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From Struggle to Success: A National Analysis of Corporate Restructuring

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ABSTRACT

The business environment is evolving quickly in terms of technology, rivalry, goods, people, places, markets, and clients. Keeping up with these developments is not enough; instead, businesses must innovate and outperform their rivals in order to constantly maximize shareholder value. Inorganic growth strategies like mergers, acquisitions, takeovers, and spinoffs are viewed as crucial engines that help businesses enter new markets, increase their customer base, reduce competition, consolidate and expand quickly, and use new technology in regards to their products, employees, and processes. Restructuring a company's internal operations may help it improve its performance, take advantage of new possibilities, and build credibility in the capital market. Additionally, it may have a significant influence on a company's market value, sometimes in the billions of dollars range. This paper will be focused on analyzing how corporate restructuring truly impacts a business and its growth in the new-age business environment.

I. INTRODUCTION

"Organizational restructuring is something that should take place within a company fairly regularly. With our modern day economy being as dynamic as it is, and with change being as prevalent as it is, companies need to be adaptive and flexible - and that requires regular restructuring."

— Hendrith Vanlon Smith Jr[2]

Globalization leads to increased competition. Such competition can be related to product and service cost and price, target market, technological adaptation, quick response, quick production by companies etc. It drives people to change and adapt and face global challenges. It not only leads to technological development but also cost cutting and value addition. Innovation and inventions happen out of necessity to meet the challenges of competition. Inorganic growth via brownfield expansions has become the need for businesses to survive in

[1] Author is a student at ICFAI Law School, Hyderabad, India

[2] Smith, Vanlon. "Quote by Hendrith Vanlon Smith Jr: "Organizational restructuring is something that ..."" *Goodreads*, https://www.goodreads.com/quotes/11234510-organizational-restructuring-is-something-that-should-take-place-within-a. Accessed 21 July 2022.

this rapidly moving modern business world. Thus, to be globally competitive and survive in the business with surplus, an enterprise needs to restructure itself.[3]

Inorganic growth strategy includes change in the corporate identity through involvement/ alliance/association with other entities. Mergers, demergers, disinvestments, takeovers, joint ventures, franchising, strategic alliances, slump sale are some options that are as a measure to achieve inorganic growth strategy. These major changes in the business are all forms of **corporate restructuring**. [4]

Since 1991, the Indian business climate has changed dramatically due to changes in economic policy and the adoption of new institutional mechanisms. While the Indian business world has benefited from deregulation and decontrol, it has only just begun to feel the effects of these developments. The promoters are the ones who are most affected, as hostile takeovers are a real possibility nowadays. Simultaneously, financial institutions with large stakes in many corporations have begun to demand improved corporate governance.

The controlled economy's operating mechanisms face additional obstacles in the changing environment. These difficulties have compelled Indian businesses to reconsider their prior methods of operation. Mergers and acquisitions are gaining recognition as a mode of expansion in India, as growth becomes increasingly important in the new economic context. This new environment requires businesses to either die or restructure through mergers and takeovers more stringently than the controlled economy did. As a result, especially since liberalization, Indian corporations have been steadily restructuring themselves through amalgamations, divestitures, leveraged buyouts (LBOs), sell-offs, spin-offs, and other means. The corporate world is currently experiencing a rapid wave of mergers and acquisitions (M&As) across all industries, which has completely reorganized the Indian business environment.[5]

The Covid-19 pandemic has caused a global slowdown in yet another scenario in which corporate restructuring will play a significant role in reviving and aiding various businesses all over the world. The risk of delisting increases when companies engage in large-scale retrenchments, massive asset downsizing, high levels of debt, and a failure to cut costs and focus on core competencies.

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[3] Dhingra, Deepika, and Nishi Aggarwal. "Corporate Restructuring in India: A Case Study of Reliance Industries Limited (RIL)." *Research India Publications*, http://ripublication.com/gjfm-spl/gjfmv6n9_02.pdf. Accessed 21 July 2022.

[4] Giddy, Ian H. "Giddy: Corporate financial restructuring." *NYU Stern*, https://pages.stern.nyu.edu/~igiddy/restructuring.htm. Accessed 21 July 2022.

[5] Bansal, Dr. Nidhi, and Dr. Saurabh Bansal. "Corporate Restructuring: A Case Study of Adani Enterprises, India." *ACADEMIA* https://www.academia.edu/27303178/Corporate_Restructuring_A_Case_Study_of_Adani_Enterprises_India Accessed 21 July 2022.

This paper will delve into the depths of the concept of corporate restructuring and the role it plays in the growth of businesses in the contemporary economy with a detailed analysis of a case study where inorganic growth via corporate restructuring has taken place on a national level.

II. What is corporate restructuring?

i) *Defining Corporate Restructuring*

Crum and Goldberg define a company's restructuring as, "a set of discrete significant measures taken in order to boost the competitiveness of the enterprise and thereby to augment its value."[6]

Corporate restructuring is the process of modifying a company's organizational structure. To address difficulties and increase value for stakeholders, this entails dramatically altering an entity's business strategy, financial structure, or management team. Employee retrenchment on any magnitude, bankruptcy, or both may be part of the company reorganization.

The following are a part of the conceptual scaffold for corporate restructuring and reorganization:

a) Management of Assets

b) Constructing new Ownership Relationships

c) Reorganizing financial claims

d) Corporate Strategies[7]

ii) *Why opt for Corporate Restructuring?*

a) Only the lowest-cost producers can survive in this period, business has to be restructured as a result of **globalization**.

b) Changes in fiscal and government policies, such as **deregulation** and **decontrol**, prompt many businesses to seek out new markets.

c) Information technology encourages many businesses to adopt new technologies in order to **develop** their **technological capabilities**.

d) **Quality improvement** and **cost-cutting** have prompted workforce reductions at both the work and managerial levels.

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[6] Crum & Goldberg [1998, p.340]

[7] "Chapter 4 Corporate Restructuring and Value Creation." *ResearchGate*, https://www.researchgate.net/file.PostFileLoader.html?id=548ffbd4d5a3f253628b466f&assetKey=AS%3A273652967247872%401442255359215. Accessed 21 July 2022.

e) The **economic value** of a currency and the implications of **foreign exchange rates**

f) The company structure has to be reorganized to focus on core business and **develop synergies**

g) One of the other objectives for business restructuring is to reduce risk through **diversification**.

h) Companies go through restructuring to **write off losses** and integrate **sick units into profitable organizations**

i) The restructuring process makes **horizontal and vertical integration easier**, removing competition and allowing the company to obtain regular raw materials.[8]

iii) *What are the various forms of corporate restructuring?*

Corporate Restructuring can be majorly divided into two forms:

- **Financial Restructuring**

Corporate financial restructuring entails reorganizing a corporation's assets and obligations, including debt-to-equity structures, in order to improve efficiency, support growth, and maximize value for shareholders, creditors, and other stakeholders. When things aren't going well and revenues are falling, a restructuring of the financial components of a corporation may be performed, maybe as a result of unfavorable economic conditions and other externalities, or even internalities. To maintain the market, survive, decrease expenses, and return to profits, management may opt to adjust its equity patterns, debt servicing schedule, and cross-holding pattern.[9]

- **Organizational Restructuring**

Organizational restructuring is defined as a process of reorganizing an organization's ownership, legal, operational, or other structures in order to make it more organized and lucrative. With some well-planned and implemented organizational restructuring, businesses can work more efficiently, become more profitable, and run better. It entails altering the organization's structure, such as lowering the hierarchy's levels, revamping job positions, dismissing excess or underperforming personnel, and changing the reporting system.[10]

[8] Bansal, Dr. Nidhi, and Dr. Saurabh Bansal. "Corporate Restructuring: A Case Study of Adani Enterprises, India." *Academia.edu*, https://www.academia.edu/27303178/Corporate_Restructuring_A_Case_Study_of_Adani_Enterprises_India. Accessed 21 July 2022.

[9] Sanghi, Vivek. "Corporate restructuring as a solution for business failures." *BlogiPleaders*, 2021, https://blog.ipleaders.in/corporate-restructuring-as-a-solution-for-business-failures. Accessed 21 July 2022.

[10] *Inspira Journals*, https://www.inspirajournals.com/uploads/Album/1267399306.pdf. Accessed 21 July 2022.

iv) *What are the different strategies or techniques implemented for corporate restructuring?*

- **Mergers**

Merger is a business strategy in which two or more companies unite, either by amalgamation or absorption. There are 4 types of mergers:

(i) Horizontal Merger: It is the joining of two or more enterprises in the same industry.

(ii) Vertical Merger: It is a merger that occurs when two companies operating in the same industry but at separate levels of the production or distribution system unite.

(iii) Co-generic Merger: It is a sort of merger in which two companies are in the same or related industry but do not sell the same products. Instead, they offer comparable items and may share similar distribution methods, resulting in synergy.

(iv) Conglomerate Merger: Conglomerate mergers bring together several types of enterprises under one umbrella organization. The goal of the merger is to make better use of financial resources, increase debt capacity, and create managerial synergy.

- **Demergers**

It's a type of corporate reorganization in which a company's business operations are divided into one or more components. A demerger is frequently used to make each of the parts run more smoothly, as they may then focus on a more focused mission.

- **Reverse Mergers**

Reverse merger is a way for unlisted firms to become publicly traded without having to go through the IPO process (IPO). In this process, a private business buys the majority of shares in a public company and renames it.

- **Disinvestment**

Disinvestment is the act of a company or government selling or liquidating a subsidiary or asset. It's sometimes referred to as "divestiture."

- **Acquisition/Takeover**

An acquirer gains control of a target company through a takeover. This type of acquisition is usually made to gain market dominance. It could be a cooperative or adversarial takeover.

There are essentially 2 types of acquisitions or takeovers:

– Friendly Takeover: With the approval of the board, one business takes over the management of the target company.

– Hostile Takeover: In this scenario, one firm takes over the administration of the target firm without the target company's consent and against its management's will.

- **Joint Ventures**

A joint venture is a business partnership between two or more companies to engage in financial activity. The parties agree to contribute equity to form a new corporation and to split the company's revenues, costs, and control. The two types of joint ventures that are recognized are:

– Project based Joint Venture: The joint venture entered into by the companies in order to achieve a specific task.

– Functional based Joint Venture: The joint venture entered into by the companies in order to achieve mutual benefit.

- **Strategic Alliance**

The term "strategic alliance" refers to an agreement between two or more parties to collaborate in order to achieve specific goals while being autonomous entities.

- **Franchising**

Franchising is an agreement in which one party (franchisee) provides another party (franchisor) the right to use a trade name, as well as certain business systems and processes, to create and market commodities / services according to particular standards.

The franchisee often pays a one-time franchise fee as well as a royalty and receives a percentage of sales revenue.

- **Slump Sale**

It is the selling of one or more enterprises or undertakings as a 'going concern' for a lump-sum sale price without assigning particular values to the assets and liabilities. [11]

III. LEGAL COMPLIANCES WITH REGARDS TO CORPORATE RESTRUCTURING

I. COMPANIES ACT, 2013

The Companies Act, 2013 (the Act) contains provisions on 'Compromises, Arrangements, and Amalgamations,' which encompass compromises or arrangements, mergers and amalgamations, Corporate Debt Restructuring, demergers, fast track mergers for small companies/holding subsidiary companies, cross border mergers, takeovers, and amalgamation of companies in the public interest, among other things. The procedural aspects of the matter, such as the format of the application are to be filed with the National Company Law Tribunal

[11] Sanghi, Vivek. "Corporate restructuring as a solution for business failures." *BlogiPleaders*, 2021, https://blog.ipleaders.in/corporate-restructuring-as-a-solution-for-business-failures. Accessed 21 July 2022.

(the Tribunal), the form of notice, and the procedural aspects of the substantive law, are handled by the Rules enacted under Chapter XV of the Act.

The following is the outline for Chapter XV.

1. Section 230-231 deals with agreements or compromises.

2. Mergers and amalgamations, including demergers, are covered under Section 232.

3. Section 233 deals with small business mergers (commonly known as fast track mergers).

4. Section 234 deals with a merger with a foreign corporation (also called cross border mergers)

5. Section 235 deals with the purchase of dissenting shareholders' shares.

6. Section 236 deals with the acquisition of a minority stake in a company.

7. Sec 237: The ability of the central government to allow for the merging of enterprises in the public interest

8. Section 238 regulates the registration of schemes involving the transfer of stock.

9. Section 239 deals with preservation of books and papers of amalgamated companies.

10. Section 240 deals with liability of officers in respect of offenses committed prior to merger, amalgamation etc.[12]

II. "SEBI (Listing Obligations Disclosure Requirements) Regulations, 2015

Regulation 37 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, provides that the listed entity shall not file any scheme of arrangement under sections 391-394 and 101 of the Companies Act, 1956 or under sections 230-234 and section 66 of Companies Act, 2013, whichever applicable, with any Court or Tribunal unless it has obtained observations letter or; no-objection letter from the stock exchange(s). Generally, stock exchanges raise queries and on being satisfied that the scheme does not violate any laws concerning securities such as the Takeover Code or the SEBI (ICDR) Regulations, Stock Exchanges accord their approval.[13]

III. THE INDIAN STAMP ACT, 1899

It is important to refer to this Act to ensure that the stamp duty that is payable on the transfer

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[12] "CORPORATE RESTRUCTURING cover.p65." *ICSI*, https://www.icsi.edu/media/portals/0/CORPORATE%20RESTRUCTURING.pdf. Accessed 21 July 2022.

[13] "Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 [Last amended on April 25, 2022]." *SEBI*, 25 April 2022, https://www.sebi.gov.in/legal/regulations/apr-2022/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-regulations-2015-last-amended-on-april-25-2022-_58418.html. Accessed 21 July 2022.

of undertaking through a merger is paid well. [14]

IV. COMPETITION ACT, 2002

The provisions of the said Act and the Competition Commission of India Regulations, 2011 are to be complied with.[15]

V. INCOME TAX ACT, 1961

Tax relief for merged / merged corporations, loss forwarding, capital gain tax exemptions, and other topics are covered. If a merger or demerger scheme involves the merger of a loss-making company or loss-making divisions, for example, the relevant provisions of the Income Tax Act and Rules must be reviewed to ensure, among other things, that the benefit of carrying forward cumulative losses is available and that these losses are assessed against the Transferee Company's profit.[16]

IV. CORPORATE RESTRUCTURING CASE STUDY

1. RELIANCE INDUSTRIES LIMITED

Reliance Industries Limited ("RIL") underwent a restructuring (split) in June 2005 as a result of differences between Mr. Mukesh Ambani and Mr. Anil Ambani, the two heirs. The complex allocation of wealth totaling $1000 billion was at the center of the RIL reorganization.

In August 2005, the RIL board approved a demerger in which the two brothers, Mr. Mukesh and Mr. Anil, ran separate businesses. By January 2006, five companies had resulted from the abovementioned demerger.[17]

Reliance Capital and Reliance Energy are two RIL Group firms that are already listed on stock markets. By the end of March 2006, the final four businesses went public.

The new RIL structure, Mr. Mukesh Ambani gained total control over:

- Core businesses of RIL along with IPCL (oil exploration, refining, petrochemicals, and textile businesses),
- Reliance Life Sciences (Biotech firm),
- Trevira (a company in Europe that manufactures polyester fibers).

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[14] *THE INDIAN STAMP ACT, 1899 Sec 1,* https://legislative.gov.in/sites/default/files/A1899-2.pdf. Accessed 21 July 2022.
[15] *MCA*, https://www.mca.gov.in/Ministry/actsbills/pdf/The_competition_Act_2002.pdf. Accessed 21 July 2022.
[16] "Tax Laws & Rules > Acts > Income-tax Act, 1961." *Income Tax Department*, https://www.incometaxindia.gov.in/pages/acts/income-tax-act.aspx. Accessed 21 July 2022.
[17] "Ver.7.pmd." *Reliance Industries Limited*, 21 October 2005, https://www.ril.com/DownloadFiles/IRStatutory/Scheme-of-Demerger.pdf. Accessed 21 July 2022.

Through the four firms, Mr. Anil gained complete control over the energy, communications, and financial sectors. The conglomerate, known as Anil Dhirubhai Ambani Enterprise, was a part of the Reliance group. These four companies were:

- Reliance Capital Ventures Ltd. (later merged with Reliance Capital Ltd.),
- Reliance Energy Ventures Ltd. (later merged with Reliance Energy Ltd.),
- Reliance Communication Ventures Ltd. (included both Reliance Infocomm and Reliance Telecom),
- Reliance Natural Resources Ltd. (included businesses in gas-based energy undertakings).

Following the Demerger, the share prices of the five businesses that were listed on the Bombay Stock Exchange (BSE) and National Stock Exchange (NSE) were referenced in different ways. The demerged share prices of the aforementioned five firms at that time totaled over ₹1235, unlocking enormous value for the owners. Prior to the reorganization, RIL's shares traded for around ₹978 per share.[18]

2. When Tata Steel Ltd. purchased Corus Group Plc. overseas, the production synergies for Tata Steel Ltd. significantly enhanced. Tata Steel Ltd. was able to combine its high quality manufacturing with Corus' cheap cost through the purchase. It led to increased R&D capacity, technological transfer, and use of a large retail and distribution network.

3. The cement division of L&T Ltd. was split off as Ultratech Cement Co. Ltd. The resultant business was subsequently transferred to Grasim Industries (Aditya Birla Group). L&T gained from the realized value of its cement division after the acquisition and was able to concentrate on their core industries, such as engineering and construction. Through economies of scale, enhanced capacity, general competitiveness, multifunctional synergies, and a merged resource pool, Grasim Ind. profited.[19]

V. Some suggestions for corporate restructuring in India?

One of the most demanding tasks for fiscal policymakers is corporate restructuring in a developing nation like India. The following list of actions may help to alleviate the concerns about corporate restructuring in India:

[18] *UIJIR*, https://uijir.com/wp-content/uploads/2020/10/15-UIJIR-523-pdf-file.pdf. Accessed 21 July 2022.
[19] Pradhan, Jyoti. "Corporate Restructuring: Types and Importance." *Taxmann*, 24 September 2021, https://www.taxmann.com/post/blog/corporate-restructuring-types-and-importance/#Types-of-corporate-restructuring. Accessed 21 July 2022.

- The government and management must provide guidance in setting restructuring precedents, discussing market collapse, and making changes to the legal and tax systems, especially during the next round of the financial crisis when business agony is all-encompassing, due to India's central organization and intimidating political environment.
- For successful business restructuring, a solid legal, regulatory, and accounting foundation needs to be established. Important legal considerations for restructuring include regulations on mergers and acquisitions, foreign investment laws, and foreclosure procedures.
- Effective steps should be implemented right away to mitigate the social costs of crisis and reformation.
- Restructuring should be based on a comprehensive and transparent approach that includes corporate and financial restructuring.
- Government should be prepared to play a significant role as soon as a crisis is assessed to be systematic.

VI. Conclusion

Due to the quick changes in the business over the years, corporate restructuring has gained a lot of popularity, especially in the last 20 years. Due to factors such as globalization, liberalization, technical advancement, etc., business enterprises now confront stronger than previously competition from both domestic and international company groupings.

Corporate restructuring primarily aims to increase investor wealth by identifying new opportunities for collaboration, economies of scale, better financial and advertising conditions, improvement and decreased income instability, improved stock management, growth in the domestic market share, and furthermore to seize rapidly expanding global markets abroad.

It's not easy to make the reconstruction successful since we are not only bringing together two associations but also coordinating the members of two associations with different societies, inclinations, and mentalities. For the success of corporate restructuring, meticulous reconstruction planning that includes directing adequate due perseverance, feasible connection between the combination, submitted and competent administration, and speed at which the coordination plan is included is essential. It is crucial when making restructuring offers to examine both the social and individual concerns of both parties for proper post-procurement incorporation in addition to the financial aspects of the secured organization.

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11. “Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 [Last amended on April 25, 2022].” SEBI, 25 April 2022, https://www.sebi.gov.in/legal/regulations/apr-2022/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-regulations-2015-last-amended-on-april-25-2022-_58418.html. Accessed 21 July 2022.

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13. “Tax Laws & Rules > Acts > Income-tax Act, 1961.” Income Tax Department, https://www.incometaxindia.gov.in/pages/acts/income-tax-act.aspx. Accessed 21 July 2022.

“14. MCA, https://www.mca.gov.in/Ministry/actsbills/pdf/The_competition_Act_2002.pdf. Accessed 21 July 2022.

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