



**AN ANALYSIS OF ACQUISITIONS  
UNDER COMPANIES ACT, 2013 –  
WITH EMPHASIS ON THE CASE OF  
WALMART AND FLIPKART**

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**Abstract**

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*Financial institutions have become an unavoidable and significant institution for a nation's growth. These banks have served as both a regulator and a driver for the country's economic progress. We may now see the development of banks in the country, with the poor and underprivileged being the principal beneficiaries of the banking programme. Banks began as urban money lending companies for businesses and industries.*

*Only via government assistance could the benefits of banking reach the poor and rural people. The process of transforming banks from simply financial entities to social institutions is known as 'social control.' This paper aims to provide a neutral view of banking law and presents a new perspective in the Covid-19 era.*

**Keywords** – Companies Act, Acquisitions, Walmart and Flipkart Deal, Banking, Social Control.

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## Introduction

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While acquisitions were first primarily observed in the Roman Empire<sup>2</sup>, empirical research on the phenomena shows it growing in the more recent years. The 1990s, as a decade, will go down in history as the time of the most significant wave of mergers and acquisitions. Acquisitions are one of the few corporate decisions that can change the value and nature of a company.<sup>3</sup> It is growing as an essential instrument in corporate restructuring.<sup>4</sup> They are strategic tools.<sup>5</sup> Which are used by firms from time to time to achieve an edge over their competing rivals and capture a prominent position in the market.<sup>6</sup>

The fundamental aim of acquisitions is to increase shareholder wealth through expanded synergies and recognize collaborations that can enhance future cash flows, thus improving its value.<sup>7</sup> Acquisitions involve two organisations – the acquiring company and the acquired company. In an acquisition, one organisation (the acquiring company) purchases a part of or another organisation's entirety (acquired company).<sup>8</sup>

It includes the procurements of large segments of shares of the acquired company, which leads to the procurement of the majority of the voting power. It involves the purchase of controlling interest in the capital and all or substantively all of the target's resources, including assets and liabilities.<sup>9</sup> While certain sections in the Companies Act, 2013 are the general provisions regulating acquisitions covering measures concerning companies, the members, and creditors.

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<sup>2</sup> A Carmeli. & G.D. Markman, *Capture, governance and resilience: Strategy implications from the history of Rome*, Strategic Management Journal 32 (3) (2011).

<sup>3</sup> M. L. Sirower., *The synergy trap: How companies lose the acquisition game*, Simon and Schuster, (1997).

<sup>4</sup> David King, *Mergers and Acquisitions: A Research Overview*, Florida State University, (2018).

<sup>5</sup> Collis and Montgomery, *Corporate Strategy*, McGraw-Hill, (1997).

<sup>6</sup> Pawan Kalyani, *Walmart and Flipkart: The Biggest Deal in Indian E-com Startup Market.*, Journal of Management Engineering and Information Technology (JMEIT) Volume 5 Issue 4, (2018).

<sup>7</sup> Momodou Sailou Jallow, Massirah Masazing, Abdul Basit, *The Effects of Mergers & Acquisitions on Financial Performance: Case Study of UK Companies*, International Journal of Accounting & Business Management, Vol. 5 (No.1) (2017).

<sup>8</sup> Faizan & Anuar, Melati & Khan, Shehzad & Khan, Faisal, *Mergers and Acquisitions: A Conceptual Review*. International Journal of Accounting and Financial Reporting, (2014).

<sup>9</sup> Gupta, *Merger and Acquisitions in India*, Journal of Indian Research, Vol. 5(1) (2017).



Certain specific provisions relating to acquisitions under the Companies Act, 2013 include Section 235<sup>10</sup>, Section 230<sup>11</sup>, Section 42<sup>12</sup> and 62<sup>13</sup> read with Rule 13 of the “Companies (Share Capital and Debenture) Rules 2014” and “Rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014” and Section 186<sup>14</sup>, amongst several others.

One of the most significant acquisitions that took place in the Indian retail market was the Walmart-Flipkart acquisition. Walmart, an America based retail giant, enclosed its acquisition of Flipkart for around \$16 billion in acquiring a majority of 77% stake in Flipkart.<sup>15</sup> This decision of Walmart to secure a majority percentage of shares and control of the online retailer Flipkart marked the largest e-commerce arrangement in the world. Walmart chose to utilize the opportunity to enter the Indian market in a comparatively more straightforward manner where its universal contender, Amazon was previously present. Eventually, Flipkart sought to use this cash inflow to regulate and improve its operations while attaining access to international markets.<sup>16</sup>

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<sup>10</sup> Section 235, Companies Act, 2013, Power to acquire shares of shareholders dissenting from scheme or contract approved by majority

<sup>11</sup> Section 230, Companies Act, 2013, Power to compromise or make arrangements with creditors and members

<sup>12</sup> Section 42, Companies Act, 2013, Offer or invitation for subscription of securities on private placement

<sup>13</sup> Section 62, Companies Act, 2013, Further issue of share capital

<sup>14</sup> Section 186, Companies Act, 2013, Loan and investment by company

<sup>15</sup> Amitendu Palit and Rahul Choudhury, *Walmart's Buyout of Flipkart: Implications for Indian E-commerce Landscape*, National University of Singapore, ISAS Brief, No. 572, (2018)

<sup>16</sup> Polisetty, Aruna and Manda, Vijaya Kittu and R.V., Naveenan, *Indian Online Retail Ecosystem - a Study on Flipkart Deal with Walmart*, International Journal of Research and Analytical Reviews (IJRAR), (2019).



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## CHAPTER I. ACQUISITIONS AND THEIR PRESENCE IN INDIA

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In today's day and age, the primary goal of every company is profit and wealth generation for shareholders. Internal development is possible by introducing new goods, but can accomplish external growth through mergers and acquisitions.<sup>17</sup> The rise in deregulation, privatization, globalization and liberalization embraced by various nations worldwide led to mergers and acquisition operating as a strategy of expansion. Acquisitions now are an essential tool to gain benefits<sup>18</sup> that increase portfolios of products, help enter new markets, acquire technology, and gain contact to assets that permit businesses to contest at a universal level.<sup>19</sup> It is a transaction<sup>20</sup> where through the issue of stock, cash or debt<sup>21</sup> one company acquires the shares of another<sup>22</sup>, which enables the former to enforce control over the affairs of the company.<sup>23</sup>

It may be pleasant or hostile and can be designed in like a contract between the acquirer (the firm seeking to acquire another firm) and the majority stockholders or through the acquisition of shares of the target company from the open market.<sup>24</sup> Acquisition was defined as “*directly or indirectly acquiring or agreeing to acquire shares or voting right in or control over a target company*”, in the case of *A.R. Dahiya v. SEBI*.<sup>25</sup> Acquisitions broaden a firm's knowledge base, decrease inertia, establish a more significant proportionate of market share, reduce competition, lessen tax obligations<sup>26</sup> and enhance the feasibility future ventures.<sup>27</sup> Potential acquirers must be able to identify, understand and evaluate<sup>28</sup> the pros and cons of each opportunity.<sup>29</sup>

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<sup>17</sup> A. Ghosh & B. Das., *Merger and Takeovers*, The Management Accountant, vol. 38(7), (2003).

<sup>18</sup> *CIT v. National Finance Ltd.*, 1962 Supp (2) SCR 865

<sup>19</sup> Yadav & Kumar, *Role of Organization Culture in Mergers and Acquisitions*, SCMS Journal of Management, vol. 2(3), (2005).

<sup>20</sup> Priya Bhalla., *Mergers & Acquisitions in India: A Sectoral Analysis*, International Journal of Business and Economic Development (IJBED), 2(2), (2014).

<sup>21</sup> Jonathan Reuvid. *Mergers & Acquisitions: A Practical Guide for Private Companies and their UK and Overseas Advisers*, Kogan Page (2007).

<sup>22</sup> *Ramnarain Sons (P) Ltd. v. CIT*, (1961) 2 SCR 904

<sup>23</sup> Manish Agarwal, *Analyses of Mergers in India*, Unpublished Thesis, University of Delhi, (2002).

<sup>24</sup> *CIT v. Grace Collis*, (2001) 3 SCC 430

<sup>25</sup> *A.R. Dahiya v. SEBI* (2016) 14 SCC 370

<sup>26</sup> Shreya Srivastava, *A Comparative Study of Substantive Provisions Governing Merger Enquiry in India and USA*, GJITC 68, (2017).

<sup>27</sup> Vermeulen, Freek and Harry Barkema, *Learning through acquisitions*. Academy of Management Journal, (2001).

<sup>28</sup> Kamal Ghosh Ray, *Mergers and acquisitions: Strategy, valuation and integration*. PHI Learning Pvt. Ltd., (2010).

<sup>29</sup> Jemison, David B., and Sim B. Sitkin. *Corporate acquisitions: A process perspective*, Academy of Management Review, 11.1 145-163, (1986).



## 1. Presence in India

The altering strategy framework used in context to globalisation, deregulation and technology across the world has led to amplified competition<sup>30</sup> and caused a world-wide increase in Mergers and Acquisitions.<sup>31</sup> It is exercised extensively for restructuring business organizations. Studies show that acquisitions gained substantial momentum in India especially during the second half of the twentieth century.<sup>32</sup> The Government introduced the notion of acquisitions. The domestic business field witnessed a wave of acquisitions over the past decade.<sup>33</sup> The consequences of the acquisitions have been different throughout the diverse sectors of the economy.

Till the recent past, the occurrence of Indian businesspersons acquiring overseas businesses wasn't widespread. The state of affairs underwent a sea of changes where cross border mergers and international acquisitions have grown to take place as the latest trend in expansion and market establishment.<sup>34</sup> Acquisitions now are vital tools in the Indian market, utilised to outdo competitors. To guide and govern acquisitions, various legislations and regulations have been drawn, passed and evolved focusing on the areas of acquisition.

Such governing rules and laws have acknowledged the importance of the Court not sitting as a deciding body exercising power on the knowledge of leaders endeavouring to restructure their companies.<sup>35</sup> Proposed acquisitions in India, are to take place primarily in harmony with the sections of the "Companies Act, 2013".<sup>36</sup>

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<sup>30</sup> Pradeep Kumar Gupta, *Mergers and acquisitions (M&A): The strategic concepts for the nuptials of corporate sector*, Innovative Journal of Business and Management, 1.4 (2012).

<sup>31</sup> Berger, Allen N., Rebecca S. Demsetz, & Philip E. Strahan, *The consolidation of the financial services industry: Causes, consequences, and implications for the future*, Journal of Banking & Finance, 23.2-4 (1999).

<sup>32</sup> Ramu, S. Shiva. *Corporate Growth Through Mergers and Acquisitions*. SAGE Publications Pvt. Limited, (1998).

<sup>33</sup> Esha Shekhar & Vasudha Sharma, *Cross-Border Mergers in Light of the Fallout of the Bharti-MTN Deal*, 4 NUJS L Rev 101 (2011).

<sup>34</sup> Harpreet Bedi, *Merger & Acquisition in India: An Analytical Study*. Emerging Markets: Finance eJournal, (2010).

<sup>35</sup> Ion Exchange (India) Ltd. In re, (2001) 105 Comp Cases 115 (Bom)

<sup>36</sup> Matter of Proposed Acquisition of Shares and Voting Rights of Deep Industries Limited by Rupesh Savla Family Trust, 2017 SCC OnLine SEBI 251



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## CHAPTER II SIGNIFICANT REGULATIONS RELATING TO ACQUISITIONS IN INDIA

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There are certain sections under the Companies Act, 2013 that regulate acquisitions and cover the shares, members, and creditors. The anticipated acquisition is to take place in harmony with the “Companies Act, 2013”<sup>37</sup> and the “SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011”<sup>38</sup>.

### 1. Companies Act, 2013

Under the mentioned regulations, acquisitions must fulfil definite prerequisites. Provisions are providing for the purchase of existing shares of a company and the subscription to new shares. The Act also provides for an exit option to prevailing shareholders via an open offer. Section 236 provides that in situations where any individual or a group of people seek to acquire 90% or more such shares of any target company for acquisition or amalgamation<sup>39</sup>, then they must in addition to notifying the company of such an intention to purchase equity, have the right to put forward an offer to buy out the shares held by the minority shareholders at a price fairly determined.<sup>40</sup>

Section 230 along with “Rule 3 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016” permits the stockholders of unlisted companies, who hold at least 75% of the shares accompanied by voting rights, to put forward an offer in light of acquiring the residual shares of the company, in compliance with a request of “compromise or arrangement” which must be filed in front of the Tribunal.

After approval from the NCLT, the minority stockholders must obligatorily sell their stock to the acquiring shareholders.<sup>41</sup> Section 235 protects stockholders against forced acquisitions. It was written to safeguard the wants of dissenting stockholders and allowing for reasonable departure of such stockholders. This Section states that an acquirer (Transferee) may present a proposal to the target company’s stockholders (Transferor) as a scheme/contract to attain stock of the latter.

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<sup>37</sup> Matter of Proposed Acquisition of Shares and Voting Rights in Prestige Estates Projects Limited. 2017 SCC OnLine SEBI 243

<sup>38</sup> Regulation 2(e), SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 2011

<sup>39</sup> Bharat P. Raut and Others v. Madhu Silica Private Limited and Others, 2019 SCC OnLine NCLT 2780

<sup>40</sup> Rule 27 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

<sup>41</sup> Hindustan Paper Officers & Supervisors Association v. Union of India & Others, 2019 SCC OnLine Cal 345



If 90% of the shareholders approve a scheme or the contract, it is considered fair and the dissident shareholders are responsible for demonstrating the contrary.<sup>42</sup> It was noted that the Court would usually use caution in interfering because of the contractual existence of the arrangement unless any fraud or harm to the public interest exists.<sup>43</sup>

Section 42 along with 62 of the Companies, Act 2013 read along with the “Rule 13 of the Companies (Share Capital and Debenture) Rules, 2014” along with “Rule 14 of Companies (Prospectus and Allotment of Securities) Rules, 2014” advocates the prerequisites for the novel issuance of preferential stock by a company that is unlisted. Shares must not be offered on private assignment in violation of Section 42<sup>44</sup> and must follow Section 62<sup>45</sup> during the issue of new stock.<sup>46</sup>

Such issuance of fresh shares must be congruent to the Articles of Association of the company<sup>47</sup> and should be accepted by the shareholders through the passing of a special resolution<sup>48</sup> in a general meeting<sup>49</sup>, which gives power to the Directors to go ahead with issuing the shares.<sup>50</sup> The statement in the notice inviting for a meeting must contain information on the objective behind the issue of shares, the date for calculating the price of the stock<sup>51</sup>, and if any, the company's shareholding pattern.<sup>52</sup> In the event of the receipt of the applicant's money, shares must be granted within 60 days, and the funds must be returned within 15 days. These conditions apply to shares, certain debentures and specific monetary instruments.<sup>53</sup>

Certain limits on the Acquirer are provided by the provisions of Section 186 of the Companies Act, 2013. The section provides that the Acquirer, when an Indian company has the option to acquire a target company. It can do so by subscribing or purchasing the shares of the target company.

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<sup>42</sup> Government Telephones Board Ltd. v. Hormusji Maneckji Seervai, (1943) 13 Com Cases 249.

<sup>43</sup> Hoare & Co. Ltd., (1933) 150 LT 374.

<sup>44</sup> Kal Airways Private Limited v. Spicejet Limited & Anr., 2016 SCC OnLine Del 4202

<sup>45</sup> Birendra Singh v. Glaxo Smith Kline Pharmaceuticals Ltd. & Ors., 2017 SCC OnLine NCLT 7272

<sup>46</sup> Lanka Venkata Naga Muralidhar S/o (Late) Lanka Viswanadham v. Vestal Educational Services Pvt. Ltd. and Others, 2018 SCC OnLine NCLT 3890

<sup>47</sup> Rule 13(2)(a) of the Companies (Share Capital and Debenture) Rules 2014

<sup>48</sup> Swedish Match AB v. SEBI, (2004) 122 Comp Cas 83

<sup>49</sup> Rule 13(2)(b) of the Companies (Share Capital and Debenture) Rules 2014

<sup>50</sup> Rule 13(1) of the Companies (Share Capital and Debenture) Rules 2014

<sup>51</sup> Technip SA v. SMS Holding (P) Ltd. (2005) 5 SCC 465

<sup>52</sup> Rule 13(2)(d) of the Companies (Share Capital and Debenture) Rules 2014

<sup>53</sup> Rule 13(1) of the Companies (Share Capital and Debenture) Rules





It may either do so, with an amount either equal to 60% of the acquirer's paid up share capital, free reserves and securities premium, or all (100%) of its free reserves and securities premium account, whichever of the two is a higher value. Such limits would be inapplicable when the acquisition requires purchasing the shares of a wholly-owned subsidiary. If the provisions of this section are violated, companies are liable to be punished with a fine and/or the officers of the company in default may be punished for a given period of imprisonment.<sup>54</sup>

## **2. Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (the "Takeover Code")**

If an acquisition is sought through the issuance of fresh shares, or the attainment of persisting shares concerning a listed company, the provisions of the Takeover Code<sup>55</sup> are applicable. They control straight and incidental procurements of shares, voting rights, and powers of the acquired company. The Takeover Code's objectives strive to guarantee transparency when an acquisition occurs through the obtaining of shares of the target company.<sup>56</sup> Its key objective is to provide ample information to the stockholders of a listed company about an approaching transformation in control of the company. It offers them an option to exit in instance where they wish not to retain their shares in the company before the consummation of the acquisition, as given in the Takeover Code.<sup>57</sup>

The domestic legislations in India have curated sufficient provisions to guide indigenous as well as international companies when it comes to acquisitions, while also providing a series of options to aid in the decision making of the path the companies seek to take. Through the Companies Act, 2013, the SEBI guidelines as well as the Takeover Code due diligence has been exercised to ensure organised acquisitions.

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<sup>54</sup> Matter of Cisco Video Technologies India Private Limited, 2017 SCC OnLine NCLT 7214

<sup>55</sup> Gautham Srinivas, Pranav Agarwal & Sai Saket Rachakonda *Indirect Acquisitions Under the Takeover Code: The Fairness-Efficiency Spectrum and Lessons for Regulation*, NLS Bus L Rev 1, (2020).

<sup>56</sup> CIT v. McDowell and Co. Ltd., (2009) 10 SCC 755

<sup>57</sup> Matter of Proposed Acquisition of Shares and Voting Rights in Wipro Limited by Apex Trust and Mr. Rishad Azim Premji, 2016 SCC OnLine SEBI 390





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## CHAPTER III. ADVANTAGES OF ACQUISITIONS

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Justice Dhananjay Y Chandrachud,<sup>58</sup> beautifully stated the approach of the judiciary towards acquisitions. He affirmed that “*Corporate restructuring is one of the means that can be employed to meet the challenges and problems which confront business.*” There are several advantages that acquisitions bring with them, for both the acquirer and the target company, in terms of profits, reduced costs and increased innovation.<sup>59</sup> Acquisitions upsurge the market share for the acquirer, and through gives access to a broader market and reduces competition. Since it is the joining of companies, the base of loyal customers, customer reach and established customer market also increases through the amalgamation. The mechanism also helps businesses to increase net income and operations, which might otherwise take years.

Furthermore, acquisitions boost a company’s efficiency and accelerate company’s development, improve capability , and increase knowledge and expertise.<sup>60</sup> In addition, the task of attracting more customers is simplified. Acquisition's first benefit is the synergy which provides an extra power that enables higher productivity and performance.

It gives the participating companies various tax advantages. To limit the tax liability, the damages caused by one company are compensated against income earned by another. With all this advantage, an acquisition agreement raises the company's market strength, which reduces the severity of harsh competition on the market. This allows the acquiring company to profit from high technical progress toward obsolescence and price wars, and move towards exploring new areas of technology and exploiting existing capabilities.<sup>61</sup>

Thus, Acquisitions ensure economies of scale. It allows the company to buy more raw materials, which leads to reduced costs. It helps businesses to minimize costs by eliminating redundancies in jobs. The newly formed company's combined capitals and reserves help reduce rivalry and gain a competitive advantage.

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<sup>58</sup> Ion Exchange (India) Ltd. v. Unknown, (2001) 105 Comp Cases 115 (Bom)

<sup>59</sup> Dezi, Battisti, Ferraris, & Papa, *The link between mergers and acquisitions and innovation: A systematic literature review*, Management Research Review, Vol. 41 No. 6 (2018).

<sup>60</sup> Paul A. Pautler, *Evidence on Mergers and Acquisitions*, 48 Antitrust BULL. 119 (2003).

<sup>61</sup> Phene, A., Tallman, S. and Almeida, P., *When Do Acquisitions Facilitate Technological Exploration and Exploitation?*, *Journal of Management*, 38(3), (2012).



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## CHAPTER IV. WALMART- FLIPKART ACQUISITION

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The acquisition of Flipkart by Walmart was in the bona fide interest of the majority, following the principles declared in the matters of *Hellenic and General Trust Limited*.<sup>62</sup> It was a strategic move played by Walmart diversification, growth and desire to benefit from the corporate opportunity<sup>63</sup> and to acquire all and any capital advantages from the acquisition.<sup>64</sup>

Walmart Stores Inc. is an American international retailer with a chain of hypermarkets and convenience outlets from the US and based in the Bentonville, Arkansas.<sup>65</sup> Founded in 1962, it is one of the larger American companies involved in the retail sector of mass merchandising. Based in Karnataka, Bangalore, Flipkart is an e-commerce establishment founded in India in 2007. Initially, its sole focus was on online book sales before spreading to other types of goods, such as electronics, apparel, household items, food and lifestyles.

### 1. Why the Acquisition took place?

In 2018, India, as an emerging market, all major economies and companies in the world had an interest in it. Moreover, India's GDP growth rate, which was over 7% annually, was ahead of many others. Over the years, Flipkart has demonstrated strong leadership and competitive lead in the e-commerce sector. When the acquisition occurred, it was Indian Internet's most valued company, with a peak estimate of more than 15 billion dollars. Flipkart was the third largest private company to raise US dollars from among the world's leading sources.

Across the last decade, Flipkart made a series of purchases and expanded its bandwidth to cover a range of items across the spectrum. It built the logistical structures required for quick business growth through 7,500+ workers and 21,000 contract labours. Flipkart has a creative and agile method for its functioning of an extensive supply chain network across India, Walmart has the expertise, steadiness and a justification for a tapping of India's booming e-commerce market.<sup>66</sup>

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<sup>62</sup> Re *Hellenic and General Trust Limited* 1976 (1) WLR 123

<sup>63</sup> *Pramod Jain v. SEBI* (2016) 10 SCC 243

<sup>64</sup> *Commissioner of Income-Tax v. Shri Krishna Gyanoday Sugar Ltd.*, 1963 SCC OnLine Pat 143

<sup>65</sup> Banerjee Deba, *Walmart Stores Inc.-A Strategic Analysis*, International Journal in Management & Social Science Year, (2015).

<sup>66</sup> Pingolia, Shashi, Case Analysis of Walmart and Flipkart M&A, (2020).



Both of the companies had an abundance to gain through this amalgamation. A mere example would be considering when Flipkart's chief competitor in India, Amazon rolled out the Prime membership programme, it emerged to be problematic for Flipkart. Through this acquisition, Flipkart can initiate Sam's Club (a plan launched by Walmart) membership to contend Amazon and win over a larger segment of the market. Moreover, Walmart's expertise in the management of the offer-line market and cross-support would profit greatly from Flipkart's technology platform.<sup>67</sup>

The deal has given online retailers who were in dire need of cash after providing competitive deals and offers for Indian shoppers the desired confidence. Through this acquisition, Walmart sought to take advantage of the opportunity to enter the Indian market. Similarly, in order to smoothen the flow of their operations and enter foreign markets, Flipkart wished to join hands with Walmart.<sup>68</sup>

## 2. Understanding the Acquisition

The Walmart- Flipkart acquisition was one of the greatest arrangements for Walmart, a company attempting to enter virtual markets across the globe. Walmart acquired a stake of seventy-seven percent for \$16 billion in Flipkart.

Since Flipkart was registered as a corporation in Singapore and its stocks were listed there, it would require formal clearances from the Accounting and Corporate Regulatory Authority (ACRA) and the Singapore Stock Exchange. Many stock exchanges require an open offer when a large number of shares of a target business are acquired by a single investor; Walmart is likely to be requested to make an open offer to shareholders (in most stock exchanges, the threshold limit was 20 per cent). To protect the interests of minority shareholders, this clause was enacted. In addition, Walmart would need approval from the Securities and Exchange Commission in the United States.

Walmart prior to the closing of the deal approached the "Competition Commission of India (CCI)" for official consent for the acquisition, and though challenged by the "Confederation of All India Traders (CAIT)" in light of unfair trade practices, the acquisition still went through.

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<sup>67</sup> P. Bala Bhaskaran and Nasheman Bandoorkwala, Walmart's Acquisition of Flipkart: Emerging Paradigm of the Digital Era South Asian Journal of Business and Management Cases 9(1) 24–39, 2020

<sup>68</sup> Polisetty, Aruna and Manda, Vijaya Kittu and R.V., Naveenan, Indian Online Retail Ecosystem - a Study on Flipkart Deal with Walmart (March 5, 2019). International Journal of Research and Analytical Reviews (IJRAR), 2019, Available at SSRN: <https://ssrn.com/abstract=3347069>



Government of India (GOI) Commerce Minister and the CCI had asked CAIT not to approve this acquisition. An additional trade group, the All India Online Vendors Association (AIOVA), which represents 3,500 online merchants, has teamed up with CAIT to oppose the Walmart–Flipkart tie-up. Small to mid-sized traders from all throughout the country were represented by both organisations, which were able to mobilise political backing for their concerns.

Due to violations of the Foreign Exchange Management Act, Flipkart has been under investigation by the Enforcement Directorate, RBI, etc. for several years. Impending national elections, perceived infractions of regulations, and ambiguity in policy framework all had the potential to create serious obstacles to the acquisition's implementation. But could CCI, or any other Indian regulator, block the transfer of shares of a Singapore-incorporated firm, whatever the rationale for doing so might be? In India, the authorities may, at the most, delay the granting of permits for activities in the country.<sup>69</sup>

Dough McMillion, the CEO of Walmart announced when the deal was being finalised that, India, is one of the most appealing retail marketplaces and their investments provide an opportunity to partner with the leading e-commerce company to transform the sector. It helped Walmart make its entry into the Indian virtual shopping space while guaranteeing Both companies' long-term growth.

A round-figure of the investment made by Walmart is around \$2 billion of novel equity funding. To finance the acquisition, Walmart seeks to use an amalgamation of freshly published borrowings and cash. Flipkart's financial performance is to be recorded and reported under Walmart's "International business segment when the deal of closed." Walmart expected to have an adverse effect of around \$0.25, up to \$0.30 in FY19, which involves additional investment-related interest expenses. By the end of 2020, Walmart anticipated an EPS change of around \$0.60 per share, comprised of:

- Each share will suffer operational losses of \$0.40- \$0.45, presuming negligible taxation benefit for losses, which amounted to around \$0.05 per share. This sum contains the values attributable to amortization of immaterial asset and short-term asset derived from purchase accounting.
- An expense of interest of roughly \$0.15 per share.

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<sup>69</sup> P. Bala Bhaskaran and Nasheman Bandoorkwala, *Walmart's Acquisition of Flipkart: Emerging Paradigm of the Digital Era*, South Asian Journal of Business and Management Cases 9(1) 24–39, (2020).



Additionally, Walmart submitted a report to the United States Securities and Exchange Commission in May 2018 stating that, under the agreement situation, it was possible for Flipkart's existing minority shareholders to demand that, after a few years, Flipkart be made an initial public offer with a value not less than that paid to Walmart.<sup>70</sup> However, there a clause that may avert minority stockholders from coercing an IPO. Once four years have lapsed, if Walmart possesses above 85% of its newly acquired venture, the Flipkart's marginal shareholders will face the loss of their veto rights on decisions and business transactions.

Conclusively, the Walmart-Flipkart acquisition is more than simply a means to compete with Amazon. By partnering with Flipkart, Walmart would be able to make its long-awaited breakthrough into retail in India via e-commerce. An uproar had erupted in the business following this transaction, which has regulators into the picture. A new draft E-commerce policy was drafted, which contained tough requirements for online retail and includes a ban on discounts.<sup>71</sup>

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<sup>70</sup>Anirban Sen, Mihir Dalal, *Walmart has Long term Plans for Flipkart, an IPO isn't one of them*, Live Mint, <https://www.livemint.com/Companies/LRQkvFz4nvoUmwDVZUryRP/Walmart-has-longterm-plans-for-Flipkart-an-IPO-isnt-one-o.html>, (last visited April 17, 2021).

<sup>71</sup>Ritu Wadhwa, *Walmart-Flipkart Acquisition: a case study*, Int. Res. J. Social Sci., Volume 9, Issue (2), Pages 21-31, April,14 (2020).



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## INFERENCE AND RECOMMENDATIONS

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In summary, acquisitions have played a significant role globally and in India in helping a business acquire larger market shares, gain greater expansion opportunities and venture into economies through established consumer bases. India has been able to keep with the trends. It has curated for itself a list of legislations, rules and guidelines that have been successful in ensuring that acquisitions take place with a sincere intention and no foul play or unfair practices during the acquisitions via shares or assets takes place. The legislations in India provided a guided pathway to the companies seeking to amalgamate into one. The distinguished provisions aided in the alignment of the organisation's business goals and the elaborate laid down procedure escorted Flipkart and Walmart in the right manner.

Flipkart's acquisition will undoubtedly change the Indian retail market segment's appearance. In terms of goods, procedures, and competition, it would be in line with the global market. As with any established market, Walmart and Amazon would be the dominant competitors. It's possible that the physical shop network will support the logistics of online transactions, and vice versa. As a result, retail business volumes would skyrocket, and the consumer experience in India would reach new heights.

The Walmart-Flipkart Acquisition was able to bring to the consumers lower prices with a greater diversity of products because all of the major e-commerce players were competing to be at the top. Prior to Walmart's entry, the Indian e-commerce space which was drying up because of lack of funds and liquidity issues because of GST and demonetization. With Walmart's funding, the market was alive and active again and foreign companies began investing in India.

**Finally, it will also help smaller businesses as Walmart is looking forward to extending its supply chains through partnering with around sixty lakh kirana stores, thus increasing the presence of the smaller players.**<sup>72</sup> Conclusively, with Indian companies being a significant part of the picture and bringing in FDI such acquisitions are recommended for the present and the future. Only through further liberalisation, ease of regulations and accumulation of investor-friendly guidelines will India occupy one of the front-line positions in the global market.

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<sup>72</sup> Walmart and Flipkart Deal: Impact on Indian Economy, MBA Universe, <https://www.mbauniverse.com/group-discussion/topic/business-economy/walmart-and-flipkart-deal> (last visited 18th April 2021).