MERGER AND AMALGAMATION

BY DEEKCHA TIWARI
FROM INDORE INSTITUTE OF LAW

ABSTRACT

In this research the researcher would like to focus on very important aspect of corporate world that is Merger and Amalgamation, and this is has become and very used to phenomena of corporate sector because prior to 2013 there was no such kind concept is there in statute but when it comes as need before the law maker then without any hesitation the they bring the concept Merger and Amalgamation in the Indian Companies Act, 2013.

Merger and Amalgamation plays very significant role in corporate sector because due this it become easy for any big company to get merger or amalgamate in any other or new company and by this it become easier for the corporate sector to do their work without restraint.

This research is chiefly dealing with the concept of merger and amalgamation and there applicability, types, and sources of evolution and comparison to old and new act, cross-border merger and amalgamation and fast track merger court. By these to concept corporate world directly meet there demand and flourished there business too.

INTRODUCTION

Ensuing the economic reforms in India in the post – 1991 period, there is a noticeable trend among promoters and established corporate group towards consolidation of market share and diversification into latest areas throughout acquisition / takeover of companies but in a further pronounced manner through mergers / amalgamations. Even though the economic consideration in terms of motive and consequence of these are analogous, and the legal procedures involved are different. The merger and amalgamation of corporate constitute an area under discussion of the Companies Act, the courts and law and there are well-laid down procedures for appraisal of shares and rights of investors. The acquisition/ takeover bids fall underneath the purview of SEBI. The terms mergers and amalgamations on the one hand and acquisitions and takeover on the other are treated here synonymously/ interchangeably.

In the preceding few years, India have witness a sizeable slowdown in the mergers and acquisitions ("M&A") activity. In the year 2014, Indian companies were implicated in transactions worth $ 33 billion whereas in the year 2015, the value of M&A commotion saw

a dip to $ 20 billion. It is anticipated that 2016 will see finely tuned global M&A movement and it is estimated that the value of transactions would cross $ 30 billion straightforwardly. The election of the Modiji led government has brought back remarkable faith in investor community. The coming year is expected to be a flourishing year in terms of M&A activity as the investor society has seen certainty in Modiji led government's modification in agenda and the policies have been largely formulated to persuade foreign investments. It is powerfully believed that year 2016 will see a rush forward in M&A activity due to the new bankruptcy law, the quicker pace of approvals initiated by the government as part of its broadmindedness of doing business in India campaign and the relaxation in Foreign Direct Investment norms.

Sectors such as IT-ITes, healthcare, energy, pharmacy, e-commerce and banking and financial services were the key sectors in 2015. In 2015, inbound deals conquered the Indian M&A landscape with curiosity coming from US, German and Canadian bidders. One can expect the enlarge in the M&A deals and behavior in the upcoming time as both local and international investors and business houses are eyeing India with a hope of marvelous growth.

International factors such as turn down in the crude prices and squat inflation locally will also facilitate the government to give a free rein to flexible business policies to draw concentration of the players in the India economy.

Mergers and acquisitions are modes by which separate businesses which might combine. Joint ventures are an additional way for two businesses to exertion together to attain growth as associates in progress, although a joint venture is more of a contractual understanding sandwiched between two or more businesses.

A "compromise" presupposes the subsistence of a disagreement for "there can be no negotiation except there is some dispute". All and sundry will agree that a compromise or arrangement which has to be authorized by the court must be realistic and that no arrangement or compromise can be said to be sensible in which you can get nonentity and give everything. The purpose of this is not confiscation. It is not that one person is supposed to be victim and the rest of the body should gorge upon his rights. Its object is to facilitate compromises to be prepared which are for the common assistance of the creditors or class of creditors as such.

Whereas "arrangement" is a term of wider implication. A re- arrangement of rights and liabilities is achievable without the subsistence of any dispute. Thus where under a proposal each shareholder of a company had to relocate some of his share to a different company and some to its shareholders and the court refuse to maintain the scheme as there was no argument which the scheme ostensible to resolve. But the Court of Appeal held that the word "arrangement" must not to be taken to mean the similar things as a compromise.

Presently there is considerable dissimilarity between an agreement which is confiscatory in character and an arrangement which contemplate a gift. In the case of gift the benefactor may have no anticipation of a return but this does not indicate that the subject- matter of a gift has been confiscated by the benefactor from the benefactor. It would be ridiculous to recommend that a gift has resulted in or is a corollary of any confiscation or forfeiture. The legislatures have not mentioned any constraint of a contract for deliberation. The expression "give and take" implies degree of voluntariness in the transactions and no further.[1]

SCHEME OF MERGER / AMALGMATION

Whenever two/ more companies consent to merge with each other, they have to set up a scheme of amalgamation. The acquiring company ought to be preparing the scheme in consultation with its merchant banker(s) / financial consultants. The major contents of a model format, inter-alia, are as listed below:-

· Depiction of the transfer and the transferee company and the business of the transferor.

·Their certified, issued and subscribed / paid –up capital.

· Foundation of scheme : Key requisites of the scheme in self-sufficient paragraphs on the commendation of valuation report, covering transfer of assets / liabilities, transfer date, reduction or consolidation of capital, application to financial institutions as guide institution for authorization and so on.

· Alteration of name, object clause and accounting year.

· Safeguard of employment. · Dividend position and prospects.

· Organization: Board of directors, their number and participation of transferee company's directors on the board.

[1] Avtar singh, company law, eastern book company, 17ed. 2018 pg. 599

IJJSR

· Appliance under section 291 and 394 of the Companies Act, 1956, to obtain Higher Court's approval.

· Operating expense of amalgamation.

· Circumstances of the proposal to become efficient and operative, effective date of amalgamation. The foundation of merger / amalgamation in the format should be the reports of the values of assets of both the merger collaborator companies.

The proposal should be prepared on the base of the value's report; reports of chartered accountants occupied for financial analysis and obsession of exchange ratio, report of auditors and audited accounts of both the companies equipped up to the appointed date. It should be ensuring that the scheme is just an unbiased to the shareholders, employees of each of the amalgamating company and to the community.

AMAGALMATION AND ACQUISTION

Times are varying and so are corporate strategies. Companies are flattering larger than ever in an enterprise to control larger markets and in investigate of new customer bases. There are numerous ways in which a company tries to spread out. It can also grow horizontally or can expand upright. Amalgamation and acquisition are two strategies which permit companies to turn into larger and more imaginative. There are people who do not comprehend the implications of these two strategies that are very humdrum in today's market circumstances. This article attempts to take a closer look at amalgamations and acquisitions to underscore their differences.

Both mergers and acquisitions engross two or more companies where businesses turn into large with an eye on growing profits during these exercises. Amalgamation refers to consolidation or merger where two or further business entities agree to join hands to outline a new business thing that is larger, has more possessions at its disposal, and has (possibly) a larger patron base along with new markets. In such a case, where coming together of two entities into a single, bigger entity takes place, shareholders of previous companies are given shares of the new company. Amalgamation may take place by merging of a smaller entity into a bigger entity or two or more business entities may merge mutually to figure a new business entity. In case of an amalgamation of two companies, stocks of both companies are dissolving and new stocks of the new business entity are issue to the shareholders. A new

board of directors is constituted to look subsequent to the affairs of the new business entity.

On the other hand, acquisition refers to an example where one company takes over scheming assets in another company. At this time the buying company becomes the owner and the companies that encompass been in use more than and ceases to manage to survive. The stocks of the retail company go on to be traded at the same time as shareholders of the company in use in excess of are issued stocks of the trade company. Acquisition is a mishmash of two companies of jagged size while amalgamation takes locate most commonly involving companies of equal size and is an example of horizontal expansion. Amalgamation is required when two contending companies join hands to keep away from competition and also to have a better customer foot. Amalgamation is frequently friendly while acquisitions are both gracious as well as antagonistic.

CONCEPT OF MERGER AND AMLAGAMATION

The expression 'merger' is not defined under the Companies Act, 1956 ("CA 1956"), and under Income Tax Act, 1961 ("ITA"). On the other hand, the Companies Act, 2013 ("CA 2013") devoid of strictly defining the term explains the concept. A 'merger' is a permutation of two or more entities into one; the preferred effect being not just the accretion of assets and liabilities of the diverse entities, but association of such entity into one business. The feasible objectives of mergers are assorted - economies of scale, acquisition of technologies, access to sectors / markets etc.

Commonly, in a merger, the merging entities would come to an end to be in continuation and would merge into a single existing entity. The ITA does conversely define the equivalent term 'amalgamation': the merger of one or more companies with an additional company, or the merger of two or more companies to form one company. The ITA goes on to stipulate certain other circumstances that must be contented for an 'amalgamation' to benefit from beneficial tax behavior.

Our laws visualize mergers can happen in more than one way, for instance in a situation in which the assets and liabilities of a company (merging company) are vested in one more or company (the merged company). The merging company loses its identity and its shareholders become shareholders of the merged company. Another method could be, when the assets and liabilities of two or more companies (merging companies) become vested in another new company (merged company). The merging companies lose their identity. The shareholders of

the merging companies become shareholders of the merged company. The CA 1956 (Sections 390 to 394) and CA 2013 (Sections 230 to 234), deal with the schemes of arrangement or compromise between a company, its shareholders and/or its creditors. **The expression merger and amalgamation are synonyms** and the word '*amalgamation*', as per Concise Oxford Dictionary, Tenth Edition, means**,** *'to mingle or come together to outline one association or structure'***.**

Even though, corporate laws may be apathetic to the dissimilar marketable forms of merger / amalgamation, the Competition Act, 2002 does pay special attention to the forms.

(1) **Horizontal Mergers**

Moreover referred to as a 'horizontal integration', this sort of merger take place between entities occupied in contending businesses which are at the same stage of the manufacturing process. Horizontal mergers take a company a pace closer towards monopoly by eliminating a contender and establish a stronger incidence in the market. The other reimbursement of this form of merger is the compensation of economies of scale and economies of scope. These forms of merger are deeply scrutinized by the antagonism commission.

(2) **Vertical Mergers**

Vertical mergers refer to the permutation of two entities at unusual stages of the industrial or fabrication process. For instance, the merger of a company occupied in the building business with a company occupied in construct of bricks or steel would lead to vertical incorporation. Companies situate to gain on description of lower operation costs and harmonization of demand and supply. Moreover, vertical combination helps a company move towards superior self-determination and self-reliance.

(3) **Congeneric Mergers**

These are mergers connecting entities betrothed in the same universal industry and to some extent interconnected, but having no widespread customer-supplier affiliation. A company uses this category of merger in order to use the consequential aptitude to use the identical sales and circulation channels to reach the customers of in cooperation businesses.

(4) **Conglomerate Mergers**

A conglomerate merger is a merger stuck between two entities in unconnected industries. The

most significant reason for a conglomerate merger is operation of financial possessions, magnification of debt competence, and increase in the value of incomparable shares by augmented influence and earnings per share, and by lowering the average cost of capital. A merger with a miscellaneous business also helps the company to incursion into diverse businesses without having to ought to have large start-up costs usually associated with a original business.

(5) **Cash Merger**

'Cash merger', also known as a 'cash-out merger', the shareholders of one unit receive cash in i place of shares in the merged entity. This is efficiently an way out for the cashed out shareholders.

(6) **Triangular Merger**

A triangular merger is frequently resorted to, for authoritarian and tax reasons. As the name suggest, it is a tripartite understanding in which the objective merges with a auxiliary of the acquirer. Based on which entity is the survivor following such merger, a triangular merger may be onward (while the target merges into the subsidiary as well as the subsidiary survives), or reverse (when the subsidiary merges keen on the target and the target survives.

Procedure under the Merger Provisions

In view of the fact that a merger essentially involves an understanding between the merging companies and their particular shareholders, every of the companies proposing to merge with the other(s) must compose an application to the Company Court having jurisdiction over such company premeditated for calling meetings of its individual shareholders and/or creditors. The Court may afterward order a meeting of the creditors/shareholders of the company. If the mainstream in number instead of 3/4th in value of the creditors and share holders there and voting at such meeting agrees to the merger, after that the merger, if legitimate by the Court, is necessary on all creditors/shareholders of the company. The Merger provision constitutes a complete code in them, and beneath these provisions Courts contain full power to authorize any alteration in the corporate configuration of a company.

For instance, in normal circumstances a corporation must look for the approval of the Court for implementation a diminution of its share capital. Nevertheless, if a lessening of share capital forms part of the corporate reorganization planned by the company under the Merger

requirements, then the Court has the authority to approve and permit such decrease in share capital and separate proceedings for reduction of share capital would not be compulsory.

Applicability of Merger Provisions to foreign companies.

Sections 230 to 234 of Companies Act 2013 be aware of and permit a merger/reconstruction wherever a foreign company merges into an Indian company. Even though the Merger requirements do not allow an Indian company to merge into a foreign company, the merger requirements under Section 234 of the Companies Act 2013 do visualize this, subject to rules made by the Government of India. However, neither is Section 234 at this time in forces nor have any regulations been formulated by the Government of India.

Essential Features of Scheme of Amalgamation

The indispensable features are rudiments intended for any format of amalgamation are as enumerate below:

(1) Determination of Transfer Date (Appointed Date)

This involves setting up of the cut-off appointment as of which all properties, changeable as glowing as steady and privileges fond of thereto are required to be transferred on or after amalgamating corporation to the combination company. This date is recognized as transfer date or the prearranged date and is usually the first day of the monetary year proceeding the financial year for which the audited accounts are obtainable with the company.

(2) Determination of Effective Date

At what time all the necessary approvals beneath a variety of statutes, via, the Companies Act 1956. The Companies (Court) Rules 1959, Income Tax Act, 1961. Sick Industrial Companies (Special Provisions) Act, 1985, would be obtained and the convey and vesting of the responsibility of amalgamating company by means of the amalgamated company would take consequence. This date is called effectual date. A method of amalgamation in general should also enclose situation to be content for the scheme to turn out to be effective.

The effectual date is significant for income tax purpose the Companies Act does not supply for such a date but it is a realistic requirement so that a court transitory an order beneath Section 394(2) production with vesting of properties in the transferee company has previous to it a significant date restricted in the format portion the rationale and in the contemplation

of the claimant companies who are gratis to choose any date which will be obligatory one. While sanctioning the scheme the court also approves this date.

The successful date may be moreover demonstration or forthcoming with situation to the submission to the court. The effect of the obligation is that a meager order for the relocate of the properties / assets and liabilities to the transferee company would grounds the vesting only from the day of that order. For tax considerations, the bring up in the order of the date of vesting is of substance consequences.

i. The proposal is supposed to state obviously the arrangements with protected and unsecured creditors counting the debenture – holders.

ii. It ought to as well state the exchange ratio, at which the shareholders of the amalgamating company would be obtainable shares in the amalgamated company. The ratio has to be worked out based on the evaluation of shares of the individual companies as per the acknowledged methods of valuation, guiding principle and the audited accounts of the company.

iii. The scheme is supposed to also offer for transfer of whole or part of the responsibility to the amalgamated company, continuance of level procedures stuck between the amalgamating and the amalgamated companies, incorporation of workers of the amalgamating company, obtaining the permission of rebellious shareholders and so on.

Application for Amalgamation

A submission for amalgamation is able to be submitted by the company, members or even any of the creditors. A constituent, in this background means any person who has approved to be a member and whose name appears on the inventory of members. A creditor includes all persons having financial claims aligned with the company for several quantities whether there or future, specific or dependent. Even one associate or one such creditor can make a submission for amalgamation. Where the relevance is planned to be made by the corporation, only a person authorized by the business in this behalf can create an application for amalgamation. It is, accordingly, obligatory that the company should to give permission the director(s) or additional officer (s) to build an application to the appropriate high courts and get hold of necessary action as may be mandatory from time to time. The directors can, although, be relevant for amalgamation simply when necessary power appears in the articles of association initially or by way of modification. Disconnect applications under Section 291

are compulsory to be submitted to the suitable high courts by the amalgamating and the amalgamated companies for the reason of the particular high courts issuing directions to assemble meetings of shareholders unconnectedly for predilection and equity shareholders to endorse the scheme of amalgamation. It is present on together the transferor and the transferee companies to acquire authorize of high courts having jurisdiction in excess of them. However, where both the companies are beneath the influence of the same high court, a joint-application may be complete such a submission can be stimulated even at what time an order for twisting up has been made. On the other hand, the transferee corporation require not obtain consent under Section 391 when the transferor company is a entirely owned supplementary of the transferor company.

DUE DILLIGENCE IN MERGERS AND AMALGAMATIONS

Due Diligence refers to the procedure of appraising, assessing and evaluating business menace by means of analysis of cost assistance which is implicated in Merger & Amalgamation. It is like annoying to discover a toggle to put on the radiance at what time in entering a dark room. The pronouncement to merge or amalgamate has to be based on measured opinion, which can be shaped only after scanning of in sequence and records available. Due Diligence embraces the appraisal course to judge the benefits in comparison with the dilemma that will be faced in post combination scenario. The method of due diligence cannot be sidestepped in Mergers and Acquisitions.

Due Diligence is a broader expression than financial audit. In financial audit, the auditors are chiefly alarmed so far as the substance accurateness of the financials and its appearance in the form of statement with a vision to provide true and fair portrait of entity's financials. The appropriate diligence procedure goes ahead of the books of account maintained through the entity and involves scrutiny of events of entity – appraisal of troubles faced by the entity, impact of lawful cases, tax assessments, concealed liabilities etc. The due diligence practice includes evaluation of cash flows – past and future, position of tax assessments and its financial impact, estimation of assets, digging out hidden liabilities subsequent to an self-governing assessment, assessment of feasibility, review of technological feasibility, assessment and analysis of in sequence knowledge security systems etc. In squat, it encompasses –

1. Appraisal of Commercial viability

2. Appraisal of Financial liability
3. Appraisal of Tax Assessments
4. Appraisal of Legal cases
5. Appraisal of Manpower Resources
6. Appraisal of compliance of laws

The due diligence method is a group work consisting of chartered accountants, lawyers, values having proficient in their own field. The evaluation, review, analysis, examination and inspection under due diligence process involve specialization and submission of mind which goes far away from fact finding exercise i.e. meager inspection of records accessible.[2]

The Chartered Accountants participate a major role in due diligence procedure and no important due diligence would be absolute devoid of their contribution. The squad, which has been, assigned the chore of due diligence follow the subsequent steps: –

1. Classification of the purpose of Merger and Acquisition.
2. Appraisal and Study of past Business operations.
3. Study of in sequence of organization within the organization.
4. Compilation of Documents.
5. Gathering of Key Information from Administration and Independent sources.
6. Distribution of review responsibilities amongst team members.
7. Anthology of findings of team members.
8. Assessment of findings.
9. Preparation of due diligence report.

Due Diligence Checklist

Step 1 – Gathering of Documents/Information from Management

1. Memorandum & Articles of Association of the entity.

[2] Nishit desai, mergers and acquisition in India, http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Mergers___Acquisitions_in_India.pdf last accessed on 20 july 2018 at 10:30pm

2. Financial Statements consisting of Balance Sheet, Profit & Loss Account, Schedules, Cash Flow Statement, Notes to Accounts, Auditor's Report and Director's Report for last 3 years or 5 years.
3. Projected Business and Income Scenario.
4. Foreign Collaboration Agreements.
5. Technical Collaboration Agreements.
6. Intellectual Property Rights – Copyrights, Patents & Trade Marks
7. Pending Litigation details with estimated financial liability[3]
8. Licenses, quota rights etc.
9. Government Approvals including Environmental clearances
10. Correspondence with Government Authorities
11. Marketing Network Details with feasibility studies
12. Brand and Goodwill Valuation
13. Internal audit Reports
14. Tax Assessments and Tax Audit Reports for last 3 or 5 years
15. Loan Agreements and Charge Certificates
16. Corporate Guarantees given
17. Lease Agreements
18. Shareholding Details
19. Technical Feasibility Reports
20. Pending Contracts/Orders in hand
21. Internal Control Systems and Processes
22. Statement of Inventory for last 3 or 5 years
23. Dealership and franchisee Agreements

[3] Supra note 2

24. Employee Contracts
25. Payroll Liability
26. Status of Statutory Dues including Labor Dues
27. Titles and ownership of Property and Assets
28. Status of Contingent Liabilities
29. Sales and Purchase Agreements
30. Pricing Policy
31. MOU's and Shareholders' Agreements
32. Joint Venture Agreements
33. Subsidiary and Associate Company Details and financials
34. Warranty Agreements
35. Insurance Policies
36. Cenvat Credit on Capital Goods
37. ESOP's and Sweat Equity Shares
38. Segment Information
39. Information Technology Systems
40. IT Security Measures
41. Minutes of Board and Committee Meetings

Step 2 – Collection of Information from Autonomous Sources

1. Industry Data
2. Independent Search of Title Deeds
3. Market Reports and Studies
4. Customer Reports
5. Product Feasibility Report

6. Past Litigation Record and Orders
7. Prosecution of Company and Directors for offences for non-compliance of laws
8. Procurement of certified copies of Financial Statements and other documents
9. Search Report for Charges and Mortgages
10. Credit Report from Bankers/Financial institutions

Step 3 – Assessment of Documents/Information

1. Over valuation of Assets
2. Under Valuation of Liabilities
3. Hidden Liabilities
4. Product warranties/claims
5. Financial Liability arising out of Pending Litigation
6. Guarantees/Comfort Letters/Letters of Credit given
7. Statutory Dues Liability including Interest and Penalty
8. Non-recoverable Assets
9. Bad and Doubtful Debts
10. Likelihood of accrual of contingent liabilities
11. Over valuation of Intangible Assets
12. Technological Obsolescence
13. Tax liabilities in future
14. Identification of Items not disclosed
15. Correctness of financial figures
16. Quality of Management and Leadership
17. Research and Development Programmers
18. Market Reputation

19. Governance policies

FAST TRACK MERGER

Fast Track merger or quick form merger is the new provision which is added in Companies Act, 2013. Fast track merger is merger between two or more small companies, holding company and its wholly own subsidiary and such other company as may be prescribed.

Fast Track merger does not involve Court or Tribunal, approval of National Company Law Tribunal is also not required. For fast track merger board of directors of both the Companies would approve the scheme. However, notice has to be issued to ROC and official liquidator and objections / suggestions have to be placed before the members. The scheme needs to be approved by members holding at least 90 percent of the total number of shares or by creditors representing nine-tenths in value of the creditors or class of creditors of respective companies. Once the scheme is approved, notice would have to be given to the Central Government, ROC and Official Liquidator. NCLT may confirm the scheme or order that consider as normal merger under section 232 of Companies Act, 2013.

Therefore Fast track merger will be a speedy process as it does not require approval for NCLT available to certain kind of truncations. It opens the scope for small companies who wanted to merge and can propose the scheme of Merger or Amalgamation through their Board of directors. There is also no requirement for sending notices to RBI or income-tax or providing a valuation report or providing auditor certificate for complying with the accounting standard.[4]

CONCLUSION

Although the 2013 Act is a pace in the right route for India Inc. and investors, it may be meaningful for the regulators to pay in regard to concerns being articulated by lawyers and corporate organizations and incorporate the obligatory amendments whereas notifying rules and issuing clarifications. Moreover, the 2013 Act seeks to make parallel other laws such as Income Tax and Exchange Control requirements to smooth the progress of its efficient accomplishment. Merely time will tell whether the 2013 Act resolve be triumphant in making

[4] Karan Gandhi and mukesh arora, key comparison between companies act, 1956 and companies act 2013- merger and amalgamation perspective, http://www.mondaq.com/india/x/411816/Shareholders/Key+Comparison+Between+Companies+Act+1956+Companies+Act+2013+Merger+Amalgamation+Perspective last accessed on 21 july 2018 at 4.30 am

M&A easier and supplementary efficient or be a legislation, which is open to understanding, leading to auxiliary disputes and litigation.

Prior to the India Companies Act, 1956 there was as such concept of merger and amalgamation but after Indian Companies Act, 2013 the concept of merger and amalgamation are added to companies law by coming of these to concept it become easier for the companies to get merged easily without facing any problem which is very helpful because merger of two companies is very beneficial. For instance a merger is where two or more business entities combine to create a new entity or company.

CROSS BORDER MERGER & AMALGAMATION

- **Under Companies Act, 1956**

According to section 394, Court can endorse arrangement between two or more Companies wherever whole or part of undertaking, property or liability of several companies referred to as transferor Company is to be transfer to another company referred as transferee company. As per this provisions of Companies Act, 1956, Inbound merger (Foreign Company merges into an Indian Company) was acceptable though, outbound merger (Indian company cannot merge with foreign Company) was not allowed. According to this section merely inbound merger is allowed wherever transferor/target Company means anybody corporate whether or not registered under 1956 Act, that a foreign company might be transferor or target company. Transferee Company means an Indian Company. Cross Border merger allowed less than 1956 Act as long as the Acquirer/transferee is Indian Company.

- **Under Companies Act, 2013**

In bounce and out bond foreign corporation merger are allowed, which means Foreign Company merging into Indian Company and Indian Company merging into foreign Company might be done with RBI approval. For that reason together these options are open under 2013 Act if foreign companies to be in notify countries, under Exchange Control Regulation, shares can be issue under Automatic route to non- resident, subject matter to certain consideration, contemplation to shareholders of merging Company may comprise cash, depository receipts or mixture of both. This section has widened the scope for Indian Companies as now they have both options of arrangement.