Editorial ….. ✍

Finally the much talked about and followed up nuclear deal received the NSG approval. Hopefully the nuclear deal news should augur well for the Indian Industry given the current slack that its been witnessing. As if proving the point the bourses bounced back on the 8th September. Talking about the market though inflation has managed to hold itself up experts are predicting the peak rate is yet to arrive, however, with the crude tapering off some relief in the form or reduced fuel prices might be around the corner. The news at Singur though is still witnessing a ding dong battle.

In other developments the US Government has stepped into to take control of the two biggest mortgage finance players Fannie Mae and Freddie Mae, it is believed that the Government of US decided to finally step in to prevent their imminent collapse and to lend support to the already shaky housing finance market. This development is expected to instill the much needed confidence in the credit market and might be good news for the global market as a whole.

In this edition we have covered the recent acquisition by HSBC of 73.21% stake in IL&FS Investmart, through this deal struck for $261 million (~Rs.1110 crs) the world's second biggest banking group has announced its entry into the Indian retail brokerage arena. We analyse the effects of entry of a big player into the fragmented and competitive broking space. HSBC views a downturn as a time to increase their leads and make acquisitions.

We've also tried to analyse Emami's move to acquire 24 per cent stake in Zandu from one of its two promoters family resulting in share price of Zandu skyrocketing by more than two and a half times, and resulting in a legal battle being sought by the other co promoter. The legal fight is being carried out in the CLB and High Court on the grounds of violation of its Right of First Refusal Clause contained in its SPA, Provision of SEBI Regulation, MRTP Act, etc.

Recently HU CONSULTANCY PVT. LTD., the flag ship of the HU Group have started a new business vertical – "NPA Turnaround". From this edition we have included a new section which will focus on identifying the ways of managing stressed assets, turning them around through restructuring, selling off, hiving off and so on. In this publication we have covered the ways of controlling the stressed assets in challenging times and have suggested some pre warning signals for bank in addition to their own early warning signals in identifying an account which is on the threshold of becoming an NPA.

These along with other regular features…

Happy reading…

M & A Critique

Vol. VIII **No. 09** **September - 2008**

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Deal Frenzy : August 2008

The deal of the month was –India's IT major Infosys Technologies announcing takeover of UK-based SAP consulting company, Axon Group, in a deal value at Rs 3,300 crore ($753.1 million) ...

Read the M&A report for more details ...

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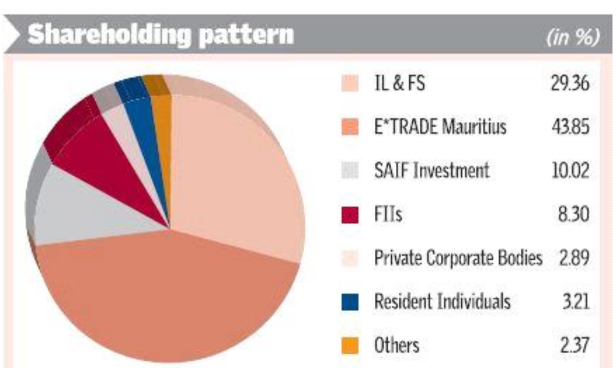
Printed and published by Mrs.Jyoti Shah on behalf of HU Mergersindia.com Pvt. Ltd., at Flat No 4, Revanjali, Plot No 62, Mitramandal Colony, Pune - 411009. Telefax: 020 24440209. Printed at M/s. Swanand Traders, 1204/24, Deccan Gymkhana, Pune - 411004.

Deal analysis: HSBC - IL&FS Investsmart

Foreign Banks and Financial Institutions have been queuing up to open shop in India to tap into rising savings of a growing middle class and lured by the country's attractive fees and a booming economy. HSBC's acquisition of Infrastructure Leasing and Financial Services Ltd (IL&FS), a dominated retail brokerage of India, is a clear indication that top foreign brokerages who till now were gunning for the institutional business from the smart and savvy fund managers, now wants to target the Indian retail investors.

HSBC acquired a 73.21% stake in IL&FS Investsmart Limited (IIL) for $261 million (~Rs.1110 crs) on May 17, 2008. This has paved its entry into the retail brokerage arena. This investment is of strategic importance to HSBC as it gives it a foothold in one of the largest retail broking markets in the world.
This month let us take a look at this deal

The Deal



HSBC will acquire 43.85 per cent stake in IIL from promoters E*Trade Mauritius Ltd, an indirect wholly owned subsidiary of E*Trade Financial Corporation and an additional 29.36 per cent stake from Infrastructure Leasing and Financial Services Ltd. HSBC will also give an open offer for additional 20% stake as per SEBI guidelines. HSBC will be making the acquisition through group subsidiaries, including HSBC Securities and Capital Markets (India) Private Limited, its securities arm in India

HSBC will acquire stake in IIL @ Rs.200 per share aggregating to $261 million plus and additional $19.4 million (Rs.82 Crores) as non - compete fees to promoter.

HSBC is the third foreign bank to have acquired a retail broking business in India in the recent past. French bank BNP Paribas acquired Geojit Securities, and Standard Chartered Bank bought 49 per cent of UTI Securities, both last year.

E*Trade Financial Corporation had said that it had been hit by the sub-prime crisis in the United States. In order to concentrate on its core business, it was looking to monetise it's holding in the Indian venture.

Synergies arising from the deal

The acquisition is a perfect match, as the move would enable HSBC a foothold in the country's retail broking business since "HSBC Securities and Capital Markets" primarily focuses on institutional business in India. HSBC will benefit from an expanded institutional broking, equity capital markets and investment banking platform in a rapidly growing marketplace. Over a period, HSBC aims to invest substantially in IL&FS Investsmart to promote its retail broking services across the country. As informed by company officials, as of now, they have no plans to merge "HSBC Securities and Capital Markets" with the "IL&FS Investsmart".

Mr Tarun Kataria, Chairman, HSBC Securities and Capital Markets Ltd, said: "The acquisition will bring to us a retail brokerage business, an on-line broking platform, a mid-cap corporate and investment banking business and a mid-cap research business.

IL&FS Investsmart has 2,000 employees and provides investment products to retail and institutional clients including equity and commodity broking, investment banking, insurance broking and distribution, mutual funds distribution and related financing services to 138,000 customers through its network of 88 branches and 190 franchisee outlets across 133 cities.

IL&FS Investsmart is listed on the National Stock Exchange and the Bombay Stock Exchange and its global depository shares (GDRs) are listed on the Luxembourg Stock Exchange.

Indian markets have an average volume of over Rs 50,000 crore a day, of which 30 per cent is dominated by large institutional investors and balance by day traders and retail investors. Further relations with retail investors can be leveraged further to offer variety of products a culminating into single window financial service provider and planner.

Valuation

Acquisition is at substantial discount to price paid in case of some of the other recent deals. Ms Naina Lal Kidwai, Group General Manger and CEO, HSBC in India, "We got a good deal here. We paid 1.9 times price to book value, which is much lower compared to the recent deal of UTI Securities at 5.4 times price to book and that of Geojit Financials at 12.8 times price to book value."

Conclusion

Financials were everybody's favorite theme till very recently then the markets went into a tizzy and valuations crashed. But strategically, presence in retail segment is a must for all foreign brokerages .It is no brainer really that for a billion plus population financials have tremendous scope and thankfully the HSBC-IL&FS Investmart deal would bring the focus back into the sector and especially the retail segment the high volume low margin game. In any case, as with any form of investing, it's important to buy low and sell high. Of the potential strategic moves companies can take to grow in a downturn—divest, acquire, invest to gain share—an aggressive acquisition strategy (defined as growth through M&A at a rate higher than that of 75 percent of a company's peers) likely to create the most value for shareholders. HSBC views a downturn as a time to increase their leads and make acquisitions. They pounce on the opportunities it creates with alacrity that is the stuff of legends.

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Emami VS Zandu: Legal battle but commercial solution

Emami bid to acquire Zandu's shares from the open market and subsequent petition filed by Parikh of Zandu has opened a lot of debate among the concerned. This bid of Emami is neither a friendly takeover nor strictly a hostile one. In this article we attempted to analyse some of the critical aspects of the deal from legal as well as commercial angles.

Zandu Phamacutical was started and run by two promoters' families- Vaidya and Parikh. Vaidya family remained dormant (probably this may be one of the good reasons to exit) in and the Parikhs were working promoters in the company. Zandu has been dedicated to manufacturing and selling of Ayurvedic / herbal products. It has a range of over 300 health promoting products in its portfolio. Zandu Balm and Zandu chyawanprash are some of the key products of the company. Shares of the company were trading at the PE Multiple of 41.5 times in the month of May'08 however currently it has gone up to around 89 times.

In the recent past, Zandu has not performed significantly as compared to its peer group that is evident from the following.

Y-O-Y Revenue growth:

	Mar'05	Mar'06	Mar'07	Mar'08
Zandu	-8%	14%	14%	5%
Emami	1%	36%	69%	13%
Dabur	10%	15%	16%	-20%

Emami is one of the fastest growing ayurveda-focussed companies. It make diverse personal care products ranging from skin care, hair care, hair coloring, health care and baby care. The company has adopted the strategy of focused presence in niche segments with very few MNCs competitors in the segment. As a part of the strategy, Emami has not embarked into premium product segment and believed in designing tailor made products for the domestic and international markets. Product innovation is one of the corporate belief of the company- "Fair and Handsome" and "Navratne cool Talc" some of the examples of innovative products. Also, the company gives importance to increase distribution and penetration in existing markets and develop itself as a global brand. The company chose contemporary celebrities for its product endorsement and innovative positioning strategies as a part of the penetration strategy. The company has shown commendable performance- its three years' CAGR in sales stood at 24.6 %.

Financial performance for the FY 07-08 and financial position as on 31 Mar'08 of Emami stood as follows:

Particulars	Rs. crore
Revenue	586.4
EBITDA	112.2
PAT	92.8
Share Capital	12.4
R&S	276.6
Loan	38.3
Total fund employed	327.3
Fixed Assets	91.3
Investments	102.9
Cash	2.8
Other Current Assets (net)	132.3

At current market price of Current market price of around Rs.290 the shares of Emami is trading at PE Multiple of around 20.4 times.

Emami, which already held 3.7% stake in Zandu (as at end Mar'08), acquired additional 24% stake in May'08 from the Vaidya family at a price of a through a Share Purchase Agreement which obligates the company to give Open Offer for acquiring minimum 20% stake from the public pursuant to the SEBI (Substantial Acquisition of Shares and Takeover) Regulations,1997. This, if successful, would mop up stake of Emami in Zandu to 47.5 per cent which is very near to controlling stake.

Emami has proposed to buy the shares of Zandu in open offer at a price of Rs.7315/- a share which same at which Emami acquired 24% stake from Vaidyas and that is also very close to the market price of the share when the takeover was first announced on 2nd June 2008.

However, the news of the takeover had sky-rocketed the stock price of Zandu when the whole market was tumbling down. After touching all time high of around Rs.24,600 per share in July'08, the share of Zandu is presently trading at around Rs.17,600 that is still higher by around 2 ½ times the price before the announcement of takeover. This may be due to expected change in management control that may lead to better financial performance of Zandu going forward or due to some other in-genuine reasons.

If Emami wishes to revise the offer price of Rs.7135 a share to bring it near to current market price of around Rs.17000 a share, it would entail additional cash outflow for Emami of around Rs.156 crore over the original cash out flow of around Rs.118 crore, which is not supported by available free funds with the Emami. Further, at price of Rs.17,000/- a share the resultant PE Multiple of Zandu comes to around 83 times compared to around 36 times at price of Rs.7315/- a share which looks very costly in terms of valuation. So, revising offer price near to current price does not seem feasible for Emami.

As far as benefits derived from Zandu is concerned, it is limited to some benefits of distribution channel (which also is not very crucial - Emami itself has a network of 2200 distributors and 1200 sub-distributors) and also Emami is no less than Zandu in terms of product innovation/revision and positioning.

The legal battle…

The Parikh family was unhappy with the move of Vaidyas family and they tried legal avenues to block the Emami bid, saying they had the Right of First Refusal (ROFR) over Vaidyas' stake sale to Emami.

- Zandu has challenged the acquisition of shares by Emami by filing a petition before the Hon'ble Company Law Board (CLB), Mumbai Bench on grounds that the acquisition of shares has violated the provisions of various laws such as the SEBI Act, 1992, SEBI Takeover Regulations, 1997, SEBI Insider Trading Regulations, 1992 and Companies Act, 1956. Zandu has asked the CLB for rectification of Register of Members in relation to acquisition of shares by Emami & suspension of voting rights attached to such shares pending the final decision of the CLB.

- The CLB had, at the hearing on July 28, 2008, passed an order to the effect that since Emami and the Company were both listed companies, SEBI was the right authority to look into any acquisition disputes.

- The Company had filed an appeal before the Hon'ble High Court, Bombay against this order of the CLB.

- The Hon'ble High Court, Bombay by its order dated August 07, 2008 has set aside the order of the CLB and directed the CLB to decide the Company's application for interim reliefs and pass a reasoned order in respect thereon within a period of 15 days from August 07, 2008.

- Consequent to above legal battle, the proposed open offer has been kept on abeyance by SEBI till the legal battle is resolved.

As the petition contains number of sub-issues such as breach of various provisions of SEBI, MRTP laws, Share Purchase Agreement – ROFR and others, the issue may not fall under one jurisdiction e.g. The issue of ROFR shall be looked into by CLB where as the issue of Insider Trading and Takeover Code shall be looked into by the SEBI.

Legal battle does not have legal solutions but the commercial one…

In our opinion Pariks' should not look the issue as legal issue but as an opportunity to enhance the shareholders value. It is in the interest of all the stakeholders of Zandu if Emami take part in the management control of Zandu with Parikhs'. Based on Emami can contribute significantly to the business skill set which is desired in Zandu. Further, instead of trying to buy Parikhs' stake Zandu may issue preferential shares to Emami so that money will come to the company and the company will be able to fund its growth strategies. This will also facilitate shareholding of Parikhs and Emami to be at desired level as to be sought.

What could be strategy of small shareholders of Zandu?

Considering all the facts of the case, we are of the opinion that Small Shareholders of Zandu may exit at the current level without waiting for final approval to the proposed Open Offer of Emami.

Conclusion :

Legal solution may not be easy and quick as though it is not hostile bid but no doubt this can not be considered as friendly takeover deal. Legal solution will never create optimum value for all concerned. Ignoring the valuation at which deal is priced and also almost zero possibility for success of the open offer, real option before Emami and second group of Zandu's promoters is to explore the best possible commercial arrangement which will create substantial, sustainable and scalable long term value for both the companies by exploiting each other strengths. Possible solution may be strategic alliance both for production and marketing, research and cross selling each other products by capitalizing on each other marketing and distribution network. This can be achieved by crating joint marketing and product development and sharing each other's vision and management skills. This has to happen at the earliest as where share price of Zandu has skyrocketed after announcement of intention of Emami. It is not surprising if Emami decides to -sell its holding in the market leading to sharp correction in Zandu's share price…

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Case Study : Corporate Restructuring

Facts :

An industrial group has been operating in the area of automobile ancillary products and Polymer products. The group is expanding very fast domestically and overseas. The group has aggressively acquired companies outside and also set up technological JV with foreign companies. Its flagship company (company 1) is operating in 3 states with 12 plants for its auto and polymer products. The group also has a dedicated polymer product company (Company 2). The third company under restructuring (company 3) dedicated to electrical products used in automobiles. The group used to do all the overseas acquisitions of companies engaged into polymer products by the polymer vertical (company 2) through SPVs created outside India.

Objectives:

1. Consolidating the businesses and creating two verticals- one of auto ancillary businesses and other of polymer businesses,

2. Making the corporate structure suitable for carrying out acquisitions abroad, and

3. To go for listing of Technology and Capital Intensive Business i.e. Automobile Ancillary

The following points were considered while executing the restructuring

To achieve consolidation of businesses in such a way that:

a) They have to be cost effective in terms of stamp duty and taxation angle.

b) The restructuring shall comply with all the legal provisions including Companies Act, Direct and Indirect Taxes and there should not be any grey area inviting unforeseen liabilities.

c) One of the companies (company 1) had one of its plants in Baddi, Himachal Pradesh which was started on some critical terms and conditions with the government and therefore there was probable impact of the restructuring in the view of loss of benefits. Therefore extra care was required while defining “undertaking” and “Appointed date”.

d) One of the companies (Company 2) had undergone change in the shareholding pattern which was critical from the point of view of final shareholding while deciding on appointed and record date.

e) It should substantially enhance Valuation of the consolidated auto ancillary and polymer companies going forward.

f) The restructuring could be implemented through one scheme only to save on time and cost.

g) Capital size of both the consolidated entities should be reasonable to service the capital.

h) The polymer business should be self sustaining for its expansion

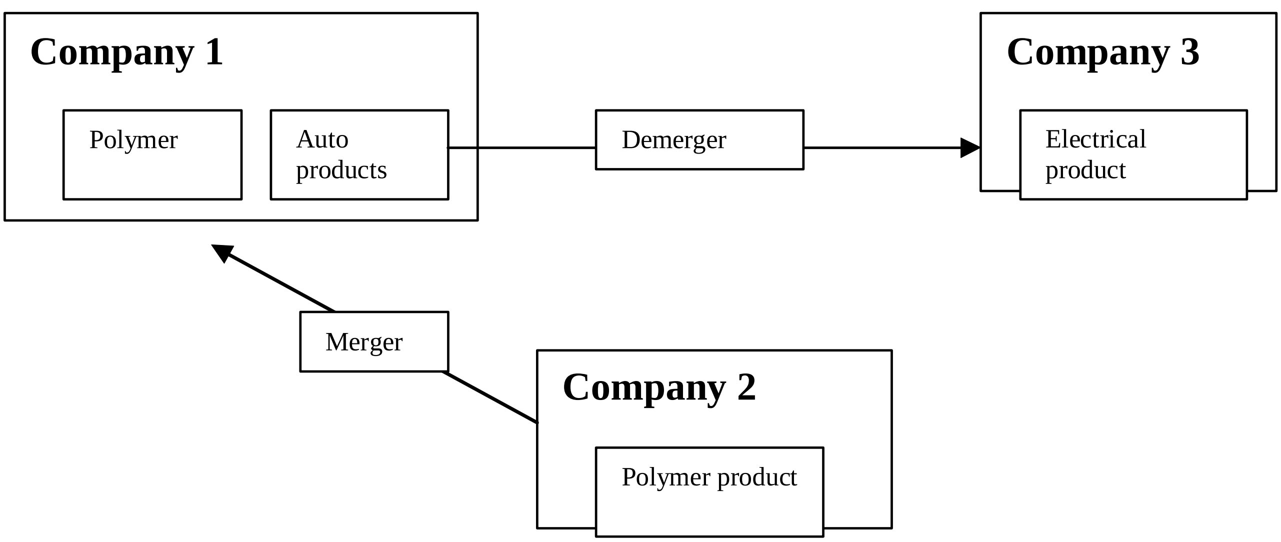
i) The scheme could have been acceptable to all the secured and unsecured creditors.

j) It should have been easy in explaining the government agencies viz. Regional Director, Auditor appointed by Official Liquidator on the queries raised

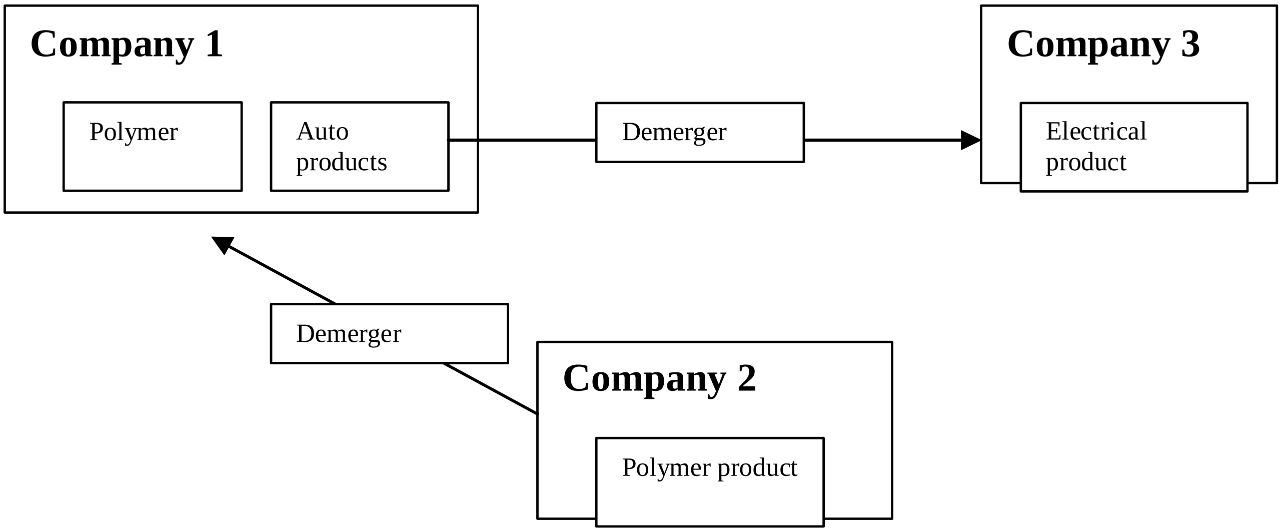
Which company should have been merged with which company and which company's division should have been demerged into which company?

Following were the options available to the management of the group :

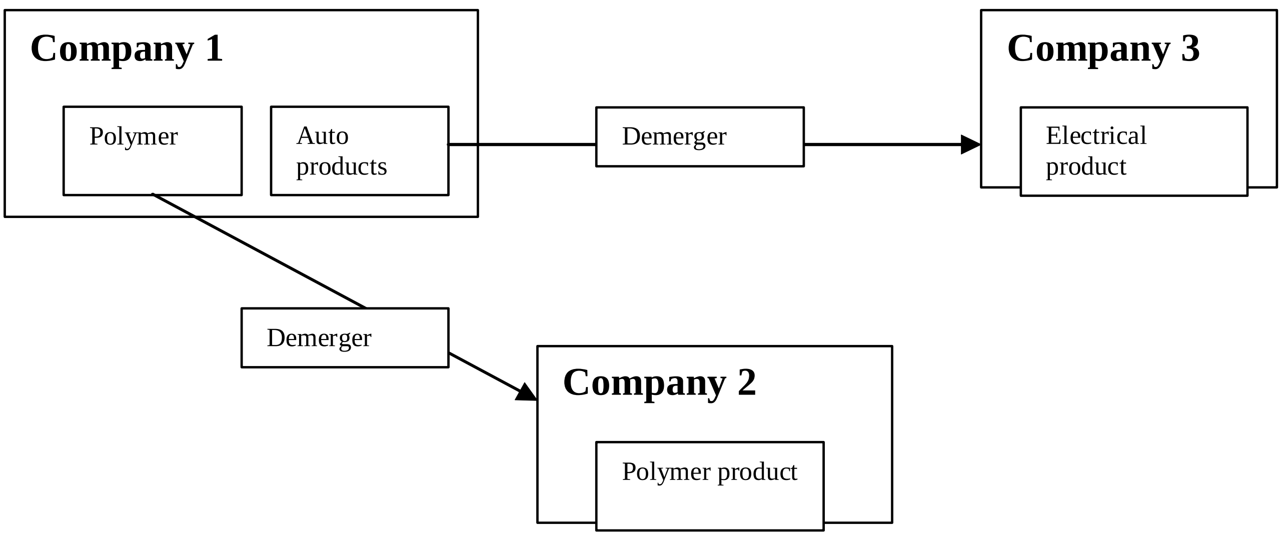
Option 1



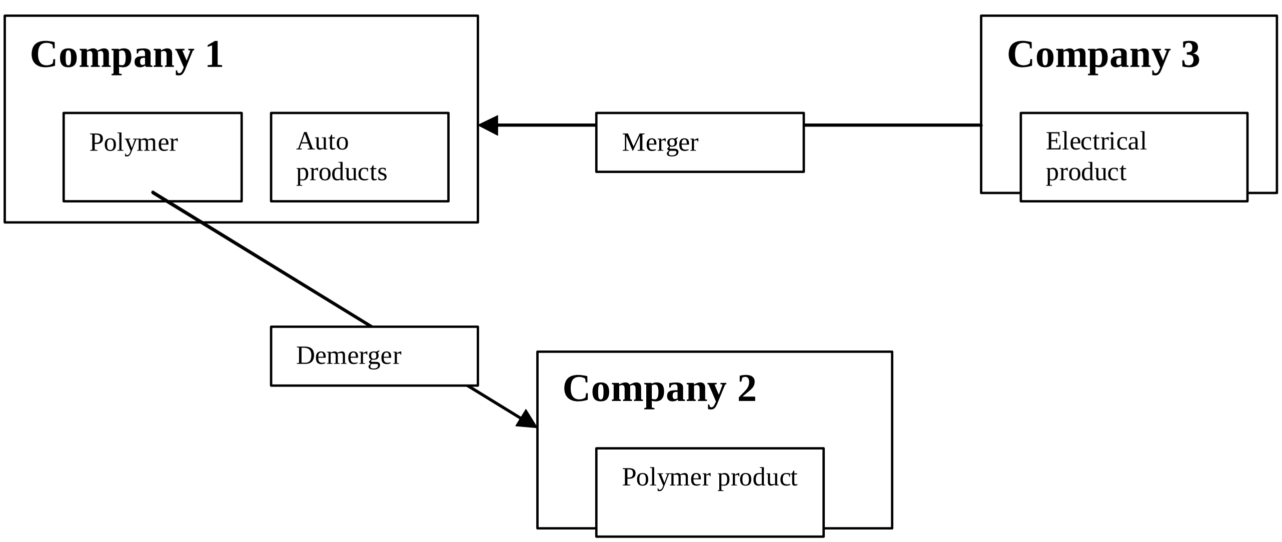
Option 2



Option 3



Option 4



It was a very critical decision as to which of the companies was to be merged with or demerged into. The fourth option was chosen after discussion with the group management and considering the following aspects:

1. Basic objectives and growth strategies of the promoters / management
2. Present corporate structure and cross holding
3. Valuation of the companies involved
4. Size of immovable assets belonging to the companies
5. Sales revenue and profitability of the companies
6. Accumulated business losses and unabsorbed depreciation under provisions of Income Tax Act
7. Capital size of the companies post restructuring
8. Other statutory hassles involved in the restructuring options

Valuation of the companies involved

One of the most critical things was valuation of companies involved. It was quite imperative to have the most appropriate valuation model to be adopted which could take care of fair valuation from Post restructuring balance sheet and future valuation and costs such as stamp duty.

Post restructuring capital size of consolidated polymer entity (company 2)

It was very imperative to have clear picture of the balance sheets of the existing companies post restructuring (company 1 and 2). As the company 2 was already having large capital size, further issue of shares to the shareholders of the transferor company (company 1) would have even further increased the capital size which was not commercially justifiable. Therefore, reduction of capital was the best scenario as this could be implemented through the same scheme to save on time, cost and hassle.

Benefits of capital reduction to the consolidated polymer company :

1. Consolidated polymer entity would be able to service the capital efficiently

2. It enhanced post reduction valuation parameters i.e. improved ROCE, ROE, etc.

3. Reduction of capital DID NOT mean loss of value for the shareholders of the company.

4. Reduction of capital would give flexibility to further increase in the capital by way of infusion of fund by any outside investors (as management wished) without any additional cost for raising authorized capital and so on.

To conclude, restructuring in this case meant “the best possible way to restructure the business”. Of course the best way will not only include the implication of minimum costs and compliances of various laws and regulations but also the future strategy of the company, valuation in long run and also value creation for all the stakeholders.

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Managing NPAs : A challenge

Background

The Indian banking sector has played a commendable role in fuelling and sustaining growth in the economy. Credit growth has increased significantly in the past few years, as reflected from Table 1.1. With gross NPA ratio decreasing from 3.5% in FY06 to 2.6% in FY07 to 2.3% in FY08, the scheduled commercial banks ('SCBs') have managed to contain distressed assets.

However, the banking system in India places significant importance on tracking net NPA as a percentage of advances made. While net NPA percentage is important for regulatory purposes it certainly does not capture the shareholders' perspective. In addition, fully written-off accounts are not captured on the bank's balance sheet. From the shareholders' perspective, it is important to understand the total recovery amount against the amount written off, including fully written-off accounts, as a large part of the profit of the banks attributed to the shareholders is written-off to their detriment. As illustrated in the Table 1.2, NPAs in absolute terms have increased from Rs. 50,407 crores in FY07 to Rs. 55,498 crores in FY08, signifying a jump of more than 10%.

Table 1.1

Summary of Advances made by Scheduled Commercial Banks

Amount in crores	2006	% to total	2007	% to total	% change	2008	% to total	% change
Public sector banks	1,106,288	75%	1,440,146	75%	30%	1,797,505	74%	25%
Private sector banks	312,874	21%	414,751	21%	33%	518,402	21%	25%
Foreign banks	59,821	4%	75,318	4%	26%	97,556	4%	30%
Total	**1,478,982**		**1,930,216**			**2,413,464**		
% change Y-o-Y			**31%**			**25%**		

Source: Data from IBA

Table 1.2

Summary of NPAs of Scheduled Commercial Banks

	Gross NPAs			Net NPAs		
Amount in crores	**2006**	**2007**	**2008**	**2006**	**2007**	**2008**
Public Sector banks	41,358	38,968	40,595	14,564	15,325	17,836
% to advances	*3.74%*	*2.71%*	*2.26%*	*1.32%*	*1.06%*	*0.99%*
Private Sector banks	7,792	9,255	12,984	3,163	4,028	5,647
% to advances	*2.49%*	*2.23%*	*2.50%*	*1.01%*	*0.97%*	*1.09%*
Foreign banks	2,648	2,183	1,919	874	648	806
% to advances	*4.43%*	*2.90%*	*1.97%*	*1.46%*	*0.86%*	*0.83%*
Total	**51,798**	**50,407**	**55,498**	**18,602**	**20,001**	**24,290**
% to total advances	**3.5%**	**2.6%**	**2.3%**	**1.3%**	**1.0%**	**1.0%**
% change Y-o-Y		-3%	10%		8%	21%

Source: Data from IBA

Managing NPAs in challenging times

It is pertinent to note that Indian economy has sailed through good times in the recent years. With the GDP increasing by more than 9% for three years running, per capita disposable income has grown phenomenally over the period. As such, delinquency rates are bound to be at a lower level in a booming economy.

Like most of the world, however, India is facing testing economic times in 2008. The seeds of credit excesses sown in the boom time conditions lead to bad loans in downswings of economic cycles, which in turn compound the NPA problem. With the interest rates hardening and recession in the economy, banks may find it tough to maintain their tempo in managing NPAs in the current scenario

Rating agency 'Moody's Investor Service' have reported that some retail-focused banks in India show a rise in customers of unsecured loans not repaying, and yet, some banks may not have comprehensive credit scoring and monitoring tools. This could leave them in a difficult position if delinquency rates were to rise substantially, a scenario observed in other retail-booming emerging markets in Asia. The boom in retail loans, the main driver for banks in recent years, has yet to be fully tested in a negative credit cycle, and banks should be better prepared with credit scoring and monitoring tools for closely screening risky loans.

Strengthening the monitoring tools

Data accessed by bankers is huge in volume. They have to rummage through innumerous data about borrowers / potential borrowers. It is quite likely that they might overlook a vital piece of information about their clients which may affect the chances of the borrower repaying back the dues. A larger challenge facing the financial institutions is the lack of systems and processes that track, alert, and analyse data effectively. Key management reporting and data analysis capabilities are critical in dealing with issues such as risk management, portfolio analysis, identifying and quantifying trends in delinquency rates and tracking of compliance metrics - basically the bulk of banking operations.

Banks have established rigorous monitoring systems to monitor credit accounts and tackle sticky assets at an early stage. A system providing 'early warning signals' of distress in the borrowers account, goes a long way in tackling NPAs at an early stage. As they say prevention is better than cure! Each bank can have in place, systems generating reports as per specific requirements. Banks may look at the following indicators as 'early warning signals' (supplementing their own warning signals) of distressed accounts:

1. <u>Irregular tax payments by the borrower</u>: The easiest way of managing a distressed capital situation is non-payment of taxes by an entity. When the borrower's business is unable to generate enough

surplus to meet day-to-day working capital requirements, borrowers resort to default in depositing levies with the statutory authorities, even though, default in payment of taxes attracts highest penalties. Unlike banks/ financial institutions, the statutory authorities do not have effective mechanism to follow-up immediately with the tax-payers for payment of the dues.

Banks should view non-payment of taxes such as VAT, TDS, labour dues, etc by borrowers as an early warning signal of duress. Statutory payments can be tracked by the banks as follows:

- Ø If the borrower makes all his statutory payments from the lending bank itself, the bank should monitor whether statutory payments are regularly paid from the borrowers account and should see that whether there is a debit to the account to that effect on a monthly basis.
- Ø If the statutory payments are paid from other banks by the borrower, the lending bank should mandate the borrower to immediately mail or fax the challans evidencing the payment of statutory dues by the borrowers.

2. <u>Sensitivity of interest rates to the borrowers business</u>:
   Banks may closely monitor those loan accounts whose business is more sensitive to economic factors such as rising interest rates, inflation, etc. Examples of such sectors are consumer durables, auto, auto ancillaries, real estate, etc. Banks should also monitor those loan accounts whose business can be adversely affected with any change in the Government policy such as chemicals industry, pharmaceutical industry.

   Banks need to discuss with the Management of the borrowing companies measures undertaken by them to cope up with the adverse factors.

3. <u>Analyse revenue streams of the borrower:</u>
   Banks need to carefully analyse the revenue streams of the borrower and understand the pricing model of the products manufactured by the borrower. Consider the following case of a company:

   An industry, lets say XYZ Limited, entered into fixed price contracts with the customers. The contracts were long term contracts and had no clause for escalation of prices. Revenues from these contracts constituted a significant portion of the total revenues of XYZ Limited. However, in the intervening period, on account of a global shortfall in the supply of key raw materials required by XYZ Limited, the prices of raw materials increased significantly.

XYZ Limited could not pass on the increase in prices of raw materials to its customers, as the contracts were fixed price customers and contained a clause of specific performance. Funds generated from the business were insufficient to meet working capital requirements. Hence XYZ Limited applied to Y Bank for increase in the limits of fund based facilities. Y Bank, which was unaware of the business situation of XYZ Limited, on account of good credit history of the client, sanctioned the funds. However, XYZ Limited could not recover from the downfall and Y Bank had to write off both the existing loan amounts as well as the new sanctioned loans. Had Y Bank studied the revenue streams of XYZ Limited, it would have been quick to realize the fatality of any further sanction of loans.

Wanting desired skill sets

Many banks and financial institutions perform various tasks of credit monitoring manually. They are unable to make a coherent analysis of the reports generated from the system. The handling of impaired financial assets is a specialized subject. For one, resolution of impaired assets and unlocking values embedded therein would need multidisciplinary skill-sets covering technology, business model validation, investment banking - merger & acquisition and law, virtually rendering them into a knowledge and execution hub of a different genre. It is rather unrealistic to assume these diverse skill-sets to be part of the domain knowledge for banks whose business focus is completely different.

As a result of the above predicament faced by banks, RBI has issued guidelines to Banks to seek help of consultants in managing NPAs. Banks can consult financial experts who can help them in devising 'early warning signal' mechanism, preparing resolution strategies for revival of business.

Conclusion

Keeping in mind the complexities of various economic factors affecting the business, it is imperative for banks and financial institutions to be proactive in their approach to managing NPAs. They should not settle for anything mediocre and seek assistance of the experts in the respective domains. Revival of borrower's accounts would not only help banks in recovering dues written off, but also ensure that banks generate revenues from the borrower for a long period of time going ahead. Surely nobody would want to let die a chicken who lays golden eggs!

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M & A Digest

Executive Report

Summary of M & A Activity for August 2008: - *This report is based on publicly available data. Report incorporates deals above Rs. 1 million, and only if they are substantially advanced on the transaction (as per the stipulated procedures) or where our research wing feels necessary.*

See M & A happenings at Bombay High Court for merger and restructuring schemes.

Trends:

The M & A activities in the month of August 2008 continued its downward trend & decreased to certain extent. The number of deals that took place in August 08 was 53 as compared to 69 deals in July 08 and the volumes of the deal decreased from Rs. 80811 millions in July 2008 to Rs. 66892 in August 2008.

Considering the sector-wise figure the maximum deals took place in Financial Services Sector with 9 deals followed by Entertainment, Information Technology and Pharmaceuticals having 5 deals each. The deals in other category tallied to 7. In terms of deal size the top place was that of Information Technology with a volume of Rs. 34335 millions comprising 51.33 per cent of total deal size. This was followed by BPO industry with volumes of Rs. 10570 millions (15.80% of total deal size).

The mega deal of the month was India's IT major Infosys Technologies announcing takeover of UK-based SAP consulting company, Axon Group, in a deal value at Rs 3,300 crore ($753.1 million). The transfer of ownership to Infosys is expected to be

INDUSTRY	Aug 08	July 08
Agro based	0	1
Automobile	1	1
Automotive	2	2
BPO	2	3
Cement	1	2
Chemical	0	2
Electrical	3	0
Energy	2	1
Engineering	1	3
Entertainment	5	1
Financial Services	9	9
FMCG	0	1
Food & Beverages	2	4
Healthcare	1	3
Information Technology	5	9
Infrastructure	0	2
Insurance	1	1
Media	0	1
Metal	1	2
Oil & Gas	1	3
Other	7	8
Packaging	0	1
Paints	0	1
Paper	0	1
Petroleum	1	0
Pharmaceuticals	5	3
Power	1	0
Rubber	0	1
Textile	1	3
Transportation (Logistics)	1	0
Total	**53**	**69**

completed by November 2008, subject to the scheme of arrangement. In other mega deal Essar group announced that its outsourcing outfit Aegis BPO has agreed to buy the Nasdaq listed off-shoring firm PeopleSupport Inc for $250 million (Rs 1,057 crore). This would be the eleventh acquisition by Aegis in the last four years.

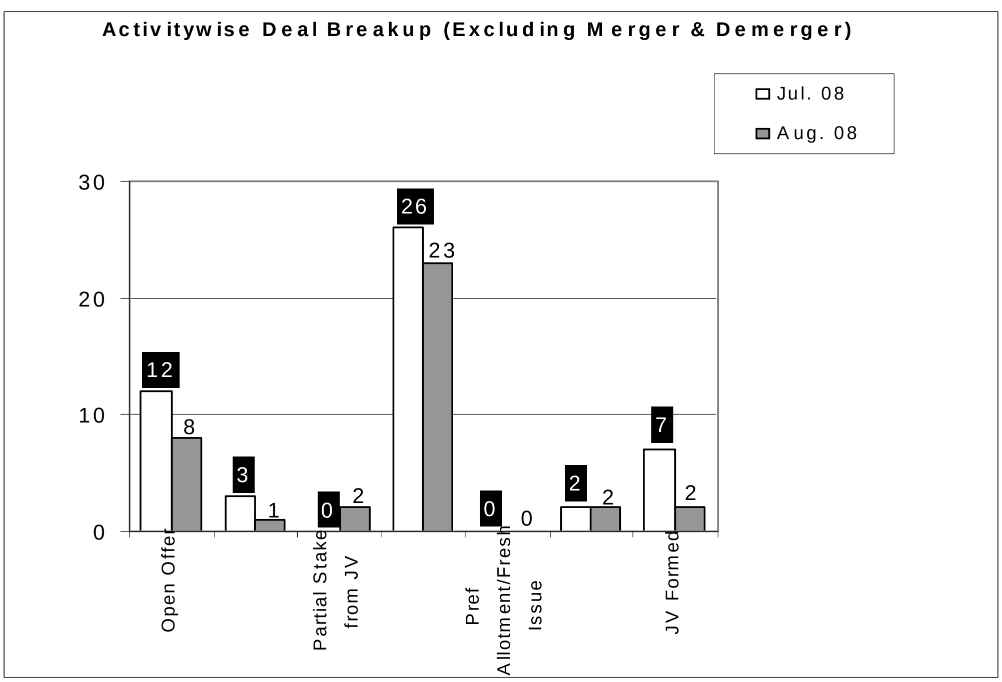
Open offer

During the month there were 6 open offers were reported by SEBI under the SEBI Takeover Code for Substantial Acquisition aggregating to Rs. 792.72 millions. The three-mega open offers out of above 6 are discussed hereunder:

1) R P Gupta, Akash Gupta, Vikash Gupta & Others making an open offer for 61.33 million shares *(36.19% of share capital)* of Shiva Cement Ltd. at a price of Rs. 8.66 per share. 2) An open offer for 0.78 million shares (20.00*% of share capital*) of Sayaji Iron & Eng. Co Ltd. was made by Mcnally Bharat Engineering Co. Ltd. for Rs. 221.60 per share.3) JIT SIN Investments Pte Ltd., Vijay Mishra & PACS made open offer for 3.68 million shares (20.00% of share capital) of Interlink Petroleum Ltd. at Rs. 17.27 per share.

Acquisition Deals :

There were 28 acquisitions in the month of August 08 aggregating Rs. 54887.35 millions, of which 10 deals were made at domestic level aggregating Rs. 4817.35 millions, merely 4 deals were made where overseas companies acquired stake in Indian companies with reported deal size of Rs. 2350.00 millions and 14 deals aggregating to Rs. 47720.00 millions where Indian companies acquired stake in overseas assets.



M & A Digest

Lead News

NATIONAL NEWS

Banking and Financial Services

NHB to acquire 12.5% stake in Mahindra Rural Housing Finance

National Housing Bank said it has agreed to acquire a 12.5 per cent stake in Mahindra Rural Housing Finance, a wholly-owned subsidiary of Mahindra and Mahindra Financial Services, for Rs 5.8 crore.

"We have agreed to acquire 12.5 per cent stake in Mahindra Rural Housing Finance for Rs 5.8 crore. We will keep this stake for the next two years after which we will consider to increase it or sell it," NHB Chairman and Manging Director S Sridhar told reporters. A subscription agreement between the two companies has been signed and as per this agreement NHB would participate in the first two years capital raising programmes of Mahindra Home Finance, which is a brand name of Mahindra Rural Housing Finance.

Aditya Birla Nuvo to buy Apollo Sindhoori

Diversified Indian firm Aditya Birla Nuvo Ltd said that it would acquire 56 per cent in Apollo Sindhoori Capital, expanding its financial services portfolio in a fast-growing market. Aditya Birla Nuvo, which has interests ranging from textiles to telecom, said it would buy the stake in the retail broking firm for 1.99 bn rupees ($46 mn) and make an open offer for a further 20 per cent, as required by law.

The founders of Apollo Sindhoori will retain a 10 per cent stake in the company, according to a statement. "Apollo Sindhoori offers us a well established platform that will further strengthen our presence in the financial services space," Ajay Srinivasan, chief executive of financial services at the Aditya Birla Group, said in the statement. The Aditya Birla Group has a presence in fund management, wealth management, insurance broking and private equity. It also has a joint venture with Sun Life for life insurance. The acquisition enables entry in the retail broking space and also gives the Aditya Birla Financial Services Group a trading facility in equities, derivatives and commodities, it said.

Indian conglomerates including the Aditya Birla Group, the Tata Group and Reliance ADAG are quickly expanding their financial services offerings to tap a fast-growing economy where rules in the sector are expected to ease. Investment group Eton Park last year took about 5 percent in ADAG unit Reliance Capital Ltd. Tata Capital recently signed an agreement with Mitsubishi UFJ Securities Co for investment banking, global offerings of Indian equities and other services. It also has an alliance with Mizuho Corporate Bank for financial services.

Electrical

Voltas acquires 51 pc stake in electrical co

Voltas, a Tata group company, said it has acquired 51 per cent equity stake in unlisted Rohini Industrial Electricals for Rs 62 crore, in a move that would complement Voltas' strengths in electrical products. Mumbai-based Rohini Industrials undertakes large turnkey electrical and instrumentation projects. The Tata Company reserves the right to increase its stake in the future. There will, however, be no change in the management of Rohini Industrials, Voltas said in its statement.

Engineering

C&S acquires partner's stake in JV

Power equipment maker Controls & Switchgear Group (C&S) has announced the acquisition of the 50 per cent stake held by its partner Gewiss SpA (Italy) in Controls & Switchgear GEWISS India Pvt Ltd — its modular wiring devices, lighting and industrial electrical solutions division. C&S will integrate Controls & Switchgear GEWISS India Pvt Ltd with the company's existing operations in power management products, a company release said.

The new entity will now be known as C&S Lighting and Wiring Accessories Pvt Ltd. C&S is a Rs 750-crore group and recently raised Rs 100 crore in private equity from GE Commercial Finance to fuel its organic capex and explore inorganic growth opportunities.

Entertainment

TV Today Network Board approves Buy-back of shares

TV Today Network Ltd has informed BSE that the Board of Directors of the Company has approved the proposal for Buy back of Company's shares pursuant to first proviso to Section 77A (2) & other applicable provisions of the Companies Act, 1956, if any and SEBI (Buy-Back of Securities) Regulations, 1998 from open market i.e. through Stock Exchanges for an amount not exceeding Rs 2930.69 Lakhs, being 10% of aggregate of paid-up equity capital and free reserves of the Company as on March 31, 2008 at a price not exceeding Rs 115/- per share. The Buy-Back would be subject to, inter-alia, the promoter and persons acting in concert with the promoter being granted exemption under SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997.

Food and Beverages

PepsiCo sells seaweed biz to Aquagri Processing

PepsiCo India is selling its seaweed cultivation business—an eight-year-old venture which even resulted in a chemical-free derivative product with a global patent to a group of entrepreneurs led by former top PepsiCo India executive Abhiram Seth. PepsiCo has transferred the assets of the seaweed business at book value to Aquagri Processing Pvt Ltd. The financial details of the deal are not known.

Mr Seth, who led Pepsi's agri and export business in India, has acquired the business in partnership with Prem Patnaik, who is actively involved in the agri-processing industries, and some other partners. The seaweed business was being run in south India, along with some self-help groups. Seaweed is used as a source of food for industrial applications and as a fertiliser.

The soft drink company had started seaweed cultivation as a corporate social responsibility (CSR) initiative.

Information Technology

GPC picks up 20% in Azure for $32.5 m

London-based strategic investment firm Greater Pacific Capital took a 20 per cent-plus stake in Azure Knowledge Corporation Pvt Ltd, an IT / ITES player for $ 32.5 million, said Mr Pradeep Udhas, Managing Director, GPC India. The money will be injected over a period of 18 months by GPC and used to fuel the inorganic growth of Azure, said Mr Jay Ruparel, promoter and Executive Director, Azure.

Acquisitions in the offing Azure will undertake two acquisitions in the course of this financial year, he said. "We are in the due diligence stage of acquiring a domestic company in the BFSI space to be completed in the next 45-60 days and we are also looking for majority stake in an international company in Eastern Europe," he said. The acquired domestic company might continue to function as an independent entity and integration will happen at a later date. But it will facilitate the entry of Azure in metros such as Kolkata and Delhi-NCR region. Azure aims for a pan-India presence with planned offices and delivery centres in Hyderabad, Mumbai and Bangalore. Currently, the company has delivery centres in Ahmedabad, Pune, China and Philadelphia in the US.

Pharmaceuticals & Healthcare

Fortis acquires CRS Health

Fortis Healthworld has acquired CRS Health, a Delhi-based pharma and wellness retail chain. It is also planning to rebrand itself and the pharma chains it acquires in future as Religare Wellness. CRS is the drug retailing arm of the diversified Delhi-based SAK Industries. Though the size of the deal is not big, it is Malvinder Singh and Shivinder Singh's first acquisition since they sold their pharma company Ranbaxy to Daiichi Sankyo. Fortis will pay around Rs 15 crore to acquire 90% stake in CRS Health. CRS has 30 stores which will help Fortis expand in the South. The promoters of CRS Health will hold 10% stake. Fortis has around 40 stores and plans to expand its presence to over 100 cities in 18-24 months.

Transportation / Logistics

Tuscan Ventures picks up 12.45% stake in LCL Logistix

Tuscan Ventures said it has picked up 12.45 per cent stake in Mumbai-based freight forwarder firm, LCL Logistics, for an undisclosed sum.

"This investment will fund LCL Logistix's rapid expansion plans and further poise them to provide as well as command outstanding value to and from all its stakeholders," Tuscan's Managing Director Vishal Sharma said in a release. Tuscan Ventures specialises in value creation through operational excellence in supply chain, logistics and transportation infrastructure. LCL Logistix's core product and service offering includes tailored containerised logistics solutions to all major destinations globally. It operates warehouses in Mumbai, Nagpur, Haldia and New Delhi, the release said.

Others

My Home Group picks up 10% in Pennar Industries

JR Realtor Service has picked up approximately 10.28-per cent stake in the Hyderabad-based, Pennar Industries Ltd. Promoted by the My Home Group, which is into cement, construction, realty and power, the transaction involved purchase of about 1.3 crore shares by JR Realtor Service at Rs 32.30 a share in a block deal.

Interestingly, the My Home Group had divested 50-per cent stake to CRH, Ireland for $456 million in March 2008. Foreign equity funds — Spinnaker Capital, UK and Deutsche Securities, which hold significant, stake in Pennar Industries, have offloaded their shares. In a communiqué to the Bombay Stock Exchange, Pennar Industries said that the company has received communication from M/s JR Realtor Services Pvt Ltd (Hyderabad) about their purchasing 1.3 crore shares in the company, which works out to 10.28 per cent of the share capital of the company.

Spinnaker Capital, which holds 20 per cent equity in the company, seems to have made the major sale. In Pennar Industries, while the core promoters hold 35 per cent, 27 per cent is held by funds (such as Spinnaker and Eight Capital of US), 6 per cent by foreign institutional investors, 3 per cent by financial institutions (such as LIC) and about 30 per cent by public shareholders.

INTERNATIONAL

Banking and Financial Services

Citi to buyback securities worth $7.3 bn

Citigroup will buy back securities worth 7.3 billion dollars from investors as part of its settlement with American regulatory authorities following allegations of fraudulent sale of illiquid bonds against the banking giant.

The banking behemoth, headed by India-born Vikram Pandit, would buy back Auction Rate Securities (ARS), or illiquid bonds, worth 7.3 billion dollars before November 5, a statement by Citi said. In a statement issued, Citi said it would also pay 100 million dollars to the State of New York and other state regulatory agencies. The decision to purchase back comes after allegations that Citi fraudulently sold ARS to investors.

Citi would purchase ARS from those who bought them before February 11.

Metal

ArcelorMittal acquires 49% stake in Mineracao Piramide

World's largest steel-maker ArecelorMittal announced the acquisition of 49 per cent stake in the Brazilian mining firm Mineracao Piramide for an undisclosed amount. The company has signed an agreement to acquire 49 per cent of the share capital in Mineracao Piramide Participacoes (MPP), said a statement issued by ArcelorMittal.

"The price to be paid by ArcelorMittal will be calculated based on the amount of iron ore and manganese reserves 'in situ' assessed according to the code for the reporting of mineral resources and ore reserves of the Australasian Joint Ore Reserves Committee (JORC)," the company said. "This investment represents a continuing development in our strategy of upstream integration. Securing supplies of iron ore is an important part of that strategy and will contribute to the future sustainability of our business," ArcelorMittal Group's Management Board Member Sudhir Maheshwari said. Located at Corumba in Brazil, MPP focuses on the exploration and development of iron ore and manganese reserves in the region. However, the transaction is subject to regulatory approvals, the statement noted.

Oil and Gas

Brazil's Petrobras buys part of Exxon's Chile unit

Brazil's state-run oil company announced a deal to buy Exxon Mobil's fuel distribution operations in Chile, continuing its expansion across Latin American energy markets. Petroleo Brasileiro SA said it will pay US$400 million to takeover Exxon's Chilean retail, industrial and aviation fuel businesses by June 2009, giving the Brazilian company control of 16 percent of Chile's retail fuel market.

Exxon Mobil last year sold about 134,000 cubic meters of fuel to the three sectors, sending 55 percent of that to retail outlets and gas stations, Petrobras said in a statement. The deal means that Petrobras will acquire 230 Chilean service stations from Esso Chile Petrolifera and other Exxon affiliates, along with six fuel distribution terminals and 11 airport distribution and sales centers, helping to "consolidate" the company's presence in Latin American fuel markets, Petrobras said. Exxon Mobile Corp will keep its chemical, lubricant and specialty businesses in Chile, Petrobras said. Petrobras, one of the world' biggest oil companies, exported US$1.5 billion worth of oil, natural gas and oil products to Chile last year. It also runs a network of nearly 1,000 service stations service stations in Argentina, Colombia, Paraguay and Uruguay, and supplies more than 80 percent of retail fuel sold in Brazil. Exxon in April sold its Brazilian distribution centers and service stations to Cosan SA Industria e Comercio, Brazil's largest sugar and ethanol producer, for US$826 million. By law, fuel sold at service stations in Brazil must be a 75-25 percent blend of gasoline and ethanol. Service stations also sell pure ethanol. Petrobras produces gasoline and disributes ethanol produced by large sugar plantations owned by individuals and corporations.

CROSS BORDER NEWS

Automobile

Mahindra & Mahindra forms JV with Chinese Co

Mahindra & Mahindra said it has formed a joint venture with Chinese tractor manufacturer Jiangsu Yueda Yancheng. The homegrown auto major would invest $26 million in the joint venture firm — Mahindra Yueda Yancheng Tractor — where M&M would hold 51 per cent stake, while the rest would be with the Chinese partner. According to the agreement, the tractor related assets and current liabilities from Yancheng tractors would be transferred to the JV Company. The net assets transferred to the JV are valued at $50 million.

Automotive

Federal-Mogul buys 51% in Perfect Circle

Global interest in Indian automotive strengths is reviving. US-based automotive giant Federal-Mogul is learnt to have acquired a 51% equity stake in the recently-delisted Perfect Circle — part of the New Delhi-based, Rs 3,000-crore Anand group — to strengthen its presence in India. The foreign company had recently acquired the engine bearings unit from the Anand group's Gabriel.

The combined sales of the engine bearings division and that of Perfect Circle is estimated to be around Rs 300 crore. While the acquisition of the controlling stake in Perfect Circle is at Rs 17 crore, it is a strategic step that will complement Federal-Mogul's recent move to build an automotive friction components manufacturing facility in Chennai, besides taking over business from an Indian group that makes components for almost all vehicle and engine parts manufacturers in the country. This would be yet another strategic move by Federal-Mogul, as the company had last year bought out industrialist Anil Nanda's stake in his JV, Goetze India. The acquisition of Goetze India and Perfect Circle would enable Federal-Mogul to make high-grade pistons and rings needed to meet emission norms that are scheduled to kick off in India by 2010.

Banking and Financial Services

Sapient acquires London-based Derivatives Consulting Group

Global services firm Sapient has acquired London-based Derivatives Consulting Group Ltd (DCG), a leading provider of derivatives consulting and outsourcing services to investment banks, hedge funds, asset managers and commercial banking clients. With this acquisition, Sapient will add a globally integrated service in derivatives processing to the market-leading capabilities of its Trading and Risk Management (TRM) practice, the company said in a release.

The addition of DCG will increase Sapient's ability to address derivatives operations issues and further strengthen its unique position in the marketplace. Sapient's expanded TRM services will now include unique operations benchmarking, deep derivatives and process expertise, operations support, technology services and proven off-shore capabilities. These will help clients both manage the growth and complexity of derivatives transactions and eliminate the inefficiencies they currently experience in derivative operations. Key clients of the practice include the leading firms in the investment banking, asset management, hedge fund, insurance, oil & gas, utilities and agricultural sectors.

BPO/KPO

Essar's Aegis BPO buys PeopleSupport of US

The Essar group said that its outsourcing outfit Aegis BPO has agreed to buy the Nasdaq listed off-shoring firm PeopleSupport Inc for $250 million (Rs 1,057 crore). This would be the eleventh acquisition by Aegis in the last four years. Post the acquisition, the companies will merge through Essar Services (Mauritius) and create an entity that would have revenues of $500 million and employ about 29,000 people.

Currently Aegis employs around 20,000 persons, and PeopleSupport, 8,500. Under the terms of the agreement, Aegis will pay shareholders of PeopleSupport $12.25 per share, said a joint statement from the companies. The deal will be funded through internal accruals of the Essar group. New clients Apart from getting 15 new clients, this 100 per cent buyout will enable the Mumbai-based Aegis to add Philippines to its delivery locations; this will also help it foray into the travel and transportation sector.

Mold-Tek Technologies acquire 2 KPO entities

Mold-Tek Technologies Ltd will acquire 100 per cent stake in two engineering Knowledge Process Outsourcing (KPO) companies namely US-based RMM Global LLC and its associate company technet Engineering Services, Thane. The company did not disclose the value of the deal.

Both the companies are involved in providing structural engineering KPO services to high rise buildings in USA with annual revenues pegged at $ 2 million, the company said in a statement. These two companies have 91 persons with average work experience of 3-5 years in providing engineering services to high rise buildings for clients in USA. The acquisitions will more than double the capacity for BPO services in high rise building segment. The total strength of Moldteck will effectively go up from 310 to 400 persons, it added.

Energy

OVL acquired 15 per cent control OF Imperial Energy

ONGC Videsh Ltd (OVL), the wholly-owned subsidiary of Oil and Natural Gas Corporation (ONGC), announced that it has acquired 15 per cent in UK-listed Imperial Energy and formally launched a negotiated takeover bid for the company at $2.6 billion (equivalent to around Rs 11,500 crore), which the company's board has approved.

In a cash deal, OVL has offered 1,250 pence per share. The bid is being submitted by Jarpeno Ltd, a wholly-owned OVL subsidiary registered in Cyprus. The control over 15 per cent of Imperial Energy's stake is part of OVL's strategy to stall a counter-bid — anticipated from China's Sinopec. It involves an irrevocable agreement with each of the directors to acquire 6.4 million shares representing 6.3 per cent at 1,250 pence a share. This includes executive chairman Peter Levine divesting 6.1 per cent. OVL has also signed an agreement with institutional investor Baillie Gifford & Co to buy its 9.2 per cent stake at 1,250 pence. However, this agreement will lapse if any competing offer is made at 10 per cent above this offer (at 1,375 pence or above). This, in effect, means that the counter-offer cannot be below 1,375 pence. In a regulatory filing to the London Stock Exchange, Peter Levine said, "Imperial Energy's Directors are pleased to have been able to reach an agreement with OVL and intend unanimously to recommend shareholders accept the proposed offer." The deal, however, still requires shareholder approval to go through. Sources, however, said that Chinese petroleum major Sinopec has also started preliminary work on Imperial Energy and is expected to make a counter-bid. After OVL submits a formal bid, shareholders need to approve or reject the transaction in 45 days, said an investment banker tracking Imperial Energy. Any company can put in a counter-bid during this period.

Engineering

Kirloskar announces acquisition of a German company

Kirloskar Electric Company Limited announced the acquisition of the Lloyd Dynamowerke Gmbh & Co KG (LDW) in Bremen, Germany. "This acquisition is of strategic interest to us. It will give Kirloskar Electric complementary engineering skills, a unique footprint in Europe and an important customer base built over the last few decades," said Kirloskar, Chairman and Managing Director of KEC.

The LDW manufactures electrical rotating machines and drive systems. LDW's clientele include companies such as Siemens, Alsthom, Thyssen Krupp and Gottwald. With a gross turnover of Rs 765 Crores in 2007-08, Kirloskar Electric is a leading manufacturer of electrical equipment in India. KEC has factories located in Bangalore, Mysore, Hubli, Pune and Tumkur.

Entertainment

Walt Disney acquires 15% stake in UGBL

The Walt Disney Company has invested Rs 118 crore for a 15 per cent stake in UTV Global Broadcasting (UGBL), the broadcasting arm of UTV Software Communications. Walt Disney currently holds 300,000 equity shares in the company. UTV Software Communications has been allotted 15,00,000 equity shares of Rs 10 each in UGBL.

With this, UTV Software Communications will hold 75 per cent of the paid-up share capital of UGBL for Rs 240 crore, making UGBL a subsidiary of UTV. The remaining

10 per cent is held by the promoter Ronnie Screwvala. The company had said in February that Walt Disney would pick up 32.1 per cent in UTV Software Communications and 15 per cent in the UGBL for Rs 81.83 billion. UGBL launched four channels from September last year— youth entertainment channel, 'Bindass', movie channel, 'Bindass Movies', global films channel, 'World Movies', Hindi movie channel UTV Motion Pictures and business news channel UTVi.

UTV Software acquires 80% stake in True Games

Media and entertainment company UTV Software Communications has acquired 80 per cent stake in California-based gaming company True Games Interactive. The acquisition has been done through UTV's UK-based subsidiary IG Intercative Entertainment.

During the company's first quarter result in July, UTV's promoter Ronnie Screwvala said that the company will invest $75 million in its gaming division. Screwvala said that UTV would use $30 million for acquiring majority stake in an overseas online gaming company. It has also earmarked $37 million (of the $75 million) to develop three high-end console games and working capital of Ignition— its gaming firm— for its facilities in London, Florida and Tokyo. The remaining $30 million will be used to invest in acquiring majority stake in an overseas online gaming company. In addition UTV would also be increasing its stake in Ignition from 70 per cent to 95 per cent for $8 million.

Information Technology

ITC acquires US based IT firm

Indian tobacco major ITC Ltd said that its subsidiary ITC Infotech India Ltds has acquired New York based IT company Pyxis Solutions, Llc for an undisclosed amount. ITC Infotech India acquired the software testing solutions provider through its US-based wholly owned unit ITC Infotech (USA), said the company in a notice to the Bombay Stock Exchange. Pyxis has now become a wholly owned unit of ITC. Pyxis client list includes international banks such as Deutsche Bank, Citi Bank, Merril Lynch etc.

Infosys buys UK-based Axon group for £407 m

Infosys Technologies Ltd said that it is buying UK-based SAP consulting company Axon Group Plc for £407.1 million or Rs 3,310 crore, in an all-cash deal to strengthen its SAP services offering. The deal would close at the end of November this year. The payment would be made in December, and it would add to earnings from January 2009, India's second largest IT services provider said.

This is Infosys' second acquisition of an entire company. The first came in December 2003 when it acquired Australian company

Expert Information Services for $22.9 million. Interestingly, the cost of acquisition is roughly twice Axon's 2007 revenues of £204.5 million. Typical acquisitions in the IT services space equate the cost of acquisition to the annual revenues. The premium that Infosys might have paid here could be explained by the billing rates that consultancy offerings command. Last year this month, Infosys' competitor Wipro announced the acquisition of Infocrossing, a US-based services provider for about $600 million. Infocrossing's annual revenues at that time were about $232 million. Axon, which specialises in SAP implementation and consultancy, has clients across sectors including aerospace, retail, manufacturing and utilities. The company would add about 2,000 employees to Infosys' strength of about 94,400 employees as of June 2008. The object of the acquisition is to have global reach, scale and financial strength necessary to participate in deals that are transformational for client's businesses, said Mr S. Gopalakrishnan, Chief Executive Officer and Managing Director, Infosys.

Tech Mahindra acquires minority stake in Servista

Mahindra group company Tech Mahindra (TechM) said it has acquired a minority equity stake in European systems integrator, Servista for an undisclosed amount. As a part of the agreement, TechM would be Servista's exclusive delivery arm for three years and would also assist the company in securing more large-scale European IT offshoring business. TechM would have the right to nominate a member onto Servista's Board of Directors, a release issued stated.

"This deal will drive Tech Mahindra's expansion into the European market place and will significantly enhance TechM's business development capability," the release said. The Mahindra group company would also support Servista in delivering managed IT services and provide it with cost-efficient and highly-scaleable world-class solutions for their clients.

Infrastructure

AMP Capital to acquire 29% equity in Gayatri

AMP Capital Finance Mauritius Ltd, part of Australia's wealth management company AMP Ltd, is acquiring a 29 per cent equity stake for Rs 100 crore in Gayatri Infra Ventures Ltd (GIVL), a wholly-owned subsidiary of construction firm Gayatri Projects Ltd (GPL). The two companies have entered into a definitive agreement to this effect.

As per the agreement, AMP Capital would be investing Rs 100 crore in the first tranche in equity shares of GIVL. These funds would be utilised to meet the requirements of GIVL's existing projects as well as future bids and concessions undertaken by it. AMP would also consider a further equity injection of Rs 100 crore depending upon the future projects undertaken by GIVL.

Metals

German & UAE group buys 70.5 % in GMR Ferro Alloys & industries Ltd

German metals group Cronimet said that it bought with a group of unnamed Dubai-based investors a 70.5 percent shareholding in Indian ferro chromium producer GMR Ferro Alloys & Industries Ltd. The seller was India's GMR Group and no price was given.

Privately-owned Cronimet said in a statement approval from Indian competition authorities had already been received. GMR Ferro Alloys, based in Tekkali Mandal in India's Andhra Pradesh state, produces about 27,500 tonnes of ferro chromium annually, Cronimet said. About 75 percent of output is exported to Europe, China, Japan and South Korea. Cronimet said the move continued its international expansion strategy. The group has global operations in recycling of steel alloy scrap and trading of ferro-alloys and chromium nickel alloys plus a wide range of other metals largely focused on the stainless steel industry. It

A consortium headed by Cronimet in April this year acquired the mining rights to a chrome ore deposit in the Bushfeld geographical complex in South Africa. Privately-owned Cronimet plans to start South African chrome ore mining by the end of 2008 and hopes 2009 ore production will reach 400,000 tonnes. In 2004, the group bought a majority shareholding in Armenian copper mine Zangezur Copper and Molybdenum Combine which it has been steadily expanding under a $60 million investment programme.

Pharmaceuticals & Healthcare

Lupin buys 30% in Aussie company

Mumbai-based drug major Lupin has acquired over 30 per cent stake in Generic Health Pty Ltd of Australia, one of the top 10 generics drug suppliers in the Australian market, for an undisclosed amount. The Melbourne-headquartered Generic Health markets generic prescription and over-the-counter (OTC) products in the Australian market, in a partnership model with established global generic drug makers. The company sells approximately $500 million (nearly Rs 2,150 crore) worth of drugs in Australia, which has Rs 11,300 crore (A$3 billion) worth generics market.

Lupin, which posted a turnover of Rs 2,773 crore last year, entered the Australian market during the last financial year by setting up a fully-owned subsidiary, currently has 16 product registrations in Australia, with 14 approvals in segments such as cardio-vascular drugs, central nervous system drugs and cephalosporins. The potential of these products are worth A$850 million (Rs 3,200 crore) and the acquisition would help market these products in Australia, said company sources. A few months ago, General Health had entered into a partnership with Actavis to market its products in Australia. BioTech Capital, one of Australia's largest life-science investment funds, also had invested about $2.2 million into General Health.

Marksans Pharma acquires UK-based Relonchem

Drug maker Marksans Pharma said it has acquired UK-based generic pharmaceutical company Relonchem for an undisclosed amount.

"The acquisition gives us an immediate marketing, distribution and sales presence in the highly profitable but regulated generic markets of UK and Europe," Marksans Pharma Managing Director Mark Saldanha said. Relonchem is engaged in licensing, marketing and supplying generic pharmaceutical products in major therapeutic classes. The company has registered sales of around $32 million in financial year 2007, Marksans Pharma said in a filing to the Bombay Stock Exchange. "This is our second acquisition in Europe after Bell's & Sons and is significant milestone which will become one of the key drivers to Marksans' global growth strategy," Saldanha added. UK accounts 26 per cent of the generics market in the European Union. The country's generics market is one of the worlds' largest in terms of both size and generic penetration with a projected size of $7.6 billion by 2009.

Textile

Oswal Group buys out Austrian joint venture partner

Indian yarn maker Oswal Group has taken over its Austrian joint venture partner, the now bankrupt textile firm FM Hammerle, media reports said. The Group's Rs.3.7-bn flagship, Vardhman Polytex, had announced a joint venture with the Dornbirn-based Hammerle in 2005 for setting up Rs.2-bn greenfield yarn-dyed shirting fabric facility. The existing joint venture tilted the sale in favour of the Indian company.

"Oswal was, therefore, preferred as also because they are going to retain 100 to 120 more employees than the other interested parties," Hammerle's operating trustee William Klagian told the ailing company's employees, media reports said. Financial details of the sale are not available. After a dramatic turn of fortune, the company filed for bankruptcy in July. The company currently has 312 employees on its rolls. It was previously reported that the company had debts of six million euros. In fact, the employees are by far the largest creditors, the media reports said. The new owners told reporters that all divisions and about 150 employees of the Austrian company would be retained. The plan is to resume operations from Sep 1.

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Legal Corner

<u>1) DIT Vs RAVVA Oil (Singapore) Pvt. Ltd.</u>
<u>Citation: (2008) 217 CTR (Del) 577</u>

About: Deduction of expenses incurred by non-resident head office on behalf of domestic branch

<u>Facts:</u> The assessee was a non-resident company, having its head office at Singapore and a sole branch office in India in connection with the exploration of oil. It incurred expense at its head office on account of administration, accounting and management services being wholly relating to its Indian branch and claimed it as deduction contending that its all operation related to India only and it had no business outside India, which was opposed by the AO contending that being a non-resident company, the provision of sec 44C would be applicable and whole of the expenses would not be available for deduction.

<u>Issue:</u> Whether expenses incurred by non-resident head office on its sole branch is allowed as deduction or not

<u>Held:</u> In Rupenjuli Tea Co. Ltd. Vs CIT (1991) 92 CTR (Cal) 37, it was held by the High court at Calcutta that the 44C is applicable only if the assessee has branches in India as well as outside India. The question of apportioning the head office expenses 'attributable' to the business in India as contemplated by sec 44C(c) of the Act would not arise where the assessee's operations are restricted only to India and no part of the expense is allocable to operations outside India. Hence, it was held that the expenses incurred by the assessee at its head office at Singapore on account of administration, accounting and management services being wholly related to its India operations as it had no business outside India; Sec 44C would not be applicable.

<u>2) Malayala Manorama Co. Ltd. vs CIT</u>
<u>Citation: (2008) 216 CTR (SC) 102</u>

About: Calculation of depreciation for book profit tax

<u>Issue:</u> "Whether in respect of a company consistently charging depreciation in its books of account at the rates prescribed in the Income-tax Rules, the Income Tax Officer has jurisdiction under section 115J of the Income Tax Act, 1961 to rework net profits by substituting the rates prescribed in Schedule XIV of the Companies Act, 1956?

<u>Held:</u> The present provisions relating to MAT are enshrined in section 115JB of the Act. What the section requires is that the profit and loss account should be prepared in the accordance with the provisions of Parts II and III of Schedule VI to the Companies Act, 1956, and that in preparing

the annual accounts including the profit and loss account, the accounting policies adopted, accounting standards followed and the method adopted for calculating depreciation, shall be the same as the one adopted for preparing the annual accounts laid before the company in the annual general meeting. In other words, there cannot be one method of working for Companies Act purposes and another for income-tax purpose. Where the method of depreciation adopted is one which is in conformity with the accounting standard and norms under Companies Act, 1956, and has been accepted by statutory auditors and the shareholders as presenting a true and fair view of the accounts of the company, the Department cannot question the method of depreciation adopted by the taxpayer company.

3) ITO Vs DSM Soft (P) Ltd.
Citation: (2008) 115 TTJ (Chennai) 469

About: Transfer of assets and operating activities to separate unit.

Facts: The assessee company, with a unit in Chennai, was incorporated on 8th June, 1991 and since then has been engaged in development of software both for export and local market. The assessee had claimed deduction under section 80HHE till AY 2000-01. During the present financial year, assessee had started a new Software Technology Park (STPI) unit at Trichy and has claimed that the entire export has been affected by its export unit situated at Trichy. During the course of scrutiny assessment, the AO noted that the STPI unit continued to have the same export clients like that of last year. The majority of the employees of the Chennai unit were taken into the STPI unit. The AO further noted that there were huge losses in the domestic unit. The domestic unit in earlier years has been showing handsome profit from its business but substantially in this year has shown huge losses. The telephone, fax, internet and e-mail expenses of STPI unit at Trichy were actually much less than those of the Chennai unit. From these facts, the AO came to the conclusion that export of software which is accomplished by the assessee through internet has been handled from Chennai and not from Trichy. Consequently, the AO held that the unit at Trichy was established by splitting the earlier business and hence was not eligible for section 10A relief.

Issue: Whether transfer of assets and operating activities to separate unit is reconstruction or splitting up of earlier business.

Held: The Tribunal said that in order to hold that a business was formed by splitting up of a business already in existence, there must be some material to hold that either some asset of the existing business are diverted and another business is set up from such splitting up of assets or that the two business are same and the one formed was an integral part of the earlier one. Admittedly, in this case, it is not the case of the Revenue that the new business involved diversion of assets from the old unit. The new unit was established by procuring machinery worth more than Rs. 50 lakhs. Thus in the opinion of the Tribunal, whether there is reconstruction of a business in terms of this section depends on facts of the case. If the alterations or changes are substantial, there would be little scope of describing what emerges as a reconstruction of business. Hence, in this matter one has to look at the substance of a transaction and not at the form.

<u>4) Baroda Refrigeration Industries Vs DCIT</u>
<u>Citation: (2008) 10 DTR 4 (Ahd)(Trib)</u>

About: Conversion of partnership firm into a company under Part IX of the Companies Act

<u>Facts:</u> M / S Baroda Refrigeration Industries, a proprietary concern till 31 March 1995, was converted into a partnership firm (firm) effective from 1 April 1995, which was thereafter registered as a company, by he name Baroda Refrigeration Pvt. Ltd (BRFL), which s a wholly owned subsidiary of BRI Electrical Pvt. Ltd (BRIEPL), in accordance with he provisions contained in Part IX of the Companies Act.

BRFL was taken over by BRIEPL effective 7th September 1995. The assets of he firm had been revalued prior to being registered as a company. The revaluation was credited to the capital account of the partners. When the business was taken over by BRIEPL, shares equivalent to he amount credited to the capital account of the partners were issued to them. The Assessing Officer (AO) was of the opinion that the transaction involving BRPL was a sham transaction and he firm had actually transferred the business including the assets o BRIEPL while the consideration received in lieu of this transfer were the shares allotted to the partners of the firm.

The AO held that the transaction would amount to transfer under the Income Tax Act (Act) and hence subject to short term capital gains.

<u>Issue:</u> Whether Conversion of partnership firm into a company under Part IX of the Companies Act is 'transfer'

<u>Held:</u> Conversion of a firm into a company in accordance with the provisions contained in Part IX of the Companies Act cannot be regarded as a 'transfer' under the Act as :

- There is a statutory vesting of title of all the properties of the firm in the newly incorporated company without any need for a separate conveyance.
- Both the entities i.e. firm and company

are not different. They do not exist simultaneously. The word "transfer" presupposes existence of transferor and transferee simultaneously.

- The provisions of he Act which brings "transfer by way of distribution" in the ambit of capital gains, will not apply in the present case as there is no distribution of capital assets to the partners or dissolution of the firm. In the present case, here was vesting of the property and not distribution of property.

- Even assuming that there is a transfer of capital asset, the liability to pay capital gains tax would not arise because:
  - The charging section is to be read with the computation section;
  - The computation section provides that the full value of the consideration received/accruing has to be considered for the computation and in the absence of specific provisions that apply to a case of 'distribution', market value of assets transferred cannot be regarded as consideration accruing to the firm; and
  - In the present case, computation is not possible as the company had allotted shares to the partners of the firm and no consideration flowed to the firm.

The partners of the firm who were allotted shares in the company became a Body of Individuals and in that status they can be taxed, but the firm can not be taxed.

No finding by the lower authorities that the taxpayer adopted a colourable device; rather conversion of firm into a company is in within the framework of law.

5) SET Satellite (Singapore) Pte Ltd Vs ITAT

About: Taxability of foreign enterprise having a Dependant Agent Permanent Establishment (DAPE) in India.

Facts: SET Satellite (Singapore) Pte Limited (Appellant), a company incorporated in Singapore, was engaged in the business of broadcasting and up-linking of television channels. SET India Private Limited (SET India), a company incorporated in India marketed ad-space on behalf of the Appellant for a commission. The Appellant was a tax resident of Singapore and was eligible for the benefits of the India-Singapore Double Taxation Avoidance Agreement (DTAA). SET India was a Dependent Agent (DA) of the Appellant. The Appellant had a Development Agent Permanent Establishment (DAPE) under Article 5(8) of the DTAA.

The Appellant filed a return of income but contended that it is not taxable in India as its DA was remunerated on an arm's length basis. After completion of the proceedings at the assessment stage and the first appellate level, the case went up to the (Income Tax Appellate Tribunal) ITAT, with regard to the taxability of the Appellant in India. The ITAT held that under the DTAA, the Appellant had a DAPE in India by virtue of the activities of the DA. The ITAT concluded by holding that DA and DAPE are two taxable units distinct from each other and the tax liability of the Appellant in respect of its DAPE is not extinguished by making an arm's length payment to the DA.

Issue:

1. Whether the activities of the DA could be regarded as activities of the DAPE of the Appellant and would any income be attributable to such activities?

2. Whether having taxed the DA on an arm's length basis for its activities in India, the same could be taxed in the hands of the Appellant as being income attributable to the DAPE?

Held: The HC relied on Circular No. 23 of 1969 issued by the Central Board of Direct Taxes (CBDT) under the domestic tax law which stated that if an agent's commission fully represents the value of the profit attributable to the agent's services, it should prima facie extinguish the tax liability of a foreign principal. In addition, the HC also relied on the decision of the Supreme Court (SC) in the case of Morgan Stanley 8 Co., Inc (292 ITR 416) which had held that if an associated enterprise, that also constitutes a PE, is remunerated on arm's length basis, nothing further can be attributed to the PE. The CBDT in its Circular No 23 of 1969, which is binding on the Revenue, clearly sets out that where a non-resident's sales to Indian customers are secured through the services of an agent in India, the assessment in India of the income arising out of the transaction will be limited to the amount of profit which is attributable to the agent's services.

The principle that emerges from the decision of the SC in the case of Morgan Stanley supra is that if a correct arm's length price is applied and an agent is compensated accordingly, then nothing further would be left to be taxed in the hands of the foreign enterprise.

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M & A Happenings At Bombay High Court

Applications

This month 20(Twenty) Schemes were filed, involving 49(Forty Nine) Companies out of which 17(Seventeen) Schemes were Scheme of Amalgamation, 2(Two) Scheme was Scheme of Demerger and 1(One) Scheme was Composite Scheme of Arrangement involving merger & Demerger.

Other facts are :

I. 4(Four) were Listed Companies

II. 8(Eight) Companies have paid-up Capital more than Rs. 10 Crores.

III. In 3(Three) Schemes, Transferee Company has carried forward losses and the Transferor Company is Profit making.

IV. In 4(Four) Schemes, both Transferor and Transferee Company have carried forward losses.

V. 3(Three) Schemes were for merger / Demerger of Subsidiary Company (Transferor Company) with Holding Company (Transferee Company).

Industry wise break up of Schemes Filed	No of Deals	
	Aug 08	July 08
Auto Components	1	-
Chemical & Fertilizers	1	1
Cement	-	1
Construction	1	1
Engineering	-	1
Financial Services	2	-
Investments	2	-
Information Technology	3	1
Jewellery	2	-
Metal	-	1
Paper	-	1
Petrochemical	-	1
Power	1	-
Real Estate	1	1
Textile	1	1
Others	5	10
Total	20	20

DETAILS OF SOME SCHEMES

Scheme of Amalgamation

Verigold Fine Jewellery Private Limited and LJ Creations Private Limited with Renaissance Jewellery Limited

This is a Scheme of Amalgamation of two Unlisted fully owned Companies with Listed Company. This is a case of horizontal amalgamation as all the companies are engaged in same line of business i.e. Gems & Jewellery. Verigold Fine Jewellery Private Limited and LJ Creations Private Limited are wholly owned subsidiaries of Renaissance Jewellery Limited. The Appointed Date of Amalgamation is 1st April, 2008.

The Transferee Company has not filed application with the High Court based on the Judgment in case of Mahaamba Investments Limited and IDI Limited (2001) 105 Company Cases page 16 to 18, that if there is no effect on the rights of the members or creditors of the Transferee Company as between themselves or does not involve reorganisation of the share capital of the Transferee Company, no application/petition by the Transferee Company is necessary.

<u>MKJ Jewellery Private Limited and Zodiac-JRD-MKJ Limited</u>

This is a Scheme of Amalgamation of Unlisted Company with Listed Company. This is the case of horizontal amalgamation as all the companies are engaged in same line of business i.e. Importers, Exporters and Manufacturing of gold jewellery, cut and polish diamonds.. Post amalgamation Equity Share Capital of the Transferee Company will be Rs. 517. 71Lacs and the promoters holding will be 63.45 % as against present holding of 53.30%.The Appointed Date of Amalgamation is 1st April, 2007.

<u>Storemedia Technologies Private Limited and Prime Focus Limited</u>

This is a Scheme of Amalgamation of Unlisted Company with Listed Company. This is the case of horizontal amalgamation as both the companies are engaged in same line of business i.e. Integrated post production, visual effects and digital intermediary capabilities. Post amalgamation Equity Share Capital of the Transferee Company will be Rs. 1282.25 Lacs and the promoters holding will be 54.31% as against present holding of 53.96 %. The Appointed Date of Amalgamation is 1st January, 2008.

<u>Composite Scheme of Arrangement involving merger and demerger.</u>

<u>Bellona Infotech Private Limited and Sameer Microtronics Private Limited and Datamatics Intercon Limited and Datamatics Limited and Datamatics Technologies Limited and Datamatics Software Services Limited and Datamatics Technologies Limited and Datamatics Software Services Limited and Datamatics Software Solutions Limited</u>

This is a Composite Scheme for:

1) Merger of Bellona Infotech Private Limited and Sameer Microtronics Private Limited and Datamatics Intercon Limited and Datamatics Limited with Datamatics Technologies

Limited.

2) Demerger of Export Division of Datamatics Software Services Limited into Datamatics Technologies Limited.

3) Merger of Datamatics Softworld Limited and Datamatics Software Solutions Limited with Datamatics Software Services Limited.

4) Reduction of Preference Share Capital of Datamatics Software Services Limited.

This is a Composite scheme of Arrangement between 7 unlisted companies and One Listed Company. The Appointed Date for Scheme of Arrangement is 1st April, 2008.

<u>Consideration for Merger Bellona Infotech Private Limited and Sameer Microtronics Private Limited and Datamatics Intercon Limited and Datamatics Limited with Datamatics Technologies Limited</u>

1.21 Equity Shares of Rs.5/- each fully paid up of Datamatics Technologies Limited for every 1 Equity Share of Rs.10/- each fully paid up of Datamatics Limited.

<u>Consideration for Demerger of Export Division of Datamatics Software Services Limited into Datamatics Technologies Limited.</u>

1(One) 8% Redeemable Non-Cumulative Preference Shares of Rs.10/- fully paid up of Datamatics Technologies Limited for every 1 (One) 8% Redeemable Non-Cumulative Preference Shares of Rs.10/- fully paid up of Datamatics Software Services Limited and 1(One) 9% Redeemable Non-Cumulative Preference Shares of Rs.10/- each fully paid up Datamatics Technologies Limited for every 1(One) 9% Redeemable Non-Cumulative Preference Shares of Rs.10/- each fully paid up Datamatics Software Services Limited.

<u>Consideration for Merger of Datamatics Softworld Limited and Datamatics Software Solutions Limited with Datamatics Software Services Limited</u>

Since Datamatics Softworld Limited and Datamatics Software Solutions Limited are direct and indirect subsidiaries no shares are to be issued pursuant to merger.

Petitions Admitted

The number of Schemes admitted were 24(Twenty Four) of which 18(Eighteen) Schemes were Scheme of Amalgamation, 4 (Four) Schemes were Scheme of Demerger and 2(Two) Schemes were Composite Scheme of Arrangement involving Merger & Demerger.

Important ones are listed below.

Schemes of Amalgamation

1. Microsynth Fabrics (India) Limited with JBF Industries Limited.

2. Badhira Leasing and Finance Private Limited with Responsive Industries Limited.

3. SRM Energy Private Limited with Hitkari Fibres Limited.

4. Verigold Fine Jewellery Private Limited and L.J. Creations Private Limited with Renaissance Jewellery Limited.

5. Leela Scottish Lace Private Limited with Bombay Rayon Fashions Limited.

Composite Scheme of Arrangement involving Merger & Demerger

1. Mobil Petrochem Private Limited and Ittefaq Ice and Cold Storage Co. Private Limited and Panama Petrochem Limited.

2. Pratibha Shareholding Private Limited and One Metro India Private Limited and Pratibha Industries Limited and Pratibha Pipes and Structural Limited.

Petitions Sanctioned

The numbers of schemes sanctioned were 31(Thirty One) out of which 29(Twenty Nine) Schemes were Scheme of Amalgamation and 2(Two) Schemes was Schemes of Arrangement. Important ones are listed below. Important ones are listed below.

Scheme of Amalgamation

1. Samrat Holding Limited and Titan Holdings Limited and Questar Investments Limited with Titan Industries Limited.

2. Sovereign Trading Enterprises Limited and Tracklighting Finance and Investments Limited and Royaltern Finance and Investments Private Limited with Indokem Limited
3. Doongursee Diamond Tools Limited with Kamanwala Housing Construction Limited.

4. Bonito Impex Private Limited with Indo-Castle Multimedia Limited.

5. Essar Investments Limited with Essar Power Limited.

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September - 2008