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M&A TACTICS FOR CORPORATE RECOVERY IN THE TIME OF COVID-19 PANDEMIC

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ABSTRACT

As the Covid-19 pandemic intensifies and the number of positive reports and casualties rises, countries, throughout the world, are enforcing tight restrictions and social distancing regulations. As the wheels of economic expansion grind to a halt, the disaster has morphed into a financial slump, plunging the banking sector into an unprecedented recession. As a result of this, India's economy has come to a stop. Changes in the market landscape, valuation issues, and a lack of financial backing as a result of banks' lending restrictions and the resulting reallocation of spare money are all major elements in strategic planning. In the current round of discussions, companies must choose between halting the process and speeding it up.

M&A transactions that are either in the planning stages or are about to be completed would most likely be postponed until the economic crisis passes. Market bid methods are more likely to lose potential purchasers. In this unpredictable climate, multinational corporations and private equity firms are likely to preserve cash and shift their attention to local enterprises, which might have an impact on cross-border commerce.

When faced with complications, interpreting mergers and acquisitions in light of the current facts and circumstances would bring clarity. In addition to rigid M&A, companies are pursuing a variety of unconventional corporate strategies, such as emerging innovation technology acquisitions, risk mitigation, divestiture of secondary resources, collaborations with competitors, funding outside of venture capital, diversified alliances with experts, and strategic associations with governments. These tumultuous times have given rise to a unique set of opportunities. While some of the M&A agreements were due to corporations renewing agreements that had been put on hold owing to the financial depression induced by the different national lockdowns,

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the vast majority of them showed firms' efforts to change and flourish in the post-pandemic environment.

Keywords: Mergers and Acquisitions, Covid-19 Pandemic, Tactics for corporate recovery, Economic fallout

COVID ERA'S PACT

Various measures and tax reliefs proposed by the Central Government in the 2020 budget, such as the infusion of capital from sovereign wealth funds and the adoption of softened regulations by the SEBI and the MCA, have proven to be a much-needed boost for M&A transactions during the epidemic. Certain issues are highlighted below that may influence the way M&A deals are usually conducted in India:

- *Extent of investment* - M&A transactions done during this time period will need to take into consideration the limits imposed by the existing scenario, and the decision-making method will need to be adjusted to suit the present obstacles. Nonetheless, the slump may offer some opportunities for investors, who may take advantage of lower stock prices in the short term to increase their investment profits once normalcy returns.
- *Due Diligence* -Contract terms such as - indemnification provisions, termination clauses, risk of insolvency, capacity to repay debts, medical insurance and perks for workers, and regulatory compliance would be given special attention. Companies will adhere to a tougher data security and data privacy regulation in times of pandemic due to the emergence of the virtual corporate world. Stronger enforcement of international data protection regulations, such as the GDPR, is required when it comes to cross-country data transfers.
- *Digital Conversion of Regulatory Practices* - Although the SEBI and the RBI have allowed stakeholders to file petitions electronically, the CCI allowed them to file a pair of applications electronically in March, 2020 as well as pre-filing consultations via virtual conferencing in connection with, among other things, combinations that fall under the green channel path.
- *Regulatory Interference* - As a result of the risk of delays in gaining approval from statutory agencies, shareholders may choose systems with fewer regulatory settings. As a reason, a share purchase may be preferable to a corporate transfer arrangement downturn transaction.

- *Indemnity* - To seek comprehensive indemnification, potential owners will need to assess the risks represented by the financial catastrophe precipitated by Covid-19. The owners will consider releasing any clear data related to the Covid-19 scenario in the form of a recorded statement in addition to using information and subjective qualifiers to appropriately establish these indemnities.

INSOLVENCY BANKING CODE – A FAVOURED OPTION FOR M&A

The legal validity of Merger and Acquisition flowing via the Code assists Acquirers and Investors in acquiring Assets or a Business as a Whole. Since its inception in 2016, the IBC has boosted the number of mergers, benefiting both investors and distressed entities.[3] Since the IBC was created to close a loophole in prior laws that resulted in significant time loss, IBC proceedings are completed in a timely way, which helps to minimize asset depreciation and allows investors to acquire assets at a fair value while also providing timely cash to distressed organizations.

Interim Resolution Professional's Information Memorandum assists investors in gaining full knowledge of the entity without undue stress. The IBC has increased activity in distressed mergers and acquisitions in India, with a total of $104.5 billion in transactions involving Indian firms in 2018.[4]

IMPACT OF SUSPENSION OF APPLICATIONS UNDER IBC ON RECENT M&A PATTERNS

An Ordinance was passed, which was later superseded by the Insolvency and Bankruptcy (Second Amendment) Act, 2020, which added section 10A to the IBC and allowed for the suspension of applications submitted under sections 7, 9, and 10 for a year to avoid the accumulation of cases under the Act. In the future, no petitions for the start of proceedings against a Corporate Debtor for a default that occurred during the Suspension Period will be submitted.

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[3] Vaida Sharma, *Distressed M&A transaction in light of COVID-19 and current insolvency regime in India*, iPleaders (Dec. 25, 2021; 01:29PM), https://blog.ipleaders.in/distressed-ma-transaction-in-light-of-covid-19-and-current-insolvency-regime-in-india/#Effect_of_suspension_on_recent_M_A_trends

[4] Sakshi Satrialika, *IBC as a trigger for M&A activities*, TaxGuru (Dec 25, 2021; 02:14PM), https://taxguru.in/corporate-law/ibc-trigger-ma-activities.html

The suspension of the IBC for the present year will bring procedures under the Code to a halt. However, although this benefits borrowers, it puts lenders' interests at jeopardy. Due to the suspension, the value of distressed firms' assets would erode, resulting in a rise in out-of-court M&A settlement transactions, prompting promoters to opt for a one-time payment and negotiate with banks to raise debts at reasonable rates.[5] Due to the suspension of the IBC, firms with promising future prospects will be bought at a low cost by astute investors, while others will be forced to restructure internally or sell their non-core business. This pause in the IBC will have a long-term impact on the M&A industry, as it will lower the number of cases for the current year, but will result in the accumulation of liabilities and loss of asset value, contradicting the aim of the Code's enactment.

HEALTH CRISIS VS. FINANCIAL CRISIS IN LIGHT OF THE PAST

The Global Financial Crisis (GFC) of 2008 resulted in a dramatic drop in M&A activity. The GFC primarily damaged the real estate industry and banks, forcing the government to create methods to free them from the shackles of overextending credit to businesses. Due to the difficulty in financing the deal, there was not enough financing and availability of funds in the economy for a large transaction deal to be completed; additionally, uncertainty about the future of the economy and grim corporate earnings expectations forced Acquired to hold or delay their acquisition prospects.

The 2008 Global Financial Crisis (GFC), Recession, and Economic Crash were all-natural financial crises. It was a lack of investor trust, along with a sharp increase in the number of borrowers unable to pay their obligations that destroyed the backbone of the economy's financial institutions.

With the collapse of the real estate market and financial institutions' excessive risk-taking, the globe entered the International Banking Crisis with the bankruptcy of Lehman Brothers.

Stocks and commodities prices fell due to a loss of investor interest in financial institutions and a reduction in credit availability in the system. Due to a drop in international commerce, the world's economy also slowed. Due to the failure of financial machinery during the Great Recession, investors' confidence was shaken, resulting in a drop in demand, which was followed by a surge in supply.

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[5] Supra 1

COVID-19 is a health crisis that has impacted the whole service industry, with unemployment at an all-time high and a negative Economic Growth rate.

As companies enter the phase of government-enforced regulations, there will be an increase in the number of acquisitions that have been long sought simply because companies with an indicatively poor balance sheet that were previously hesitant to sell their assets will now be under pressure to sell in order to cope with their cutbacks and mounting debts.

There has been a huge increase in out-of-court M&A and the amount with more and more distressed M&A in place and the suspension of IBC. Despite the fact that the M&A market is diminishing, companies who choose to make acquisitions outperform those who do not. In the economy, there have been several big acquisitions. With over half a billion active users, India's telecom and digital sectors has become a favourite among international investors.

- Tech behemoths such as - Facebook and Google have made significant investments in Reliance Jio, with total investments of $5.7 billion and $4.5 billion, respectively.
- Think and learn, the platform that runs the world's largest education company - Byjus has bought Whitehat Jr. for a whopping $300 million all-cash deal.
- Reliance Acquisition in the non-tech online pharmacy - Netmeds.
- The Fintech sector has been reinforced by the increased usage of digital payment channels.
- In contrast to the Great Recession, there will be a drop in supply chain, which will have an influence on demand afterwards.

As a result, there are many parallels and distinctions between the Global Financial Crisis and COVID-19. This may be used to understand how M&A in a downturn affects the economy. Similar to the GFC, M&A will decline and Distressed Assets will grow, but because this is a health crisis, there may be a lot of Distressed M&A in the near future.[6]

APPROACHES FOR CORPORATE RECOVERY

In a post-Covid-19 environment, the role of M&A will be redefined as firms seek to maintain their market position, speed the recovery process, and prepare themselves to survive through a mix of aggressive and averting M&A tactics. Companies are turning to one of two corporate resurrection procedures as a result of the present epidemic.

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[6] Supra 1

1. *Averting M&A -*[7]Averting M&A tactics are those that are employed to protect the company's operations. These techniques are primarily targeted at hostile takeovers and are used to save enterprises' value and protect markets in order to preserve competitive parity. Financially unstable enterprises must take dramatic actions such as - the sale of distressed assets, to preserve cash from loss-making areas and preserve a stable primary sector. In a crisis, the sale of distressed assets needs the shortest feasible procedure to maximise revenues. The following are some protective techniques that businesses might implement:

- *Divestments* - Due to the present economic downturn, secondary assets that are in high demand are seldom sold. Those selling such assets in this circumstance must be fully aware that the number of potential buyers will be restricted, and they must be prepared to deal with asset fire-sales.
- *Investor Activism* - During downturns, aggressively exploring value creation projects as well as anticipating what investor activists or competitive bidders would demand is crucial to long-term success. This might involve reconsidering shareholder rewards, capital allocation, and trade finance.
- *End-to-End M&A* - By taking critical actions to combine recent acquisitions, companies may significantly decrease cost and free up cash flow. Private equity companies, institutional investors, distressed venture capitalists, & huge businesses with strong investment portfolios are all in a hurry to act and pursue potentially predatory M&A tactics.

2. *Offensive M&A -*[8]

Companies employ offensive methods in order to hasten the evolution of their business's character. Co-investment opportunities with partners are eagerly pursued by businesses. Companies are quickly pursuing unconventional M&A activities such as - joint ventures, collaborations, transformative M&A, & sustainable infrastructure venture projects, in addition to asset restructuring.[9] The following are some instances of aggressive M&A tactics:

- *Cross-Sectoral M&A* - Due to the high demand for the industry, medical care, financial services, technology, & communication should be prioritised. Innovative M&A opportunities

[7] Venus Kennedy, *Covid-19: The M&A role in companies' recovery*, Deloitte (Dec. 26, 2021; 04:23PM), https://www2.deloitte.com/br/en/pages/strategy-operations/articles/covid-19-papel-fusoes-aquisicoes-recuperacao-empresas.html

[8] ibid

[9] *M&A strategies to thrive in the post-pandemic environment*, Deloitte (Dec. 26, 2021; 10:41AM), https://www2.deloitte.com/us/en/insights/topics/strategy/m-a-markets-post-pandemic-business.html

should be provided to such sectors so that, they may work together to recover losses caused by the epidemic.

- *Joint Ventures* - Business models in advertising, banking, & commercial retail all favour sectoral integration. As the new normal accelerates market transformation, spurred by new customer preferences and purchasing habits, companies must explore new partnerships and M&A also. Both flexible start-ups & traditional companies might be involved in collaborations.
- *Portfolio Optimization* - With systemic disruptions, the production and services sectors will need to rebuild and de-globalize their values, gaps in the supply chain or business paths will need to be repaired. Most sellers' expectations have been reset as a result of the pandemic's decrease in values, giving a once-in-a-lifetime chance to acquire and expand the market at low prices. Companies in the industrial and biomedical industries were notably affected.
- *Community Leadership* - From responsible procurement & development to climate mitigation & social leadership, the pandemic brought in a sea change in business expectations in terms of their impact on the sustainability agenda. Companies that engage in M&A transactions can attain their efficiency targets faster.

CONCLUSION

Distressed mergers and acquisitions are not new to the Indian economy. Poor planning, policy challenges, bureaucratic and political disputes are just a few of the reasons why firms fail. Both investors and sellers have a lot of analysis, processing, and due diligence to undertake in a troubled M&A, and they have a lot less time. Distressed M&A is nothing short of an art; it needs exceptional abilities and a voracious desire.[10] The Insolvency and Bankruptcy Code was enacted to combat the scourge of non-performing assets in the market by establishing an effective and quick resolution mechanism. The IBC regime has aided the growth of the M&A sector by providing a quick Corporate Insolvency Resolution Process, and since the timelines for proceedings already under CIRP have been relaxed by Central Government Notification, this will result in a more effective Examination and more valuable Mergers.[11] COVID-19 has had a significant influence on both human and business resources in the economy, which will

[10] Distressed Mergers & Acquisitions: A Recent Trend in Corporate Sector in India, Legal Services India (Dec. 26, 2021; 05:02PM), http://www.legalservicesindia.com/law/article/2026/29/Distressed-Mergers-Acquisitions-A-Recent-Trend-in-Corporate-Sector-in-India

[11] Supra 1

undoubtedly increase the number of distressed mergers and acquisitions, but it is also being viewed as an opportunity for both local and international investors. To put it another way, this will be like flipping a coin, and only time will tell what the outcome will be.

Outdoor inspections for organizational due diligence and physical discussions will very certainly be phased out. Instead, from procurement to execution to post-deal value generation, virtual and computational resources will very probably remain an integral element of the whole M&A system.

As the new normal arises, unique consumer tastes and purchasing behaviours are expected to enhance cross-sector integration. This will allow non-traditional businesses to enter current markets with fresh business strategies, possibly eliminating established market participants. The impact of Covid-19 has hastened the integration of technology into the practice systems of several sectors. Companies, particularly those in non-digital industries, will pursue technology acquisitions in order to establish flexible operational and consumer networks. Because of the large number of deals completed this year, it is apparent that companies have begun to employ virtual and interactive resources in mergers and acquisitions. Companies are facing extraordinary problems in these unusual times. As a result, in the face of significant uncertainty, organizations must focus on preserving their core businesses while being sensitive to prospective expansion M&A opportunities.