Merger in joint stock companies

Introduction Mergers or amalgamation, result in the combination of two or more companies into one, wherein the merging entities lose their identities. No fresh investment is made through this process. Howeverof shares takes place between the entities involved in such a process. Generally, the company that survives is the buyer which retains its identity and the seller company is extinguished.

A merger can also be defined as an amalgamation if all assets and liabilities of one company are transferred to the transferee company in consideration of payment in the form of equity shares of the transferee company or debentures or cash or a mix of the above modes of payment. An acquisition, on the other hand, is aimed at gaining a controlling interest in the share capital of acquired company.

It can be enforced through an agreement with the persons holding a majority interest in the company’s management or through purchasing shares in the open market or purchasing new shares by private treaty or by making a take-over offer to the general body of shareholders. Joint stock company is the most dominant business form for organised and large industrial and commercial activities. The corporate and industrial sectors are in a sense inseparable as a substantial part of organised industrial activity is conducted by joint stock companies.

Questions like what to produce, how much to invest, where to raise finances from, how much to spend on R and advertisement, where to get technology from, at what price to sell and in which markets, how to diversify, etc. are decided at company level and not by the factory management. Joint stock companies also undertake a variety of services ranging from transport, distribution, finance, health and media. The corporate sector is important for mobilizing and utilising household savings for making new investments. It is a major recipient as well as supplier of foreign investment.

Mergers And Acquisitions Of Companies Under The Joint Stock Companies Act 1956 The Income Tax Act, 1961 [Section 2(1A)] defines amalgamation as the merger of one or more companies with another or the merger of two or more companies to form a new company, in such a way that all assets and liabilities of the amalgamating companies become assets and liabilities of the amalgamated company and shareholders not less than nine-tenths in value of the shares in the amalgamating company or companies become shareholders of the amalgamated company.

Thus, mergers or amalgamations may take two forms: Merger through Absorption:- An absorption is a combination of two or more companies into an ‘ existing company’. All companies except one lose their identity in such a merger. Merger through Consolidation:- A consolidation is a combination of two or more companies into a ‘ new company’. In this form of merger, all companies are legally dissolved and a new entity is created. Here, the acquired company transfers its assets, liabilities and shares to the acquiring company for cash or exchange of shares.

There Are Three Major Types Of Mergers: Horizontal merger A horizontal combination is a merger of two competing firms belonging to the same industry which are at the same stage of the industrial process. These mergers are carried out to obtain economies of scale in production by eliminating duplication of facilities and operations and broadening the product line, reducing investment in working capital, eliminating competition through product concentration, reducing advertising costs, increasing market segments and exercising better control over the market.

It is also an indirect route to achieving technical economies of large scale. Vertical merger A vertical combination is one in which a company takes over or seeks a merger with another company in order to ensure backward integration or assimilation of the sources of supply or forward integration towards market outlets. The acquirer company gains a strong position due to the imperfect market of its intermediary products and also through control over product specifications. However, these gains must be weighed against the adverse effects of the merger.

For instance, firms which have monopoly power in one stage may increase barriers to entry through vertical integration and this would help to discriminate between different purchasers by monopolisation of raw material supplies or distributive outlets. Conglomerate merger A conglomerate combination is the amalgamation of two companies engaged in unrelated industries. It enhances the overall stability of the acquirer company and improves the balance in the company’s total portfolio of diverse products and production processes.

Through this process, the acquired firm gets access to the existing productive resources of the conglomerate which result in technical ficiency and furthermore it can have access to the greater financial strength of the present acquirer which provides a financial basis for further expansion by acquiring potential competitors. These processes also lead to changes in the structure and behaviour of acquired industries since it opens up new possibilities.

The Legal Procedures for Mergers or Acquisitions: The Companies Act, 1956 Permission for merger:- Two or more companies can amalgamate only when the amalgamation is permitted under their memorandum of association. Also, the acquiring company should have the permission in its object clause to carry on the business of the acquired company. In the absence of these provisions in the memorandum of association, it is necessary to seek the permission of the shareholders, board of directors and the Company Law Board before affecting the merger.

Information to the stock exchange:- The acquiring and the acquired companies should inform the stock exchanges (where they are listed) about the merger. Approval of board of directors:- The board of directors of the individual companies should approve the draft proposal for amalgamation and authorise the managements of the companies to further pursue the proposal. Application in the High Court:- An application for approving the draft amalgamation proposal duly approved by the board of directors of the individual companies should be made to the High Court.

Shareholders’ and creators’ meetings:- The individual companies should hold separate meetings of their shareholders and creditors for approving the amalgamation scheme. At least, 75 percent of shareholders and creditors in separate meeting, voting in person or by proxy, must accord their approval to the scheme. Sanction by the High Court:- After the approval of the shareholders and creditors, on the petitions of the companies, the High Court will pass an order, sanctioning the amalgamation scheme after it is satisfied that the scheme is fair and reasonable.

The date of the court's hearing will be published in two newspapers, and also, the regional director of the Company Law Board will be intimated. Filing of the Court order:- After the Court order, its certified true copies will be filed with the Registrar of Companies. Transfer of assets and liabilities:- The assets and liabilities of the acquired company will be transferred to the acquiring company in accordance with the approved scheme, with effect from the specified date.

Payment by cash or securities:- As per the proposal, the acquiring company will exchange shares and debentures and/or cash for the shares and debentures of the acquired company. These securities will be listed on the stock exchange. Advantages of Mergers & Acquisitions Economies of scale arise when increase in the volume of production leads to a reduction in the cost of production per unit. This is because, with merger, fixed costs are distributed over a large volume of production causing the unit cost of production to decline.

Economies of scale may also arise from other indivisibilities such as production facilities, management functions and management resources and systems. This is because a given function, facility or resource is utilized for a large scale of operations by the combined firm. Operating economies arise because, a combination of two or more firms may result in cost reduction due to operating economies. In other words, a combined firm may avoid or reduce over-lapping functions and consolidate its management functions such as manufacturing, marketing, R and thus reduce operating costs.

Synergy implies a situation where the combined firm is more valuable than the sum of the individual combining firms. It refers to benefits other than those related to economies of scale. Operating economies are one form of synergy benefits. But apart from operating economies, synergy may also arise from enhanced managerial capabilities, creativity, innovativeness, R and market coverage capacity due to the complementarily of resources and skills and a widened horizon of opportunities. Disadvantages of Mergers and Acquisitions

Diseconomies of scale if business become too large, which leads to higher unit costs. Clashes of culture between different types of businesses can occur, reducing the effectiveness of the integration May need to make some workers redundant especially at management levels- this may have an effect on motivation May be a conflict of objectives between different businesses, meaning decisions are more difficult to make and causing disruption in the running of the business. Merger and Acquisition of Joint Stock Companies – BIKASH PRASAD 11MBA0005