mergers

The Reserve Bank of India has been empowered under the Foreign Exchange Management Act, 1999 and section 234 to enact regulations and issue rules relating to foreign exchange and trade to facilitate, monitor, promote and simplify the operations relating to India's foreign exchange market. The Reserve Bank of India is also empowered to monitor external trade, payments and protect the foreign exchange reserves to enable the orderly development of foreign trade in India. It is designated the governing authority for dealing in any type of foreign exchange.

Rules laid down by the Reserve Bank of India provide a general framework inter alia for resultant companies of these schemes to deal with issuing of securities, payment of consideration to shareholders, valuation, reporting compliances, methods for dealing with borrowings, guarantees and assets in the resultant jurisdictions, management of foreign currency accounts for a transferee Indian company, Special Non-Resident Rupee Accounts for a transferee non-Indian company that takes over an Indian company and the timelines for completing these payments, and bank transactions in relation to the same.

Although the rules for Foreign Exchange Management in relation to cross border mergers are numerous, the Foreign Exchange Management (Cross Border Merger) Regulations, 2018 lays down the framework of basic requirements. Any scheme of arrangement shall be deemed to have the approval of the Reserve Bank of India (for the purposes of the section 234 of the Companies Act) if this scheme complies with all the conditions laid down in the said Cross Border Merger Regulations (2018). In the event the scheme does not fulfil the conditions laid down under these Cross Border Merger regulations, 2018, then prior approval of Reserve Bank of India, and such other authorities as prescribed, are required before applying to the National Company Law Tribunal for a members' or creditors' meeting.

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Before entering into a cross-border merger, the Indian company involved in such merger must be in full and complete compliance of all Foreign Exchange Management Regulations of the Reserve Bank of India.

Conditions for deemed approval of Reserve Bank of India

In mergers where the resultant company is a non-Indian Company

Any outstanding borrowings and assets of the Indian transferor company must be acquired by the non-Indian company only in accordance with provisions of the Foreign Exchange Management Act. Debts should be settled in accordance with the scheme of arrangement sanctioned by the National Company Law Tribunal. Assets, if not permitted to be held by a non-Indian entity under Foreign Exchange Management Act, should be disposed of within two years of the acquisition. The remittance received from these assets may be used to repay borrowings or may be sent outside India within this timeframe, as prescribed.

Special Non-Resident Rupee Accounts may be opened for the transferee Indian company to deal with transactions relating to the cross-border merger for a period of two years from the date of sanction of the scheme, in accordance with the Foreign Exchange Management (Deposit) Regulations, 2016.

Issuance of shares and securities to shareholders of the transferor Indian company, should be provided in accordance with the Foreign Exchange Management (Overseas Investment) Rules, 2022, Foreign Exchange Management (Overseas Investment) Regulations, 2022, Foreign Exchange Management (Overseas Investment) Directions, 2022 and the Master Direction on in Joint Venture or Wholly Owned Subsidiaries Abroad.

In relation to acquiring foreign securities, an Indian national is only permitted to avail the same if the fair market value thereof is within limits set by the Liberal Remittance Scheme.

Any offices of the transferor Indian company shall become the branch office of the transferee non-Indian company in accordance with the Foreign Exchange Management (establishment in India of a branch office or a liaison office or a project office or any other place of business) Regulations, 2016.

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In mergers where the resultant company is an Indian Company:

Any debts and guarantees of the non-Indian entity along with its assets shall be undertaken by the Indian transferee company in compliance with the requisite provisions of the Foreign Exchange Management (Borrowing and Lending) Regulations 2018, Master Direction- External Commercial Borrowings, Trade Credits and Structured Obligations and other guidelines relating to tax and borrowing. If these debts or assets are not compliant with the regulations prescribed, the Indian company shall have two years to bring the same within the ambit of the Foreign Exchange Management Act and repatriate the proceeds to India. Any outward remittance towards payments of borrowings and guarantees of the transferor company shall be made after the aforesaid period of two years, however the Indian company is permitted to sell assets (which are not permitted to be held under the foreign exchange management regulations) of the non-Indian entity in foreign jurisdictions and use the proceeds to repay the foreign liabilities of the non-Indian transferor company. During the aforesaid period of two years, the Indian company may open a bank account in the overseas jurisdiction for the purpose of carrying out transactions resulting from the merger in accordance with Foreign Exchange Management (Foreign Currency Accounts by Person Resident in India) Regulations, 2015.

Additionally, in the event the merger of the Indian entity is with its wholly owned subsidiary, joint venture or a step-down subsidiary of the wholly owned subsidiary or joint venture, the Master Direction on in Joint Venture or Wholly Owned Subsidiaries Abroad and Foreign Exchange Management (Overseas Investment) Rules, 2022, Foreign Exchange Management (Overseas Investment) Regulations, 2022 and Foreign Exchange Management (Overseas Investment) Directions, 2022 shall apply.

The resultant Indian entity from a cross border merger shall issue shares or securities to the shareholders or creditors of the non-Indian company in accordance with the Foreign Exchange Management (Non Debt Instrument) Rules, and the Foreign Direct Investment Policy of India. In the event shares are issued to non-Indian residents, the same must be reported within a period of 30 days of issuing the same in accordance with requirements prescribed by Reserve Bank of India.

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Prohibited business sectors

Having stated the above, there is an absolute prohibition placed on companies operating in the categories of business pertaining to lottery, gambling including casinos, chit funds, Nidhi Companies, trading of transferable development rights, real estate (not including townships, roads, bridges, construction of residential or commercial premises or real estate investment trusts registered and regulated by Securities and Exchange Board of India), tobacco manufacturing, railway operations or foreign technology collaboration. Companies engaged in these businesses may not have any form of foreign investment, including by way of a merger.

Other scenarios where prior written approval may be required

Subject to the above, all companies availing foreign investment must seek approval from the central government in the event their sector of business is categorised as 'restricted'. One such restricted sector is publishing or printing of scientific or technical magazines, specialty journals or periodicals. Any amount of foreign investment in these sectors involves seeking an approval from the central government. The sector of DTH Broadcasting, e-commerce activities and airport projects on the other hand, are permitted up to a 100 per cent foreign investment without any further permissions required to be taken from the central government, that is, they are 'automatic' investment sectors.

Similarly, thresholds for maximum ownership by foreign entities have been set in certain business sectors, (ie, maximum thresholds of percentage ownership that may be from non-Indian sources). For example:

- FM radio broadcasting, or news and current affairs related television channels, are each permitted maximum foreign investment of up to 49 per cent, subject to central government approval;
- companies engaged in telecom services may have foreign investment of up to 49 per cent automatically (subject to border sharing countries' regulations), but to acquire any investment exceeding this threshold, requires prior approval from the central government;
- similar to telecom services, any investment from a non-Indian entity in the scheduled air transport services in the domestic and regional sector would automatically be permitted up to 49 per cent, but must have prior

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approval from the central government if the threshold of investment is to be exceeded. An aggregate investment by foreign entities may be permitted up to a 100 per cent, subject to approval from the central government;

- the maximum investment permitted by foreign entities in public sector banks is limited to 20 per cent. Therefore, a non-Indian entity can only invest up to the designated 20 per cent (in these public sector banks) subject to prior approval from the Indian government, that is, there is no scope for automatic investment; and
- in contrast, private sector banking is permitted an investment of up to a maximum of 74 per cent by non-Indian entities, of which, an investment up to 49 per cent is automatic, and for investment beyond 49 per cent, prior approval from the central government is required. These stipulations have been enumerated for almost all fathomable categories of business.[5]

In the event of a transfer of ownership of a given company or of its controlling entity (including by way of merger or acquisition), if the said change results in a variation in the aggregate foreign investment beyond the permitted automatic thresholds prescribed under the consolidated Foreign Trade Policy, this transfer of ownership shall also require government approval, and requisite compliance with FEMA regulations[6] as per the resultant investment ratios.

All the aforesaid restrictions and regulations apply to any of the downstream investments of companies having foreign ownership, including subsidiaries.

Entities affiliated with a country that shares a land border with India (eg, Bangladesh, China, Myanmar) must obtain special approval from the central government prior to any investment in India, including via a merger, takeover or otherwise. A company registered in these jurisdictions, or having any beneficial owner who is a citizen of these jurisdictions, regardless of its business or the level of investment thereto,[7] must seek central government approval prior

5 Further sectoral caps and entry routes may be found at www.investindia.gov.in/foreign-direct-investment.

6 Rule 3.4 of FED Master Direction No. 11/2017-18.

7 Schedule I of Foreign Exchange Management (Non Debt Instrument) Rules, 2019; [Press Note No. 3 (2020 Series)]; Rule 3.2 of FED Master Direction No. 11/2017-18.

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to investment in any Indian companies including the 'automatic' route under the Non-Debt Instrument Rules.

Securities and Exchange Board of India

A listed company, in addition to all compliances of unlisted entities, must follow the steps required under the guidelines imposed by Securities and Exchange Board of India prior to presenting a scheme of merger to the tribunal seeking the order for the preliminary member and creditor meeting or waiver thereof. The applicable national-level Stock Exchange facilitating this merger is also assigned several obligations and requirements. Such national-level stock exchange shall provide a no-objection letter or such prerequisite conditions that may be fulfilled before granting 'no-objection' certification. In the event prerequisite conditions are provided by the National Level Stock Exchange, a company must documentarily prove to the National Company Law Tribunal that all prerequisite compliances laid down in the no-objection certificate have been completed. Thereafter, the conditional no-objection certificate shall be deemed to have full effect.

If the listed entity is listed on a stock exchange that is not at the national level, requisite steps are provided to obtain the required approval from a national level stock exchange. Additionally, compliances required by any foreign stock exchange where the non-Indian company is listed must also be followed in accordance with the guidelines of such foreign stock exchange.

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Other aspects relating to Companies Act involving cross border mergers

As per the chapter XV, notice must be given by the companies who are parties to a merger, to their respective shareholders and creditors. Even though the concerned tribunal itself ordered a publication of notice in a newspaper covering a small region, the courts have held that the company should have been aware that a considerable amount of its shareholders lived outside the circulation of the said regional newspaper (in which the publication was ordered). Therefore, it is the responsibility of this company to ensure that the tribunal gives an appropriate order that envisages the purpose of reaching all the shareholders.[8]

However, to clarify, it was also held by the courts that, if a single creditor has been erroneously missed[9] or when a creditor's interests, according to the court, have been sufficiently protected,[10] then this meeting or notice need not automatically be declared void. The composition of classes of creditors and shareholders are distinguished by the effects of a scheme of arrangement on their rights. The extent to which these rights in the scheme are similar or dissimilar would determine the bifurcation of classes on a case-to-case basis.[11] Non-Indian creditors are, thus, not automatically considered as a separate class[12] if there is no difference on the effect of the scheme of merger on their interests[13] versus other creditors. Therefore, these non-Indian creditors may not have *locus standi* to raise objections on such a ground. Unless their collective rights are affected due to such non-residency

8 *GV Films Ltd v Metage Special Engineering Market Fund Ltd*, (2010) 154 Com Cases 252: (2010) 96 CLA 449 (Mad).

9 *Maknam Investments Ltd*, (1997) 87 Com Cases 689 (Cal); *Indian Cresent Bank Ltd, Re*, (1949) 53 CWN 183; *Bhagat Ram Kohli v Angel's Insurance Co Ltd*, (1937)7 Com Cases 161.

10 *Vikrant Tyres Ltd Re* (2003) 47SCL 613; *Re, Tea Corpn Ltd*, *Sorsbie v Tea Corpn Ltd*, (1904) 1 Ch 1(CA).

11 *Telewest Communication Plc Re*, (No. 1), (2005) 1 BCLC 752 (Ch D).

12 *Arvind Mills Ltd Re*, (2002) 111 Com Cases 118 (Guj); *Commerz Bank AG v Arvind Mills Ltd* (2002) 110 Com Cases 539 (Guj); *Re, English, Scottish and Australian Chartered Bank*, (1893)3 Ch385; *Travencore National Quilon Bank Ltd, Re*, (1939) 9 Com Cases 14 (Mad).

13 *Jaypee Cement Ltd Re*, (2004) 122 Com Cases 854: (2004)2 Comp LJ 105 (All); *Sovereign Life Assurance Co v Dodd* (1982) 2 QB 573 (CA).

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by the said proposed scheme of arrangement,[14] these creditors cannot seek protective measures of the Companies Act reserved for discriminatory schemes. It was further held by courts that these classes are designated in relation to rights and not all ancillary interests.

Meting out an offer or details of a scheme need not be done globally at the same time, provided that the rights of shareholders are not adversely affected. A company chose not to publish their offer for buy-out to its Australian shareholders until 90 per cent of the shares of the company had been acquired. Since the offer was identical to the offer extended to the Indian shareholders and did not affect the rights of the non-Indian counterparts differently, the offer was held to be non-discriminatory against Australian shareholders, though belatedly communicated.[15] That being said, any foreign creditor who has not consented to a scheme of merger may be entitled to seek reliefs in a foreign court[16] in an appropriate jurisdiction.

Dispensing of shareholder and creditor meetings is routinely permitted by National Company Law Tribunal[17] for domestic mergers (subject to the provisions of the Act). Such application for dispensing with meetings of creditors or shareholders requires properly stamped[18] consents or affidavits of the stakeholders, and must fulfil the requisite thresholds of majority[19] set under the Act. Requirements for convening meetings of creditors or

14 *Gujarat Lease Financing Ltd Re*, (2002)50 CLA150(Guj): (202)36SCL 838.

15 *Joseph Holt plc, Wipnar Holdings Ltd v Joseph Holt Group plc*, (2001) 2 BCLC 604 (CA & Ch D) & (2001) EWCA Cir 770.

16 *New Zealand Loan and Mercantile Agency Co v Morrison*, (1898) AC 349.

17 *Jupiter Alloys and Steels India Ltd TA No. 11 of 2017* (17 May 2017) [Kolkata]; *Coffee Day Overseas Pvt Ltd* [TP No. 265/2017] in CA. No. 738/2016 (2 Feb 2017) [Bengaluru]; *L&T Shipbuilding ltd and Marine Infrastructure* CP No. 17 of 2017, (20 March 2017 [Chennai]; *RMZ Infotech Pvt Ltd* TP No. 285/2017 in CA No. 652/2016 (11 April 2017) [Bengaluru]; *Virtusa Software Services Pvt Ltd* CA(CAA)No. 35/230/HDB/2017 (8 May 2017) [Hyderabad]; *Welspun Energy Pvt Ltd* CA(CAA) No. 4/NCLT/AHM/2017 (14 March 2017) [Ahmedabad]; *Bagrrys Finance Pvt Ltd* CA(CAA) No. 6/CHD/HP/2017 (28 April 2017) [Chandigharh].

18 *Sri Kumaran Wind Energy Pvt Ltd* CA/1029/CAA/2019 (20 December 2019 (Chennai).

19 *Alovera Tradelink Pvt Ltd* [2016] 216 Comp Cases 217 (NCLAT).

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shareholders virtually, also requires the properly stamped[20] consents or affidavits and must fulfil requisite thresholds of majority[21] set under the Act. Holding these creditor or shareholder meetings via videoconference[22] has been permitted by the Ministry of Corporate Affairs in light of the covid-19 pandemic (subject to following prescribed procedure). The process for a virtual meeting should be undertaken at the stage prescribed for seeking an order to convene the shareholders' or creditors' meetings, respectively. However, it is not a matter of right,[23] and the same may be mandated where the court deems that a physical meeting may be necessary.

It was held by courts that providing the currency conversion for a scheme of arrangement in an averaged-out conversion rate from the Indian rupee to the non-Indian currency, instead of the conversion rate at each individual distribution was not a ground, by itself, to determine the unfairness of the scheme of arrangement to the non-Indian lenders of this currency.[24]

Competition Act 2002 and Competition Commission of India (Procedure in Regard to the Transaction of Business Relating to Combinations) Regulations, 2011

All cross-border mergers are subject to the controls and framework laid down by the Competition Act and the Regulations relating thereto. In the event jurisdictional thresholds laid down in this act and regulations are exceeded by the transaction and this transaction may have considerable adverse effects on competition in the relevant market, the transaction may be prohibited by the Competition Commission of India. A scheme of merger that may exceed the thresholds prescribed must be presented before the Competition Commission of India. In the event the Competition Commission does not respond within 210 days, the scheme shall be deemed to be approved.

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20 *Sri Kumaran Wind Energy Pvt Ltd* CA/1029/CAA/2019 (20 December 2019 (Chennai).

21 *Alovera Tradelink Pvt Ltd* [2016] 216 Comp Cases 217 (NCLAT).

22 *Anuradha Renewables Private Limited*; CA(CAA) No. 19/CII/2020 decided on 27 April 2020 (NCLT Mumbai).

23 *Mega Corporation Ltd* [2018]146SCL227 (NCLAT).

24 2004 EWHC 1466: *Telewast Finance (Jersey) Ltd Re* (No. 2) (2005)1 BCLC772 (Ch D).

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Conclusion

Time and again, it has been observed by courts and economists worldwide that no country can ostracise the international corporate community without hindering its own progress. The government of India has sought to launch India as a manufacturing hub. Therefore, to keep up with increasingly globalising, modern and capitalist times, it is important to be open to international business. In the years following the repeal of the 1956 Act, foreign direct investment in India increased to US$28.81 billion, (ie, by about 39 per cent (year-on-year)).[25] Indian companies are also experiencing an unprecedented growth as surveys show that about 91 per cent of 'Make in India' sellers have considered expanding their business beyond Indian borders. Therefore, it may be inferred that the upgrade in Indian law relating to companies could not have come at a better time.

Sanjay Chhabra

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Sanjay Chhabra is the founding and managing partner of Archer & Angel and primarily based in the firm's New Delhi office. He is the head of the firm's corporate and intellectual property practice and has over 26 years of experience. Sanjay has been assisting clients that include world's leading multinationals in FMCG, electronics, information technology, real estate, hotel and restaurant chains, food and beverages, technology etc.

Sanjay has extensive experience in advising both domestic and foreign corporations on corporate issues, ranging from foreign investment and exchange control regulations applicable in India including regulatory approvals, structuring foreign investments into India and domestic investments overseas, incorporation of companies, joint ventures, mergers and acquisitions including

25 *The Economic Times* (28 May 2015) No FIPB nod required for M&As in sectors under automatic route.

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extensive due diligence on target companies, corporate governance and director's liabilities, corporate compliance issues and preparation and advice on transaction documents.

He also advises on a wide variety of legal issues affecting intellectual property, including drafting and negotiating agreements for protection of trademarks, brand names, domain names, copyright and designs, management of portfolios and enforcement mechanisms.

Sanjay's insightful analysis, knowledge coupled with client's requirements, has helped clients in managing most complex and challenging transactions. He has been recognised by *Who's Who Legal*, *WTR*, *Asia IP Law* (India's Chapter), *Managing IP* etc. He is a member of INTA, APAA, ABA and IBA.

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Akash Bhardwaj is a partner in the corporate practice and also has a degree in information technology and software development and brings this knowledge to his law practice. Akash is a member of firm's corporate, labour & employment and real estate team. Over the past 19 years, he has been involved in various corporate transactions, including mergers & acquisitions, joint ventures, asset purchases and real estate transactions (for commercial and industrial property).

He has also been involved in various TMT transactions including advising and helping various multinationals in establishing a presence in India, advising of telecom, media and technology laws. His TMT practice also involves obtaining licences from the Department of Telecom for various activities, data protection, broadcasting related issues, licences from the Ministry of Information and Broadcasting, software licensing, advising on telemarketing and OSP related issues etc.

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He represents a number of companies in their real estate transactions, which are in the business of consumer products, food and beverage, apparel and accessories, technology and hospitality. He has also advised manufacturers in various aspects of establishing factories, from land acquisition to obtaining all approvals for operating a fully functional factory.

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Amrita has around 10 years of experience, wherein she has been assisting global clients (which includes world's leading multinationals) in setting up their presence in India, which involves undertaking end to end compliance and procedures including securing necessary approvals and advisories. She also has an extensive experience in advising both domestic and foreign corporations on commercial corporate issues including company secretarial issues, provisions of (Indian) Companies Act, foreign investment regulations as applicable in India. Her expertise is in providing comprehensive solutions regarding good corporate governance and corporate laws (including foreign exchange regulations) issues to global clientele. She has been also involved in various corporate transactions, including mergers & acquisitions, joint ventures, slump sale transactions and re-structuring.

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