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A Comparative Study of M&A Laws between India, Bangladesh, and the USA and Their Deals in Pre and Post-Covid Period

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ABSTRACT

Mergers and Acquisitions (M&A) have become an extensive phenomenon activity to perform nowadays, and their value is dramatically growing in worldwide especially in the United States and Europe with the belief that two companies together are more valuable than existing separate companies. First, we have explained the impact of the Covid-19 crisis on M&A and various other sectors including their M&A transactions. Secondly, to lay the foundations for a better understanding of M&A processes in general, we explained the M&A and its different terms in a comprehensive way. We found that diversification of products, cutting costs are the main reasons for M&A. After that, we have highlighted the trend of M&A by detailed contrast and comparison of M&A structure of USA, Bangladesh, and India. While no review of these topics can claim to be comprehensive, we do attempt to present a good variety of literature approaches representing not only elite scholarly journals but also some important practitioner-oriented books and articles.

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ABBREVIATIONS

BSEC	Bangladesh Securities and Exchange Commission
BDT	Bangladesh Taka
BTRC	Bangladesh Telecommunication Regulatory Commission
BPDB	Bangladesh Power Development Board
CCI	Competition Commission of India
CFIUS	Committee on Foreign Investment in the United States
DTAA	Double Tax Avoidance Agreement
DOJ	Department of Justice
DoCoMo	Do Communications over the Mobile network
FMCG	Fast-Moving Consumer Goods
FTC	Federal Trade Commission
GDP	Gross Domestic Production
GNP	Gross National Income
GSK	GlaxoSmithKline
IDRA	Insurance Development and Regulatory Authority
IMAA	Institute of Mergers, Acquisitions and Alliances
IP	Intellectual Property
ICB	International Commercial Bank
LDCs	Least Developed Countries
NCLT	National Company Law Tribunal
S&P	Standard & Poor

SEBI	Securities and Exchange Board of India
SEC	Securities and Exchange Commission
SME	Small-to-Medium Enterprises
UN	United Nation
USA	United States of America
USD	United States Dollar
U.S.C	United States Code
USC	United States Congress

INTRODUCTION

Since 2000, more than 7,90,000 transactions have been announced worldwide with a known value of 57 trillion USD. In 2018 the number of deals has decreased by 8% to about 49000 transactions, while their value has increased by 4% to 3.8 trillion USD[1]. 2020 was the worst year in terms of the number of deals completed since 2014 and 10,000 deals were closed in the first four months of 2021. Many went bankrupt due to the ongoing pandemic, and many were acquired by the big giants.

The outbreak of the Covid-19 pandemic is an exceptional daze to the Indian economy. From the beginning of February 2020, every nation has gone through numerous changes in the context of employment, GDP, banking, transportation, businesses, agriculture, etc. In the virtual press conference on World Health Day & Covid-19, Dr. Takeshi Kasai (WHO Regional Director for the Western Pacific) said "Foreign workers in some countries, people in informal urban settlements, and migrant communities can face more difficulty with living conditions and access to healthcare"[2].**Impact On Various Sectors** - **Agriculture** is considered the most crucial sector for the Indian economy but due to the crisis, it has failed in inter-state transportation services of agricultural goods because of which farmers have to incur huge losses. On the other hand, **Education** sector has also gone through some major downfalls as institutes are shut down and students mustlearn through online materials rather than the more effective practical aspects. **Healthcare** is an important need during this pandemic but the fear of getting infected with the virus has restricted people to go to clinics and hospitals and even hospitals are mainly focusing on Covid-19 patients and ignoring others, so most of the citizens must go for telemedicine. **Commerce** and **Industry** is also suffering as the government has issued guidelines for maintaining social distancing, so employees must work from home. The market is declining as consumers are going outside to buy only healthcare and FMCG products. **Security/Defence** has also get affected by Covid-19 because of the lower supply chains and manufacturing facilities of defense companies. As we can see, almost all the sectors have been affected due to the Covid crisis, M&A (Mergers & Acquisitions) has not been left behind being affected in this current phase.

BASIC UNDERSTANDING OF MERGERS AND ACQUISITIONS

1. What are Mergers and Acquisitions?

The jurisprudence of M&A is based on Common English saying, 'UNITY IS STRENGTH'. Every business model when incorporated goes through various challenges and the foremost challenge that comes is – Fund Raising and Risk Bearing capacity of a business. The government of India has set certain guidelines that need to be followed by corporate entities, the failure of which might result in a business loss and reputation. As to study more about mergers and acquisition, one must know that these two terms are often used interchangeably. However, the difference lies in their implication.

MERGER is 'to unite two things which means it is a combination of 2 entities where either one entity will lose its existence or both and that entity will transferall its assets and liabilities to the other.

E.g.: 'ABC Ltd.' and 'XYZ Ltd' are the two companies that are performing a merger. Now, either both will lose their existence, or they will unite as one. Like – either 'EFG Ltd' will form i.e., a new company or XYZ Ltd. Will emerge (if ABC is emerging to XYZ)

ACQUISITION is 'to acquire or takeover other entity' which means when one company purchases a share of the other company to take control by acquiring 50% or more of its shares. This will allow them to make decisions independently about newly acquired assets. It generally occurs with target company approval amicably and if not then it is done forcefully which is known as a takeover.

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[1] *M&A Statistics*, IMAA available at https://imaa-institute.org/mergers-and-acquisitions-statistics/

[2] *Virtual press conference on World Health Day and Covid-19 in the Western Pacific*, World Health Organisation available at https://www.who.int/westernpacific/news/speeches/detail/virtual-press-conference-on-world-health-day-and-covid-19-in-the-western-pacific-7-april-2021

For e.g. 'A Ltd.' Acquired 'Z Ltd.' By taking 75% of its equity shares.

How merger is different from Acquisition/Takeover

- A merger is mutual consent where both the parties agree as one entity whereas in acquisition there is a domination control on the target company.
- In a Merger, the new entity is formed whereas in acquisition no new entity is formed.
- The merger is done amicably whereas in a takeover it is done forcefully without the consent of the target company.

PRE& POST COVID CONDITION Of M&A INVARIOUSCOUNTRIES

The global turmoil caused by the Covid-19 pandemic has spread concern about the economic downturn and for its recovery. As the pandemic has its negative impact on almost all sectors, it has also opened some new refreshing opportunities for certain businesses. According to the S&P Global Market Intelligence, the number of closed deals in Q1 of 2020 decreased by 18.7% versus the Q1 average over the last 3 years while the drop in overall transaction value was even more pronounced at -29.2% versus the same time. As the pandemic continues into Q2 of 2021 the negative impact on the M&A totals and values is expected to grow. The transaction values by region declined across the world. Overall values declined 34.5% with the largest drop occurring in the Latin America and Caribbean region (-63.5%), followed by Asia Pacific (-52.0%) and the United States and Canada (-34.0%).[3]

M&A deals in Various Sector

Industrial: As of Q1 2020 to Q1 2021, the transactions in the Industrial sector have increased from the US $90.3 bn to US $193.3 bn. According to S&P Global Market Intelligence, E&Water Solution (South Korea) has acquired Dangjin also a South Korea-based company for a value of US $35.2 bn which is the biggest deal in Q1 2021 in the Industrial sector.

Telecom: Online services are enormously used in this social distancing movement, so the telecom and digital space department are already shown huge growth in this pandemic. Reliance industry acquired Future Group's business for a value of around Re. 24,713 crore and Facebook's investment in Jio platforms worth USD 5.7 bn is an attestation for the same.

Education: As we know that due to pandemic, education centres are also closed and are moderating online because of which the value for the EdTech industry is highly increasing and has become a good platform for investment. For example, Byju's, the brand name for Think and Learn Pvt. Ltd. has acquired White hat Jr for $300 million in an all-cashdeal. Unacademy has acquired majority stakes of Mastree, an online learning platform that provides lessons in science, technology, engineering, arts, and mathematics for students of classes 5th to 8th for a total value of $5 million.

Healthcare: If we compare the M&A activities of Q1 2020 with Q1 2019, the transaction value in the healthcare department has decreased from US $127.47 bn to US $75.72 bn which means -46%. Reliance Industries Limited acquired equity stake ownership of Netmeds (also known as Vitalic Health Pvt. Ltd.) with a value of around Re. 60 crores. This deal is one of the most important deals in this Covid-19 crisis.

M&A Structures of Developed, Developing and Least developed Countries i.e., USA, India, and Bangladesh

Firstly, we must understand the concept of these three categories. The classification of countries is based on the economic status such as GDP, GNP, per capita income, industrialization, the standard of living, etc.[4]

Developed Countries The countries with a sovereign state, whose economy has highly progressed and possesses great technological infrastructure, as compared to other nations. E.g.: USA

Developing Countries, the country with low industrialization and low human development index is termed as developing countries. E.g.: India

Least Developed Countries (LDCs) The countries with low-income resisting structural hindrances to sustainable development with low levels of human assets. E.g.: Bangladesh

Developing Country: INDIA

Regulatory Bodies &Legislations

- **COMPANIES ACT, 2013 –** It is the legislation that governs every company in India. Being a corporate structure, it must comply with the various provisions, rules and regulations provided in the Companies Actand chapter XV i.e.,

[3] *Global M&A by the numbers:Q1 2020,* spglobal available at https://www.spglobal.com/marketintelligence/en/news-insights/blog/global-ma-by-the-numbers-q1-2020

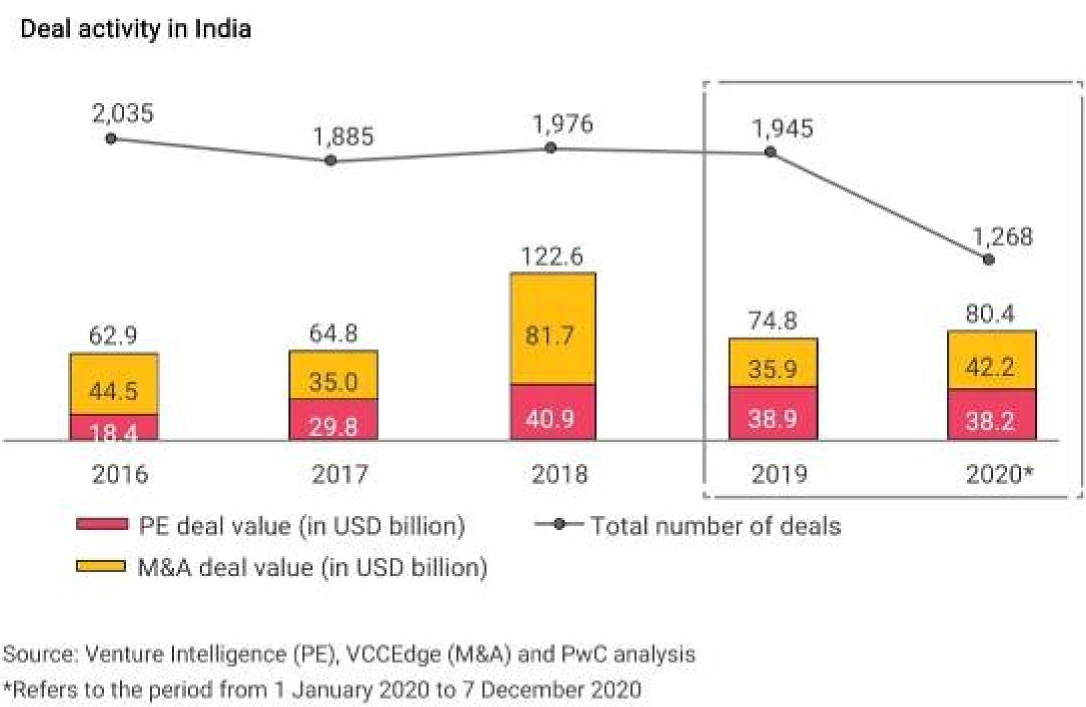
[4] *Difference between developed and developing countries*, Key Differences https://keydifferences.com/difference-between-developed-countries-and-developing-countries.html

Compromises, Arrangements and amalgamations deal with provisions of mergers and acquisition rule which company needs to comply with.

- **COMPETITION ACT, 2002** – This law has been made to make sure that no company abuses its dominant position in the market. The Competition Commission of India (CCI) has been monitoring the M&A deals in a manner that does not hamper public interest at large. Section 5 and 6 of the Act and the CCI Regulations, 2011 are the main laws dealing with this.
- **SECURITIES LAWS** - The securities and exchange board of India has been established to adhere to the purpose of regulatory capital and securities market in India. It regulates the market for public listed companies. When the shares are listed on the stock exchange, approval of SEBI is required. Regulation of the SEBI Regulations, 2015 states that the scheme of arrangement must not violate the provisions of securities law.
- **FOREIGN EXCHANGE LAWS -** India became the 7th largest economy soon after independence when liberalization was introduced. This boosts the confidence of foreign countries to invest and do business in India. Now, foreign investors started acquiring and merging with Indian organizations which results in the inflow and outflow of foreign exchange reserves. The deal or the transactions must follow the guidelines laid down by the Reserve Bank of India.
- **TAX LAWS –** The tax treatment in India is being governed by Income Tax Act,1961 which allows the companies to follow the tax procedures and claim financial tax benefits. To avoid double taxation India has signed an agreement with DTAA also known as TAX TREATIES with many countries. As per the Companies Act 2013, an Indian company can merge into a foreign company, but this is not categorized in Indian Income Tax laws.
- **INSOLVENCY AND BANKRUPTCY CODE, 2016 -** It is also a governing law that focuses on the dead or distressed assets of the company.
- **IPR LAWS -** When a company follows the mergers and acquisition process, intangible assets also get transferred to acquiring company which includes copyrights, patents, trademarks, design, etc., and for which one needs to abide by IPR laws.

Market Status of M&A in India

Market Dependency and uncertainty are the major factors of concern for any investor throughout the world. Despite challenges faced by the global pandemic, India made a remarkably outstanding performance in few areas of M&A in 2020. The Information Technology sector stands strong and raised $20 billion in the middle of lockdown. This price was raised by Jio platform when Google and Facebook acquired 77% and 10% stake in a global lockdown. Covid-19 made a decrease in deal count from 461 deals in 2019 to 382 in 2020 whereas inbound activity by value was at its highest since 2013 at $49.1billion, whereas outbound activity declined by 13% in value, to $1.76 Billion.



Developed Country: USA

Regulatory Bodies and Legislations

Regulation of M&A activity falls within the dual jurisdiction of the federal government and the individual state in which the target company is incorporated[5]. Generally, the federal government regulates sales and transfers of securities through the Securities and Exchange Commission (SEC), and policies competition matters through the Antitrust Department of Justice (DOJ) and FTC. Other federal agencies impose additional requirements over acquisitions in certain regulated industries.

Three laws govern M&A structure in the USA-

1. **Section 7 of the Clayton Act**

It is the key substantive US Antitrust law governing M&A in the USA which makes it illegal if followed certain conditions.
- Where directly or indirectly acquire other's stock or asset where the acquisition is reasonably likely to create less competition or tend to create a monopoly/market power. Such activity may also be illegal under Sherman Act § 1.
- Allows for procompetitive justifications.

It applies to a range of acquisitions including
- Exclusive license to IP Rights.
- Mergers and consolidation
- Setting up of non-corporate entities.
- Formation of Joint ventures

2. **The Hart-Scott-Rodino Antitrust Improvements Act, 1976**

The purpose of this Act is to allow the Department of Justice and the Federal Trade Commission the ability to review certain mergers and business combinations before they happen to make sure that consumers will remain with many choices in the marketplace.

To be reportable, the acquisition must meet two tests:
- **Size-Of-Person's test** - it is met if one person involved in the transaction has total assets or annual net sales of U.S. $13 million or more and another person involved has total assets or annual net sales of U.S. $130.3 million.
- **Size of Transaction**- It is met if the value of the transaction exceeds the U.S. $65.2 million. The Notification and Report Form that must be filed with each of the Enforcement Agencies requires a variety of information including:

A. Subsidiaries
B. Stockholders
C. Competitive overlaps between parties
D. The transaction
E. Operations of parties
F. Revenue of parties
G. The transaction

Failure to comply with the Hart-Scott-Rodino Act may result in a **monetary penalty of $43,280 per day**.

3. **The Exon-Florio Amendment to the Defence Production Act, 1950**

It is a law that is made to protect the interests of the United States. Exon-Florio authorizes the president of the U.S. to suspend, prohibit or rescind any transaction which would result in the control of U.S. business by a foreign person. CFIUS i.e., Committee on foreign investment in the United States and this committee can also initiate a transaction if:
- CFIUS believes that it threatens national security.
- The transaction is a foreign government-controlled transaction

Section 721(50 U.S.C. App. 2170) - Authority to review certain mergers, acquisitions, and takeovers.

[5] *Mergers and Acquisition,* ICLG
https://iclg.com/practice-areas/mergers-and-acquisitions-laws-and-regulations/usa

Market Status of M&A in USA Jurisdiction

YEAR	M&A DEALS (US TARGETS)	AGGREGATE DEAL VALUE	M&A DEALS (USACQUIRORS)	AGGREGATE DEAL VALUE
2018	11091	USD 1.96 T	12111	USD 2.04 T
2019	11369	USD 1.90 T	12588	USD 1.89 T

However, M&A deals were rapidly increasing whereas their value is decreasing which means that few sectors were showing larger growth in 2019 initially are -

1. HEALTH
2. IT SECTOR
3. FINANCIAL AND BUSINESS SERVICE
4. ENERGY

Though, there were few deals which are of highest in 2019 are-

- Myer Squibb's company's USD93.5 billion acquisition of Celgene Corporation.
- United Technologies Corporation's USD89.7 billion acquisition of Raytheon Company.
- Fidelity National Information Services, USD42.6 billion acquisition of Worldpay, Inc.

But,
Like in many other countries around the world, Covid-19 has impacted mergers and acquisition deals of the USA in big numbers. On a massive scale, thousands of businesses shut down and many have filed for bankruptcy, workers have been laid off or granted temporary leave. The M&A world has recovered from the internet bubble in the late 1990s and the Great Recession of 2007-09 but this pandemic not only affected everyone in terms of the financial system but also in terms of spending power of buyers to get deals done, due diligence process, deal structures.

While covid-19 was spreading in other countries during January and February of 2020, the USA was still out of danger at that time. In Mid March, it spread massively resulting in lockdown. But as soon as the USA emerged from the lockdown and business began to open, the USA market deal started booming resulting in an increase of 349% in value relative to Q2020. Both Strategic and financial M&A decreased during Q1-Q3 in 2020. In Q1–Q3 2020, private equity buyouts accounted for US$148.1 billion in deal value across 896 deals, which were decreases of 31% and 21.7% respectively relative to Q1–Q3, 2019[6]

Least Developed Country (LDC): BANGLADESH Regulatory Bodies and Legislations[7]

- **COMPANIES ACT, 1994-** Bangladesh's M&A is governed by both Industry-specific laws and Commercial laws. The Companies Act 1994 is not exhaustive but of course, includes a wide number of conditions for a transfer of shares in an acquisition. When a merger is into consideration, the party must resort to sections 228 and 229 of the legislation as these are the powers to compromise with the creditors and members and facilitate concluding arrangements. Further, Section 230 of the Act provides for the provisions of power to acquire shares of shareholders dissenting from the schemes or contracts approved by the majority.
- **THE CONTRACT ACT, 1872 -** The Contract Act, 1872 is the chief Contract Law in Bangladesh as it includes important transactional documents require in an M&A deal such as joint venture, shareholders' agreements, share purchase agreement, etc. It possesses certain key legal terms which are required to validate any transaction, e.g., free consent, Acceptance and revocation of proposals coercion, misrepresentation, unlawful considerations, certain obligations of parties to contracts, devolution of joint rights, the performance of reciprocal promises, and see more formalities to avoid any uncertainty in the process of the contract.
- **BANGLADESH SECURITIES & EXCHANGE COMMISSION, 2018 -** Various Acts and Rules have been promulgated under Bangladesh Securities and Exchange Commission (BSEC) Act, 1993. The BSEC (Substantial Acquisition of Shares & Take over), 2018 is the most formulated rule for the takeover which has replaced the same rule promulgated in 2002. Though the BSEC is the key regulatory body for M&A transactions in Bangladesh, there is no mandatory rule to consult or seek permission from BSEC for undertaking an M&A transaction

[6]*The Mergers and Acquisition Review- the USA*, The Law Reviews, available at https://thelawreviews.co.uk/title/the-mergers-andacquisitions-review/usa

[7]*Legal Environment for Mergers & Acquisition In Bangladesh*, The Financial Express available at https://thefinancialexpress.com.bd/views/views/legal-environment-for-mergers-and-acquisitions-in-bangladesh-1567435642?amp=true

unless the paid-up capital being BDT100 million ($1.25 million) or more. Besides the BSEC, depending on the sector, Bangladesh Telecommunication Regulatory Commission (BTRC), Bangladesh Power Development Board (BPDB), Bangladesh Bank and Insurance Development and Regulatory Authority (IDRA), may come up in the role.

- Apart from the above key regulatory body and Legislation, Bangladesh has almost all the laws formulated, such as, **section 15** of **The Competition Act, 2012**, which prohibits direct or indirect takeover by any person that would have a destructive effect on competition, **The Environment Conservation Act 1995**, **The Forest Act, 1927, The Bangladesh Labour Act, 2006** and **section 18** of **The Foreign Exchange Regulations Act, 1947** which mandates that permission has to be obtained from Bangladesh Bank for any act of a company ceases to be controlled.

Market Status of M&A in Bangladesh

The Economy of Bangladesh has emerged as one of Asia's remarkable and the UN recommend graduation of Bangladesh from the category of LDC is perfect evident for it. Bangladesh has seen some of its biggest successful M&A transactions during 2018 and 2019.

A record has been set when Akij Group sold, Dhaka Tobacco, its entire business to Japan Tobacco Inc for an amount of $1.47 billion in November 2018. In the same year, Nuvista Pharma Limited, a subsidiary of Organon Holding BV, The Netherlands was acquired by Bedimo Pharmaceuticals Ltd is a notable acquisition in the sector.

In 2020, Unilever has acquired 82% shares of GlaxoSmithKline (GSK) Bangladesh Limited for a total value of 20.2075 billion Bangladeshi taka while general investors own the rest of 18% of its shareswas a record-breaking M&A deal. In the same year, Akij group acquired Janata jute mills (one of the most profitable jute product makers) for around 700 crores Bangladeshi taka.

If we look at the telecom sector, the purchase by Malaysia's Axiata of telecom operator Aktel, Warid telecom by Airtel, Sheba telecom by Orascom and Oriental Bank by ICB financial Group, shares of City Cell by Singtel and Aktel's shares by NTT DoCoMo were some notable M&A transactions.

Comparison between Market Structure ofIndia, USA, and Bangladesh

1. Legislations Governing M&A

INDIA

- Companies Act, 2013 (Key Regulatory body governing companies).
- Competition Act, 2002 (Responsible for fair and healthy competition in the market).
- SEBI Regulations, 2015(Regulatingcapital and securities market for public listed companies).
- Foreign Exchange Laws (Encouraging of foreign investors to invest in Indian Market)

USA

- Section 7, Clayton Act (Prohibits M&A which reduces competition or creates a monopoly in the market).
- Hart-Scott-Rodino Act, 1976 (Prohibits certain M&A until they have made a detailed filing with the U.S).
- Exon-Florio Amendment, 1950 (Law enacted by United States Congress (USC) to review foreign investments within the US).

BANGLADESH

- Companies Act, 1994 (Key Regulatory body/act to consolidate and amend the law relating to companies).
- Contract Act, 1872 (Includes important elements and obligations required for a legal merger, acquisition, or transaction of assets).
- Bangladesh Securities and Exchange Commission, 2018 (Chief organization to protect the interest of investors in securities & to develop the securities market).

2. Are Hostile Bids Allowed?

A Hostile bid is a particular type of bid where an acquiring company directly attempts to take over the target company without the consent of the management (directors, members, etc.).

INDIA

Hostile bids are allowed as it facilitates M&A growth, increases competition, and encourage capital market development. In India, **regulation 3** of the **Takeover Regulations** requires a hostile bidder to make an open offer obtaining 25% of voting rights in the target or acquiring ‘control’ under **regulation 4**. While **Regulation 18(11)** of the Takeover Regulations obligates the acquirer to obtain all statutory approvals.[8]

[8] *Competition Regulatory Framework Governing Hostile* Takeovers In India, India Corp Law https://indiacorplaw.in/2020/06/competition-regulatory-framework-governing-hostile-takeovers-in-india.html

USA

Hostile bids are allowed in the United States and are governed by federal laws and the law of the state of incorporation for the target company. Under federal regulation or Williams Act, **Section 14d** of the Securities Exchange Act of 1934 and **Regulation 14D** require a bidder to make specific disclosures to security holders.

BANGLADESH

Though hostile bids are allowed under the **Substantial Acquisition of Shares and Takeovers Regulations 2002** in Bangladesh, most M&As in Bangladesh so far have been friendly because of the mindset of traditional business people who consider it taboo to sell a business and there is no proper policy for the transfer of foreign reserves as Bangladesh still follows the one established in 1946.

3. Ways To Control Public M&A

INDIA

- **Shares Acquisition –** It is stated under the **Takeover Regulations** that a bidder must have to make an 'open offer' to the public shareholders of the target company upon a substantial acquisition of shares or voting rights or acquisition of control of the target company, directly or indirectly.
- **Scheme of Arrangement –** It is a binding agreement between a company, shareholders and creditors and required the consent of National Company Law Tribunal (NCLT) to execute arbitrary changes in the structure of a business and thus are used when a reorganization cannot be achieved by other means.

USA

- **Cash tender offers/Exchange offers –** A tender offer is a bid to purchase shareholders' stock of a corporation. On the other hand, an exchange offer is a specific type of tender offer in which securities or other non-cash alternatives are offered in exchange for shares. However, cash tender offers are subject to certain requirements including a minimum offer period of at least 20 business days, withdrawal rights, best-price rule, etc.
- **One-Step Statutory Merger/Traditional Merger –** As stated by US state corporate law, a one-step merger is a merger between two companies in which one of the two companies will continue to survive after the transaction has been completed. Also, A one-step merger cannot be completed on a hostile basis without the approval of the target's board of directors.[9]

BANGLADESH

As earlier mentioned, the Public M&A market is very rare in Bangladesh. The market is mainly controlled by Private M&A over there. However, public M&As are obtained by the following methods :

- **Shares Acquisition –** Shares can be acquired by purchasing existing equity in the target from another shareholder or by subscribing to fresh equity in a company.
- **Merger (amalgamation) –** The target company assets and liabilities are transferred to the acquiring company and then the target company dissolves following a court order.
- **Demerger –** To avoid tax inefficiencies, the target's possessions were demerged from the target under a court order and then transferred to the buyer.

4. Cross Border Merger

A cross-border merger is a merger of two companies that are in different countries resulting in a third company. It is another important contributor to the growth potential of M&A as companies not only want to introduce their brands in the local market but also to foreign countries which might result in huge profits and fame for them.

INDIA

Globally, India is one of the fastest-growing economies and its immense market potential has attracted significant interest in an Indian economy. Major growth is because of the inflow of FDI (Foreign Direct Investment) into India through cross-border mergers and acquisitions. There has been enough promising evidence of increasing depth and maturity with an estimated real annual gross domestic product (GDP) growth rate of 8.8% in 2021,[10] owing to a strong capital market and market-friendly and competitive, regulatory reforms. Section 234 of the Companies Act 2013 provides the legal framework of the cross border in India.

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[9] *One-Step Statutory Merger*, Thomson Reuters Practical Lawhttps://uk.practicallaw.thomsonreuters.com/w0182217?transitionType=Default&contextData=(sc.Default)&firstPage=true

[10] *Real GDP Growth, IMF Data Mapper*, India, International Monetary Fund (October 2020) (Jan. 02, 2021) https://www.imf.org/en/Countries/IND ; Sridhar Rama Subramanian, Expert Speak on the Overall Economic Outlook, 16(4) GTILLP 1, 25 (2018)

There is a rise from 2001 to 2014 with a CAGR of 22%, and the highest recorded in 2009 which is Rs905 Bn followed by the 2011 deal of Rs 782.77 Bn. This growth strategy had motivated various researchers to investigate the outcome of such cross-border mergers and acquisitions activity in terms of profitability and various other factors.

USA

Due to covid-19 and global geopolitical tension, international M&A activity declined in the year 2020 and due to the ban on foreign travel, the corporates were worried to accept virtually due diligence in foreign jurisdictions. But to strengthen supply chains and increase their growth, corporates had to accept the new normal which resulted in an increase in cross-border activity in the second half of 2021.

The first quarter of 2021 saw the highest volume of cross-border M&A since 2017 which is a remarkable development in a global economy entering its second year of pandemic. There has been an increase of 78% in volume of deals from Q1 of 2020 and a 68% increase over the Q1 of 2019[11]. In the total US made a deal of total $120.9 Bn which is the highest in the world. The deals for 2021 in the cross border are remarkably high and show us a green signal which tells us that corporate has accepted 'new normal'.

BANGLADESH

It is one of the underdeveloped countries and this is the one reason that M&A remained at a beginning stage in most sectors of the economy. At the end of 2018, Bangladesh reported the biggest cross-border acquisition where JTI (Japan Tobacco International) acquired the tobacco business of local Akij Group valued at 1.47 Bn. The country is ripe for M&A deals, both local and cross-border in the technology, finance, and e-commerce sector. The factors to decide the structure is operational considerations, including control over a particular corporation or its shareholders, and tax implications and approval from relevant government authorities are required.

What could be done?

Now, if we look upon the effective measures followed by Developed and developing countries like in USA and Bangladesh, it can be observed that the SMEs (Small-to-Medium Enterprises) are well functioning in these countries as it is an important aspect in economical growth. Successful SMEs end up forming a large corporation and M&A can be instrumental in such growth. But to successfully build an SME, owners, CEOs, Bankers,

Accountants, HR, need to have deliberate knowledge of M&A and that's when the role of M&A advisors came up in functioning. The other barriers to M&A growth are conflicts, insecurities, ineffective utilization of resources, etc. To overpower these challenges, investment banks, large corporate industries, and the Bangladesh government need to shift focus to the M&A sector and other corporate industrial services. However, Bangladesh has the potential to become a high-income country in the future, but today it has to come up with new policies and adopt M&A as a crucial strategic tool for reinvigorating the financial sector. Also, the participation of the Banking sector in Bangladesh has become vital for reviving stagnant economic activities. Big corporates need to shift their priority by focusing not only on big deals that generate huge income but also on small deals as it may help in the long run by getting huge returns to any company.

WAY FORWARD

Mergers and Acquisition is one the fastest growing industry in the world. After the recession of 2007-08, the covid period brought a slight decline in the volume and amount of deals but the corporate world accepted this time by trusting their target companies and conducting due diligence virtually. Many of the companies went bankrupt, and many of them were acquired by big giants. According to the M&A trend survey, 42% of the people are interested in exploring non-traditional M&A given economic and political uncertainty and 51% believe that there is going to be a cyber threat as companies are now opting for virtual data room. On the other hand, Artificial Intelligence (AI) will be having a huge impact on M&A as it can gather information from multiple markets and sectors and compare them to identify acquisition opportunities that likely offer the best ROI.[12]

While going for any deal it is important to check its digital value as a target value having a large team of data scientists, full-stack developers can be attractive for a company lacking technical depth and this is how any transaction works. M&A created a boom in the market in its second quarter of 2021, as corporate started adopting the problems held by the pandemic. The future of M&A not only favors the IT industry but also looks for e-commerce. As several corporates

[11] *Analysis: Cross-Border M&A Defied The Pandemic In a Record Q1*, Bloomberg Law https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-cross-border-m-a-defied-the-pandemic-in-a-record-q1

[12] *Artificial Intelligence to Enhance M&A*, One to One-Corporate Finance, available at, https://www.onetoonecf.com/embracing-artificial-intelligence-to-enhance-mna/

are adopting M&A to enhance their firms' growth, they will feel more reliable and trustworthy on this trend. Our world is adopting a New Normal i.e., Earning While Distancing, which will create new job searches and a boom in the tech industry. An organization must adopt digitalization while disabling traditional methods until we get a proper solution to the Covid crisis. Assuring authenticity and credibility of e-conference is seen as the best alternative. With growing global competition, one can expect huge growth while an increase in M&A activities. Healthcare has seen very stagnant growth in M&A deals before the pandemic in 2019 which means this industry is craving for new regulations and market exposure.

CONCLUDING OBSERVATIONS

This paper had done a comparative study on the structure of M&A in India, the USA, and Bangladesh. All these countries have experienced a significant M&A wave starting from the recession period to a stagnant growth to 2019. We have analyzed that though the effect of Covid has lessened down the potential growth of countries in the world, it also moves us towards Digitalisation from buying groceries to seeking online consultations with a doctor for minor conditions and made our healthcare system stronger and more advanced. The IT industry of India raised $20 billion in the middle of lockdown whereas the US showed a boom in the market in terms of its deal value and volume, the value increased by 48.3% and 27.7% respectively.

The 'Governing Law' of the USA, India and Bangladesh have properly scrutinized legislative authorities to keep an eye on a company so that they do not create monopoly conditions in the market. Hostile bids are allowed in all three countries but most of the deals in Bangladesh have been done amicably because of the traditional business pattern. Instead of the huge impact of a pandemic, the M&A market status of India, the USA and Bangladesh keep flowing at a pace after some time. The procedure for the acquisition of a public company is almost the same in India and Bangladesh except for the fact that the Public M&A market is very rare in Bangladesh because of the taboo in the minds of the citizens of not selling their companies but as the time passes and new policies came in the picture, the issue will be resolved.

India, being the fastest growing economy has attracted various market potential through cross-border mergers and its major growth is because of the inflow of FDI. USA has shown its remarkable performance in the first quarter of 2021 in cross merger deals as there is a 78% increase in M&A volume whereas as per our finding Bangladesh made no such growth from 2019 and their performance is stagnant. Every country's due diligence process is almost similar, the difference lies only when they have different goals towards the target company. Still, there is a need of framing more effective and reliable policies to increase the strength of the M&A sector. The world had accepted new norms and policies for regulating deals in the market which not only saves corporate time but also increases their efficiency. Due diligence process is now done by most of the countries through virtual data room preparation which results in increasing cross-border deals throughout the world.