ROLE OF INTELLECTUAL PROPERTY IN MERGERS AND ACQUISITIONS

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INTRODUCTION

What is Intellectual Property?

Article 2 para 8 of the WIPO Convention, 1967 defines "intellectual property" as the rights associating with - literary, artistic and scientific works - efficiencies and performing arts, photos and broadcasts - innovations in all areas of human endeavour - scientific discoveries - commercial designs - hallmarks, solution notes, and commercial names and designations - protection versus unjust competitors and all various other rights arising from intellectual, scientific, literary or artistic areas."

Intellectual property as words signifies is a residential or commercial property of the intelligence. The resourcefulness and labor of the writers, creators and creators is what this property purportedly gives rights to. The topic of intellectual property laws is very diversified, extending from the design of a simple utilitarian item like a paperclip to as complex as a space shuttle design produced by a technology giant. They are a main possession to the technology or biotechnology companies and form a majority of their business strategies. The item worth, brand name worth or the development profile of a business plays a critical role when it comes to the management of properties of the company.

What are Mergers and Acquisitions?

The term ‘merger' is not specified under the Companies Act, 2013 or under Income Tax Act, 1961. As an idea, a merger is a device used by companies to increase their long-lasting success by broadening their procedures. It is a mix of two or more entities into one, the preferred effect being not simply the build-up of assets and liabilities of the unique entities, but organization of such entity into one business. The feasible objectives of mergers are manifold - economies of scale, purchase of technologies, access to varied industries/markets and so on. Typically, in a merger, the combining entities would certainly stop to exist and would certainly combine into a solitary entity. Laws in India use the term ‘amalgamation' for merger. Section 2(1)(A) of the Income Tax Act, 1961 defines an amalgamation as the merger of one or more companies with another, or the merger of 2 or more companies to form a brand-new company, in such a way that all assets and liabilities of the amalgamating companies become the assets and liabilities of the integrated company. Shareholders holding not less than nine-tenths in worth of the shares in the amalgamating company or companies become shareholders of the integrated company. Sections 230-234 of the Companies Act, 2013 deal with the plans of arrangement and compromise in between a business, its shareholders and/or its creditors.

Mergers may be classified into the following types -

1. **Horizontal Mergers -** Under this strategy, two companies that remain in direct competition and sharing the exact same line of product combine merge. The merger is based upon the presumption that it will provide harmony and allow improved cost efficiencies to the new business. It is presumed that the merger would certainly give benefits such as staff decrease and decrease in related costs, economies of scale, opportunity to obtain technologies unique to the target company, and increased market reach and industry visibility.

2. **Vertical Mergers** - Vertical mergers are usually mergers of non-competing companies where one's item is a required element or complement of the others. Such a merger is represented by one firm engaged in various aspects of manufacturing say, expanding raw materials, manufacturing, transferring, marketing and/or selling. Such mergers can achieve pro-competitive effectiveness benefits.

3. **Conglomerate Merger** - A conglomerate merger is a merger in between 2 entities in unrelated markets. The primary factor for a conglomerate merger is usage of funds, enlargement of financial obligation capacity, and increase in the worth of outstanding shares by enhanced leverage and earnings per share and by reducing the average cost of funding.

4. **Accretive Merger** - Accretion is all-natural development in dimension or degree by progressive external addition. Accretion suggests ‘value creation'. Accretive Mergers occur when a business with high price-to-earnings proportion (P/E) purchases a business with a reduced P/E. Consequently, the EPS of the obtaining company increases.

5. **Dilutive Merger** - The word ‘dilutive' suggests ‘destruction' or ‘dilution'. A dilutive merger is one where the EPS of the obtaining company falls after merger. Since the EPS declines, the obtaining company's share price also declines, as the marketplace anticipates a reduction in the company's future profits. The expected decline could be because the marketplace forces feel the merger would certainly ruin worth and would certainly not result in synergies post-merger.

ACQUISITIONS

Acquisition is an effort made by one firm to gain a majority interest in another firm. The firm trying to gain a majority interest is called the acquiring firm and the other firm is called the target firm. Once the purchase is finished, the acquiring firm becomes the lawful proprietor and controller of business of the target firm. The acquiring firm pays for the net assets, a good reputation, and brand of the company bought. Acquisitions are activities whereby companies seek to accomplish economies of scale, enhanced effectiveness, and enhanced market exposure. In an acquisition, unlike in a merger, there's no trade of stock or consolidation as a brand-new company although it involves one company purchasing another.

Acquisitions may be classified into 2 kinds -

1. **Assets Purchase** - Under this technique, the acquiring firm purchases specific identifiable assets for business. These assets are perceived as having potential to include worth to the acquiring company. Sometimes, it may also presume defined obligations. This helps the acquiring company to decrease the risk of handling unidentified obligations such as seller's agreements, workers, and so on.

2. **Stock Purchase** - Under this technique, the acquirer purchases the whole outstanding equity of the target company. It is a technique where the acquirer purchases the whole company and all assets and liabilities of business that come with it. Stock purchase doesn't cause any disruption in the procedures which can continue customarily.

BENEFITS OF IP IN MERGERS AND ACQUISITIONS

1. **Value Enhancement to the Firm's Profile** - Among the significant benefits of an IP asset purchase or merger is that it includes worth to the asset profile of a business. In purchase to achieve consistent growth in the market it is necessary that companies should evaluate whether the present profile meets the requirements to fulfill their present business objectives. Innovating something new is not feasible every time in this vibrant and inconstant market environment, therefore companies must search for new opportunities and offerings by way of acquiring present innovation by various other business for growth of its product portfolio and lead in the market. This will be done by implementing IP plans and solutions in purchase to determine unique developments that can amount to the speculated development of the company.

2. **Acquiring Unique Abilities** - The companies have always wanted to have a stronghold in the market. They constantly want to have a controlling position in the market against their rivals. Among the significant devices used for this is the acquisition or merger of unique innovation or abilities of their rivals to have an edge over others. It changes the entire overview of the company as well as creating a unique and efficient business model for the new company.

3. **Transfer of Technology** - Another productive benefit of obtaining an IP asset is that it enables the move of technology from a single person to another in the market place because of which free flow of an IP asset is maintained. This also leads to proper exploitation of the IP asset and its complete utilization.

4. **Diversification** - The acquisition or merger also assists in exploring and enhancing various areas of business. It facilitates participating in various areas of business. As it's easier to participate in a company through pre-established sources, it decreases the cost of procedure and creates a varied asset profile for the company. It opens up new doors for more deals, benefits, and acknowledgment in the market.

5. **Growth** - The very basic objective to implement any corporate strategy is to advertise growth and development which further leads to maximization of profit to accomplish its preferred objectives. The purchase or merger of an IP asset adds to the development prospects of the company by obtaining new and competent technology. It ensures that the item profile of the company is upgraded as per the present demand in the market, A business must assess its

current intellectual property asset profile to determine whether it meets the requirements and is according to business objectives.

INTELLECTUAL PROPERTY DUE DILIGENCE

Carrying out appropriate due diligence includes analyzing not just the monetary information of a business, however, likewise evaluating the company's essential assets. This is important since the earning potential of a business depends upon the kind and high quality of assets it has. While assessing assets, one should thoroughly evaluate IP assets of the target business. It's essential to perform a comprehensive IP assets due diligence before participating in financial investments since economies are ending up being progressively technology-driven. Intellectual property due diligence is important for financial investment in practically every kind of target business. It is particularly considerable when the target business is involved in a technology industry, as in this industry, many services and products include IP assets. Provided the contemporary company atmosphere, IP due diligence is inevitable since firms spend a considerable amount in technology. The procedure of determining all IP assets, validating possession and guaranteeing that they are devoid of encumbrances for the intended business use is essential to any type of merger, acquisition or financial investment. The following are the objectives of IP Due Diligence -

1**. Identify and find IP assets** - The basic objective of IP due diligence is to determine and find the IP assets of the target. This listing might be incredibly varied depending upon the nature of business. It might consist of licenses and/or patentable topic, copyrights, hallmarks, domain, profession tricks, mask functions, innovations, work of authorship, equipment and gadgets.

2. **Ascertain nature and range of targets declared rights in IP assets** - The target might not have consistent rights on all the IP assets. The target's rights might vary from straight-out possession to a permit in the IP assets. Thus, before choosing the financial investment, ascertaining the target's rights in IP assets ends up being essential.

3. **Evaluate credibility of target's rights on IP assets** - Assessing the credibility of the target's rights on the IP assets includes making a judgment regarding the relative strength of rights

declared by the target. Unique treatment ought to be required to guarantee that the target's real rights conform with the truths revealed to the prospective investor. It ought to be guaranteed that the rights must suffice to allow continued operation of business without disruption.

4. **Evaluate any type of prospective IP violation claims** - IP assets due diligence mainly includes violation problems. This action consists of evaluation of circumstances where the target's IP assets might infringe a third party's rights, or the target might have a legitimate claim of violation versus a third party. Either of these circumstances have the potential to seriously interrupt the procedure of business.

5. **Analyse any type of give of IP rights made by target** - This action includes evaluation of licenses, circulation contracts, reseller plans and other transaction by the target including a transfer of rights in the IP assets that might affect their worth.

CONCLUSION

Intellectual Property plays an extremely important function in Mergers and Acquisitions. Intellectual property assists in the growth of business, as it's the intangible asset of the business and the primary resource of the business asset profile so, it's extremely important for any type of business to safeguard its Intellectual property rights. The due diligence of Intellectual property is likewise extremely important, any kind of carelessness in the process of IP due diligence can cost business around in millions. Mergers and Acquisitions aid companies in enhancing their asset profile, obtaining new methods and capabilities, broadening their client base, diversification, development of business, and so on, and IP assists Mergers and Acquisitions in accomplishing all these goals. So, we can state that the function of IP in mergers and acquisitions is extremely important.

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