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CROSS-BORDER MERGERS AND ACQUISITIONS IN RELATION WITH IPR: A CRITICAL LEGAL ANALYSIS

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ABSTRACT

Merger & Acquisition (M&A) around the world, whether domestic or **cross-border**, has been used as a strategic tool for expansion, competitive advantage and wealth creation for shareholders. Increasing the number and value of foreign M&A deals shows that cross-border M&A has gained more prominence and popularity compared to market expansion strategies through the establishment of wholly-owned subsidiaries in the overseas market. Cross-border M&A's are a fast way to reach a new market. The growing popularity of cross-border M&A is partly motivated by the worldwide **liberalization** of the legal and regulatory regime. In this way, systemic and liberal regulation is required to improve cross-border M&A deals in the Indian corporate world, so the Companies Act 1956 was replaced by the **Company Act 2013**. The Company Act 2013 is expected to simplify the life of corporate India, improve **corporate governance** standards and make India an attractive and secure investment and destination. This paper seeks to discuss some key changes to the system for cross-border M&A regulation in India under the Companies Act, 2013. The paper has also focused on the reasons related to cross-border mergers and acquisitions. Since, the signing of the agreement on Trade-Related Aspects of Intellectual Property Rights (**TRIPS**) has been enhanced by a global process of strengthening and harmonization of frameworks and intellectual property rights (**IPR**s). This paper analyses whether IPRs play a role in decision-making on cross-border mergers and acquisitions (M&A's) and whether they are different for developed and developing countries and for industries with different technology material. Hence, it is concluded that IPR systems do not affect cross-border M&A decisions but encourage the formation of investment links between countries in the manufacturing sector, regardless of the technical stage.

Keywords: Merger & Acquisition, cross-border, liberalization, Company Act 2013, corporate governance, TRIPS, IPR.

I. INTRODUCTION

The corporate sector around the world has used Merger and Acquisition as a crucial method for corporate transformation in order to successfully address the obstacles raised by the current pattern of globalization. One of the most important aspects of the new M&A surge is the presence of a significant number of cross-border M&A deals. M&A has been prevalent in developing economies for a long time, but in India M&A has picked up since the implementation of economic liberalization policies by the Government of India in 1991. In this way, a more new, streamlined and nationalized regulation was enacted by the Companies Act 2013 to put our company law into line with best global practices. The new Act of 2013 incorporates pragmatic changes for M&A to make the procedure simpler, quicker and safer for businesses, some of the highlights of which include: setting up the National Company Law Tribunal (NCLT) to hear and vote on M&A proposals, reducing the risk and reach of M&A objection and making it easier for shareholders to join by postal ballot approval. The new phase of harmonizing and reforming intellectual property rights (IPR) structures is likely to have consequences for foreign ties between countries. However, the effect of IPRs on international trade, foreign direct investment (FDI), technology transfer and mergers and acquisitions (M&A's) is not evident from a theoretical or methodological point of view. In the case of cross-border M&A's, intellectual property (IP) rights are sometimes referred to as a major driving force behind an arrangement could be the relevant aspect of the importance of the target firm and the firm's ability to gain access to them. However, from a theoretical point of view, the relationship between IPRs and M&A's is still unclear.

As a relevant part of the general regulatory system, investment climate can be affected by IPR systems argues that IPR systems alone cannot explain how firms decide to invest, trade or license a product in a given country, since the decisions of firms are influenced by other factors. Indeed, the choice between FDI, licensing, and trade is likely to depend on and interact with the advantages of internationalization derived from market power, market size, transport, transaction, and labour costs. These factors, together with financial variables and the institutional system, are usually different in countries with different levels of development. The effect of IPRs on M&As may therefore also be affected differently by the level of development of the countries involved in the agreements.

This paper examines whether IPR structures would be improved over the reporting era. The post-TRIPS period (1995-2010) influenced M&A decisions using the Extended Gravity Model. Our analysis varies in a variety of ways from current literature. Firstly, most experiments using the Gravity Model concentrated on trade or FDI, while using the Gravity Specification to describe M&As. Secondly, most of the writers discussing the effects of IPRs have concentrated on FDI. Conversely, we consider the strength of IPR networks in the target countries to be a potential determinant of cross-border M&As. Thirdly, while most of the current research concentrate on single basic M&A determinants, we expect more important M&A determinants to be identified in the literature. Finally, we also research whether there is a particular influence of IPRs in sectors of different technology strength, as the impact of IPRs is usually sector-specific.

1.1 EXISTING LEGAL SITUATION

In India, Cross border is majorly regulated under (i) the Companies Act 2013; (ii) SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 2011; (iii) Competition Act 2002; (iv) Insolvency and Bankruptcy Code 2016; (v) Income Tax Act 1961; (vi) The Department of Industrial Policy and Promotion (*DIPP*); (vii) Transfer of Property Act 1882; (viii) Indian Stamp Act 1899 (ix) Foreign Exchange Management Act 1999 (FEMA) and other allied laws as may applicable based on the merger structure.

1.2 SCOPE AND OBJECTIVE

The scope of the research is limited to the study of the current legislation and focuses primarily on the new growth of cross-border M&A in compliance with the Companies Act 2013.

The prime objectives of this paper are:

1. To analyze the concept of Cross-border M&A, also

2. To analyze reason for Cross-border M&A related provisions of Companies Act, 2013.
3. To analyze Cross-border M&A related provisions of Companies Act, 2013.
4. To find out the relative importance of Cross-border M&A in corporate sector.

1.3 RESEARCH QUESTION

How does Intellectual Property Rights affect mergers and acquisitions and whether strengthening of IPR leads to any change in valuation of a company?

1.4 HYPOTHESIS

There is an increasing consensus that economic growth is concerned with institutional factors, tighter intellectual property rights only favour large corporations based in industrialized countries by enhancing their monopoly power, to the detriment of less developed countries and will affect the mergers and acquisition in today's world.

1.5 RESEARCH METHODOLOGY

The paper derives information from various documents, legislations etc. secondary data available in the form of Journals and Articles which have been referred to. The data/information so derived from primary and secondary sources has been described and evaluated through narrative analysis.

II. CROSS-BORDER MERGERS & ACQUISITIONS

Cross-border M&A means an M&A transaction between two or more companies of different countries, also referred to as overseas mergers and acquisitions. In cross-border mergers, the assets and operations of two or more companies belonging to two or more different countries are merged to form a single legal entity. In a cross-border acquisition, the control of assets and operations is transferred from a local to a foreign company, the former becoming a subsidiary of the latter[1].

Mergers and acquisitions are explained as the consolidation of companies. The terms mergers and acquisitions are defined as:
A merger combines two companies in one. Such transactions take place between two businesses/companies of the same size. Additionally, the terms of the merger are amicable and also mutually agreed by the two companies to become equal partners in the new venture.[2]

Acquisition occurs when a company buys another company. Sometimes, the purchase is friendly whereas sometimes it is hostile. Thus, a large company acquires a small company to diversify its business.[3]

Simply put, mergers and acquisitions are defined as a combining of two or more companies incorporated in two or more than two countries. Companies incorporated in different jurisdictions are going through this transition in order to improve their development and their standards in the international market. According to Section 234 of the Companies Act, 2013, read with Rule 25A of the Companies (Compromises, Agreements and Amalgamations) Amendment Rules, 2017– describes it as a merger and amalgamation of companies registered under the Companies Act, 2013 or

[1] UNCTAD, WIR 2000 p-99
[2] Deepti Sikha, 'Cross Border Merger and Acquisition: A Complete Analysis' (2020)
[3] Ibid.

the previous Act, i.e. The Companies Act, 1956 and also the company incorporated outside India in the notified foreign jurisdictions or vice versa[4].

A local company can be acquired by another company located in other countries. The entity can be a private company, a public company or a state-owned company. The merger and acquisition by foreign investors also referred to as cross-border mergers and acquisitions, results in the transfer of authority and control in the operation of the merged or acquired entity. Assets and liabilities of two entities incorporated in two different countries are merged as a single legal entity in terms of mergers. Although the process of transformation of the assets and liabilities of the local company to a foreign company; automatically, the local company will be affiliated in the acquisition process. The state where the origin of the companies that makes an acquisition is located is termed as the acquiring company. The country, where the company is to be acquired or where the target company is located is termed to be the Host country.

2.1 FACTORS CONSIDERED IN CROSS-BORDER MERGERS AND ACUISITIONS

Cross-border M&A backed by technical developments, low-cost financing arrangements and robust business conditions that have made dealers optimistic and more innovative in their growth strategies[5]. It can be used as a whole to mean transactions where operating enterprises merge with or acquire control of the whole or part of the company of other enterprises, with parties of separate national origins or home countries[6]. Depending on the flow of transactions, cross-border M&A could be either Inbound (foreign companies investing in India) or Outbound (Indian companies investing abroad). Some considerations are common to cross-border M&A, such as

- There has been a huge effect of the government regulations at all levels, such as licensing, employment law, taxation and the regulation of the subject matter.
- The potential difficulty of dealing with the laws of both countries at all stages.
- The obstacles to integration posed by diverse cultures and languages.
- National security risks and related limitations.
- Barriers to due diligence in different legal and cultural contexts.
- Restriction of trade or the conduct of certain types of industry in few countries.
- Co-ordination of intellectual property rights.
- Sharing technology or any innovation which can help in reducing the costs.
- Increase the efficiency of companies in producing goods and services.

In brief, cross-border M&A is more complicated than domestic M&A, a fair deal of thinking regarding due diligence, a qualified, and experienced due diligence team will help ensure that one has carefully considered all applicable considerations and

[4] Ibid.

[5] Earnest & Young L.L.P, "Mergers and Acquisitions in the newer of Companies Act 2013" (Feb- 2014. P-14).

[6] OECD New Patterns of industrial globalization: Cross-border mergers and acquisitions and strategic alliances 2001 p-14.

understand the legal requirements associated with ones proposed transaction[7].

2.2 REASONS FOR CROSS-BORDER MERGERS & ACQUISITIONS

Cross-border M&A's can be seen as a kind of fusion between a domestic and a foreign company. They have become topics of interest primarily because they allow businesses to penetrate new international markets and improve their ability to succeed in global markets[8]. Any of the reasons for cross-border M&A's are as follows:

1. Growth

Expansion and expansion by M&A is less time consuming and more cost-effective. Instead of going through the time-consuming process of internal development or diversification, the firm will accomplish the same target in a short time by M&A with an existing firm. Moreover, such a plan is also less expensive than the option of building the requisite manufacturing resources and capacity[9]. The building of new facilities takes time and can make it more lucrative to acquire the existing facilities of another company[10].

2. Synergy

Synergy involves working together where two undertakings pool their resources and efforts, together they can achieve greater outcomes than two separate undertakings due to reductions in operating costs viz. combined sales departments, personnel services, plant management, etc., which lower operational costs[11]. There are various forms of synergies, such as production synergy, operating synergy, financial synergy, managerial synergy, marketing synergy, etc. As an example, Mahindra & Mahindra Ltd (M&M) acquired the Jiangling Motor Company Group (JMCG) which will enable the company to enter into the tractor manufacturing synergy[12].

3. Enhance profitability due to Economic of Scale

M&A can increase the volume of production, leading to a reduction in the cost of production without raising the fixed costs. As a result, fixed costs are spread over a large volume of production, which allows the unit cost of production to decline[13]. These economies of scale emerge as a result of more intensive use of joint manufacturing capacity, research and development facilities, etc.

4. Increase in Market power and Market entry

Acquiring businesses with a good manufacturing and distribution network provides the benefit of rising market control and achieving market leadership. In order to obtain access to new markets, a multinational

[7] KPPB Law firm https//www.KPPB law, com/...inbound and outbound Mergers and Acquisitions/.
[8] Michael A. Hitt et, al, Merger and Acquisition- A Guide to creating value for Shareholders, 2001,
[9] V.K. Bhalla, Financial Management and policy, Anmol Publication Pvt. Ltd, New Delhi, 1998 p- 1144
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[13] M Pandey, Financial Management, Vikas Publishing House (P) Ltd, New Delhi, 2007. P-378

corporation tends to combine with a locally developed company that understands market dynamics and has established a customer base[14]. Cross-border M&A is a way of being or staying major players in those markets. For eg, Vodafone's acquisition of Hutchison Essar was to gain entrance into the Indian market, Whirlpool Corporation entered the Indian market by acquiring Kelvinator India, Tata-Corus merger, etc. Thus the increase in market power is one of the reasons for cross-border M&A.

5. **Global Competitiveness**

Cross-border M&A is being used to acquire global strategic power. Globalization and economic policy liberalization have pushed the corporate entity to restructure itself by M&A. In an open dynamic and globalised environment it is important for an organization to be put in a position to compete with the best in the world[15]. In order to diversify goods and industries, eliminate reliance on exports, escape political and economic uncertainty in the home country and contend with global rivals in their own territories, corporate companies are inspired by cross-border M&A. A offer to purchase the second largest U.K. in the world tea brand Tetley Tea (Tetley Group) by Tata Tea (TTL) with a view to achieving global competitive power.

2.3 EXPECTED CHANGES IN REDUCTION OF TIME IN M&A CASES

As a step towards enhancing the ease of doing business and the liberalized framework for Indian firms to enter the global market, the M.C.A(Ministry of Corporate Affairs) has allowed both In bound and Out bound mergers through the (National Company Law Tribunal) N.C.L.T approval process. Under the Old Act, it was necessary to be authorized by the High Courts of the State which had authority over the registered office of the corporations requesting approval of the M&A schemes. The new Act recommends that the N.C.L.T assume the authority of the High Courts in the form of the restructuring scheme under the Old Act, with the acceptance of the M&A scheme postponed due to time-consuming litigation before the High Courts of State. The said move is su3333pposed to help minimize the time it is currently needed to secure penalties in M&A situations.

1. **Prior approval from R.B.I. is mandatory**

Section 234(2) of the Companies Act 2013 provides that a foreign company can combine with a company registered under this Act or vice versa. However, such a merger needs the prior approval of the Reserve Bank of India. The merger scheme can, inter alia, provide for payment of the consideration in cash or in the depository receipt or a combination of the two[16]. For the purposes of this sub-section, the term "Foreign Company" denotes any company or body incorporated outside India, whether or not has a place of business in India.

2. **Central Government forming Rules in consultation with the R.B.I.**

Section 234(1) provides that the Central Government can in consultation with R.B.I, make rules on mergers and amalgamations

[14] Gurminder Kaur, Corporate Mergers and Acquisitions, Deep and Deep publication Pvt Ltd New Delhi, 2005. P-273

[15] Bhasin, “Merger and Acquisition: An Overview,” Manupatra Newslines, Vol-1, Issue-7, Dec 2006, P-11.

[16] Sec- 234(2) of the Companies Act 2013.

provided under in this section[17]. The coverage, continuity (both within and with other existing laws) and clarification of those rules would be key requirements.

3. National Company Law Tribunal (NCLT) Approval

The Companies Act 2013 establishes a new authority, N.C.L.T, which, upon its constitution, will assume the jurisdiction of the High Courts for the sanctioning of mergers. The Tribunal will consider the proposal for merger after the corporation has obtained the approval of the R.B.I and has complied with the provisions of sections 230 to 232 of the New Act and the Rules.

4. Fast-Track Merger

Section 233 of the Companies Act 2013 establishes the globally accepted concept of 'Fast Track Merger Process', which introduces a much streamlined method for mergers and amalgamations of some companies, including small companies, as well as holding companies and their wholly-owned subsidiaries. Provisions under the Company Act, 1956 which deals with conventional mergers and amalgamations are time-consuming and expensive procedures, since they require clearances from many regulatory bodies and every type of company must take this route. There was a need to improve and speed up the process for the merging of small companies, the retention of subsidiary companies and companies where the interests of third parties are not concerned. The present Act allows all these corporations to follow merger and amalgamation procedures quickly, conveniently and within a fixed period of time.

Cross-border mergers also governed by the R.B.I under the Foreign Exchange Management Act 1999 (FEMA) to harmonize the scope of cross-border mergers. RBI has published (as of 26 April 2017) the Draft Foreign Exchange Management (Cross-border Merger) Regulations 2017 (Draft Regulation) which set out certain guidelines to be followed in the case of both inbound as well as out bound merger.

5. Inbound Merger

In the light of inbound mergers, the Draft Regulation provides that the resulting Indian company may issue or pass securities to a person residing outside India in compliance with Foreign Exchange Management (transfer or issue of security by a person residing outside India) Regulation 2000.

Any borrowing or imminent borrowing by a foreign transferor that becomes borrowing by the resulting business shall comply with external commercial borrowing requirements or trade credit standards or other foreign borrowing criteria as set out in Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulation 2000 or Foreign Exchange Management (Guarantee) Regulation 2000, as may be applicable.

The subsequent Indian company may acquire and hold assets outside India as permitted under the provisions of FEMA and its rules and/or regulations. For example, the resulting company may acquire immovable property outside India for its own business and for resident purposes in compliance with the Regulation of Foreign Exchange Management (Acquisition and Transfer of

[17] Sec- 234(1) of the Companies Act 2013.

Immovable property outside India) Regulation 2015.

6. **Outbound Merger**

In the case of outbound mergers, where the resulting company is an international company:

The acquisition and holding of securities in the resulting company by an Indian resident shall be in compliance with the Foreign Exchange Management (Transfer or Issue of Foreign Security) Regulation, 2000 or the terms of the Liberalized Remittance Scheme as applicable. The subsequent foreign company is liable to repay outstanding or imminent debts in compliance with the scheme approved by NCLT under the terms of the Company (Compromise, Arrangement or Amalgamation) Rules, 2016. The subsequent foreign company may acquire, hold any assets in India or transfer any such assets under the limits permitted under the provisions of the FEMA.

In the case of both inbound and outbound mergers, where any assets or securities are acquired or held by the resulting company in contravention of the provisions of FEMA(Foreign Exchange Management Act), the resulting company shall sell such assets or securities within a period of 180 days from the date of the sanctioning of the cross-border merger scheme and the sale proceeds to be repatriated to India or outside India, as the case may be immediately through channels. The Draft Regulations mandate that all transactions resulting from cross-border mergers be reported to RBI between an Indian company and a foreign company engaged in cross-border mergers, as may be prescribed from time to time.

III. IMPACT OF IPR ON MERGERS AND ACQUISITIONS

Intellectual Property (IP) assets in cross-border M&A plays a relevant part of the valuation of the target business and a company's willingness to accessing them may be a driving force behind a deal. Nonetheless, the theory of economies sheds an unclear light on the relationship between IPRs and M&A's, in particular, at the national level. In addition, IPRs not only influence firms decisions to participate in M&A's. But also for licensing or exporting technologies that can be complementary or substitutes. Furthermore, the imitation hazard that derives from different countries capabilities are also described as a crucial aspect that forms the IPR's effects. In addition, the technology content of sectors and the level of growth Countries suggesting a range of unique characteristics are often likely to vary in M&A’s influence. A substantial share of FDI is accounted for by cross-border M&As. The signing in 1994 of the Trade-Related Aspects Agreement on Intellectual Property Rights (TRIPS) contributed to a process of global delusion and tightening of frameworks for IPRs. In this phase, the level of existing IP protection has been increased by developed countries and developing or less developed countries have either introduced new systems or adapted their existing systems to the ‘minimum standards' demanded by TRIPS. The scope of IP protection has also been broadened, covering industries or products which have long been exempt from IP protection, such as plant varieties, micro-organisms, and pharmaceutical products.

For the same the consideration can be the interaction between the structures of IPRs and target countries' imitation capacity. This interaction will depend on sector technology information, as high imitation skills in the target countries may be more likely to deter firms from cross-border M&A's, exchange or transition of technology in the medium and high technology sectors about information. Rising IP protection may be more relevant in these sectors for businesses that participate in M&A’s. Conversely, in industries where goods can be made available, easily copied, regardless of countries' imitation capacity, the interaction may be less pertinent.

3.1 FACTORS AFFECTING MERGERS AND ACQUISITIONS

The impact of IPRs can also depend on the level of development of nations. For various factors, this can occur, first, for developed countries and less developed countries, the role of innovation and the development of different technical material varies. Secondly, developed countries used to have strong IPR systems in place long before the TRIPS agreement, whereas less developed countries have recently been created adopting strong systems of IP protection. The majority of less developed countries were reluctant to tighten their IPR structures and their actual strengthening was not an endogenous reaction to domestic innovation, although some developed countries supported uniform reforms across countries. The influence of stronger IPRs depends on countries' imitation capabilities becoming more significant in countries with high imitation capabilities, but also on the fact that this interaction is more important in the medium- and high-technology content sectors.

These findings are robust for various defined situations that control endogeneity and allow it are inferred that technical variations, imitation to determine the abilities and levels of development of countries it is important to determine the IPR’s impact on M&A’s. This has relevant consequences in the context of the global strengthening and harmonization of structures for IPRs.

For several years, the primary cause of most mergers has been the urgent desire of many corporations to obtain valuable technological assets created by the fastest growing companies. In several ways, these properties are regarded as intangible assets and intellectual assets, a breakthrough technology, unique know-how, trade secrets, patents, copyrights, trademarks, knowledge databases, unique customer list, unique corporate reputation and modern business models with collectively are known as Intellectual properties. Battles with these rare assets have also powered what others have called the mania of mergers.

The value added to the businesses that own them and their ability to produce superior goods and services that achieve the highest profit margins are financially motivated by the value of these intangible assets and intellectual properties. Sometimes these assets are exceptional and hard to replicate. In several cases, the acquisitions are followed by intense auction bidding with many companies struggling to acquire the target firms with these unique intangible assets and intellectual property.

3.2 3M CORPORATION CASE

The use of M&A to obtain other companies' intellectual property is not limited to high-tech companies, but has quickly spread to many conventional businesses. Despite their internal culture of relentless innovation and new product growth, even corporations that had evolved for decades found that they simply could not keep pace with the proliferation of new intellectual property production by countless start-up companies across the United States and the globe. Instead of trying to replicate intellectual property internally, it has become more cost-efficient for businesses to obtain technology. A relevant example of this is that 3M Corporation became legendary as one of the most innovative companies in the world over the past hundred years, filling up more patents every year than most companies will in their entire lifetime.3M's entire corporate culture was also known for encouraging workers to use 15% of their work time to develop new intellectual property that literally produced 60,000 new products.By1998, however, 3M decided that it could not manage to fulfill the target requirement for its businesses to produce 30 percent of its income from goods less than four years old. Nor does 3M guarantee that the production of new goods will continue to reach its 10 percent financial growth rate simply through its own internal research and development by exchanging thousands of patents with its Central Bank. Thus, 3M changed its legendary strategy to enable each of its many heads of business division to constantly propose acquisition of businesses whose cutting-edge intellectual property and innovative research and development teams could jump start the overall rate of Corporate Finance of 3M growth well beyond what it could achieve internally. In reaching the wrenching realization that they have passed a highly efficient growth engine, 3M is not alone among conventional firms, clearly no longer adequate to guarantee survival or to achieve past corporate growth expectations. As a result, conventional corporations, partly deregulated government firms, and numerous high-tech and start-up companies are all joining the massive wave of global mergers and acquisitions today.

3.3 FAILED MERGERS AND ACQUISITIONS

There are many failed mergers and acquisitions were based on estimates and key assumptions that they were wrong or unrealistic. Classic example of these M&A valuation problem was Quaker oats $17 billion purchase of Snapple, which later was sold for only $ 300 million. Snapple's fledging beverage business with specific patents, trademarks, trade secrets, very quick growth rate of company reputation, which Quaker oats thought would be close to Gatorade's success. Snapple all the IP and intangible assets, primary distribution channel world small convenience stores that could charge expensive prices but were much harder to supply then supermarkets which sold Gatorade. These small stores could not support the huge volume of sales that Quaker oats and its banker forecast for Snapple. Price competition from other beverages in supermarket inevitably forced the profit margins for Snapple down from what convenience stores could charge. Snapple's valuable and unique new Brewing technique was reverse engineered, or copied, by many other beverage companies. Also, the market niche it had pioneered became so overcrowded with competitors selling copies of Snapple that the original Snapple's forecast growth rate, on which investment banks valuation forecast has been based, could not be sustained. Quaker oats sold Snapple, after additional large yearly Investments, for a bargain price of only $300 million to small beverage company that served convenience stores. It was highly profitable immediately. While the Snapple acquisition by Quaker oats remains a classic blunder, its valuation mistakes remain quite common.

A far worse case was Mattel, the leading toy producer that bought the learning company, youth focus interactive media firm, for $3.4 billion, then less than two years later sold it for $0 payment. In the modern digital media world, the old toy company was totally out of its depth.

A crucial market strategy is that many businesses give away a key initial IP, new technology, or a key trade secret to capture a wide variety of consumers early in order to purchase potential add-ons and later product innovations from that company. This initial product or service give away strategy has become standard practice in a number of industries: Free computer software, free new food products, free mobile handsets etc. The global growth strategy of many companies is to lock in as many potential consumers as quickly as possible to their basic structure, product or technology so that the IP of their business becomes the basic broad industry norm under which all others must function. This is however, viewed as a challenge to the valuation of M&A.

The failed mergers negotiations risk IP losses, it is important to know that a large amount of vitally important secret proprietary information about each company is shared during the intense negotiation period, as the two firms perform their due diligence investigation of the other firm prior to the final Merger. The key knowledge learned about the proposed merger partner business includes the manner in which companies' study, design and produce fresh products. The company's basic manufacturing processes, how it handles its revenues and international operations are also discussed by its potential acquisition partner in depth. If that merger fails to be completed, all the secret information divulged in that merger negotiation is now in the hands of the entire team of the other firms negotiators.

3.4 VALUATION OF INTELLECTUAL PROPERTIES

When the investor banker is called on to value a patent, trademark or copyright owned by competitor because it is a target company for a hostile acquisition, accurate information about the company specific cash flows, profits or the portion of its entire net income derived from just one of its many products is more difficult to obtain. This task requires far more estimation and in-depth research study by Strategic, financial, and market analysts.

IV. CONCLUSION

A cross border merger essentially helps in global expansion of companies. If India needs to be put on the global commercial map, it is imperative that a sound and stable legal framework pertaining to cross border mergers be devised. This is the rationale behind the introduction of section 234. The need for a cross border merger stems from the need for economic growth and achieving economies of scale. Major IPR reforms have been adopted by many developed countries in the last two decades. While there are many theoretical arguments on the positive and negative impacts of such reforms on local economies, there is limited empirical evidence on whether and how these reforms generate value for the host countries and the countries with which they do business especially at the firm level. Through the analyses of cross-border M&As performed by U.S. companies, which are an important form of foreign direct investment, a new evidence has been looked upon. The patterns of cross-border M&As are considerably influenced by IPR. Specifically, countries with significant IPRs attract more cross-border M&As, especially hi-tech M&A activity. These results are motivated in particular by deals involving targets from non-advanced economies and hi-tech sectors. Acquirers of such targets experience substantially higher advertisement impact, and after they introduce IPR improvements, the target companies often receive higher premiums.

For companies in non-advanced economies, which experience many financial product, and labour market constraints, this result has important implications. While current literature suggests that cross-border M&As could alleviate such constraints at the firm level, there are still very limited cross-border M&As between advanced and non-advanced economies. It can be seen that improving the environment for IPR protection can promote such activities and create value for participating firms. IPRs systems are likely to affect not only decisions of firms related to M&As but also trade and licensing. The design of IPR systems should therefore also consider the possible effect of these decisions and the consequences for countries in terms of innovation, transfer of technology and development.

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