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Author:
Dilpriya Juneja
Law Graduate from Amity University, Noida.

CORPORATE RESTRUCTURING IN INDIA

INTRODUCTION

According to Oxford dictionary restructuring means, “to give a new structure to, rebuild or rearrange”. The term corporate restructuring means a slight change in the ownership structure without a change in the original business for greater business decisions and achieving higher efficiency so that the company is viable in the long run. It is a process by which firms or companies do an analysis of itself at a point of time and alters what it owes and owns and refocuses itself to specific tasks of performance improvements. The corporate restructuring of a company includes activities which tries to make the organization more balanced, profitable and enable the company to achieve its objectives more efficiently. Hence the following features or characteristic of corporate restructuring can be listed as follows :

- Change of ownership and management
- Achieving efficiency
- Achieving economies of scale
- Reducing financial and operational risk.
- Continuous improvement in shareholders’ value.
- It leads to the transaction such as merger, acquisition, amalgamation, takeover, combination.

HISTORICAL BACKGROUND

In earlier years, the economy of India was mostly dominated in a centralized way by government intervention and participation and regulated the economy. Economy was closed as economic forces that is demand and supply did not have the full liberty to rule the market, there was no scope of realignments and the economy was restricted hence in such a situation the scope and mode of corporate restructuring was very limited or no such scope because of the restricted government policies and rigid regulatory framework. But the scenario changed with the upcoming of financially strong entrepreneurs such as Ram Prasad Goenka, M.R. Chabria, Sudarshan Birla, Srichand Hinduja and Dhirubhai Ambani who were phenomenal in undertaking certain major corporate restructuring activities.[1]

Now coming to the present scenario, the economic and liberalization reforms have been transformed the business scenario all over the globe. The concept of restructuring is becoming popular in the corporate sector all over the world, by undertaking both big and small entities, comprising old economy businesses, conglomerates, and new economy companies and even the infrastructure and service sectors. From banking to oil exploration and telecommunication to power generation, petrochemicals to aviation, companies are coming together as never before. Not only this new industries like e-commerce and biotechnology have been exploding and old industries are being transformed drastically mainly after the 1991" where the real economy started opening up and thus leading to arrangements or transactions such as mergers, amalgamations, acquisitions, combination and takeovers, and these expressions have become too common and familiar in the corporate sector. These terms would later be dealt with in the paper in detail. Hence the government-controlled economy is no more the situation, in order to cope with the global competition it is being realized that corporate restructuring is a necessity.

SCOPE AND NEED FOR CORPORATE RESTRUCTURING

The scope of corporate restructuring is very wide as it may encompass global scenarios as well as national scenarios in order for a corporate to strive in the competition world. It also aims at exploiting the strategic assets accumulated by a business-like goodwill natural monopolies. The main need or scope for any corporate restructuring is achieving economies of scale and synergies. Economies of scale mean achieving efficiency at a reduced cost, and synergies mean

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[1] Corporate Restructuring in India, retrieved from https://www.ripublication.com/gjfm-spl/gjfmv6n9_02.pdf, accessed on 24th October 2020.

the sum total of two companies are merged as a result of which higher efficiency is achieved or higher productivity is achieved.

We can infer that corporate restructuring aims at mainly the following listed below :

1. To focus on core strengths, operational synergy and efficient allocation of managerial and infrastructural capabilities.
2. Consolidation and economies of scale by expansion and diversion to exploit domestic and global markets to its greatest extent.
3. Revival and rehabilitation of a loss-making company by adjusting losses of that unit with profits of a healthy company.
4. Acquiring constant supply of raw materials and access to scientific research and technological developments for thriving through competition.
5. Capital restructuring can improve return on capital employed by appropriate mixing of loan and equity funds and by reducing the cost of service.

Corporate restructuring helps in improving the corporate performance by bringing it at par with competitors by accepting the technological and other changes.

MERITS OF RESTRUCTURING

If a business downsizes during restructuring, its operational costs may decrease. When a business eliminates layers of management during its restructuring, communication and decision-making often improve. Simplifying management reorders the organizational hierarchy of a company, opening the lines of communication and removing barriers to productivity. Finally, businesses restructuring to introduce new technologies may enjoy increased operational efficiency.[2]

FORMS OF CORPORATE RESRUCTURING

[2] Corporate restructuring in India under companies act 2013, retrieved from https://fastforwardjustice.com/corporate-restructutring-under-companies-act-2013/#_ftn2, accessed on 24th October 2020.

In recent time the words like Mergers, acquisitions, Amalgamations, takeovers has become day to day activity and have become so familiar. As per the White Industry's Case " Mergers and Acquisitions are a collective term for different business transactions where companies merger or they change ownership respectively. It is a great way to achieve strategic goals and economies of scale. With globalization and liberalization and growing competition, many mergers and amalgamations are taking place all over the world. And somehow we all are a bit acquainted with these words. But if we take a close look at all the forms of corporate restructuring is some kind of an arrangement. Before going into the forms of corporate restructuring it is necessary to have a broad idea about the terms, compromise, and arrangement. An arrangement can be explained as where parties agree to do something, notwithstanding the fact there was no dispute between the parties and any scheme other than a scheme by way of compromise or reconstruction which affects the right of creditors or any class of members of the company. Therefore the word arrangement has an inclusive definition and contemplates an arrangement to be not an only reorganization of share capital. The expression arrangement would also include acquisition of shares of a subsidiary by the dominant shareholders by the holding company in lieu of the shares of the subsidiary, transferred by the holding company. Also It was well held in one of the case that "An arrangement , as the expression used in the act embraces a wider class of agreements than a compromise therefore it can include modification of rights above which there are no disputes and can also include a reorganization of share capital of the company by consolidation of shares of different classes or division of shares or by both the methods " As these two terms are not defined in the Companies Act, 2013, yet from the concept of the arrangement, we can have a vivid idea about the term compromise, that it is, compromise is a much narrower term or it has a constrictive and restrictive approach as compared to arrangement. An arrangement is something that does not include any scheme of compromise. From the wordings of the Act, it can be understood that a scheme of compromise is specifically related or concerned with the settlement with the creditors and some kind of dispute is required for such a settlement. Whereas arrangement having a wider scope is mainly concerned with the rights of the members and shareholders, an arrangement is made fora modification in the share purchase agreement and for an arrangement to take place no dispute is necessary.[3]

Corporate restructuring can be of the following types :

[3] Corporate restructuring in India under companies act 2013, retrieved from https://fastforwardjustice.com/corporate-restructutring-under-companies-act-2013/#_ftn2, accessed on 24th October 2020.

- Mergers and Amalgamation
- Acquisition I and I Takeover
- Divestiture
- Demerger (split up)
- Reverse merger
- Reduction of Capital
- Joint Ventures
- Buyback of Securities

LEGAL PROVISIONS WITH RESPECT TO COMPANIES ACT, 2013

Before any scheme of arrangement or compromise is laid down before the NCLT for its approval, certain steps are required to be followed. One of the most important step before any merger or acquisition is fixing a potential investor or targeting a competitor, then conducting the due diligence process and preparing a due diligence report upon which the investor company decides whether to invest or not, once after reviewing the due diligence report they set the conditions subsequent and conditions precedent which are required to be complied with throughout the process and even after the transaction takes place. Then the companies which will be undergoing a change in the capital structure or ownership would call a meeting of the creditors or the members, who will be getting affected by such a reorganization.[4]Along with compliance with the provisions of the Companies Act, the companies are also required to comply with certain general and specific laws which can be either a pre-compliance or a post compliance. Along with all these compliance, the memorandum of association and article of association of the companies are also required to be amended. A brief note on the provisions of the Companies Act which deals with the transactions of compromise, arrangements, and amalgamations.

[4] Corporate restructuring in India under companies act 2013, retrieved from https://fastforwardjustice.com/corporate-restructutring-under-companies-act-2013/#_ftn2, accessed on 25th October 2020.

CONCLUSION

The restructuring usually takes place when a business is struggling and losing money. A third party will be brought in to assess the way that the business is being run, and then make recommendations based on what they found that will help make the business run more efficiently. A strong corporate restructuring firm will have experts in a wide variety of areas that can examine all aspects of a business to help find solutions. A good corporate restructuring firm will not just identify problems of where money is being lost, but also offer solutions that a company can implement in order to solve those problems. They will also help a company through the process of restructuring by developing forecasts of what to expect and making sure the company is able to secure the capital available to make those changes. Corporate restructuring can help restore, preserve and enhance the value of an organisation.

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