

Triumphs And Tribulations

MERGERS and acquisitions are grabbing the headlines on a stunningly regular basis these days and have become an integral part of business activity in the contemporary world. India Inc has clearly arrived. The total value of acquisitions reached over Rs 1,00,000 crore during '05, up 100% over the previous year. On the merger front, the number of deals rose to 375 during '05, up 46%. For the first time Indian companies are acquiring foreign assets than vice-versa.

Some M&A plans get translated into realities, while others fail to materialise. A well planned and properly coordinated approach for dealing with the risks any time during the "deal cycle" is a sine qua non for the any M&A process success.

All know that huge investments in terms of time and money are required to be committed in the course of any M&A process. Financials need to be analysed both by in-house experts as well as by many parties. Due diligence has to be carried out by agencies possessing the relevant experience and expertise, which obviously comes at a great cost. Declarations are made on the

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basis of available information, after collecting and analysing facts.

But, notwithstanding all this care and caution, if the M&A plan does not succeed, what happens: Huge costs, huge opportunity costs, time lost, dent in the balance sheet, loss of market reputation and share holder dissatisfaction. This is where insurance protection

The Way To Successful M&A Deals Is To Identify The Risks In The 'Deal Cycle' & Endeavour To Remove Them

in the form of some transactional liability insurance can come to the rescue of the contracting parties making the failure to take-off less painful.

What are the Insurance Covers available?

Warranties & Indemnities Insurance: During the M&A transaction, the seller makes many declarations about the various aspects of the business, which form the basis of the M&A agreement. If these declarations turnout to be incorrect and wrong and the buyer suffers a loss, the seller is expected to make

good the loss. One way to create comfort for the buyer is to escrow a percentage of the purchase price to cover any breach of the representations and warranties the seller makes to the buyer during an M&A transaction.

II Aborted Bid Costs Insurance: This policy provides for reimbursement of direct costs associated with the planned acquisition that has been terminated due to contingencies like:

- Regulatory Intervention
- Failure of other party to meet closing conditions
- Vote of disapproval by shareholders of other party
- Competing bid

III Litigation Buyout: The insured transfers a claim and/or pending litigation to the insurer outright. Litigation is removed from the balance sheet & the insurer assumes all liability on a going-forward basis.

IV Tax Opinion Liability Insurance: Insurance guarantees a particular

tax position taken by a company.

V Hostile Bid Insurance: This hostile takeover policy provides for reimbursement of the potentially huge costs associated with successfully defending against a hostile bid. A hostile bid is an attempt to gain control of a target company, usually via a tender offer or unsolicited proposal. The road to successful M&A is not always a smooth one. It is necessary to identify the risks in the 'deal cycle' and endeavour to remove them. Expertise in risk management is critical during the M&A process in order to prevent the merger itself from triggering liability claims. Transaction Insurance weaves various customised insurance products around a transaction to remove risks. It not only helps in closing a transaction but also helps in closing a better deal by eliminating or reducing risks. It is a tool which tries to lessen the impact of the unforeseeables helping the management to focus on major issues with increased comfort level for the organisations concerned.

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The views expressed are personal