Nishith Desai Associates
LEGAL AND TAX COUNSELING WORLDWIDE

MUMBAI SILICON VALLEY BANGALORE SINGAPORE MUMBAI BKC NEW DELHI MUNICH NEW YORK

M&A Lab

Recent Learnings From Deal Making In India

Strategic, Legal and Tax Dimensions
Indian and International Perspectives

ING Vysya – Kotak Bank:
Rising M&As in Banking Sector

Cairn – Vedanta:
'Fair' Or 'Socializing Vedanta's Debt'?

Reliance – Pipavav:
Anil Ambani Scoops Pipavav Defense

June 2016

Dear Friend,

We are delighted to share our private publication, M&A Lab: Recent Learnings From Deal Making In India (2016). This research publication analyses some of the landmark M&A deals of 2015, namely:

- ING Vysya - Kotak Bank: Rising M&As in Banking Sector!
- Cairn - Vedanta: 'Fair' Or 'Socializing Vedanta's Debt'?
- Reliance - Pipavav: Anil Ambani Scoops Pipavav Defense!

As a law-firm, we are deeply committed towards research, knowledge sharing and thought leadership. Our M&A Lab dissects major deals from a strategic, legal, regulatory and tax perspective - both Indian and international.

This publication would be of interest to Chairmen, CEOs, General-counsels, Board-members, decision makers and learning institutions. The case studies present lessons from select M&A deals, which we believe would assist in making informed decisions in future transactions.

We hope you find this publication useful and interesting. A soft version of the publication is available at our knowledge site: www.nishithdesai.com

Feel free to reach us for feedback, queries or further information.

Best wishes and warm regards,

Nishith Desai | Vaibhav Parikh | Nishchal Joshipura

Primary Contacts

Nishith Desai

nishith.desai@nishithdesai.com

Nishith Desai is the founder and Managing Partner of Nishith Desai Associates with over 40 years of experience as a leading corporate law and international tax expert. He is a researcher, published author and lectures in leading academic institutions and universities around the world.

Nishith Desai is credited with developing many of the benchmark structures for India focused investments and M&A. He is frequently interviewed by the media and press, and speaks at major conferences. Chambers & Partners (2014) praises Nishith Desai for his extensive knowledge of the intricacies of tax law and also his ability to find solutions for complex tax issues. Clients praise him as a 'visionary'. Legal 500 (2014) honors the team led by Nishith Desai having advised on tax aspects of M&A and fund formation.

Vaibhav Parikh

vaibhav.parikh@nishithdesai.com

Vaibhav Parikh is Partner of Mergers & Acquisitions and Private Equity Practice at Nishith Desai Associates. He is a lawyer with background in engineering. He has led several high profile M&A and Private Equity deals and specializes in legal and tax structuring of complex cross-border transactions. Vaibhav Parikh is an expert in technology (including e-commerce), media and telecom space.

He also advises major MNCs on Corporate & Securities laws, Structuring of Inbound/ Outbound Investments, Private Equity Investments, IP laws and Exchange Control Law.

Nishchal Joshipura

nishchal.joshipura@nishithdesai.com

Nishchal Joshipura is Partner of Mergers & Acquisitions and Private Equity Practice at Nishith Desai Associates. He is a lawyer with background in management & chartered accountancy. He has led several high profile M&A and Private Equity deals and specializes in legal and tax structuring of complex cross-border transactions.

He also advises major MNCs on Corporate & Securities laws, Transfer Pricing, International Taxation, Globalization, Structuring of Inbound/ Outbound Investments, Private Equity Investments, Structuring of Offshore Funds, Taxation of E-Commerce and Exchange Control Law.

Simone Reis

simone.reis@nishithdesai.com

Simone Reis is Co-Head of Mergers & Acquisitions and Private Equity Practice at Nishith Desai Associates. She is qualified to practice law in India and in New York and holds an LLM degree from Duke University, North Carolina, USA. She is also a part of the Private Equity practice at the firm.

Both domestically and internationaly, Simone Reis has led several high profile deals and focuses on M&As, competition law, private equity and venture capital investments. She has advised a wide spectrum of MNCs across several sectors such as manufacturing, pharma, information technology and banking and financial services.

Ruchir Sinha

ruchir.sinha@nishithdesai.com

Ruchir Sinha is the Co-Head of Mergers & Acquisitions Practice and Private Equity Practice at Nishith Desai Associates. Ruchir Sinha also heads Private Equity and Private Debt in Real Estate Practice at the firm. Ruchir Sinha has led several high profile deals and focuses on M&As, private equity, venture capital investments and fund formation. He has advised a wide spectrum of MNCs across several sectors such as manufacturing, pharma, healthcare, information technology, banking and financial services and real estate.

Rajesh Simhan

rajesh.simhan@nishithdesai.com

Rajesh Simhan is the Head of International Tax practice at Nishith Desai Associates. He represents and advises major MNCs in structuring inbound and outbound M&As and also represents clients in complex international tax litigation.

Prior to joining the firm, he has had extensive experience working with a Big 4 accounting firm. Rajesh Simhan was awarded an LL.M in Taxation from the Georgetown University Law Center, Washington D.C. and his graduate law degree from the National Law School of India University, Bangalore.

Sangeeta Rana

sangeeta.rana@nishithdesai.com

Sangeeta Rana is a senior member of Mergers & Acquisitions and Private Equity Practice at Nishith Desai Associates. Sangeeta Rana has led several high profile deals and focuses on M&As, private equity and venture capital investments. She has advised a wide spectrum of MNCs across several sectors such as e-commerce, pharma, healthcare, information technology and financial services.

Karan Kalra

karan.kalra@nishithdesai.com

Karan Kalra is a Senior Member of the Mergers and Acquisitions and Private Equity Practice at Nishith Desai Associates. He also co-heads the banking finance team at the firm. His practice primarily focuses on domestic and cross border M&As, fund investments, structured finance transactions and on providing regulatory and general corporate advice.

With a specific industry focus on the banking and financial services sector, he has advised clients across several jurisdictions and sectors. For his work Karan Kalra has been credited in IFLR 1000, Legal 500 and the RSG Consulting Survey.

About NDA

Nishith Desai Associates (NDA) is a research based international law firm with offices in Mumbai, Bangalore, Palo Alto (Silicon Valley), Singapore, New Delhi, Munich and New York. We provide strategic legal, regulatory, and tax advice coupled with industry expertise in an integrated manner.

As a firm of specialists, we work with select clients in select verticals. We focus on niche areas in which we provide high expertise, strategic value and are invariably involved in select, very complex, innovative transactions.

We specialize in Globalization, International Tax, Fund Formation, Corporate & M&A, Private Equity & Venture Capital, Intellectual Property, International Litigation and Dispute Resolution; Employment and HR, Intellectual Property, International Commercial Law and Private Client. Our industry expertise spans Automotive, Funds, Financial Services, IT and Telecom, Pharma and Healthcare, Media and Entertainment, Real Estate, Infrastructure and Education. Our key clientele comprise marquee Fortune 500 corporations.

Equally passionate about philanthropy, social sector and start ups, our role includes innovation and strategic advice in futuristic areas of law such as those relating to Bitcoins (block chain), Internet of Things (IOT), Privatization of Outer Space, Drones, Robotics, Virtual Reality, Med-Tech and Medical Devices and Nanotechnology.

Nishith Desai Associates is ranked the 'Most Innovative Asia Pacific Law Firm in 2016' by the *Financial Times - RSG Consulting Group* in its prestigious **FT Innovative Lawyers Asia-Pacific 2016** Awards. With a highest-ever total score in these awards, the firm also won Asia Pacific's best 'Innovation in Finance Law', and topped the rankings for the 'Business of Law'. While this recognition marks NDA's ingress as an innovator among the globe's best law firms, NDA has previously won the award for 'Most Innovative Indian Law Firm' for two consecutive years in 2014 and 2015, in these elite *Financial Times* Innovation rankings.

Our firm has received much acclaim for its achievements and prowess, through the years. Some include:

IDEX Legal Awards: In 2015, Nishith Desai Associates won the "M&A Deal of the year", "Best Dispute Management lawyer", "Best Use of Innovation and Technology in a law firm" and "Best Dispute Management Firm". IDEX Legal recognized Nishith Desai as the Managing Partner of the Year in 2014.

Merger Market has recognized Nishith Desai Associates as the fastest growing M&A law firm in India for the year 2015.

World Tax 2015 (International Tax Review's Directory) recognized NDA as a Recommended Tax Firm in India

Legal 500 has ranked us in tier 1 for Investment Funds, Tax and Technology-Media-Telecom (TMT) practices (2011, 2012, 2013, 2014).

International Financial Law Review (a Euromoney publication) in its **IFLR1000** has placed Nishith Desai Associates in Tier 1 for Private Equity (2014). For three consecutive years, IFLR recognized us as the Indian "Firm of the Year" (2010-2013) for our Technology - Media - Telecom (TMT) practice

Chambers and Partners has ranked us # 1 for Tax and Technology-Media-Telecom (2015 & 2014); #1 in Employment Law (2015); # 1 in Tax, TMT and Private Equity (2013); and # 1 for Tax, TMT and Real Estate – FDI (2011).

India Business Law Journal (IBLJ) has awarded Nishith Desai Associates for Private Equity, Structured Finance & Securitization, TMT, and Taxation in 2015 & 2014; for Employment Law in 2015

Legal Era recognized Nishith Desai Associates as the Best Tax Law Firm of the Year (2013).

ASIAN-MENA COUNSEL named us In-house Community 'Firm of the Year' in India for Life Sciences Practice (2012); for International Arbitration (2011); for Private Equity and Taxation in India (2009). We have received honorable mentions in ASIAN-MENA COUNSEL Magazine for Alternative Investment Funds, Antitrust/ Competition, Corporate and M&A, TMT, International Arbitration, Real Estate and Taxation and being Most Responsive Domestic Firm.

We have won the prestigious 'Asian-Counsel's Socially Responsible Deals of the Year 2009' by **Pacific Business Press.**

We believe strongly in constant knowledge expansion and have developed dynamic Knowledge Management ('KM') and Continuing Education ('CE') programs, conducted both in-house and for select invitees. KM and CE programs cover key events, global and national trends as they unfold and examine case studies, debate and analyze emerging legal, regulatory and tax issues, serving as an effective forum for cross pollination of ideas. Our trust-based, non-hierarchical, democratically managed organization that leverages research and knowledge to deliver premium services, high value, and a unique employer proposition has been developed into a global case study and published by John Wiley & Sons, USA in a feature titled 'Management by Trust in a Democratic Enterprise: A Law Firm Shapes Organizational Behavior to Create Competitive Advantage' in the September 2009 issue of Global Business and Organizational Excellence (GBOE).

Please see the last page of this paper for the most recent research papers by our experts.

Disclaimer

This report is a copyright of Nishith Desai Associates. No reader should act on the basis of any statement contained herein without seeking professional advice. The authors and the firm expressly disclaim all and any liability to any person who has read this report, or otherwise, in respect of anything, and of consequences of anything done, or omitted to be done by any such person in reliance upon the contents of this report.

Contact

For any help or assistance please email us on ndaconnect@nishithdesai.com or visit us at www.nishithdesai.com

Main Contents

Nishith Desai Associates
LEGAL AND TAX COUNSELING WORLDWIDE

M&A Lab

ING Vysya – Kotak Bank: Rising M&As in Banking Sector!

January 2016

Contents

1. Prologue

With the current climate of growing globalization and expanding international banks, the need to grow has been imminent for Indian banks. In late 2014, Kotak Mahindra Bank Limited ("**Kotak**"), one of India's rapidly expanding banks, announced its all-stock acquisition of ING Vysya Bank Limited ("**ING Vysya**"), structured as a merger, resulting in a single merged entity that will be India's fourth largest bank (the "**Deal**"). Kotak and ING Vysya bring two very different flavours to the table – whether in terms of geography, clientele, business modalities, or heritage; and it is this complementary diversity of the two, clubbed with their size that makes this deal a milestone in the Indian banking sector. The resultant entity will retain only Kotak's name, but all of ING Vysya's shareholders including the ING Group, who will be locked in till April 1, 2016.

While the deal was structured as a merger under Section 41 of the Banking Regulation Act, 1949 ("**BR Act**"); it appears that in substance it is an all-out acquisition of ING Vysya, whose promoter, the ING Group, has been looking to exit India since 2013. Further, the terms, timing and regulatory processes of the Deal provide us with some interesting insight into the Indian banking sector, as well as M&A challenges in India. Coming after a 4 year hiatus in M&A activity in the banking sector, this merger also comes as a response to recommended sectoral reforms.[1]

Being a merger of two banks, the scheme of merger ("**Scheme**") was subject to RBI scrutiny, which scrutinized various aspects of the Scheme including valuation, and the impact of the Deal in the banking industry. Having received the RBI's seal of approval, Kotak now has the uphill task of fully integrating the two businesses, and ING Vysya's employees who were vehemently opposed to the merger.[2]

In this lab we examine the Deal and the broader implications thereof. As always, we analyse the Deal from a commercial, legal, regulatory and tax perspective.

1. See Section on 'Overview of Banking and M&A' below.
2. http://www.thehindu.com/business/Industry/ing-vysya-employees-protest-over-merger-with-kotak/article6764123.ece

2. Glossary of Terms

2013 Circular	SEBI Circular dated February 4, 2013 (Scheme of Arrangement under the Companies Act, 1956 – Revised requirements for the Stock Exchanges and Listed Companies)
BR Act	Banking Regulation Act, 1949
BSE	Bombay Stock Exchange
Kotak	Kotak Mahindra Bank Limited
ING Vysya	ING Vysya Bank Limited
CCI	Competition Commission of India
CA 1956	Companies Act, 1956
CA 2013	Companies Act, 2013
Competition Act	Competition Act, 2002
Contract Act	Indian Contract Act, 1872
Deal	The all-stock acquisition of ING Vysya by Kotak, through a scheme of amalgamation under which each shareholder of ING Vysya will be allotted 725 equity shares of Kotak for every 1000 equity shares of ING Vysya held by them.
FIPB	Foreign Investment Promotion Board
INR	Indian Rupees
ITA	Income Tax Act, 1961
LSE	Luxembourg Stock Exchange
Merger Guidelines	Guidelines for merger / amalgamation of private sector banks
NBFC	Non-banking financial company
NSE	National Stock Exchange of India Limited
Parties	Kotak Mahindra Bank Limited and ING Vysya Bank Limited
RBI	Reserve Bank of India
Scheme	Scheme of Amalgamation of Kotak and ING Vysya, approved by their respective shareholders on January 7, 2015.
SEBI	Securities Exchange Board of India
Takeover Code	SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011
USD	United States Dollar

3. Details of the Deal

I. The Parties

A. Kotak Mahindra Bank Limited

Established in 1985, Kotak Mahindra Finance Capital Management Limited, the flagship company of the Kotak Group, started off as a non-banking financial services company, initially providing financing for the purchase of automobiles. In 2003 it became the first ever NBFC to be converted into a bank.[3]

Despite its humble beginnings, Kotak today is one of India's fastest growing banks, which caters to wide variety of banking needs of both individuals and corporates. It provides consumer banking services, commercial banking services, investment banking services, and numerous other financial services. With a portfolio of over 15 subsidiaries across India and the world and a few joint ventures, Kotak has spread its businesses wide across the market and country with over 600 operating branches. Currently, Kotak is primarily promoted by Mr. Uday Kotak who continues to hold about 39.69% of the capital interest and is listed on the NSE, BSE and LSE.

B. ING Vysya Bank Limited

With roots as far back as the 1930s, 'Vysya Bank' comes with a long heritage of banking in the trade communities of south India. In 2002, it became the first ever Indian bank to merge with a foreign one, when it officially announced its merger with the Dutch banking giant ING Group, which took a controlling stake in the bank. The bank has over time grown a strong presence in south India with over 500 branches in the south. It has also, because of its ties with the ING Group, grown its presence abroad with a presence in over 5 countries.[4]

Before the Deal, the ING Group promoted ING Vysya, holding a 44% equity stake in the bank.[5] The bank also has numerous other investors who hold smaller stakes, such as Aberdeen Asset Management, Franklin Templeton, Morgan Stanley, and Citigroup.[6] The bank's total income as of March 2014 was INR 60,723.40 Million and the total net profit as of March 2014 was INR 6,578.51 million.[7] The bank majorly deals in retail, private and wholesale banking services. ING Vysya is also listed on the BSE and NSE.

II. Chronology of Events

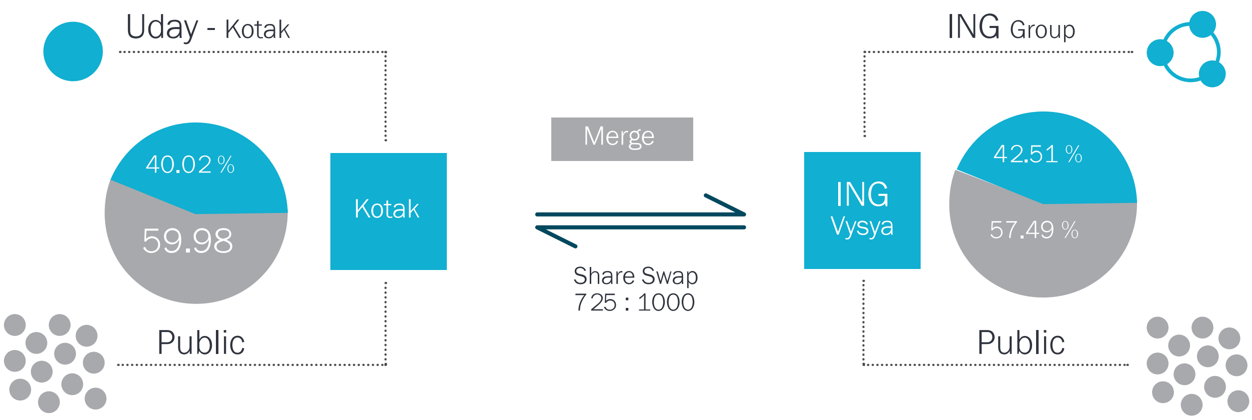
September 2013	Reports of ING's intention to sell its stake in ING Vysya and Kotak being the front runner [8]
November 20, 2014	Scheme is approved by the board of directors of Kotak and ING respectively
January 7, 2015	The Scheme is approved by the Shareholders of Kotak and ING respectively
February 12, 2015	Merger receives CCI approval
April 1, 2015	Appointed Date of the Scheme
April 1, 2015	Date on which RBI approved of the Scheme
July 3, 2015	Date of FIPB approval to increase the aggregate foreign investment in Kotak, pursuant to the Deal [9]
September 30, 2015	Long Stop Date

3. http://www.kotak.com/bank/privy/About_Kotak.htm
4. The Scheme; See also: http://profit.ndtv.com/stock/ing-vysya-bank-ltd_ingvysyabk/reports
5. http://ingvysya.kotak.com/IngBlog/Media/PDF/INGVysyaBank_MARCH2012.pdf
6. *Ibid.*
7. http://ingvysya.kotak.com/IngBlog/Media/PDF/Annual_Report_2013-14.pdf
8. http://articles.economictimes.indiatimes.com/2013-09-30/news/42536787_1_ing-vysya-bank-uday-kotak-ing-group
9. http://fipb.gov.in/Authenticate/Admin/PDocuments.aspx

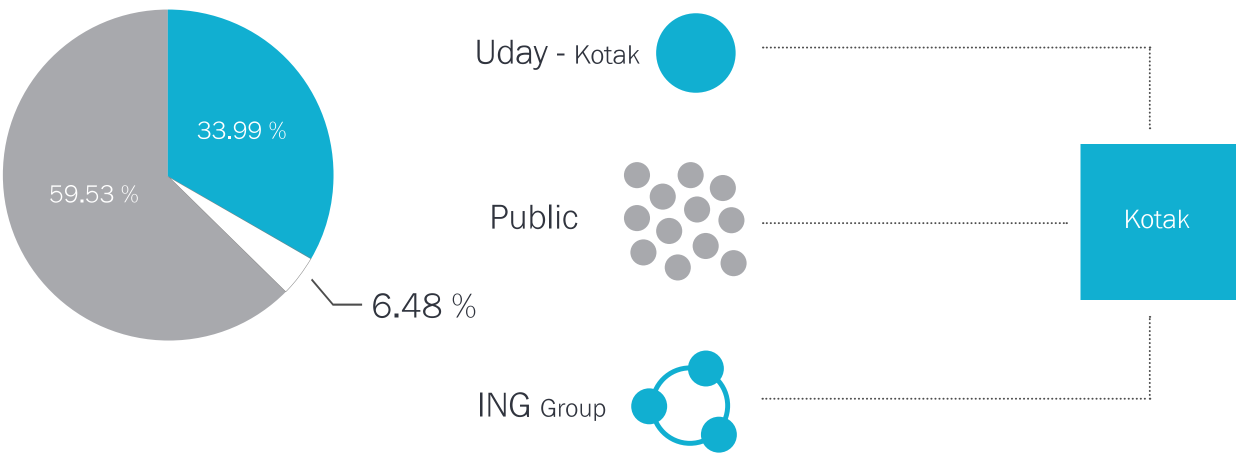
III. Deal Snapshot

Transferee Bank	Kotak Mahindra Bank Limited
Transferor Bank	ING Vysya Bank Limited
Mode of Transaction	The Deal was entirely carried out through a single scheme of amalgamation merging ING Vysya into Kotak. The merger was carried out in accordance with Section 44A of the BR Act and the Merger Guidelines.
Shareholding in Kotak before the Merger	Promoter Group: 40.02% Public Shareholding: 59.98% ▪ FIIs: 36.85% ▪ Mutual Funds/ UTI: 1.65% ▪ Financial Institutions/ Banks: 0.21% ▪ Foreign Banks: 4.25% ▪ Foreign Bodies: 2.04% ▪ Bodies Corporate: 3.30% ▪ Individuals: 10.27% ▪ Others: 1.41%
Shareholding in ING Vysya before the Merger	Promoter Group: 42.51% Public Shareholding: 57.49% ▪ FIIs: 26.98% ▪ Mutual funds/ UTI: 13.43% ▪ Financial Institutions/ Banks: 1.76% ▪ Bodies Corporate: 5.36% ▪ Individuals: 8.14% ▪ Others: 1.82%
Post-merger Shareholding in Kotak	Promoter Group: 33.99% Public Shareholding: 66.01% ▪ ING Group: 6.48% ▪ FIIs: 33.58% ▪ Domestic: 19.12% ▪ FDI: 6.83%
Consideration	As part of the amalgamation, 725 shares of Kotak were issued in lieu of every 1000 shares of ING Vysya to every shareholder of ING Vysya. Fractional shares were not granted and were instead pooled, sold and cash consideration from the sale was distributed to shareholders proportionate to their fractional entitlements.

Pre - merger



Post - merger



IV. Structure of the Deal

A. Deal Structure

The Deal was structured as a scheme of amalgamation (merger) ("**Scheme**") in accordance with Section 44A of the BR Act.

Under the Scheme, ING Vysya will completely merge into Kotak, and all its assets and liabilities will be transferred to Kotak as of the Effective Date. Shareholders of ING will become shareholders of Kotak and will be allotted 725 equity shares of Kotak for every 1000 equity shares of ING Vysya held by such shareholder immediately prior to the Effective Date.

The key terms of the Scheme are:

i. **Appointed Date:** April 1, 2015[10]

ii. **Swap Ratio:** 725 equity shares of face value INR 5 of Kotak shall be issued to the shareholders of ING Vysya for every 1000 equity shares of face value INR 10 of ING Vysya held by them.

iii. **Directorship:** 1 director from the board of ING Vysya has been appointed on the board of Kotak.

iv. **Transfer of employees:** All employees of ING Vysya will on and from the Effective Date, become employees of Kotak, and all years of services in ING Vysya for employees still in service on the Effective Date shall be counted in determining employee benefits, such as gratuity, incentive plans, ESOPs, etc.

v. **Branding:** As of the Appointed Date, ING Vysya has ceased to exist and all usage of the name has been replaced with Kotak's. However, Kotak has entered into an agreement with the ING Group to allow Kotak to continue to use the ING trademark and name for a certain transitional period.

vi. **Partial Shares:** Under the Scheme, no partial shares may be issued. Instead, all equity shares in lieu of all fractional entitlements of shareholders, shall be consolidated and allotted to a trust / director / officer appointed by the board of Kotak (post-merger), who shall hold the shares on behalf of the members entitled to such fractional entitlements, with the express understanding that such trust / person shall sell the shares on the market, within 60 days of allotment. The proceeds of the sale are to be returned to the bank which will appropriately distribute them amongst the members in proportion to their respective fractional entitlements.

The Scheme was approved by 99.93% of the Shareholders (by value) of Kotak[11], and 96.89% of ING Vysya's shareholders by value.[12]

As required under the BR Act, Kotak and ING Vysya have also implemented an optional buy-back mechanism for any shareholder of the respective banks who voted against the merger. This entailed that any shareholder of either Kotak or ING Vysya who did not approve of the Deal, was entitled to tender his/her shares and receive from Kotak/ING Vysya, in cash, the value (as determined by RBI) of such shares. Depending on the number of shares tendered and bought back, the share capital of Kotak/ ING Vysya was reduced by the relevant amount.

B. Other Agreements

In addition to the Scheme, ING also entered into an Implementation Agreement ("**IA**") with ING Bank NV and ING Mauritius Investments-I to ensure their cooperation in the merger and other related matters, and to ensure continuity of business. The IA inter-alia locks-in ING for a period of 1 year from the Effective Date of the Deal.[13] ING and ING Group NV also entered into an additional agreement in order to continue the usage of the ING trademark for a certain transitional period.

10. RBI approved the Scheme on April 1, 2015 and therefore the "**Effective Date**" of the Scheme is also April 1, 2015.
11. http://www.kotak.com/sites/default/files/press_release/Press_Release_08.01.2015.pdf
12. http://www.ingvysyabank.com/IngBlog/Media/PDF/Press-Release-ING-Vysya-Bank-EGM-outcome.pdf
13. http://www.business-standard.com/article/finance/kotak-mahindra-ing-vysya-bank-merger-at-reasonable-valuations-114112100030_1.html

4. Overview of Banking and M&A

I. Evolution of the banking industry in India

The banking industry in India has transformed from a licensed and regulated sector to a liberalized and modern sector. Traditionally, small money lenders had sprung into business and provided loans. The first banks were established during the colonial era which earmarked the growth of the banking industry. The first three banks established during the British era were the Bank of Calcutta in 1806, which was renamed as the Bank of Bengal in 1809, the Bank of Madras in 1843 and the Bank of Bombay in 1868. It is quite fascinating to note that the Bank of Madras was set up as a result of the reorganization and amalgamation of four banks i.e. Madras Bank, Carnatic Bank, Bank of Madras and the Asiatic Bank.[14] Furthermore, the three presidency banks merged in 1921 to form the Imperial Bank of India. Several private banks were also established in the early 1900s which as a result of being unregulated began to exploit the poor. This led to the establishment of the Reserve Bank of India in 1935 in accordance with the Reserve Bank of India Act, 1934. In spite of the formation of the RBI, the growth of the banking industry in India was quite low and in order to streamline the functioning and activities of around 1100 commercial banks during that period, the Government formulated a special legislation, the Banking Companies Act, 1949. The Banking Companies Act was renamed as the Banking Regulation Act in 1966.

II. Consolidation in the indian banking sector

The continuous growth and expansion of banks internationally and the requirement for Indian banks to meet global standards have promoted the requirement for consolidation in the banking sector. The Report of the Committee on Financial Sector Reforms[15] headed by the current RBI Governor Mr. Raghuram Rajan had suggested encouragement of consolidation in banks as against forceful consolidation. The committee had suggested that considering the fragmented nature of the Indian banking sector, consolidation will help banks in setting their foot in the larger field and become a global player in order to integrate with the global economy and to achieve fuller capital account convertibility.

Consolidation is considered to be beneficial in various ways. It is believed that larger banks are more efficient and profitable than smaller ones and generate greater economies of scale. The efficiency may be in terms of effective management, lower costs and higher quality of the services provided. Consolidation of banks which cater to different segments will help in geographical diversification and entry into new markets along with economies of scale. Additionally, larger banks may be in a position to mitigate the risks incurred in financing and meeting stringent international regulatory norms. They will also be able to meet large scale corporate and infrastructure funding which small scale banks may not be able to. However, it is apprehended that consolidation of banks may result in concentration of market power with the merged entities which leads to lack of competition in the economy and may in turn result in monopoly. It may also result in a situation where the needs of the smaller sections of the society are not catered to as the larger banks may aim at serving larger corporates.[16]

While consolidation in the banking industry is being promoted, at the same time the RBI in consequence of the financial inclusion plan of the present government has issued guidelines to promote setting up of small financial banks. Around 113 companies are competing to enter the niche category of payments and small finance banks, while the approval will be granted to only two applicants. The intention of such small finance banks is to undertake basic banking services such as acceptance of deposits, lending to the sections of the country which do not have access to large banks, small business units, marginal farmers, micro and small industries and entities in the unorganized sector.[17] This only results in additional small banking companies in the economy.

Against this backdrop, a debate arises as to whether it is necessary to promote consolidation or the growth of smaller banks. While it is important to strengthen the banking industry in India to level it with the global economy, it is also necessary to ensure that

14. http://www.pbr.co.in/julyseptissue/10.pdf
15. http://planningcommission.nic.in/reports/genrep/rep_fr/cfsr_all.pdf
16. http://www.rbi.org.in/scripts/PublicationReportDetails.aspx?ID=713
17. http://rbi.org.in/scripts/BS_PressReleaseDisplay.aspx?prid=32614

the financial inclusion in the country is not at stake. Consolidation is thus typically encouraged of only weaker banks or distressed banks.

III. Others Mergers and Acquisitions in the Banking Sector

A highly regulated industry, the banking industry has seen very few mergers and acquisitions since the privatization of the sector.

Traditionally most cases of bank mergers had taken place on the directions of RBI. Its ground was to merge weak banks with the stronger banks to maintain a balance in the economy. Though not very high in number, market led mergers and amalgamations have found their way in the banking sector.

Statistically, since 1961, there have been 81 amalgamations in the Indian banking sector of which 47 had taken place before July 1969 i.e. before nationalization of banks. Out of the 34 remaining mergers, 26 mergers had occurred between private sector banks and public sector banks and rest were between two private sector banks. However, ever since the banking sector reforms, pursuant to the Narasimhan Committee Report, in 1991, there have been 31 mergers / amalgamations in the banking sector.[18]

The only mergers that the nationalized banks have seen are that of the merger of the New Bank of India with the Punjab National Bank in 1993 and the acquisition by State Bank of India of State Bank of Saurashtra[19] and State Bank of Indore[20] in 2008 and 2010 respectively.

One of the most contentious mergers in the private banking space was the acquisition of Bank of Madura by ICICI Bank Limited in March 2001. While the merger enabled ICICI to expand its branches, it assumed several liabilities as Bank of Madura had very high non-performing assets. On the other hand, for the economy, the burden of one weak bank had reduced.[21]

Another important merger that resulted in many benefits to the merged entity was the merger of HDFC Bank and Centurion Bank of Punjab in 2008. The resultant merged entity inherited a huge asset base along with a wide network of branches. The other synergy included sharing of the varied clientele of both the banks.[22]

The merger at hand which is being promoted as one beneficial to both the banks, comes after a 5 year long break in M&A activity in the banking sector. The last such merger was that of Bank of Rajasthan with ICICI Bank in 2010.

18. Banking Structure in India- The Way Forward, Reserve Bank of India, 2013
19. http://www.prsindia.org/uploads/media/SBI%20Bill%202009.pdf
20. Scheme of Acquisition: https://www.sbi.co.in/portal/documents/44589/60030/1257924030715_sbin_scheme.pdf/202aaed5-1c79-4091-b065-d8db-0ce3df19
21. http://www.mayin.org/ajayshah/MEDIA/2000/icicibank-bankofmadura.html
22. http://tejas.iimb.ac.in/articles/01.php

5. Commercial Considerations

I. Why did the two banks merge?

Numerous reasons have been cited[23] for the merger of the two banks rooted primarily in the complementary nature of value built by the two entities. Kotak, with 641 branches and a strong presence in the North and West India also brings to the table long standing corporate relationships, a broad product portfolio and a robust capital position. ING Vysya brings with it a long grown brand value and deep presence in South India with a total of 573 branches (particularly in Andhra Pradesh, Telangana and Karnataka.) ING Vysya has a large customer base across all segments, and is particularly noted for having best-in-class SMA Business as also for serving large international corporates in India utilizing its access to the international relationships of the ING Group.

The resultant Kotak Bank would have 1214 branches across India and *inter alia* reap the following benefits of the merger:[24]

- Customers and employees would benefit from the wider geographical presence, and broader product and expertise base.
- Kotak's strong capital position potentially avoids capital raising and attendant dilution in the near to medium term for ING Vysya shareholders.

In additions to the above, it appears that there were certain other driving forces for both Parties to close this Deal, as described below:

A. ING Group's Exit from India

Though not officially announced by the Group, there have been numerous reports since 2013 of INGs intention to divest and exit India.[25] ING which took a hit in the global recession was heavily indebted to the Dutch government. This was followed by the sale of its INR 11 Billion stake in ING Vysya Life Insurance in late 2013, and more reports of ING's plan to sell its stake in ING Vysya.

B. RBI Directive to Uday Kotak

In May 2014, Uday Kotak received a directive from RBI to reduce his shareholding in the Bank to 20% (from 45.3% at that time) by December 2018. He was to reduce it to 30% by December 2016.[26] Pursuant to the Deal, the promoter's stake in the Company will be reduced to 33% putting him well on his way to meet the requirements of the directive.

II. Why was the Deal structured as a merger and not share acquisition?

While no direct reasons have been cited by any of the Parties for the reason why the deal was structured as a merger and not a share purchase, the following are some considerations that could have leaned on the structuring of the Deal:

A. Promoter Dilution & Capital Expenditure

Given, the RBI directive to dilute the Promoter's stake in Kotak, the Deal, which entailed a share swap instead of a capital expenditure (which would have been required for a share purchase), allowed Kotak to avoid the cash needs of an acquisition, and directly dilute its shareholders (primarily Mr. Uday Kotak).

B. Takeover Code Exemption

The merger was exempt from the obligation to make an open offer under the Takeover Code, and thus, relieves Kotak from having to make an open offer. If however, Kotak had elected to structure the Deal as share purchase, they would have had to comply with the requirements of the Takeover Code.

C. Two Banks

If the deal was structured as share purchase the result would have been two separate banks. However, it appears that a primary commercial reason for the Deal was to consolidate the value that both Kotak and ING Vysya had into a single large bank, drawing the benefits of both.

23. The Scheme
24. http://corporates.bseindia.com/xml-data/corpfiling/AttachHis/Kotak_Mahindra_Bank_Ltd1_201114.pdf
25. See: http://www.thehindubusinessline.com/industry-and-economy/banking/kotak-mahindra-board-okays-merger-of-ing-vysya-bank/article6618345.ece , Also see, https://in.finance.yahoo.com/news/ing-plans-sell-stake-indias-143815719.html and http://www.finanznachrichten.de/nachrichten-2015-03/33001467-ing-group-completes-divestment-of-voya-shares-for-total-proceeds-of-usd-2-billion-399.htm
26. http://www.livemint.com/Companies/ttoEK9spz40QonoPyGemIJ/Uday-Kotak-ordered-to-cut-stake-in-Kotak-Mahindra-Bank-to-40.html

D. Tax Benefits

The Deal being structured by way of a merger, was tax neutral under the IT Act. Further, when ING eventually exits from the merged entity, it can do so by selling its stake on the floor of the market and thus avail of the tax exemptions afforded to such transactions. However, if the Deal was structured as an acquisition, because of the size of the sale, it would have practically been impossible to execute it entirely on the floor of the market. ING would have thus had to complete the sale off the floor of the market, because of which it would have been subject to capital gains tax.

III. How was the merger valued? Who decided the Price?

The swap ratio was arrived at by the independent valuers appointed by Kotak and ING Vysya respectively who recommended a share exchange ratio, which was accepted by the respective Boards. The independent valuers valued each Bank using all of the following methods: (i) Market Price Method; (ii) Comparable Companies Method; (iii) Discounted Cash Flows Method; and (iv) Net Asset Value Method.[27] Certain other "qualitative factors" were also factored in while arriving at the swap ratio.[28]

The swap ratio was approved by the RBI on April 1, 2015.

IV. Was there any opposition from any stakeholder to the Deal?

The employees of ING Vysya staged a protest on January 7, 2015, the day on which the EGM to approve the Scheme was held.

The All India ING Vysya Bank Employees Union and All India ING Vysya Bank Officers Association, the two labour unions constituting about 35% of the 10,000 employees had opposed the merger stating concerns over wage and job security.[29] Their concern was that the management of Kotak had not made any commitment to the continuation of the existing service conditions on transfer of employees. They also alleged that while Kotak had promised pension to the transferred employees, it would not be linked to the dearness allowance. They therefore demanded a tri-partite agreement to be signed between ING Vysya, Kotak and the employees of ING Vysya laying down in detail the benefits to be provided.

Apart from the concern that Kotak does not guarantee job security, the employees had also demanded that ING Vysya be merged with a nationalized bank rather than with another private bank. Their other concern was also that Kotak does not approve of employee unions and they fear that the demands of the employees will not be met post the merger.

The protest is irrespective of the fact that the Scheme provides that the employees of ING Vysya will become the employees of Kotak from the date of the amalgamation without any break or interruption in services and on the terms and conditions as to remuneration, emoluments and perquisites no less favourable then currently being provided to the employees of ING Vysya.

The BSE had sought clarifications from ING Vysya on knowledge of the employee agitation from newspaper reports. ING Vysya clarified to the BSE that these were merely rumours in the media, and quoted a Kotak spokesperson who said that post-merger, Kotak would comply with all requirements, including providing pension linked to dearness allowance adjustments.[30] Further, a letter from Kotak to ING Vysya clarifiying that Kotak would honour all agreements between ING Vysya and the Unions relating to terms of employment, wages, welfare measures, superannuation benefits, etc. was enclosed with the clarification [31]

However, Kotak, which otherwise has been ranked highly as an employer, is likely to have the challenge of integrating the employees of ING Vysya. The management of Kotak has time and again assured that there will be no drastic job or cost cuts in the near future.[32]

27. http://ingvysya.kotak.com/IngBlog/Media/PDF/Joint-Valuers-Report-on-Fair-Exchange-Ratio.pdf
28. The Scheme
29. http://businesstoday.intoday.in/story/ing-bank-staff-demand-job-safety-post-merger-to-strike-on-january-7/1/213997.html
30. http://www.bseindia.com/corporates/anndet_new.aspx?newsid=b62a78cd-921a-4c43-aa54-38cf9f31afb5
31. http://corporates.bseindia.com/xml-data/corpfiling/AttachHis/ING_Vysya_Bank_Ltd_060115.pdf
32. http://www.moneycontrol.com/news/business/no-drastic-job-cuts-post-kmb-ing-vysya-merger-uday-kotak_1234949.html

6. Legal and Regulatory Considerations

I. What is the difference between the merger under the CA 1956 / CA, 2013 and the BR Act?

Typically the process of a merger of two companies is court driven process governed by Section 391-394 of the CA 1956. However, in the case of two banking companies, because of the sensitive nature of the sector, this process is entirely governed under Section 44A of the BR Act, which is a complete code with respect to a banking company merger.[33] Below we highlight some of the differences between a standard merger and a merger under Section 44A:

Merger under Companies Act	Merger under BR Act
Primarily governed by Sections 391-394 of the Companies Act and Sections 230-232 in the case of the Companies Act, 2013. Additionally regulators such as the CCI, SEBI, and the FIPB will regulate relevant aspects of the merger.	Governed under Section 44A of the BR Act and the Merger Guidelines. In addition to RBI, only the CCI has any regulatory jurisdiction over the merger. Foreign investment up to 49% in the banking sector can take place under the automatic route. Any foreign investment beyond 49% up to 74% would require the prior approval of the FIPB.
Process initiated by the drafting of a scheme of amalgamation which stipulates the terms and conditions of the merger, including the share swap (consideration) based on a valuation as per any internationally accepted valuation process.	Process initiated by the drafting of a scheme of amalgamation which stipulates the terms and conditions of the merger, including the share swap (consideration) based on a valuation as per any internationally accepted valuation process.
The merger is a court driven process; where the court is the relevant company court (i.e. currently the High Court in most states).	Merger is driven by the parties themselves, however subject to RBI scrutiny and approval.
Statement of the arrangement and its effect is required to be sent with every notice calling for the meeting to all interested parties. The Court will send notice of the application to the Central Government, which may make representations if it feels necessary.	Notice of meeting to be given to every shareholder and to be published at least once a week for three consecutive weeks in not less than two newspapers which is circulated in the locality.
Central Government may provide for the amalgamation of two companies under Section 396 of the CA 1956.	Central Government may provide for the amalgamation of two banking companies as well, under Section 396 of the CA 1956, but only after consultation with the RBI.
<u>Consents Required</u> After the scheme is filed with the relevant court, the Court may convene a meeting of the shareholders and creditors (as required) to obtain consent to the scheme by of a majority in number of 3/4 in value of: i. Creditors/class of creditors of the company ii. Members/class of members of the company	<u>Consents Required</u> Before filing of the Scheme, it requires approval of majority in number representing two-thirds in value of the shareholders of each bank/NBFC.
Scheme must be sanctioned by the relevant Company Court (in most cases the High Court of the state).	Scheme must be approved by RBI.

33. *Bank of Madura Shareholders Welfare Association v. Governor, Reserve Bank of India, (2001)3CompLJ212(Mad).*

Once the consents of member/creditors have been obtained the Court cannot go into the merits of the scheme or any of the commercial objectives of the merger. Court will however hear objections from the Income Tax authorities and Registrar of Companies (if any).	RBI may scrutinize the merger on any of the following[34]: ▪ Sound rationale for amalgamation ▪ Systematic benefits and advantages to the residual entity ▪ Impact on financial stability of the country ▪ Interests of the banking industry ▪ Interests of the depositors ▪ Profitability considerations
<u>Dissenting Shareholders</u> The dissenting shareholders may make an application to the court.	<u>Dissenting Shareholders</u> The dissenting shareholder may claim from the banking company, in respect of the shares held by him in that company, the value of shares as determined by the RBI when sanctioning the scheme.
<u>SEBI related procedures:</u> Listed companies have to comply with certain obligations of SEBI in case of a scheme or merger or reconstruction[35]: i. File the draft scheme with the stock exchange; ii. Place a valuation report obtained from an independent chartered accountant before their audit committee for approval; iii. Upon filing of the scheme with the stock exchange, the listed company is required to disclose the draft scheme on its website. They are also required to disclose the observation letter (letter with the comments of the stock exchange and SEBI on the draft scheme) on their website within 24 hours of receiving the same; iv. Listed companies must (a) include the observation letter of the stock exchanges, in the notice sent to the shareholders seeking approval of the scheme; and (b) bring the same to the notice of the High Court at the time of seeking approval of the scheme.	<u>NA</u> SEBI has clarified that only listed companies undertaking a scheme of arrangement under Part IV and Chapter V of Part VI of the CA 1956 are required to comply with the obligations imposed by SEBI while merging or amalgamating.[36]

II. What approvals and compliances were required for the Deal under the BR Act & the Merger Guidelines?

A. Board and Shareholder Approval

Section 44A of the BR Act and the Merger Guidelines require that a scheme of amalgamation be approved by the board of directors of each amalgamating company, and subsequently by two-thirds of the shareholders (represented by value) of each company. The Section also stipulates that the notice concerning the time, object and place of the shareholders' meeting needs to be provided to every shareholder and is to be published at least once a week for 3 consecutive weeks in at least 2 newspapers (one being in a language commonly understood in the locality).

The board of directors of ING Vysya and Kotak at their respective meetings held on November 20, 2014 approved the amalgamation of ING Vysya with Kotak.

Further, at a meeting of the shareholders of ING Vysya held on January 7, 2015[37], out of the 8118 shareholders present and voting in person or through proxies, a total of 7228 shareholders, constituting 89.04% in number and representing 96.89% in value[38] of the shareholders voted in favour of the merger. Similarly out of the 4130 shareholders of

34. Merger Guidelines; also look at: https://rbi.org.in/scripts/publicationsview.aspx?id=10495

35. SEBI Circular No. CIR/CFD/DIL/5/2013 dated February 4, 2013 read with the provisions of SEBI Circular No. CIR/CFD/DIL/8/2013 dated May 21, 2013, http://www.nseindia.com/content/equities/SEBI_Circular_04022013.pdf

36. http://www.sebi.gov.in/cms/sebi_data/attachdocs/1369139160079.pdf

37. http://www.moneycontrol.com/mccode/news/article/article_pdf.php?autono=1269757&num=0

38. http://corporates.bseindia.com/xml-data/corpfiling/AttachHis/ING_Vysya_Bank_Ltd_080115.pdf; http://ingvysya.kotak.com/IngBlog/Media/PDF/Press-Release-ING-Vysya-Bank-EGM-outcome.pdf

Kotak present and voting in person or through proxies at a meeting of Kotak's shareholders on the same date, a total of 4,101 shareholders constituting 99.30% in number and representing 99.30% in value[39] of the shareholders voted in favour of the transaction.[40]

B. RBI Approval

After obtaining the approval of the shareholders, Section 44A of the BR Act mandates that a scheme of amalgamation be sanctioned by RBI. On April 1, 2015, RBI granted this sanction to the Scheme[41], and it came into force with effect from the same date. All the branches of ING Vysya Bank Ltd. have since been functioning as branches of Kotak Mahindra Bank Ltd; and all the tangible and intangible assets of ING Vysya were transferred to Kotak Mahindra Bank. A full integration is proposed to be completed within 9-12 months following the RBI approval.[42]

C. Merger Guidelines

Apart from the BR Act, the Merger guidelines issued by RBI lays down the process of merger / amalgamation and the factors which are to be considered by the board of directors before approving the scheme. The following factors are mandatorily required to be considered by the board before they approve the merger:

i. *value at which the assets, liabilities and the reserves of the amalgamating company are proposed to be incorporated into the books of the amalgamating company and whether such incorporation will result in a revaluation of assets upwards:* As per the Scheme all the assets, liabilities and reserves of ING Vysya are proposed to be recorded in the books of the amalgamated entity at the value they appear in the books of ING Vysya on the Appointed Date.[43] In order to arrive at this, the board is also likely to have taken into account the total value of the assets, the total non-performing assets and the likely impact on the revenue of Kotak. The gross non-performing assets of ING Vysya for the quarter ended December 31, 2014 was only 0.66%, while that of Kotak was 0.83% indicating that the non-performing assets of ING Vysya are not so high so as to adversely affect the financials of the merged entity.

ii. *whether due diligence has been undertaken in respect of the amalgamated company;*

iii. *the nature of consideration which the amalgamating banking company will pay the shareholders of the amalgamated company:* The value of the consideration that is proposed to be given to the shareholders of ING Vysya is 725 equity shares of the face value of INR 5 each in Kotak for every 1000 (one thousand) equity shares of the face value of INR 10 each held in ING Vysya by the shareholders.

iv. *Whether the swap ratio has been determined by independent valuers having the required competence and experience:* The equity share exchange ratio has been arrived at by independent valuers by applying multiple valuation methods. While Price Waterhouse & Co. LLP was appointed by ING Vysya, S.R. Batliboi was appointed by Kotak, the two valuers had jointly assessed the swap ratio. Additionally a "fairness opinion" on the swap ratio was obtained from Avendus Capital Private Limited for Kotak and Edelweiss Financial Services Limited for ING Vysya, both merchant bankers registered with SEBI.

v. *the shareholding pattern in the two banking companies, and whether as a result of the amalgamation and the swap ratio the shareholding of any individual, entity or group in the amalgamating banking company will be in violation of the RBI guidelines in that regard:* RBI has framed the Guidelines on Ownership and Governance in Private Sector Banks which are meant to ensure that the ultimate ownership and control of private sector banks are well diversified. Under the Guidelines for acknowledgement of transfer/allotment of shares in private sector banks [44], any transfer or allotment shares which increases the aggregate shareholding of an investor (being domestic or foreign) equivalent to five percent and more of the paid-up capital of the bank requires the acknowledgement of RBI (which is granted discretionally), before such allotment can be effected by the bank.[45] This is to ensure that no single entity or a group of related entities has shareholding or control, directly or indirectly in any bank in excess of 10% of the paid-up capital of the bank.[46] Since the Deal was a merger scheme, approved by RBI, ING Group will not require the

39. http://www.financialexpress.com/article/industry/banking-finance/kotak-ing-vysya-merger-gets-shareholders-approval/27491/
40. http://www.moneycontrol.com/mccode/news/article/article_pdf.php?autono=1269756&num=0
41. https://rbi.org.in/scripts/BS_PressReleaseDisplay.aspx?prid=33601
42. http://www.moneycontrol.com/news/business/ing-vysya-bk-becomes-kotak-mahindra-bank-rbi-okays-merger_1347132.html
43. http://www.ingvysyabank.com/IngBlog/Media/PDF/Investor-Presentation.pdf
44. https://www.rbi.org.in/scripts/BS_CircularIndexDisplay.aspx?Id=1465
45. http://www.rbi.org.in/scripts/BS_CircularIndexDisplay.aspx?Id=1465
46. http://www.rbi.org.in/upload/content/images/guidelines.html

approval of RBI to hold a stake of around 6.48% in the amalgamated entity which exceeds the 5% threshold.

vi. *The impact of the amalgamation on the profitability and the capital adequacy ratio of the amalgamating company:* While the capital adequacy ratio of Kotak was higher than ING Vysya at 17.59% as against 14.99%, it is expected that the capital adequacy ratio of the merged entity will be 16.51%.[47] Though the capital adequacy ratio of the merged entity is expected to reduce, the ratio as compared to other banks is expected to be on the higher side.[48]

vii. *the changes proposed to be made in the composition of the board of directors of the amalgamating banking company as a result of the amalgamation and whether the resultant composition of the board will be in conformity with RBI Guidelines in that regard. The BR Act also has certain requirements with respect to the directors of a banking company:* The Scheme proposes that 1 director of ING Vysya will be invited to form part of the board of Kotak. Considering that he was a director on the board of ING Vysya, he is likely to satisfy the general qualifications prescribed for directors under the BR Act and the RBI Guidelines.

While it is evident that the board of directors of a company will not make the decision as crucial as an amalgamation without putting into thought the above considerations, it is probably the sensitive nature of the banking sector that has led to the specific guidelines and the requirements imposed on boards of the amalgamating banking companies.

III. Why was the approval of the FIPB required?

On April 21, 2015 Kotak allotted 139,205,159 equity shares of INR 5 each to the shareholders of ING Vysya.[49] This has resulted in the aggregate foreign investment in Kotak going up to 48.5%, which is just shy of the FDI cap under the automatic route applicable to the banking sector (i.e. 49%). To avoid tripping the limit, Kotak filed an application with the FIPB, to increase the FDI limit applicable to Kotak to 55%. The FIPB approved Kotak's application on July 3, 2015.[50]

IV. Why was the approval of CCI required?

The Competition Act, along with Competition Commission of India (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 prohibits a person or enterprise from entering into a 'combination' which causes or is likely to cause an 'appreciable adverse effect on competition' ("**AAEC**") within the relevant market in India, and renders such a combination void. "Combination", for the purposes of the Competition Act, includes a merger or amalgamation in which the resultant entity post the merger has assets in India or outside India that exceed the financial thresholds prescribed under the Competition Act.

In December 2015, Kotak and ING Vysya had filed a notice with the CCI under Section 6 (2) of the Competition Act, which requires any person or enterprise, who or which proposes to enter into a combination to give notice to the CCI. The CCI on February 12, 2015 concluded that the amalgamation of Kotak and ING Vysya will not result in an AAEC in the relevant market i.e. market for provision of banking services.[51]

V. Is the CCI approval required for all banking mergers and amalgamations?

With respect to M&A in the banking sector, the traditional role of RBI has been to consider the synergies and benefits of a merger between two banks to the economy and to the financial stability in the country.

CCI on the other hand explores the effects of such a merger on the competition in the sector. However, in the past much debate has ensued over whether CCI should at all have the power to regulate mergers within the banking sector. The Banking Laws (Amendment) Bill, 2011 proposed to take away the applicability of the Competition Act to the banking sector in respect of matters involving mergers, reconstruction, transfer, reconstitution or acquisition of the banks under the BR Act.[52] This amendment was not, however, accepted as part of the Banking Laws (Amendment) Act, 2012 which received

47. http://www.ingvysyabank.com/IngBlog/Media/PDF/Investor-Presentation.pdf
48. http://dbie.rbi.org.in/OpenDocument/publicOpenDocument.jsp?iDocID=17409884
49. http://corporates.bseindia.com/xml-data/corpfiling/AttachHis/Kotak_Mahindra_Bank_Ltd_210415.pdf
50. http://fipb.gov.in/Authenticate/Admin/PDocuments.aspx
51. http://cci.gov.in/May2011/OrderOfCommission/CombinationOrders/C-2014-2-231.pdf
52. http://www.prsindia.org/uploads/media/Banking%20Laws/Banking%20laws,%2018%20of%202011.pdf

Presidential assent on 5 January 2013.[53]

A question arises as to whether a merger or amalgamation in the banking sector requires the green signal from the CCI along with the approval of the RBI. While RBI is the sectoral regulator in the banking sector which lays out and enforces rules, the CCI regulates the competitive behaviour of the banks in the market. RBI while judging a merger or amalgamation in the banking sector would evaluate it largely on the basis of the effect it would have in ensuring the safety of the depositors, the effect of the merger on the risk taking ability of the banks and the overall stability in the financial sector, while the CCI which aims to promote competition in the market would evaluate it on the basis of how it would affect the competition in the banking sector. The roles of RBI and CCI thus cannot be merged and both the regulators will have to go hand in hand securing the interests of the economy and the customers.[54]

VI. What were the disclosures that were required to be made?

A. Listing Agreement

The listing agreement with the stock exchange entails the various disclosures a listed company is required to make with the stock exchange and the circumstances in which they are required to be made in order to enable the shareholders and the public to appraise the position of the company, and to avoid the establishment of a false market in its securities. A listed entity is required to file all copies of

i. proceedings of its annual / extra-ordinary general meetings;

ii. any notices, circulars issued in the press regarding a merger, amalgamation, reconstruction, reduction of capital, scheme or arrangement;

iii. notices, circulars issues or advertised in the press in regard to meetings of shareholders / creditors / debenture holders or any class of them; and

iv. events such as strikes, lock outs, closure on account of power cuts, etc. and all events which will have a bearing on the performance / operations of the company.

ING Vysya informed the NSE[55] and the BSE[56] of the proposed scheme of merger on November 20, 2014, immediately after the Board meeting approving the merger which took place at 5 p.m. on the same day. Kotak also informed the BSE[57] and the NSE[58] of the merger on November 20, 2014. The Parties have also submitted to the stock exchanges the press releases regarding the merger.[59]

B. Insider Trading

On November 22, 2014, two days after the proposed merger was announced, SEBI began probing into whether there was any insider trading ahead of the announcement. Kotak's and ING Vysya's shares surged 8% and 13% respectively[60] on November 20, 2014 due to speculations[61] of the proposed merger before the approval of the board was actually obtained, post the closing of the market for that date.

SEBI sought details from the NSE and the BSE regarding trading of the shares of ING Vysya that were conducted prior to the announcement of its merger with Kotak, to verify whether any unusual trading activities took place in the shares and whether such trading could have been conducted in violation of securities market regulations.[62]

VII. Was the approval of SEBI required?

The approval of SEBI is not mandatorily required in the case of a merger / amalgamation between banking companies. The RBI if considers necessary may refer a potential issue in the case of a merger / amalgamation to SEBI for consideration.

53. http://indiacode.nic.in/acts-in-pdf/042013.pdf
54. http://www.cuts-ccier.org/ArticlesJan10-CCI_has_a_role_to_play_in_bank_mergers.htm
55. http://nseindia.com/corporates/corpInfo/equities/AnnouncementDetail.jsp?symbol=INGVYSYABK&desc=News+Clarification&tstamp=241120142038&
56. http://corporates.bseindia.com/xml-data/corpfiling/AttachHis/ING_Vysya_Bank_Ltd_201114.pdf
57. http://corporates.bseindia.com/xml-data/corpfiling/AttachHis/Kotak_Mahindra_Bank_Ltd_201114.pdf
58. http://nseindia.com/corporates/corpInfo/equities/AnnouncementDetail.jsp?symbol=KOTAKBANK&desc=News+Clarification&tstamp=241120142037&
59. http://corporates.bseindia.com/xml-data/corpfiling/AttachHis/Kotak_Mahindra_Bank_Ltd1_201114.pdf
60. http://articles.economictimes.indiatimes.com/2014-11-22/news/56362139_1_insider-trading-ing-vysya-bank-725-shares; http://www.business-standard.com/article/news-cm/kotak-mahindra-bank-ing-vysya-bank-decline-in-volatile-trade-114112400555_1.html
61. http://www.thehindubusinessline.com/markets/did-the-market-get-a-whiff-of-the-kotak-banking-vysya-deal/article6618724.ece
62. http://articles.economictimes.indiatimes.com/2014-11-24/news/56420752_1_surveillance-mechanism-securities-market-regulations-sebi

SEBI had, in 2012,in response to an RTI filed to it alleging the reasons for approval being given for the amalgamation of Bank of Rajasthan with ICICI Bank, clarified that its approval is not required for a merger or amalgamation of two banking companies under Section 44A.[63] Also, as per the SEBI circulars issued in 2013, it clarified that its approval is only required for all listed companies undertaking a scheme of arrangement under the CA 1956.[64]

VIII. Why did the Takeover Code not get triggered?

Regulation 10(d) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulation, 2011 sets out that any acquisitions pursuant to a scheme *"of arrangement involving the target company as a transferor company or as a transferee company, or reconstruction of the target company, including amalgamation, merger or demerger, pursuant to an order of a court or a competent authority under any law or regulation, Indian or foreign"*. The language of the Regulation is intentionally (as opposed to the 2013 Circular) and thus even covers a merger under Section 41 of the BR Act. The Deal, being covered by the exemption under Regulation 10(d), did not trigger an open offer under the Takeover Code.

63. http://www.sebi.gov.in/cms/sebi_data/attachdocs/1354009364533.pdf

64. http://www.nseindia.com/content/equities/SEBI_Circular_04022013.pdf; http://www.sebi.gov.in/cms/sebi_data/attachdocs/1369139160079.pdf

7. Tax Considerations

I. Is the Transaction Tax Exempt?

While any income from the sale of an asset or undertaking is usually subject to taxation, the ITA under Section 47(vi) exempts *"any transfer, in a scheme of amalgamation, of a capital asset by the amalgamating company to the amalgamated company, if the amalgamated company is an Indian company"* from the definition of 'transfer', in the determination of assessment of tax on capital gains. In order to avail of this exemption scheme must comply with the definition of an 'amalgamation' as under Section 2(1B) in the ITA, which specify the following three conditions:

- All the property of the amalgamating companies must become the property of the amalgamated company by virtue of the amalgamation.
- All the liabilities of the amalgamating companies must become the liabilities of the amalgamated company by virtue of the amalgamation.
- The shareholders holding not less than 3/4th in value (75%) of shares in the amalgamating company (apart from the shares already held by the amalgamating company) must be shareholders in the amalgamated company by virtue of the amalgamation.

Additionally, in order for the transfer to be tax neutral for the shareholders of the amalgamating entity, the only consideration that can be received by them is the allotment of shares in the amalgamated entity.

According to the scheme of amalgamation, (i) all properties of ING Vysya immediately before the merger will become the property of Kotak; (ii) all liabilities of ING Vysya immediately before the merger will become the liabilities of Kotak; and (iii) the current shareholders of ING Vysya will become the shareholders of Kotak, and this number exceeds the threshold limit specified in Section 2(1B). Hence the transaction falls under the exemption to the definition of 'transfer' and is thus tax-neutral for both the companies as well as their shareholders.

II. Tax Implications of the Consolidation and Sale of Fractional Entitlements of Shares

According to the scheme, all fractional entitlements in relation to equity shares are consolidated, and equity shares in lieu of the same are allotted to a trust. The trust holds the equity shares in trust and for the benefit of the shareholders who are entitled to such fractional entitlements. The same are to be sold and the proceeds thereof are to be distributed to the shareholders in proportion to their respective shareholding. Such proceeds received by the shareholders in lieu of the sale of their fractional entitlement will be taxable as capital gains in the hands of the shareholders.

III. Tax Implications on the Buyback of Equity Shares

Any shareholder of either Kotak or ING Vysya who did not approve of the Deal, is entitled to tender his/her shares and receive from Kotak/ING Vysya, in cash, the value (as determined by RBI) of such shares. This buy-back of shares by Kotak and/or ING Vysya will be subject to capital gains tax under the ITA.

8. Epilogue

The Deal comes as a forerunner, of a rise in M&A activity and growth in the Indian Banking Sector. Recent news about RBI granting 'payment bank' approval to 11 applicants[65], and granting permission to Bandhan Financial Services Private Limited (previously a non-banking micro financier) to open a private sector bank[66], shows a clear intent on the part of the regulator to stimulate growth in the sector. Looking at a broader international context too, there appears to be evidence that the time is right for Indian financial institutions to take on the challenging global markets. All these factors put together, the market and its players will be closely watching Kotak as it fully assimilates its new acquisition, to assess how well it does. This is then likely to set the tone for future banking M&A activity in India.

65. http://www.moneycontrol.com/news/business/rbi-grants-in-principle-nod-to-11-cos-for-payment-banks-_2633481.html
66. http://www.business-standard.com/article/finance/bandhan-set-to-get-final-approval-from-rbi-115061700263_1.html

M&A Lab

Cairn – Vedanta: ‘Fair’ Or ‘Socializing Vedanta’s Debt’?

January 2016

Contents

1. Prologue

A few years ago in India, it was rare for proxy advisory firms to comment on M&A transactions. It was even rarer for proxy advisory firms to form a different view on the same deal. However in recent times, with the sophistication in the deal making environment coupled with changes in the regulatory framework proxy advisory firms have wielded significant power and influence over M&A transactions. Therefore it comes as no surprise that debt ridden Vedanta Ltd's ("**Vedanta**") announcement of merger with its debt-free and cash rich subsidiary Cairn Ltd ("**Cairn**" and the merger shall be hereinafter referred to as the "**Transaction**"), has provided a great opportunity for proxy advisory firms to demonstrate and wield their influence.

The interesting part however, is that not all proxy advisory firms have the same advice on the Transaction. One proxy advisor labeled the deal "fair"[1] with a tone of caution whereas another proxy advisory firm castigated Vedanta for "socializing" its heavy debt.[2]

While the markets, shareholders, proxy advisory firms and all stakeholders may have their own view on the merits or demerits of the Transaction, one aspect that cannot be denied is that the Transaction comes as no surprise to anyone. The gloomy macro-economic environment for the commodities market as a result of a sharp decline in commodity prices has had a negative impact on the net profits of the metals and mining conglomerate Vedanta. In fact, for the second quarter of FY 2016 the company has seen more than a 40% drop in its consolidated net profits from the second quarter of the previous financial year.[3] Vedanta has attributed this decrease to the fall in crude oil and metal prices, as well as the depreciation of the rupee.[4] This gloomy business prospect accompanied with the high debt outstanding on the books of Vedanta almost forced it to get direct access to its "cash cow" Cairn.

While, no one in-principle can question Vedanta's decision to merge its subsidiary Cairn as *per se* it is a legitimate business decision, the debate on whether the deal terms are fair or not is a reasonable one and must be welcomed as it creates a robust and vibrant deal environment in India wherein such deals are closely scrutinized. This M&A Lab, while providing the necessary background to the deal and the parties, analyzes dynamics of the Transaction and the lessons that it holds for future M&A transaction in India.

1. Institutional Investor Advisory Services, "Vedanta-Cairn Merger Fair, but deal dynamics could change" dated June 15, 2015, available at: http://iias.in/ArticleBlog.aspx?title=Vedanta%E2%80%93Cairn-Merger-Fair-but-deal-dynamics-could-change.aspx.
2. InGovern Research Services, InGovern report on Vedanta-Cairn India Merger dated June, 2015, available at http://www.ingovern.com/wp-content/uploads/2015/06/Report-on-Vedanta-Cairn-India-Merger.pdf.
3. "Vedanta may discuss on sweetening Cairn India deal next week" available at: http://economictimes.indiatimes.com/industry/indl-goods/svs/metals-mining/vedanta-may-discuss-on-sweetening-cairn-india-deal-next-week/articleshow/49510627.cms.
4. Ibid.

2. Glossary of Terms

ADRs	American Depositary Receipts
BALCO	Bharat Aluminium Company Ltd.
BSE	Bombay Stock Exchange
CA 2013	Companies Act, 2013
CA 1956	Companies Act, 1956
Cairn	Cairn Limited
Cairn Plc	Cairn Plc, UK-based erstwhile promoter of Cairn, and currently is largest minority shareholder
Competition Act	Competition Act, 2002
CCI	Competition Commission of India
CIHL	Cairn India Holdings Ltd., Indian subsidiary of Cairn
CUHL	Cairn UK Holdings Ltd., erstwhile holding company for Cairn and subsidiary of Cairn Plc
Effective Date	The date on which the court approves the Transaction
ESOP	Employee Stock Option Plan
FY	Financial Year
INR	Indian Rupees
ITA	Income Tax Act, 1961
LIC	Life Insurance Cooperation of India
Ltd.	Limited
MALCO	Madras Aluminium Company
NYSE	New York Stock Exchange
NSE	National Stock Exchange
Party(ies)	Cairn and Vedanta
Pvt.	Private
RBI	Reserve Bank of India
Scheme of Arrangement	Scheme of arrangement entered into between Cairn and Vedanta in relation to this Transaction
SoA Circular	Circulars dated February 4, 2013 and May 21, 2013 issued by SEBI in relation to scheme of arrangements undertaken by listed companies
SEBI	Securities and Exchange Board of India
Sesa Goa	Sesa Goa Ltd., former Indian subsidiary of Vedanta Plc
Sesa Sterlite	Sesa Sterlite Ltd., renamed Vedanta
SPV	Special Purpose Vehicle
Sterlite Industries	Sterlite Industries (India) Ltd., former Indian subsidiary of Vedanta Plc
Takeover Code	SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011
TISPRO	Foreign Exchange Management (Transfer or issue of security by a person resident outside India) Regulations, 2000
Transaction	Merger of Cairn into Vedanta
TSMHL	Twin Star Mauritius Holdings Limited, wholly-owned subsidiary of Vedanta
USD	United States Dollar
Vedanta Plc	Vedanta Resources Plc, UK parent of Vedanta

3. Deal Dynamics

I. Parties Involved

A.Vedanta Plc

Vedanta Plc is a diversified natural resources company specializing in the production and mining of zinc, lead, silver, copper, iron ore, alumunium, power and oil & gas.[5] Through its subsidiaries, Vedanta Plc has operations across India, Zambia, Namibia, South Africa, Liberia, Ireland and Australia.[6] It was listed on the London Stock Exchange in 2003, and will be the parent of the merged entity i.e. Vedanta (post-merger with Cairn) if the Transaction is completed.

i. Group Structure (relevant for this Transaction):

ii. Key Financials

The key financial overview of Vedanta Plc is captured in the table below:

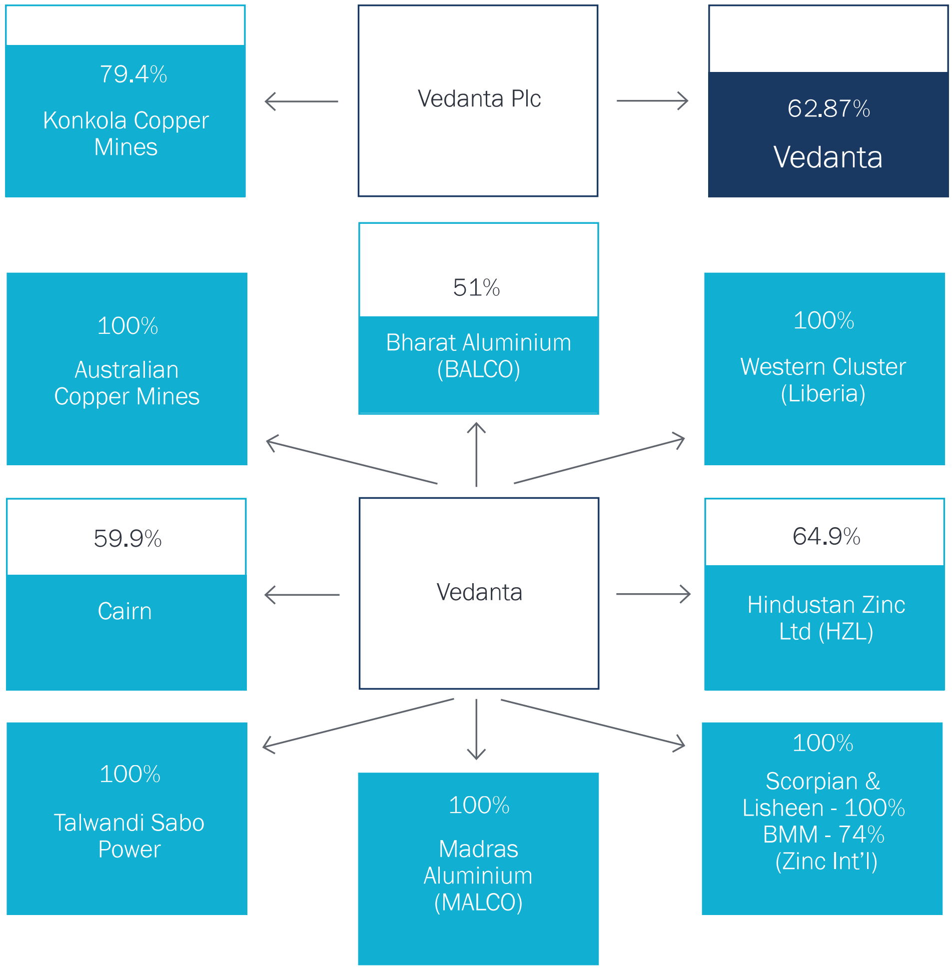
Particulars	As per audited financial statements of FY 2014-2015 (consolidated financials) (USD Million)
Total Revenue	12,878.7
Total Assets	36,988.9
Total Debt	16,668
Profit/Loss After Tax	3,788

B.Vedanta

Vedanta is a subsidiary of Vedanta Plc which holds 62.9% of its voting capital.[7] Vedanta was formed as a part of Vedanta Plc's group strategy to consolidate and simplify its corporate structure.[8] Vedanta, formerly known as Sesa Sterilite Ltd, was a product of the merger of Sesa Goa Ltd and Sterlite Industries (India) Ltd.[9] Vedanta is listed on the BSE and the NSE[10], and has ADRs listed on the NYSE.[11]

5. Vedanta "Who we are" available at: http://www.vedantaresources.com/about-us/our-story/who-we-are.aspx.
6. Vedanta "Our Operations" available at: http://www.vedantaresources.com/our-operations.aspx.
7. Vedanta "Key Facts" available at: http://www.vedantalimited.com/know-us/key-facts.aspx.
8. Ibid.
9. Ibid.
10. Ibid.
11. Ibid.

i. Group Structure



ii. Key Financials

The key financial overview of Vedanta is captured in the table below:

Particulars	As per audited financial statements of FY2014-2015 (standalone) (in INR crores)
Total Revenue	73,364
Total Assets	78,534.40
Total Debt	77,752
Profit/Loss After Tax	1,927.20

C. Cairn Plc

Cairn Plc is one of the leading independent oil and gas exploration and development companies in Europe having its headquarters in Edinburgh, Scotland and its operations office in London, England. Prior to the acquisition of Cairn by Vedanta in 2011, Cairn Plc controlled Cairn and held approximately 69% of its voting capital.[12] However, Vedanta Plc indirectly acquired 59% stake in Cairn from CUHL for USD 8.67 billion through its group subsidiaries, that is, 18.45% of the stake in Cairn was acquired by Vedanta, 1.72% of the stake by Sesa Resources and the remaining 38.83% was acquired by TSMHL.[13] Hence, Cairn Plc currently holds 9.82%

12. Cairn India "Operations" available at: http://www.cairnenergy.com/index.asp?pageid=71.
13. Shareholding pattern as of December 2011, available at: http://www.bseindia.com/shareholding/shareholdingPattern_60.asp?scripcd=532792&qtrid=72.00.

of the voting capital of Cairn. As the largest minority shareholders of the merging entity, Cairn Plc will have a significant say in the final outcome of the Transaction.[14]

i. Group Structure

D. LIC

LIC is an Indian state-owned insurance group and investment company. LIC holds 9.06% of the voting capital of the merging entity, Cairn and therefore will have a significant say in the eventual outcome of the Transaction.

E. Cairn

Cairn, a subsidiary of Vedanta, is one of the largest independent oil and gas exploration and production companies in India.[15] Around 1/4th (one fourth) of the domestic crude oil production in India has been contributed by Cairn especially in FY 2015.[16] The equity shares of Cairn are listed on BSE and NSE.[17]

In FY 2015, Cairn had a cash flow of INR 8,765 crores from its operations. As per the annual report of FY 2014-2015 of Cairn, there has been a 22% reduction in the revenue of Cairn due to a drop in oil prices. There are various risks that have been identified to have a potential impact on the business of the company. However, the significant risk to its operations is the volatility of gas and oil prices considering the fact that the majority of the Cairn's revenue is derived from the sale of crude oil and natural gas in India.[18] Therefore, the near term focus for Cairn in terms of their operation lies in optimizing project economics and driving operational efficiencies for core fields.[19]

i. Shareholding Pattern [20]

Category	Shareholding (%)
Promoters & Group Promoter	**59.88**
Twin Star Mauritius Holdings Ltd	34.43
Vedanta	23.71
Sesa Resources Ltd.	1.74
Public Shareholding (>1%)	**40.12**
Cairn UK Holdings Ltd.	9.82
LIC	9.06
Total	**100**

14. For a detailed analysis of Vedanta's acquisition of Cairn from Cairn Plc, please refer to our M&A Lab "Cairn-Vedanta: Deal Dissection" available at: http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Ma%20Lab/M%26A%20Lab_Cairn%20Vedanta_March0112.pdf
15. Price Waterhouse & Co LLP and Walker Chandiok & Co LLP Joint Valuation Report dated June 14, 2015 available at: https://www.cairnindia.com/sites/default/files/scheme_of_arrangement/Valuation-Report-Joint.pdf.
16. Ibid.
17. Ibid.
18. Cairn India Annual Report 2014-2015, available at: https://www.cairnindia.com/sites/default/files/annual_reports/Annual-Report-2014-15.pdf.
19. Ibid.
20. Shareholding pattern as on September 30, 2015, available at: http://www.nseindia.com/corporates/corporateHome.html?id=spatterns&radio_btn=company&param=CAIRN

ii. Key Financials

The key financial overview of Cairn is captured in the table below:

Particulars	As per audited financial statements (standalone) (INR in crores)
Total Revenue	14,646
Total Assets	66,834
Total Debt	Nil
Profit/Loss After Tax	6,541

II. Transaction Documents

The Parties have entered into a Scheme of Arrangement in connection with the Transaction.

III. Chronology of Events

Date	Particulars
December 8, 2011	Vedanta Plc indirectly acquires 59% stake in Cairn India from CUHL (a holding subsidiary of Cairn Plc) for USD 8.67 billion.[21] 18.45% is acquired by erstwhile Sesa Goa (now Vedanta), 1.72% by Sesa Resources (a wholly-owned subsidiary of erstwhile Sesa Goa), while the remaining 38.83% is acquired by TSMHL, an SPV and wholly-owned subsidiary of Vedanta Plc.[22]
	Vedanta Plc secured a USD 6 billion acquisition facility on behalf of TSMHL to fund the acquisition. [23]
August, 2013	The Vedanta Group restructures: i. Vedanta Plc merges its various subsidiaries including Sesa Goa, Sterlite Industries, MALCO, Sterlite Energy, and Vedanta Aluminium into one entity – Sesa Sterlite.[24] ii. Vedanta, indirectly acquires TSMHL along with its 38.83% stake in Cairn and the associated acquisition debt of USD 6 billion.[25]
July, 2014	Cairn extends loan to the tune of USD 1.25 billion to parent company Vedanta (then, Sesa Sterlite).
April 21, 2015	Sesa Sterlite is renamed Vedanta to achieve better alignment with the Vedanta group. [26]
June, 2015	Vedanta acquires 4.98% of Cairn from TSMHL for USD 315 million resulting in its current direct shareholding of 23.71%.[27]

21. Vedanta Plc, "Completion of Acquisition in a Controlling Stake in Cairn India Ltd." dated December 8, 2011, available at: http://www.vedantaresources.com/media/9599/vedantaresourcesplc_cairndealcompletion_presentation_final.pdf.
22. For a detailed analysis of this acquisition, please refer to our M&A Lab "Cairn-Vedanta: Deal Dissection" available at: http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Ma%20Lab/M%26A%20Lab_Cairn%20Vedanta_March0112.pdf
23. Vedanta Plc Annual Report 2011, available at: http://ar2011.vedantaresources.com/assets/15362_Vedanta%20AR11%20FINAL.pdf
24. "Sesa Goa, Sterlite merger becomes effective," available at: http://timesofindia.indiatimes.com/business/india-business/Sesa-Goa-Sterlite-merger-becomes-effective/articleshow/21884322.cms.
25. http://www.vedantalimited.com/media/72861/sesa_sterlite_ar_13-14__pdf_for_email_.pdf.
26. Vedanta "Key Facts" available at: http://www.vedantalimited.com/know-us/key-facts.aspx.
27. "Vedanta buys Twinstar Mauritius's stake in Cairn India," available at: http://www.livemint.com/Companies/30JJT7iaHzO90Ck73VHIlJ/Vedanta-buys-Twinstar-Mauritiuss-stake-in-Cairn-India.html

June 14, 2015	The board of directors of Vedanta and Cairn approve the merger, and a joint press release is issued.[28] Simultaneously, Price Waterhouse & Co LLP and Walker Chandiok & Co LLP, Independent Chartered Accountants issued a joint share exchange ratio report.[29] Based on this report, Lazard India Pvt. Ltd., an independent Category I-Merchant Banker, issued a fairness opinion stating that the share exchange ratio is fair.[30]
June 14, 2015	Pursuant to the share exchange ratio report and fairness opinion, audit committees of both Vedanta[31] and Cairn[32] recommend the Scheme of Arrangement between Vedanta and Cairn.
June 22, 2015	Vedanta files application under s. 24(f) of the listing agreement for approval/no objection letter for the proposed Scheme of Arrangement.[33]
Sept. 10, 2015	BSE[34] and NSE[35] provide "No adverse observation" letters for submitting the Scheme of Arrangement with the High Court by March 10, 2016.
November 16, 2015	Cairn files application under sections 391-394 of the CA 1956 for approval of the Scheme of Arrangement before the Bombay High Court.[36] Application is currently in pre-admission stage.
December 1, 2015	Vedanta files application under sections 391-394 of the CA 1956 for approval of the merger before the Bombay High Court at Goa.[37]
December 1, 2015	Mr. Rajotavo Dasgupta, one of Cairn's minority shareholders, files a civil suit before the Bombay High Court alleging that the USD 1.25 billion loan granted by Cairn to Vedanta is in violation of the CA 2013.[38]
December 18, 2015	Bombay High Court at Goa issues order in relation to Vedanta's petition under sections 391-394. The order requires Vedanta to hold equity shareholders, and secured and unsecured creditors meetings for approval of the Scheme of Arrangement on February 24, 2016.[39]
June, 2016	As per the statements made by Vedanta, we understand that the Vedanta management expects to consummate the Transaction.[40]

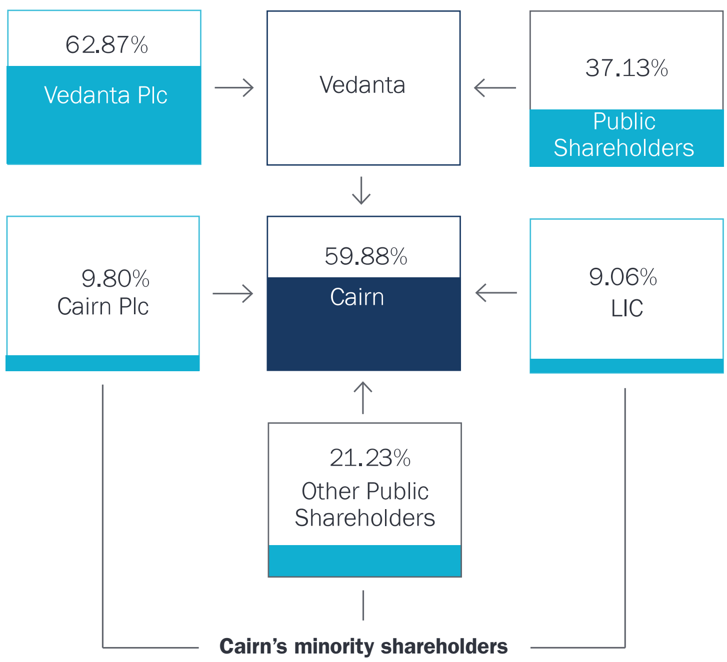
28. "Cairn India Vedanta boards go ahead to merger," available at: http://www.business-standard.com/article/companies/cairn-india-vedanta-boards-go-ahead-to-merger-115061400408_1.html.
29. Price Waterhouse & Co LLP and Walker Chandiok & Co LLP, Joint Share Ratio Report dated June 14, 2015, available at: http://www.vedantalimited.com/media/83697/audit_committee_report.pdf.
30. Lazard India Pvt. Ltd, Fairness Opinion dated June 14, 2015, available at: http://www.vedantalimited.com/media/83700/fairness_report.pdf.
31. "Report of the Audit Committee of Vedanta Ltd ('Vedanta' or 'the Company') for Amalgamation of Cairn India ('Cairn') with Vedanta Ltd." dated June 14, 2015, available at: http://www.vedantalimited.com/media/83697/audit_committee_report.pdf
32. Report of the Audit Committee of Cairn India Limited ('Cairn' or 'the Company') for Merger of Cairn with Vedanta Limited ('Vedanta')" dated June 14, 2015, available at: https://www.cairnindia.com/sites/default/files/scheme_of_arrangement/Audit-Committee-Report.pdf.
33. BSE, "NOC under clause 24", available at http://www.bseindia.com/corporates/NOCUnder.aspx?expandable=1
34. BSE, Observation Letter regarding the Draft Scheme of Arrangement involving Amalgamation of Cairn India Limited with Company" available at: https://www.cairnindia.com/sites/default/files/scheme_of_arrangement/Observation-Letter-BSE.pdf.
35. NSE, Observation Letter regarding the Draft Scheme of Arrangement involving Amalgamation of Cairn India Limited with Company" available at: https://www.cairnindia.com/sites/default/files/scheme_of_arrangement/Observation-Letter-NSE.pdf.
36. *Cairn India Ltd.* Case no. CSDL/825/2015, available at: http://bombayhighcourt.nic.in/index.html
37. *Vedanta Limited*, Company Application (Main) No. 168 of 2015, available at http://www.hcbombayatgoa.nic.in/
38. "Minority shareholder sues Cairn India" available at: http://www.business-standard.com/article/companies/minority-shareholder-sues-cairn-india-115121001098_1.html
39. *Vedanta Limited*, Company Application (Main) No. 168 of 2015, available at http://www.hcbombayatgoa.nic.in/
40. "Cairn Vedanta merger now by June 2016, says group firm" available at: http://articles.economictimes.indiatimes.com/2015-11-04/news/68017107_1_vedanta-ltd-bank-debt-vedanta-resources

IV. Deal Snapshot

Merging Company	Cairn
Surviving Company	Vedanta
Share Swap Ratio	Each holder of Cairn shares (other than Vedanta and its subsidiaries) will receive for each share of Cairn, one equity share in Vedanta and one redeemable preference share.
Terms of the redeemable preference shares	**Par Value**: INR 10 (Rupees Ten) **Dividend/Coupon**: 7.5% per annum payable at the end of each financial year **Maturity**: 18 months from the date of issuance
Implied value per share	INR 10 (Rupees Ten) for each share.

V. Deal Structure[41]

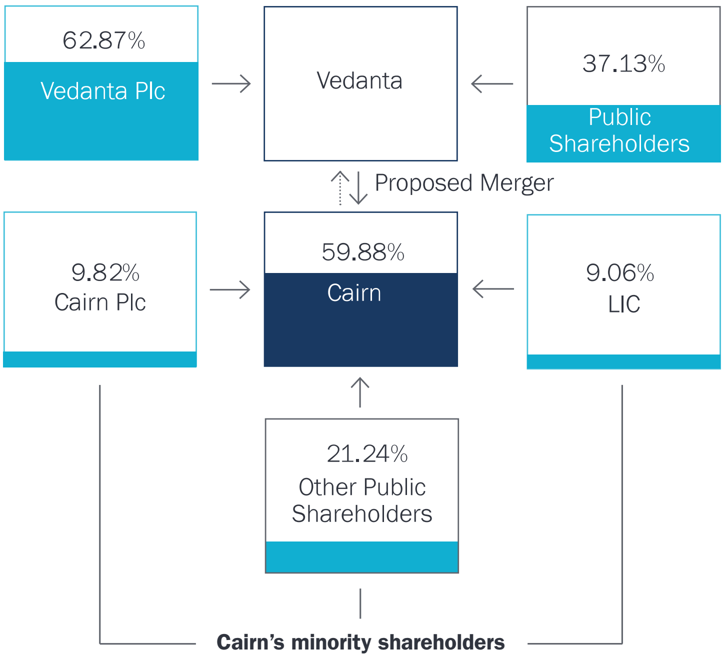
STRUCTURE PRE-TRANSACTION



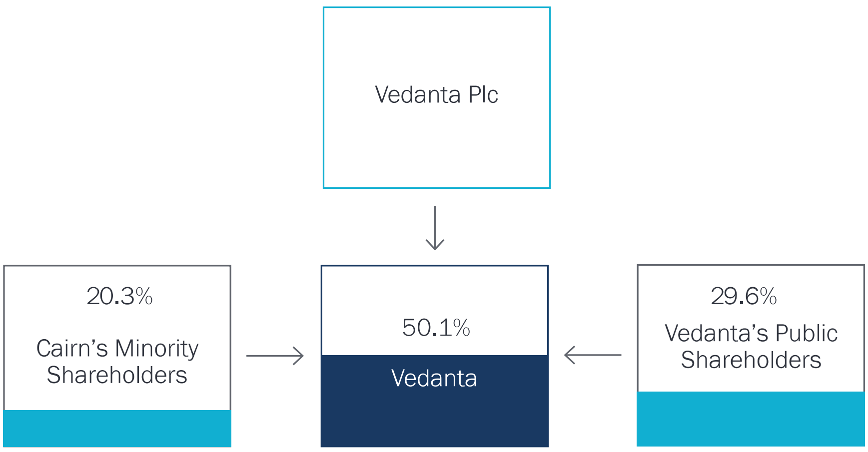
41. Post-merger shareholding sourced from InGovern Research Services, InGovern report on Vedanta-Cairn India Merger dated June, 2015, available at http://www.ingovern.com/wp-content/uploads/2015/06/Report-on-Vedanta-Cairn-India-Merger.pdf.

TRANSACTION

Under the scheme, Cairn shareholders will receive 1 equity share and 1 redeemable preference share (face value INR 10, at 7.5% premium) of Vedanta for 1 equity share of Cairn.



STRUCTURE POST-TRANSACTION



Transaction Mechanism

Legend: Holding Structure

3. Commercial Considerations

I. What is the rationale behind the merger?

A. Vedanta's Story

Mr. Anil Agarwal, Chairman of Vedanta Plc said at the companies' joint press release that "The merger of Cairn and Vedanta Ltd consolidates our position as India's leading diversified natural resources champion, uniquely positioned to support India's economic growth."[42]

As per Vedanta Plc's stated corporate strategy to simplify its group structure,[43] the decision to merge its two subsidiaries comes as no surprise. Vedanta claims that the merger has multiple advantages for both Vedanta and Cairn.

i. Advantages for Vedanta

Firstly, post-merger, Vedanta will gain access to the oil and gas assets of Cairn at attractive valuations as the share price of Cairn has fallen sharply over the last one year.[44] Secondly, infusion of Cairn's cash reserves of nearly USD 1.2 billion would help improve Vedanta's financial flexibility to allocate capital to the highest return projects and reduce overall costs which would in turn help sustain strong dividends for all shareholders.[45] Thirdly, a strong balance sheet will also improve the credit rating of the combined entity, thus, providing an opportunity for refinancing.[46]

ii. Advantages for Cairn

Cairn's merger with Vedanta would mean generating additional value by providing the company access to Vedanta's portfolio of diversified metals and mining assets that would assist in combatting the cyclical downturn of oil prices and in turn, ensure stable cash flows.[47] Cairn would also benefit from access to capital which it would then be able to invest in further oil and gas research and development. The Transaction would provide an opportunity for Cairn to benefit from economies of scale and participate in the upside potential of Vedanta, while still retaining its core management team and decision making framework.[48]

B. The Other Version

Analysts are skeptical whether the Transaction will result in any real benefits for Cairn's shareholders. Despite the companies' repeated efforts to highlight the mutually beneficial aspects of the merger, the reality remains that both Vedanta Plc and Vedanta are substantially debt laden, while Cairn is profitable with significant cash reserves. Specifically, as of March 2015, Vedanta Plc had a net debt of USD 7.7 billion,[49] while Vedanta had stand-alone debt of approximately USD 5.7 billion.[50] In contrast, Cairn had cash reserves of approximately USD 2.7 billion.[51] Based on these figures, analysts believe that one of the driving factors behind the merger is Vedanta's attempt to socialize its debt across the minority shareholders of both Vedanta and Cairn.[52]

II. Have such similar arrangements been undertaken before and what were the premiums paid?

A. Precedents

Although a similar merger i.e. one to create an integrated natural resource player is rare, globally it

42. Press Release, "India's Leading Diversified Natural Resources Company Merger of Vedanta Limited and Cairn India Limited", dated June 14, 2015, available at: https://www.cairnindia.com/investors/scheme-arrangement.
43. Ibid.
44. Institutional Investor Advisory Services, "Vedanta-Cairn Merger Fair, but deal dynamics could change" dated June 15, 2015.
45. Press Release, "India's Leading Diversified Natural Resources Company Merger of Vedanta Limited and Cairn India Limited", dated June 14, 2015, available at: https://www.cairnindia.com/investors/scheme-arrangement.
46. Institutional Investor Advisory Services, "Vedanta-Cairn Merger Fair, but deal dynamics could change" dated June 15, 2015.
47. Ibid.
48. Press Release, "India's Leading Diversified Natural Resources Company Merger of Vedanta Limited and Cairn India Limited" dated June 14, 2015, available at: https://www.cairnindia.com/sites/default/files/scheme_of_arrangement/Merger-of-Vedanta-Limited-and-Cairn-India-Limited.pdf.
49. Cairn India's merger with Vedanta may fall through," available at: http://www.business-standard.com/article/companies/cairn-india-s-merger-with-vedanta-may-fall-through-115072300336_1.html.
50. "Cairn India, Vedanta boards approve merger at 1:1 ratio," available at: http://www.business-standard.com/article/companies/cairn-india-vedanta-boards-approve-merger-at-1-1-ratio-115061400470_1.html.
51. Ibid.
52. InGovern Research Services, InGovern report on Vedanta-Cairn India Merger dated June, 2015, available at http://www.ingovern.com/wp-content/uploads/2015/06/Report-on-Vedanta-Cairn-India-Merger.pdf.

has been undertaken in a few instances. BHP Billiton is the largest integrated natural resources player in the world and generates 22% of its revenues from its petroleum business.[53] It entered into the shale gas business in 2011 by acquiring Petrohawk.[54] Similarly, Freeport-McMoRan is one of the largest copper producers in the world which previously had an oil business that was hived off into a separate unit in 1994.[55] However, in December 2012, it merged its oil business and acquired another oil exploration company to replicate the BHP Billiton model.[56] The following table provides further details in relation to the same:

ARRANGEMENTS SIMILAR TO THE CAIRN-VEDANTA MERGER [57]

Acquirer	Target	Year	Acquisition Price (USD billion)	Premium (%)	Mode of Payment
BHP Billiton	Petrohawk	2011	12.1	61	Cash
Vedanta	Cairn India	2010	8.7	21	Cash
Freeport-McMoRan	Plains Exploration & Production Co	2012	6.9	39	Cash+Stock

B. Premium

The merger between Cairn and Vedanta indicates a swap ratio of 1:1 along with redeemable preference shares with a premium of 7.3% which, in comparison, can be considered to be lower than the above similar arrangements in the same industry in the past.[58] However, it can be argued that the valuation may still seem fair to the Cairn shareholders as, *firstly*, it takes into account an improvement in oil prices going forwards and *secondly*, in comparison to the abovementioned arrangements wherein premium was decided after taking into account a change in control of the company, Vedanta is already the controlling shareholder, hence, the premium does not account for the same.[59]

III. Why would Cairn's minority shareholders not approve?

Although the Transaction would seem to be a win-win deal for both Cairn and Vedanta, it has been severely criticized by analysts and minority shareholders led by their mercenaries (proxy advisory firms) for the following reasons:

A. Unfair Share Swap Ratio

Analysts and shareholders both believe that the share swap ratio of Cairn's 1 equity share for Vedanta's 1 equity plus 1 preferential share at 7.5% is too low. Even though the ratio was determined by independent valuers and considered to be fair by Cairn's own representatives,[60] some minority shareholders do not consider the USD 135 million (i.e. Rs.11/share for minority shareholder) as sufficient to offset Cairn's USD 2.7 billion cash contribution.[61]

B. Opportunistic Timing

The announcement of this merger comes at a time when Cairn's shares are trading at some of their lowest prices over the last five years. In fact, Cairn's share prices have reduced by nearly half over the past year.[62]

53. Institutional Investor Advisory Services, "Vedanta-Cairn Merger Fair, but deal dynamics could change", dated June 15, 2015.
54. Ibid.
55. Ibid.
56. Ibid.
57. Ibid.
58. Ibid.
59. Ibid.
60. Vedanta Ltd has received a fairness opinion from Lazard India Pvt. Ltd, and Cairn has received opinions from DSP Merrill Lynch Ltd and JM Financial Institutional Securities Ltd. Source: Press Release," India's Leading Diversified Natural Resources Company Merger of Vedanta Limited and Cairn India Limited" dated June 14, 2015, available at: https://www.cairnindia.com/investors/scheme-arrangement.
61. "Cairn Vedanta merger will deliver economies of scale" available at: http://www.livemint.com/Companies/xNRFsfvW1aGQ5y2Ku6jXML/CairnVedanta-merger-will-deliver-economies-of-scale-Navin.html.
62. InGovern Research Services,InGovern report on Vedanta-Cairn India Merger dated June, 2015, available at http://www.ingovern.com/wp-content/uploads/2015/06/Report-on-Vedanta-Cairn-India-Merger.pdf.

Aviva Investors, which has a 4.3% shareholding in Cairn plc and also a stake in Cairn, has publically stated that *"As long-term investors, we believe that the timing of this deal is opportunistic and materially undervalues Cairn, its current reserves and future prospects. The combination of a depressed global oil price, ongoing tax litigation and uncertainty over the long-term ownership structure of Cairn have all contributed to the low value currently ascribed to its assets by the equity market."*[63]

Based on the timing of the merger, analysts argue that public shareholders may need to suffer a significant write-off on their investment.

C. Cairn's cash reserves used for repayment of debt

Minority shareholders like Cairn Plc and LIC have also expressed concern over the fact that Vedanta has provided very little guidance as to how it intends to spend Cairn's cash reserves.[64] They fear that the cash will be used to pay off Vedanta's debts, instead of allocated for further oil and gas development.[65]

D. Inheriting Vedanta's problems

Moreover, instead of being able to participate in Vedanta's upside, some shareholders believe that Cairn will inherit the problems of a large mining conglomerate including the ongoing disputes with environmental activists over plans to expand their aluminum refinery, and commence bauxite mining in Orissa.[66] Further, Amnesty International has also highlighted various human rights abuses associated with Vedanta's Lanjigarh refinery.[67]

E. Government controlled minority shareholder

Another factor that may play a significant role in whether the Transaction gets the minority approval it needs is the fact that the second largest minority shareholder - LIC is government owned.[68] In the past, the government has vetoed the merger of Vedanta group companies like Hindustan Zinc and Bharat Aluminium Company.[69] As such, it will be interesting to see whether the government will support this Transaction.

F. Cairn's USD 1.25 billion loan to Vedanta to be written off

As part of the Scheme of Arrangement, any loan between Vedanta and Cairn is to be treated as an intra-company transfer and written off after the two companies merge.[70] This provision is significant for Vedanta as it currently has in its books a loan of USD 1.25 billion obtained from Cairn.[71] Although such a clause is fairly standard in all schemes of amalgamation, it may prove controversial in this Transaction for historical reasons. In fact, one of Cairn's minority shareholders, Mr. Rajotavo Dasgupta, has already filed a civil suit before the Bombay High Court claiming that the USD 1.25 billion loan was granted in violation of the CA 2013, and must be repaid before it can be written off as per the Scheme of Arrangement.[72]

The historical background to this claim is as follows. In 2011, Vedanta Plc indirectly acquired approximately 59% of Cairn from CUHL (a holding subsidiary of Cairn Plc) for USD 8.67 billion.[73] While approximately 20% was directly acquired by erstwhile Sesa Goa (a company which has been

63. "Aviva opposes Cairn India Vedanta merger" available at: http://www.thehindubusinessline.com/companies/aviva-opposes-cairn-india-vedanta-merger/article7507260.ece.
64. "Vedanta may discuss on sweetening Cairn India deal next week" available at: http://economictimes.indiatimes.com/industry/indl-goods/svs/metals-mining/vedanta-may-discuss-on-sweetening-cairn-india-deal-next-week/articleshow/49510627.cms.
65. "Vedanta Cairn merger makes investors glum, company says its a win-win deal" available at: http://economictimes.indiatimes.com/industry/indl-goods/svs/metals-mining/vedanta-cairn-merger-makes-investors-glum-company-says-its-a-win-win-deal/articleshow/47682883.cms
66. InGovern Research Services, InGovern report on Vedanta-Cairn India Merger dated June, 2015. Available at http://www.ingovern.com/wp-content/uploads/2015/06/Report-on-Vedanta-Cairn-India-Merger.pdf.
67. Ibid.
68. "Cairn Vedanta merger faces big challenges" available at: http://www.business-standard.com/article/companies/cairn-vedanta-merger-faces-big-challenges-115062201124_1.html
69. Ibid.
70. Scheme of Arrangement between Cairn India Limited and Vedanta Limited and their Respective Shareholders and Creditors", clause 4.4, available at: https://www.cairnindia.com/investors/scheme-arrangement.
71. "Minority shareholder sues Cairn India" available at: http://www.business-standard.com/article/companies/minority-shareholder-sues-cairn-india-115121001098_1.html
72. Ibid.
73. Vedanta "Completion of Acquisition of Controlling Stake in Cairn India Ltd." dated December 8, 2011, available at: http://www.vedantaresources.com/media/9599/vedantaresourcesplc_cairndealcompletion_presentation_final.pdf.

merged into Vedanta), the remaining 38.83% was acquired by TSMHL, an SPV and wholly-owned subsidiary of Vedanta Plc.[74] In order to fund the acquisition, Vedanta Plc had secured a USD 6 billion acquisition debt on behalf of TSMHL.[75] In August 2013 Vedanta, indirectly acquired TSMHL along with its 38.83% stake in Cairn, and the associated acquisition debt of USD 6 billion was entered into Vedanta's books.[76]

Subsequently, in 2014, Cairn granted Vedanta the contentious USD 1.25 billion loan.[77] As per Vedanta plc's September 2015 Corporate Presentation, the loan was used to pay off Vedanta's "inter-company debt."[78] As the USD 6 billion acquisition debt was the only inter-company debt on the books of Vedanta at the time, Mr. Dasgupta alleges that Vedanta must have used the loan received from Cairn to repay debt which was originally incurred in order to facilitate the purchase of Cairn's shares in 2011.[79] As section 67(2) of the CA 2013 specifically prohibits a company from granting a loan to facilitate acquisition of its own shares, Mr. Dasgupta claims that the USD 1.25 billion loan was in contravention of the law, and must be repaid before Vedanta can write it off pursuant to the Transaction.[80] The Bombay High Court has ordered that affidavits in reply be filed by January 5, 2016 and that the matter be listed for *ad interim* relief by January 19, 2016.[81]

74. http://www.bseindia.com/corporates/shpPromoters_60.aspx?scripcd=532792&qtrid=73&CompName=CAIRN%20INDIA%20LTD%20&QtrName=March%202012. See also: http://www.vedantalimited.com/media/72861/sesa_sterlite_ar_13-14__pdf_for_email_.pdf
75. Vedanta Plc Annual Report 2011, available at: http://ar2011.vedantaresources.com/assets/15362_Vedanta%20AR11%20FINAL.pdf
76. Sesa Sterlite Limited Annual Report 2013=3014, available at: http://www.vedantalimited.com/media/72861/sesa_sterlite_ar_13-14__pdf_for_email_.pdf.
77. "Minority shareholder sues Cairn India" available at: http://www.business-standard.com/article/companies/minority-shareholder-sues-cairn-india-115121001098_1.html
78. "Vedanta Resources Plc Corporate Presentation 2015" available at: http://www.vedantaresources.com/media/180101/jpm_mid_and_small_cap_and_ms_industrials_sept_2015.pdf
79. "minority shareholder sues Cairn India" available at: http://www.business-standard.com/article/companies/minority-shareholder-sues-cairn-india-115121001098_1.html
80. Ibid.
81. *Rajotava Dasgupta v Cairn India & Ors.* Notice of Motion (L) No. 3367 of 2015 with Suit (L) No. 1267 of 2015, available at: http://bombayhighcourt.nic.in/index.html

4. Legal and Regulatory Considerations

I. What are the approvals required for the Transaction

Approval	Provision of Law	Status
Approval from stock exchanges (BSE and NSE)	Clause 49 of the Listing Agreements (BSE and NSE).	In principle approval was obtained by Vedanta in relation to the merger.
Approval (Observation Letter) from SEBI	*SoA Circular*	Received
75% of the shareholders of Cairn and Vedanta.	Court convened meeting s. 391- 394 of CA 1956. All shareholders including the non-public shareholders allowed to vote.	Not received yet.
50% approval from the public shareholders of Cairn and Vedanta.	SoA Circular	Not received yet.
Approval of Foreign Investment Promotion Board to be obtained by Vedanta.	Regulation 7 of TISPRO	Not obtained yet by Vedanta.
Approval by Ministry of Petroleum & Natural Gas for transfer/ assignment of petroleum mining rights	*Petroleum Act, 1934 read with Petroleum and Natural Gas Rules, 1939*	Vedanta has engaged in discussions with the ministry in relation to the same.

II. Why would the Transaction not trigger a mandatory open offer under the Takeover Code?

The Transaction would not trigger the mandatory open offer requirement under the Takeover Code as it would be exempt under Regulation 10 of the Takeover Code wherein any acquisition of shares, voting rights or control is exempt from a mandatory open offer obligation if such an acquisition has been undertaken pursuant to a scheme of arrangement or merger and approved by a competent authority.

III. Why would the Transaction not require an approval of the Competition Commission of India?

The Transaction would not require the approval of the Competition Commission of India as Regulation 4 of the Competition Commission of India Regulation 2011 exempts any acquisition of shares/ voting rights within a group. In the case at hand, the merger between Vedanta and Cairn which belong to the same group would be exempt from obtaining such approval.

IV. What is the recourse available to the minority shareholders?

The minority shareholders (non-promoter shareholders) of both Vedanta and Cairn will have the following recourse under law-:

i. *Block the Merger under the SoA Circular Resolution*- As discussed above, the Transaction would require the approval of "majority of the minority" as per the SoA Circular. This effectively allows Cairn Plc. and LIC (with some assistance or proxies other minority who collectively hold 18.88% out of the total public shareholding of 40.12% in Cairn to block the Transaction.

ii. *Challenge the Transaction in Court*- It is possible that all minority shareholders may not have a decisive vote at the shareholders meeting and therefore would not be able to block of the Transaction if the majority of the public shareholders vote in favour of the Transaction. There is also a theoretical possibility that Cairn

Plc. and LIC even acting collectively may not be able to block the Transaction. In such an event, the minority shareholder may also challenge the Transaction before the Court where the Transaction is presented for approval. It will be open for the minority shareholders (especially Cairn) to argue that the Transaction (a) is prejudicial to the interest of the minority shareholders as the premium paid to the shareholders of Cairn for Vedanta's debt is not sufficient, (b) is unlawful as it is the final step in a series of transaction that was undertaken in violation of the CA 1956 and CA 2013[82] and (c) is not in public interest as the combined entity will be a weaker entity and therefore will not be able to increase oil production in the country. While, the court will have the requisite jurisdiction to entertain all these contentions, if the approval (i) of the 'majority of the minority' shareholders under the SoA Circular is obtained and (ii) of the Ministry of Petroleum and Natural Gas is obtained, then it will significantly weaken the force of the arguments of the disgruntled shareholders given the court is unlikely to interfere with the commercial wisdom of the parties to the Transaction.

iii. *Representative Suit*- All the minority shareholders can bring a derivative claim against the Vedanta, Cairn and directors under Order 1 Rule 8 of the Code of Civil Procedure, 1908. The claim will require the court's permission to be admitted and anecdotally it is seen that such suits are rarely and dismissed on various grounds.[83]

V. What are the standards of director's duties in similar transactions?

The duties of the directors have been codified under the new CA 2013.[84] The directors are *inter alia* required to (a) act in the interest of the company, all the shareholders, employees, community and (b) exercise his duties with due care, skill, diligence and act independently. The directors of the respective entities would need to demonstrate that the transaction is fair, reasonable and in the overall interest of the respective companies, its employees and the community.

VI. What are the lessons for future M&A transactions?

This Transaction reflects the increasing risks to M&A transactions. M&A transactions in India not only have to navigate through regulatory issues but will also have to delicately handle concerns of the activist minority shareholders (assisted by proxy advisory firms). Once some of the provisions under CA 2013 such as class actions suits, squeeze out of minority shareholders, new scheme of arrangements requirements and constitution of the new tribunal to efficiently resolve shareholder disputes is operationalized, the rules of the M&A game are likely to change further. The lessons for the board, directors and controlling shareholders from this Transaction are as follows-:

i. Deals will be closely scrutinized by proxy advisory firms and their recommendations will have significant weight in the manner in which shareholders vote at meetings.

ii. Active and early engagements will the proxy advisory firms and minority shareholders will be required to be undertaken. The announcement of M&A transaction should be supported by adequate and robust materials justifying the terms of the deal and the rationale.

iii. The directors will be required to in some detail justify the manner in which they approved the deal. It would be advisable for the directors to clearly articulate the basis on which they have voted for and against the deal and insist that the same be incorporated in the minutes of the meeting in which such matters are discussed.

82. Refer to the discussion above where one of the minority shareholders has challenged the Transaction on the grounds that it is violation of S. 67 of the CA 2013 in that effectively Cairn is paying for the acquisition of its own shares.

83. Vikramaditya Khanna & Umakanth Varottil, *The rarity of derivative actions in India: reasons and consequences in Dan W. Puchniak, Harald Baum & Micheal Ewing-Chow, The Derivative Action in Asia: A Comparative and Functional Approach (2012)*

84. S. 166 of CA 2013.

5. Tax Considerations

I. Is the Transaction tax-exempt?

As per section 47 of the ITA, amalgamations or mergers qualifying under section 2(1B) are tax neutral. As such, any gain in the hands of Cairn or its shareholders resulting from the transfer of shares pursuant to the Transaction will be exempt from capital gains tax.

Section 47(vi) of the ITA states that, *"any transfer, in a scheme of amalgamation, of a capital asset by the amalgamating company to the amalgamated company if the amalgamated company is an Indian company"* will not be considered as a 'transfer' for the purpose of assessment of capital gains. Section 47(vii) extends this exemption to *"any transfer by a shareholder, in a scheme of amalgamation, of a capital asset being a share or shares held by him in the amalgamating company".*

Further, section 2(1B) of the ITA defines 'amalgamation as follows:

"amalgamation", in relation to companies, means the merger of one or more companies with another company or the merger of two or more companies to form one company (the company or companies which so merge being referred to as the amalgamating company or companies and the company with which they merge or which is formed as a result of the merger, as the amalgamated company) in such a manner that—

i. all the property of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of the amalgamation;

ii. all the liabilities of the amalgamating company or companies immediately before the amalgamation become the liabilities of the amalgamated company by virtue of the amalgamation;

iii. shareholders holding not less than three-fourths in value of the shares in the amalgamating company or companies (other than shares already held therein immediately before the amalgamation by, or by a nominee for, the amalgamated company or its subsidiary) become shareholders of the amalgamated company by virtue of the amalgamation.

Otherwise than as a result of the acquisition of the property of one company by another company pursuant to the purchase of such property by the other company or as a result of the distribution of such property to the other company after the winding up of the first-mentioned company.

As a result of the Transaction, (i) the property of Cairn immediately before the merger will become the property of Vedanta, (ii) all liabilities of Cairn immediately before the merger will become the liabilities of Vedanta, and (iii) the current shareholders of Cairn will become the shareholders of Vedanta. Hence, this should result in a tax-neutral transaction for both Cairn and its shareholders.

II. How do Cairn's potential tax liabilities effect the Transaction?

Cairn currently has an ongoing dispute with the Income Tax Department (**"IT Department"**) in relation to Cairn plc's subsidiary CUHL transferring shares of its Indian subsidiary to Cairn in 2006.[85] As CUHL was Cairn's promoter at the time of the transaction, the IT Department issued a demand notice to Cairn in March 2015 worth INR 20,295 crores for CUHL's failure to deduct withholding tax on capital gains earned on the 2006 transaction.[86] Cairn has objected to this demand by filing a writ petition with the Delhi High Court which is currently pending.[87]

As per the Scheme of Arrangement, all proceedings by or against Cairn are to be transferred into the name of Vedanta by virtue of the order of sanction from the High Court.[88] This means that before such order is granted, Vedanta will need to satisfy the High Court that it has enough cash reserves to meet Cairn's tax liabilities in the event that the Delhi High Court rules in favor of the IT Department.

85. "IT Dept. slaps Rs. 20,495 cr. Tax demand on Cairn India" available at: http://www.business-standard.com/article/companies/it-dept-slaps-rs-20-495-cr-tax-demand-on-cairn-india-115031300634_1.html.

86. Ibid.

87. "Cairn India to merge into Vedanta Ltd. Board approves merger" available at: http://economictimes.indiatimes.com/industry/energy/oil-gas/cairn-india-to-merge-into-vedanta-ltd-board-approves-merger/articleshow/47663868.cms.

88. "Scheme of Arrangement between Cairn India Limited and Vedanta Limited and their Respective Shareholders and Creditors", clause 7.1, available at: https://www.cairnindia.com/investors/scheme-arrangement.

Moreover, based on the same 2006 transaction, the IT Department has also issued a demand notice on Cairn Plc for INR 10,247 crore as withholding tax and fines on the alleged INR 24,500 crore capital gains it made in 2006.[89] As a part of this demand, the IT Department has also restricted Cairn Plc from selling its last 9.82% stake in Cairn.[90] Cairn Plc has appealed against the demand and has also filed a Notice of Dispute under the UK-India Investment Treaty.[91] However, until a settlement is reached, Cairn Plc's shares in Cairn are frozen.[92] As such, Vedanta will also need to get approval from the IT Department before it can cancel Cairn Plc's shares and issue the company new shares in Vedanta in accordance with the swap ratio.[93]

89. "IT Dept. slaps Rs. 20,495 cr. Tax demand on Cairn India" available at: http://www.business-standard.com/article/companies/it-dept-slaps-rs-20-495-cr-tax-demand-on-cairn-india-115031300634_1.html.

90. Cairn "News: Indian tax Dispute" available at: http://www.cairnenergy.com/index.asp?pageid=27&newsid=471.

91. Cairn Energy Plc Half Yearly Report Announcement dated August 18, 2015, available at: http://www.cairnenergy.com/files/results_and_presentations/2015/180815/2015_half_yearly_results_announcement.pdf.

92. Cairn "News: Indian Tax Dispute" available at: http://www.cairnenergy.com/index.asp?pageid=27&newsid=471.

93. "Cairn Vedanta merger faces big challenges" available at: http://www.business-standard.com/article/companies/cairn-vedanta-merger-faces-big-challenges-115062201124_1.html.

6. Epilogue

It is perhaps too early to write the epilogue for this Transaction. Given the dynamics at play it could go either way for Vedanta. Eventually, in political democracy the ballot boxes determine the fate of the candidate and in corporate democracy the process is no different. The pundits have had their say, now the ball is fairly in the court of the shareholders to decide their own fate.

Will it be a photo finish or an anti-climax? We will have to wait till the latter half of 2016.

Nishith Desai Associates
LEGAL AND TAX COUNSELING WORLDWIDE

M&A Lab

Reliance – Pipavav: Anil Ambani Scoops Pipavav Defense

January 2016

Contents

1. Prologue

"This transaction is an endorsement of the vision we set out to achieve almost 10 years ago."

–Nikhil Gandhi, founder promoter, Pipavav

A burgeoning debt and lack of sufficient revenues to service the debt forced the founders of Pipavav to sell the company they formed to achieve a dream.

At such a time, when suitors were lining up to acquire a stake in Pipavav Defense and Offshore Engineering Limited, Anil Ambani's Reliance Infrastructure swooped in and entered into an agreement with Bhavesh Gandhi and Nikhil Gandhi (and their companies) to acquire a controlling stake in Pipavav. While there were unconfirmed reports of the Hero Group and Mahindra & Mahindra being close to acquire stakes[1], the younger Ambani went about business at the speed of light and ensured that his long standing dream of foray into India's lucrative defense sector got a shot in the arm with the acquisition of Pipavav. Having entered into binding agreements for acquisition of the stake in Pipavav, the only obstacle between the Reliance ADAG Group and Pipavav were regulatory approvals from multiple regulators. In the time while these approvals have been awaited, the ADAG Group has also embarked on a spree of selling non-core assets, such as cement and roads to focus on the defense sector.

With these regulatory hurdles having been cleared after a long wait, the ADAG Group is in process of completing the payment of consideration to the public shareholders who have tendered their shares in the open offer for the shares of Pipavav at the time this M&A Lab is going for print.

In this M&A Lab, we have attempted to analyze the legal, regulatory and commercial considerations of this deal.

1. http://articles.economictimes.indiatimes.com/2015-02-12/news/59083800_1_pipavav-defence-dcns-mahindra-group

2. Glossary of Terms

Term	Particulars
Acquirer	Reliance Defense Systems Private Limited
AOA	Articles of Association of the Target
BSE	Bombay Stock Exchange
CA 2002	Competition Act, 2002
CCI	Competition Commission of India
CDR	Corporate Debt Restructuring
CSE	Calcutta Stock Exchange
DLOF	Draft letter of offer dated March 18, 2015
Emerging Voting Capital	The shares of the Target post the consummation of the transactions under the Open Offer and the SPA
FCCB	Foreign Currency Convertible Bonds
FIPB	Foreign Investment Promotion Board
FLOF	Final Letter of Offer dated November 20, 2015
GMB	Gujarat Maritime Board
Grevek	Grevek Investment and Finance Private Limited
INR	Indian Rupees
ITA	Income Tax Act, 1961
JLF	Joint Lenders' Forum
Listing Regulations	Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015
NSE	National Stock Exchange
Open Offer	The open offer by the Acquirer and the PAC for the shares of the Target, in accordance with the terms of the DLOF and the FLOF
PAC	Persons acting in concert
Promoters	SIL, SSHPL, Grevek, Mr. Nikhil Gandhi and Mr. Bhavesh Gandhi
RInfra	Reliance Infrastructure Limited
SAAB	SAAB AB (Publ.), a company incorprated under the laws of Sweden
Sale Shares	Tranche I Shares and Tranche II Shares collectively
SIL	SKIL Infrastructure Limited
SPA	Share purchase agreement dated March 4, 2015 that triggered the open offer
SSHPL	SKIL Shipyard Holdings Private Limited
STT	Securities Transaction Tax
Takeover Code	SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011
Target	Pipavav Defense and Offshore Engineering Company Limited
Tranche I Shares	13,00,00,000 equity shares of the Target, constituting 17.66% shares of the Target
Tranche II Shares	Up to 5,47,87,774 equity shares of the Target constituting 7.44% shares of the Target

3. Details of the Deal

I. Parties Involved

A. Acquirer and PACs

i. Reliance Defense Systems Private Limited ("Acquirer")

The Acquirer was incorporated under the Companies Act, 2013 on December 20, 2014 by RInfra. The Acquirer is a part of the Reliance group, and a wholly owned subsidiary of RInfra. The Acquirer has been incorporated by the Reliance group with the purpose of exploring opportunities in the defense sector.

ii. Reliance Infrastructure Limited ("RInfra")

RInfra is a public limited company incorporated on October 1, 1929 under the Companies Act, 1913. RInfra was formed as Bombay Suburban Electric Supply in 1929, and after a series of name changes, was finally renamed as Reliance Infrastructure Limited on April 28, 2008.

The operations of RInfra expand over a large number of sectors, including power generation, transmission, distribution, trading and in the infrastructure space through roads, metro rail, cement and real estate.

B. Sellers

i. SKIL Infrastructure Limited ("SIL")

SIL is a public limited company listed on the NSE and the CSE. SIL is involved in engineering, procurement and construction. In addition, it is involved in developing logistics facilities, including developing container freight stations and in developing defense systems. As of March 31, 2015, SIL held 25,03,73,648 equity shares of the Target, constituting 34.01% of the shares of the Target.[2] Out of the 25,03,73,648 shares of the Target, 24,92,68,648 shares of the Target have been pledged with lenders, as follows [3]:

- 12,16,50,500 shares pledged with the lenders of an associate company of SIL;
- 8,63,45,374 shares pledged with the lenders of SIL;
- 56,60,048 shares pledged with the lenders of SSHPL;
- 3,56,12,726 shares pledged with the lenders of subsidiaries of an associate company of SIL;

ii SKIL Shipyard Holdings Private Limited ("SSHPL")

SSHPL is a wholly owned subsidiary of SIL and is engaged in the business of developing shipyards and is a Promoter of the Target. As of March 31, 2015, SSHPL held 3,83,77,686 equity shares of the Target, constituting 5.21% of its share capital. Out of these, 3,83,77,685 shares were pledged with various lenders.[4]

iii. Grevek Investment and Finance Private Limited ("Grevek")

Grevek is a private limited company incorporated in 1993 and is a part of the Promoter group of the Target. As of March 31, 2015, Grevek held 2,23,49,494 equity shares of the Target, constituting 3.04% of its share capital, all of which were pledged with various lenders.[5] In addition, 70,79,998 shares of the Target held by Grevek were locked- in.[6]

C. Target Company

Pipavav Defense and Offshore Engineering Company Limited ("**Target**") is a public limited company incorporated on October 17, 1997 as Pipavav Ship Dismantling and Engineering Limited. The name of the company was changed to Pipavav Shipyard Limited on April 29, 2005 and subsequently to its current name on June 27, 2011. The shares of the Target are listed on the BSE and the NSE.

The Target is one of the largest private defence companies, and operates in defense shipbuilding, army equipment construction, heavy engineering and other defense systems, among others.

II. Transaction Documents

A. Share Purchase Agreement

A share purchase agreement dated March 4, 2015 was entered into between the Target, the Promoters,

2. http://www.bseindia.com/corporates/shpPromoters_60.aspx?scripcd=533107&qtrid=85&CompName=PIPAVAV%20DEFENCE%20AND%20OFF-SHORE%20ENG%20LTD%20&QtrName=March%202015
3. Annual Report 2014-15, SIL, available online at http://www.skilgroup.co.in/index.php?option=com_phocadownload&view=category&download=10 8:annual-report-fy-2014-2015&id=8:annual-reports&Itemid=177
4. http://www.bseindia.com/corporates/shpPromoters_60.aspx?scripcd=533107&qtrid=85&CompName=PIPAVAV%20DEFENCE%20AND%20OFF-SHORE%20ENG%20LTD%20&QtrName=March%202015
5. http://www.bseindia.com/corporates/shpPromoters_60.aspx?scripcd=533107&qtrid=85&CompName=PIPAVAV%20DEFENCE%20AND%20OFF-SHORE%20ENG%20LTD%20&QtrName=March%202015

the Acquirer and RInfra (the "**SPA**"). Under the SPA, the Acquirer has agreed to acquire 25.1% of the total share capital of the Target, in tranches, as follows:

- 13,00,00,000 equity shares of the Target, constituting 17.66% at a price of INR 63 per share for an aggregate consideration of INR 819,00,00,000 ("**Tranche I Shares**");
- Up to 5,47,87,774 equity shares of the Target constituting 7.44% shares at a price of INR 63 per share for an aggregate consideration of INR 345,16,29,762 ("**Tranche II Shares**", and collectively with the Tranche I Shares, the "**Sale Shares**"). The number of Tranche II Shares to be acquired by the Acquirer would be equal to the total number of Tranche II Shares less the number of shares acquired by the Acquirer in the Open Offer. Post the acquisition of the Tranche II Shares, the shares held by the Acquirer would be equal to 25.10% of the shareholding of the Target. It is understood that the Acquirer received approximately 17% shares in the Open Offer [7], and accordingly, none of the Tranche II Shares would be acquired by the Acquirer.

i. Conditions precedent

As mentioned above, out of the total 42.26% shares of the Target held by the Promoters, 42.11% shares were pledged with various lenders of the respective promoters and/ or their group companies. Accordingly, the release of the pledge for the sale of the Tranche I Shares and / or the Tranche II Shares was required to be obtained by the Promoters for the sale of the shares to the Acquirer. This was included as a condition precedent to the closing of the Deal. It was agreed between the parties to the SPA, that the consent of the lenders for the release of the Tranche I Shares shall be obtained upfront, with the consent for the release of the Tranche II Shares to be obtained in a mutually agreeable manner, if required.

In addition to the above, there were other conditions precedents which were to be satisfied by the Promoters prior to the consummation of the Deal. These included execution of a master restructuring agreement between the Target and its lenders (discussed below), waivers from the other shareholders of the Target with respect to pre-emptive rights, tag along rights and other restrictions on share transfers, approval of the shareholders of SIL for the sale of the Sale Shares, approval of the CCI (explained in detail later) and approval of the Gujarat Maritime Board ("**GMB**") *(explained in detail later).*

The above mentioned conditions precedent were to be satisfied by the 'long stop date', which was November 16, 2015 under the SPA.[8] However, considering the delay in receiving the statutory approval from GMB, the long stop delay was extended to January 31, 2016.[9]

ii. Other conditions

In addition to the conditions precedent under the SPA, the following conditions are also worth noting:

- Post the consummation of the Deal, other than the nomination of the independent directors, the Acquirer has the right to nominate all directors on the board of the Target. Mr. Anil D. Ambani shall be the chairman of the board of directors of the Target post the consummation of the Deal. Consequently, the Acquirer was also acquiring control of the Target.
- The Promoters have agreed to a non-competition and non-solicitation obligation for a period of 5 (five) years from the date of the consummation of the Deal.

6. http://www.bseindia.com/corporates/shplockedshares.aspx?scripcd=533107&qtrid=85&CompName=PIPAVAV%20DEFENCE%20AND%20OFF-SHORE%20ENG%20LTD%20&QtrName=March%202015
7. http://economictimes.indiatimes.com/news/defence/reliance-infrastructure-buys-additional-17-stake-in-pipavav-defence-for-rs-850-crore/article-show/50205060.cms
8. http://corporates.bseindia.com/xml-data/corpfiling/AttachHis/27FD91CA_2D81_450D_A3FF_E514DCD3F205_174502.pdf
9. http://corporates.bseindia.com/xml-data/corpfiling/AttachHis/27FD91CA_2D81_450D_A3FF_E514DCD3F205_174502.pdf

3. Deal Snapshot

Target	Pipavav Defense and Offshore Engineering Company Limited
Acquirer	Reliance Defence Systems Private Limited
PAC	RInfra
Sellers	SIL, SSHPL and Grevek
Trigger event for Open Offer	Execution of the SPA for the acquisition of up to 25.10% shares of the Target and the acquisition of control of the Target.

Mode of acquisition	**Direct acquisition:**
	▪ Under the SPA, the Acquirer shall acquire:
	  ▪ 17.66% of the Emerging Voting Capital;
	  ▪ Up to 7.44% of the Emerging Voting Capital (depending on the shares of the Target tendered under the Open Offer).
	Open Offer:
	▪ Open offer made by the Acquirer to the public shareholders of the Target to acquire 26% of the Emerging Voting Capital.

Total holding contemplated	▪ Minimum of 25.10% of the Emerging Voting Capital; ▪ Maximum of 43.66% of the Emerging Voting Capital (17.66% as Tranche I Shares and 26% under the Open Offer).
Acquisition price	**Direct Acquisition:** The consideration for the acquisition of the shares of the Target under the SPA is as follows: ▪ 13,00,00,000 equity shares of the Target at a price of INR 63 per share aggregating to INR 819,00,00,000; ▪ Up to 5,47,87,774 equity shares of the Target at a price of INR 63 per share aggregating to up to INR 345,16,29,762. **Open Offer:** ▪ 19,14,13,630 equity shares of the Target at a price of INR 66 per share aggregating to INR 1263,32,99,580. Accordingly, the minimum acquisition price to be paid by the Acquirer would be INR 1164,16,29,762 (for 25.10% of the Emerging Voting Capital) and the maximum price payable by the Acquirer would be INR 2082,32,99,580 (for 43.66% of the Emerging Voting Capital)

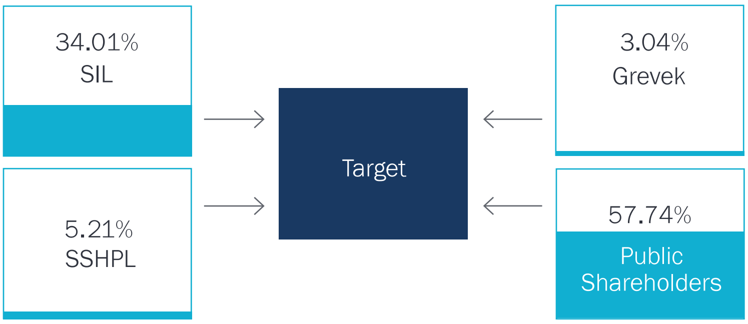
4. Chronology of Events

Date	Particulars
March 4, 2015	▪ SPA is executed between the Acquirer, RInfra, the Target and the Promoters; ▪ Public announcement issued
March 11, 2015	Detailed public statement is published in newspapers
March 18, 2015	Draft letter of offer ("**DLOF**") is filed with SEBI
April 20, 2015	CCI approves the Deal
April 29, 2015 and May 11, 2015	SEBI provides its observations in relation to the DLOF
October 21, 2015 and November 7, 2015	Letter received from GMB granting approval for the Deal
November 14, 2015	Committee of Independent Directors of the Target issued its recommendations in favor of the Open Offer
November 20, 2015	Final Letter of Offer issued
December 2, 2015	Date of opening of the tendering period
December 15, 2015	Date of closing of the tendering period
December 10, 2015	Letter between the Target, the Promoters and SAAB was executed
December 31, 2015	Last date for payment of the consideration to the public shareholders who have tendered their shares to the Acquirer under the Open Offer

5. Deal Structure

The shares of the Target was held as follows prior to the deal [10].

- Promoter shareholding of the Target as on March 31, 2015 was equal to 42.26% of the Emerging Voting Capital, which was as follows:
  - 25,03,73,648 equity shares of the Target, constituting 34.01% of the Emerging Voting Capital was held by SIL (Promoter holding);
  - 3,83,77,686 equity shares of the Target, representing 5.21% of the Emerging Voting Capital was held by SSHPL (Promoter holding);
  - 2,23,49,494 equity shares of the Target, constituting 3.04% of the Emerging Voting Capital was held by Grevek (Promoter holding);
- Public shareholding of the Target as on March 31, 2015 was equal to 57.74% of the Emerging Voting Capital, which included the following shareholders:
- 5,84,65,899 equity shares was held by LIC, constituting 7.94% of the Emerging Voting Capital;
- 5,34,23,871 equity shares was held by IL&FS Maritime Infrastructure Company Limited, constituting 3.15% of the Emerging Voting Capital;
- 2,54,07,881 equity shares was held by SAAB Akteibolag, constituting 3.33% of the Emerging Voting Capital;
- 3,22,00,000 equity shares was collectively held by Valiant Mauritius Partners FDI Limited, Valiant Mauritius Partners Offshore Limited and Valiant Mauritius Partners Limited constituting 4.38% of the Emerging Voting Capital.



10. http://www.bseindia.com/corporates/ShareholdingPattern.aspx?scripcd=533107&flag_qtr=1&qtrid=85.00&Flag=New

A. SPA

Under the first transaction under the SPA, the Acquirer would acquire 13,00,00,000 equity shares of the Target, constituting 17.66% at a price of INR 63 per share for an aggregate consideration of INR 819,00,00,000, post which it hold 17.66% of the Emerging Voting Capital. The balance was held by public shareholders.

B. Open Offer

Subsequently, the Acquirer would make an offer to the public shareholders to acquire 19,14,13,630 shares of the Target, constituting 26% of the Emerging Voting Capital, for a price of INR 66 per share, aggregating to INR 1263,32,99,580. The price for the shares under the Open Offer was determined in accordance with Regulation 8 of the Takeover Code. Depending on the number of shares offered under the Open Offer, the Acquirer could hold up to 43.66% of the shares of the Target.

However, in case the shareholding of the Acquirer post the consummation of the Open Offer is less than 25.10% (i.e. the number of shares offered under the Open Offer is 5,47,87,773 or lesser, the Acquirer would acquire such additional number of shares from the Promoters, such that the number of shares held by the Acquirer overall is 18,47,87,774. In case the number of shares acquired by the Acquirer under the Open Offer is 5,47,87,774, i.e. 7.44% or more, the second leg under the SPA would not trigger.

6. Commercial Considerations

I. Why did Mr. Anil Ambani decide to acquire the Target?

The Reliance ADAG group had been intending to venture into the defense sector for a while, especially considering the push which the sector was receiving from the new Modi-led government. The NDA government, since it came to power in 2014 has been pushing its 'Make in India' program, which emphasized on manufacturing in India. The defense sector was also a beneficiary of this program, with the central government having decided to grant orders worth USD 250 billion in the next 5 years[11] for the defense sector.

On 17 February, 2015, the cabinet committee on security approved plans to build six nuclear-powered submarines and seven stealth warships at a cost of about INR 1 trillion. At that time, Government of India was also exploring building six modern conventional submarines through technology transfer from a foreign collaborator in a deal estimated at INR 50,000 crore and was assessing the capability of the Target amongst other defense companies.[12]

Having decided to foray into the defense sector, the most viable option for the ADAG group was to grow inorganically. Greenfield projects in the defense sector, i.e. commencing projects from scratch is a laborious and expensive task, which in addition to being a long gestation, and capital intensive sector, is also driven

by a wide range of regulations and restrictions. At such a time, the distressed Target seemed like a lucrative plan for ADAG group and an acquisition seemed only logical with the Promoters' backs already against the walls. The other important factor which might have influenced ADAG Group's decision to scoop the Target was India's defence spending which is expected to hit USD 620 billion between 2014 and 2022, with half of it going into capital expenditure, potentially turning a leading buyer of expensive arms into an arms supplier to rich nations.

II. Why did the Acquirer and RInfra not buy out the Promoters' completely?

The Promoters held 42.26% of the shares of the Target prior to the execution of the SPA. The Acquirer has agreed to acquire up to a maximum of 25.10% of the shares of the Target, thereby resulting in the Promoters holding at least 17.16% of the shares of the Target post the consummation of the transaction contemplated under the SPA and the Open Offer. If 26% of the shares of the Target are offered by the public shareholders under the Open Offer, the shareholding of the Promoter would be 24.60% post the Open Offer, while that of the Acquirer would be 43.66%.[13]

It is unclear why the Acquirer and RInfra did not acquire the entire shareholding of the Promoters. One reason could be that the Acquirer/ RInfra wanted to foray into the sector, experiment with the sector, and then increase its shareholding later, if deemed viable. However, any such increase at one go at a later point of time would trigger another open offer requirement, so it is unlikely that the entire shareholding of the Promoters would be acquired at once. Another reason could have been the substantial amount of funds which would have been required to acquire the entire shareholding. Assuming the same price for which the Sale Shares are being acquired, the Acquirer and RInfra would have had to pay an additional amount of approximately INR 11397 million in addition to what is already being paid/ committed under the Open Offer and the SPA.

III. Why did the Acquirer deposit shares of Reliance Power in an escrow account?

In accordance with Regulation 17 of the Takeover Code, the Acquirer was required to deposit a certain amount in an escrow account to secure its obligation of payment to public shareholders who tender their

11. http://www.business-standard.com/article/companies/reliance-infra-to-pick-up-25-stake-in-pipavav-defence-115030401209_1.html
12. http://www.livemint.com/Companies/fQxAtYIziwK9G40WeIUm4N/How-and-why-Anil-Ambani-bought-into-the-Pipavav-fire-sale.html
13. FLOF

shares in the open offer. One of the options permitted to the Acquirer is deposit of frequently traded shares of any company. In accordance with this regulation permitting the deposit of shares, the Acquirer / RInfra decided to deposit the shares of Reliance Power. The reasons for the deposit of shares are not clear, but it seems that the reasons would be to ensure that immediate cash are not restricted. In case cash was required to be deposited, it would have meant that such amount of cash, which would be in the range of approximately INR 2,740 million would have been deposited in the escrow, which could not have been used for any other purpose by the Acquirer/ RInfra.

IV. Why CDR?

The Target was under distress with the financial performance constantly deteriorating in the last couple of years.[14] The financial situation of the Target could be attributed to an international economic slowdown which has hampered the entire industry, which is evident from the fact that two other major players (ABG Shipyard and Bharti Shipyard) are also under CDR.

In the case at hand, the inability of the Target to service its debts resulted in a joint lenders' forum (**"JLF"**) being formed in 2014. The JLF has been considering its options to approve a restructuring package for the Target. The lender had also insisted that the promoters infuse more cash into the Target to repay their debt. However, since the promoters were not able to infuse any additional cash, the lenders started considering restructuring under the CDR process.[15] The Target was opposed to the idea of a CDR since it would taint the image of the company, thereby resulting in other financial consequences.[16]

The Target had debt of approximately INR 7,600 crores which was being considered by the JLF.[17] The Target had considered its options to ensure that it does not end up in CDR. In 2012, the Target sought approval for the issuance of foreign currency convertible bonds (**"FCCB"**), and received approval of the FIPB for such increase.[18] It was reported that the Target is looking to raise an amount of approximately USD 150 million in the London Stock Exchange by issuance of FCCBs[19], but later shelved the plan.[20] The Target also contemplated borrowing cheaper funds offshore to refinance expensive domestic debt.[21] However, none of these plans were implemented.

In this background, the JLF had to consider the options open to it. The JLF, as a concept, has been criticized for its inability to take swift decisions, largely due to the lack of consensus among the various lenders.[22] Unfortunately, the Target was no exception. Finally, with lack of options before it, the JFL decided to refer the Target for restructuring to CDR, much against the Target's wish. In fact, it is stated that the CDR route was the one which is easier for the lenders to comply with, and hence a CDR reference was made.[23]

V. Why was the master restructuring agreement under CDR process a condition precedent for the Deal?

Once the master restructuring agreement was executed, the Target would get some breathing space with respect to its debt servicing capabilities, including a moratorium with respect to payments, and additional leverage in the form of fund and non-fund based facilities. Accordingly, the Acquirer required the Target to ensure that the lenders reached an agreement and had executed the master restructuring agreement with the Target.

VI. Why did the lenders agree to infuse additional debt in the Target?

While it is unclear in this specific situation, lenders under CDR are generally expected to infuse additional funds, in addition to requiring the promoter to infuse additional cash into the company

14. http://www.financialexpress.com/article/industry/companies/pipavav-could-be-latest-cdr-entrant/29245/
15. http://www.livemint.com/Companies/bEaLVj2HDYsoSREIzpcYWK/Pipavav-in-talks-with-lenders-for-easier-loan-repayment-term.html
16. http://smartinvestor.business-standard.com/market/Econnews-287699-Econnewsdet-Bankers_choose_CDR_route_to_restructure_Pipavav_Defence_debt.htm#.VoIzAPl97IU
17. http://www.livemint.com/Companies/7uXxyeWSGtCRTqklLuAraM/Pipavav-Defence-set-to-restructure-Rs7600-crore-debt-under.html
18. http://www.livemint.com/Politics/vspfRMoklqXty4i8YJuTGP/14-FDI-proposals-worth-Rs-11335-cr-cleared.html
19. http://www.vccircle.com/news/engineering/2013/07/31/pipavav-defence-looking-raise-150m-through-lse-listing-oct
20. http://www.livemint.com/Companies/bEaLVj2HDYsoSREIzpcYWK/Pipavav-in-talks-with-lenders-for-easier-loan-repayment-term.html
21. http://www.livemint.com/Companies/bEaLVj2HDYsoSREIzpcYWK/Pipavav-in-talks-with-lenders-for-easier-loan-repayment-term.html
22. http://www.livemint.com/Industry/hBD5reO6YVvMDjarPoJXtM/Divergent-views-hold-back-lenders-forums.html
23. http://www.livemint.com/Industry/hBD5reO6YVvMDjarPoJXtM/Divergent-views-hold-back-lenders-forums.html

to facilitate revival of the company. However, in this case, it seems that the revival of the defense sector due to the central government's push for the sector and the quality of the defense contracts where the Target was shortlisted, were factors which the lenders took into consideration while deciding on the master restructuring agreement.[24]

VII. Who is expected to be the chairman of the group post the Open Offer?

As per the regulatory filings, Mr. Anil Ambani, the chairman of the ADAG group is expected to be the chairman of the Target. This is in addition to acquiring control over the majority of the board of directors of the Target. This is a clear indication of the fact that despite not having bought out the Promoters entirely, the control would lie exclusively with the ADAG group.

It is also interesting to note that at a time when acquirers are staying clear of steering the acquired companies immediately, allowing the erstwhile promoters to control the acquired company, at least jointly with the acquirer, the ADAG group's control of the Target is a bold move, especially considering that it does not have any experience in the defense sector. The move to control the entire board exclusively may turn out to be a risk, considering that the financial position of the Target is not positive, and it is already under the CDR.

VIII. What prevents the Promoters to start a competing business?

Considering the vast experience and track record which the Promoters possess, it is essential for the Acquirer and RInfra that they do not compete with the business of the Target through any other entity. Accordingly, a non-compete and a non-solicitation agreement for a period of 5 (five) years has been agreed by the Promoters under the SPA. Any breach of such non-compete or non-solicit would result in a breach of the SPA. Under section 27 of the Indian Contract Act, 1872 ("**ICA**"), any agreement in restraint of business, profession or trade is held to be invalid. However, the section itself makes an exception to permit restriction on the seller to carry on business of which the goodwill is also sold, so long as the buyer carries on a like business post such sale.

IX. Will the status of the Target undergo any change with respect to it being under CDR?

The approval of the lenders for the Deal has already been obtained, and it is unlikely that the status under the CDR would change. However, it is reported that the Acquirer and RInfra want the Target to exit the CDR process.[25]

X. Why does the Acquirer and RInfra want the Target to exit the CDR?

The covenants applicable on a borrower under the master restructuring agreement are typically very onerous and restricts flexibility in terms of the operations of the borrower. Accordingly, the Acquirer and RInfra decided to get the Target to exit the CDR process post the consummation of the open offer.[26] RInfra announced its intention to withdraw the Target from CDR process in its press release dated November 16, 2015. The press release mentioned that the exit from the CDR is expected to lead to improved financial flexibility and increased business opportunities for the Target.[27]

XI. What changed the Acquirer and RInfra's position from the execution of the SPA, which required the master restructuring agreement to be executed as a condition precedent?

While the Acquirer and RInfra wanted the master restructuring agreement, there are already reports that they want the Target to exit the CDR post the Deal. It appears that the rationale for the change in the stance is more from a timing perspective rather

24. http://www.livemint.com/Companies/7uXxyeWSGtCRTqklLuAraM/Pipavav-Defence-set-to-restructure-Rs7600-crore-debt-under.html
25. http://www.livemint.com/Companies/hB18Gx6U7pNhBURQvuFTMM/Pipavav-Defence-to-exit-corporate-debt-restructuring.html
26. http://www.livemint.com/Companies/hB18Gx6U7pNhBURQvuFTMM/Pipavav-Defence-to-exit-corporate-debt-restructuring.html
27. http://corporates.bseindia.com/xml-data/corpfiling/AttachHis/34E30C76_0E7D_4B91_8E60_D62A9FE0E3C6_145249.pdf

than any other reason. At the time of the execution of the SPA (even today in fact), the Target does not have sufficient funds to pay the recompense amount to the lenders. If the Acquirer/ RInfra requires any such exit, the recompense amount would have to be paid to the lenders, and it seems likely that additional funds will be infused by the Acquirer and/ or the PAC into the Target, including for the payment of the recompense amount to the lenders.[28]

28. http://www.indiastrategic.in/topstories3694_Reliance_Infrastructure_Acquires_Pipavav_Defence.htm

6. Legal and Regulatory

I. How was the offer price decided and justified?

The shares of the Target were 'frequently traded' shares. The offer price for the Open Offer were determined in compliance with regulation 8(2) of the Takeover Code, which requires the price to be higher than the highest of, *inter alia*, (i) highest price under the transaction attracting the open offer obligation; (ii) volume weighted average market price per equity share of the company for a period of 60 (sixty) trading days immediately preceding the date of the public announcement on the stock exchange where it is traded maximum in terms of volume. The highest price in accordance with regulation 8(2) of the Takeover Code was INR 65.71, and accordingly, the offer price of INR 66 per share was higher than such number.

II. Will the Promoters continue to remain 'promoters' of the Target post the consummation of the Deal?

The FLOF states that post the acquisition of the Sale Shares by the Acquirer, the Promoters shall no longer remain 'promoters' of the Target, and the Acquirer and the PAC shall be categorized as 'promoters' of the Target.

III. Are there any concerns in relation to the Promoters no longer being classified as 'promoters' of the Target?

While the FLOF states that post the divestment of the Sale Shares, the Promoters shall no longer remain 'promoters' of the Target, and the Acquirer and the PAC shall be categorized as 'promoters' of the Target, it is to be seen whether it would be possible for the Promoters to be reclassified as non-promoters. The SEBI had in January 2015, released a discussion paper stating the means by which a promoter could be reclassified as a non-promoter.[29] This was followed by an approval of the SEBI at a board meeting, where it approved the reclassification mechanism for promoters of listed companies. The provisions in this regard have been incorporated in the Listing Regulations.

As per the Listing Regulations, any promoter who intends to be reclassified as a public shareholder, would need to comply with the following conditions:

- A new promoter should be replacing the erstwhile promoters of the company, either by way of an open offer, or any other means, which replacement shall be with the approval of the shareholders of the company;
- The outgoing promoters should not be holding any key management person position in the company for a period of more than 3 (three) years from the date of the shareholders' approval passed under the previous point. Additionally, such resolution of the shareholder should expressly permit such outgoing promoter to hold any key management person position;
- The outgoing promoter along with its PACs should not be holding more than 10% (ten percent) of the shareholding of the company post the reclassification.

For reclassification of promoter, the approval from the stock exchange where the company is listed is required, provided it complies with the conditions mentioned above. In cases where the company is listed on multiple exchanges, the approval from the 'concerned stock exchange' shall be required.

With the Acquirer/ PAC being classified as 'promoters' of the Target, the first condition would be satisfied. In addition, the second condition would also be complied, since it seems that the outgoing promoters would not be holding any key management person position. However, the third condition would not be complied, since the Promoters would be holding in excess of 10% (ten percent) of the shares of the Target post the consummation of the Deal. In light of the same, it is to be seen if it is possible for the reclassification of the Promoters at all. This may be one of the first cases for the reclassification to be tested, under the new Listing Regulation and it would be interesting to see if the reclassification is permitted.

29. http://www.sebi.gov.in/cms/sebi_data/attachdocs/1419934886654.pdf

IV. How did the Acquirer comply with regulation 17 of the Takeover Code, which requires deposit of a certain amount in an escrow account?

Regulation 17 of the Takeover Code requires the acquirer or the PAC to deposit in an escrow account, within 2 (two) days from the date of the detailed public statement, an amount equal to the sum of (i) 25% of INR 1000 million of the consideration payable under the open offer; and (ii) 10% of the amount of consideration above INR 1000 million. Accordingly, in the case in hand, the Acquirer/ RInfra would have been required to deposit an amount of INR 1353 million.

In compliance with Regulation 17, the Acquirer opened an escrow agreement under which it deposited 4,50,00,000 shares of Reliance Power Limited on March 5, 2015. 33,00,000 additional shares of Reliance Power Limited were deposited in the escrow account on May 13, 2015, due to a shortfall in the amount required to be deposited in the escrow account. In addition, a guarantee from Yes Bank was issued for an amount of INR 600 million in this regard on June 23, 2015.

V. Why was the approval from SAAB required?

Under the AOA, SAAB had reserved matters in the Target, which required the consent of SAAB for certain items, as mentioned in the AOA. One of these matters included amendment of the charter documents of the Target in a manner which is detrimental to the rights of SAAB. Under the SPA, the Acquirer would have a number of affirmative vote matters, and accordingly the approval of SAAB was required.[30] Additionally, the Promoters were required to hold at least 26% of the shares of the Target for such period as may be mutually agreed between the Promoters and SAAB. It may be possible that the approval was required for this reason as well.[31]

VI. What were the regulatory approvals required for the consummation of the Deal? What was the significance of these approvals from the perspective of the Open Offer?

The parties required the approvals of the CCI and the GMB for the consummation of the Deal. The approvals of the CCI and the GMB acquired additional importance from the perspective of the Open Offer since the DLOF dated March 18, 2015 stated that the consummation of the acquisition of the shares under the Open Offer was contingent on the receipt of the approvals from the CCI and the GMB.

VII. Why was the approval of the CCI required for the consummation of the Deal?

In accordance with Section 6 of the Competition Act 2002 (“**CA 2002**”), if any transaction breaches the thresholds provided under Section 5 of the CA 2002, the prior approval of the CCI is required for the consummation of the proposed transaction. In this case, the thresholds under Section 5 were breached. In addition, the Acquirer was acquiring the control of the Target as well, and accordingly, the approval of the CCI was required under Section 6 of the CA 2002.

VIII. When was the application for the approval of the CCI made?

Such application for the approval is tobe made within a period of 30 days from the date of the execution of a binding agreement which triggers the filing under Section 6 of CA 2002. The Deal was triggered by the execution of the SPA (March 5, 2015), and accordingly the application to the CCI was to be made by April 4, 2015. The application was made on April 1, 2015.

30. Article 188 of the AOA

31. Article 76 of the AOA

IX. Did the CCI grant approval for the consummation of the Deal? What was the reasoning for the approval?

By its order dated April 20, 2015, the CCI granted approval to the Acquirer to consummate the Deal. In its order, the CCI noted that the Acquirer was a newly incorporated company to explore opportunities in the defense sector, and RInfra was a public listed company engaged in engineering, procurement and construction services for power projects, road projects, power business and infrastructure projects. On the other hand, the Target was currently engaged in defense shipbuilding, commercial shipbuilding, offshore construction and refurbishment, and intended to enter into heavy engineering, defense compact systems and manufacturing of tanks and aerospace. Acknowledging that there was no vertical or horizontal overlap between the operations of the Acquirer/ RInfra (or any of its other subsidiaries) with that of the Target, the CCI noted that there would not be any appreciable adverse effect on competition in India. Accordingly, the proposed combination was approved.

X. Why was the approval of the GMB required?

The Target had entered into a concession agreement with the GMB dated September 30, 1998, and a sub-concession agreement in 2009, in relation to the land leased to the Target by the GMB (“**Concession Agreement**”). Under the terms of the Concession Agreement, the approval of the GMB, the Target had agreed to a number of covenants, including negative covenants. For undertaking any action, which is contrary to the covenants agreed, the approval of the GMB is required.

In accordance with the terms of the Concession Agreement, the Acquirer had sought approval for (i) acquisition of up to 25.1% shares of the Target from the Promoters; (ii) acquisition of control and management over the Target, along with the right to appoint majority directors; (iii) acquisition of up to 26% of the shares of the Target from the public shareholders; and (iv) sub-concession agreement with validity of lease period up to February 10, 2038.

XI. When did the GMB grant its approval for the Deal?

The GMB had given its approval for (i) and (ii) mentioned above by way of its letter October 21, 2015. The Acquirer had written to GMB again on October 29, 2015 to seek approval of the GMB for (iii) and (iv) above. The GMB, through its letter dated November 7, 2015 (received on November 13, 2015), granted approval for (iii) and (iv) above as well.

XII. Why was the opening of the open offer period delayed till December 2015?

The Acquirer had, in the DLOF stated that the consummation of the Open Offer was contingent on the receipt of the approvals from the CCI and the GMB, to the satisfaction of the Acquirer and the RInfra. The CCI approval was received on April 20, 2015 itself. However, the approval of the GMB was delayed, and the final approval was received only in November 13, 2015. Once the approval was received, the period for the Open Offer was decided as December 2, 2015.

XIII. Did SEBI provide any comments on the DLOF?

SEBI had provided its comments on the DLOF by way of its letter dated May 11, 2015.[32] The comments from SEBI were as follows:

- The period for tendering the shares under the Open Offer should commence within 12 (Twelve) business days from the later of (i) the day on which the approval of SEBI was received, or (ii) the day on which the approval from the GMB was received;
- The payment to those shareholders who agreed to tender their shares should be made within a period of 10 (Ten) days from the date of the closing of the tendering period;
- The Acquirer shall pay to the public shareholders the amount with an interest of 10% (Ten percent) per annum for the period of delay.

32. http://corporates.bseindia.com/xml-data/corpfiling/AttachHis/04070F3A_EF73_4435_AA1C_4F8F95FF14C0_090728.pdf

XIV. What other approvals were required for the transaction under the SPA to be consummated?

In accordance with the terms of the SPA, the following approvals were required, in addition to the regulatory approvals from GMB and CCI for the transactions under the SPA to be consummated:

- Consent of the lenders of the Target with whom the Sale Shares of the Target were pledged by the Promoters, for the sale of the Sale Shares;
- The master restructuring agreement between the Target and the CDR Lenders having been executed;
- Approval from the existing shareholders, including specifically SAAB for the consummation of the Deal, including the change in control and management of the Target. The SAAB approval was received by way of a letter executed between SAAB, the Target and the Promoters [33];

XV. Did the lenders reach a resolution in respect of the CDR?

The lenders finally reached an agreement in late March 2015, and relevant agreements, including a master restructuring agreement were executed between the Target and the lenders.[34] The lenders agreed to a restructuring package under which they agreed to advance additional facilities worth INR 4,500 crores to the Target, in the form of fund and non-fund based facilities.[35]

XVI. Will the master restructuring agreement continue indefinitely?

No. the master restructuring agreement is generally expected to be in force for a certain period of time, say 3-5 years. If the company is unable to improve its financial situation even post this period, the lenders may decide to extend the time for the same, adopt alternate mechanisms to revive the company or seek to enforce the security provided, depending on a number of reasons, including the reasons for the inability of the company to improve its financial position, and austerity measures taken by the company to improve its financial position.

In case of the Target, it is understood that the Acquirer and RInfra have decided to get the Target to exit from the CDR as soon as the Deal is consummated.[36]

XVII. How do the lenders ensure compliance with the master restructuring agreement?

Any company under CDR is subject to the conditions and restrictions of the CDR, which includes restrictions on investment other than in the ordinary course of business, incurring additional debt, sale of assets, effecting any material change in the management and creation of security over its assets. To ensure compliance with such covenants, a monitoring committee is formed, which committee is company specific with representations from the lenders and the CDR Cell. The promoters or representatives of the company may be invited for the meetings as well. The monitoring committee is required to submit reports in the prescribed format with the progress on a monthly basis.

XVIII. Are there any conditions for the Target to exit the CDR? If yes, how is it expected to achieve such conditions?

Exit from a CDR can be only in compliance with the conditions prescribed by the CDR Cell. A successful exit from CDR can be only in the following cases [37]:

- At the end of the restructuring period, the borrower company exits the CDR;

33. http://corporates.bseindia.com/xml-data/corpfiling/AttachHis/225F7C28_3B6F_40F1_A3E4_4EB1B1581505_172615.pdf
34. The Target's disclosure to the stock exchanges on March 31, 2015, as follows *"Pipavav Defence and Offshore Engineering Company Ltd has informed BSE that the Corporate Debt Restructuring Empowered Group (**"CDR EG"**) has approved the Corporate Debt Restructuring Package (**"CDR Package"**) for Pipavav Defence and Offshore Engineering Company Limited (**"The Company"**). In this regard the Lenders of the Company and the Company have entered into relevant agreements for implementation of the CDR Package."*
35. http://www.financialexpress.com/article/companies/pipavav-debt-is-recast-days-before-deadline/57789/
36. http://www.livemint.com/Companies/hB18Gx6U7pNhBURQvuFTMM/Pipavav-Defence-to-exit-corporate-debt-restructuring.html
37. CDR Master Circular dated June 25, 2015 available online at http://www.cdrindia.org/downloads/CDR-Master%20Circular-29Apr15.pdf

- When the financial performance of the borrower company is more than 25% (twenty five percent) of the EBITDA projections for 2 (two) consecutive years;
- Voluntary exit by the borrower company upon payment of the 'recompense' amount.

Accordingly, for the Target to exit CDR, it would need to pay the 'recompense' amount. The recompense amount includes the principal waivers, the waiver of interest dues, reduction of interest rate, sacrifice on the interest rates for the additional financing provided.

8. Tax Considerations

I. What was the tax implication on the Promoters' pursuant to the sale of the Sale Shares?

Any capital gains from the sale of the Sale Share would be subject to tax for the Promoters under the Income Tax Act, 1961 (**"ITA"**) unless the shares sold can be classified as a long-term capital asset (i.e. it was held for more than 1 (one) year preceding its sale), and the transaction through which it is sold is chargeable to securities transaction tax (**"STT"**) which is levied by the stock exchange at the time of transfer.

If the Sale Shares were sold off the market, any gains arising from the sale of these shares would be taxed at 10% under the ITA (exclusive of surcharge and education cess).

II. What is the tax implication for the public shareholders tendering their shares under the Open Offer?

The public shareholders of the Target, who tendered their shares in the Open Offer, would be subjected to capital gains tax on the sale of the equity shares held by them in the Target. If the public shareholder held shares for a period of 12 (Twelve) months or less, it would be taxable as short term capital gains, while if shares were held for a period longer than 12 (Twelve) months, it shall be taxable as long term capital gains.

7. Epilogue

With the completion of the Open Offer, the Reliance ADAG Group has completed its first chapter of foray into the defense business. In the time which took this first step to fructify, the group has already taken substantial other steps to diversify in the sector, including setting 11 (eleven) companies under RInfra alone, with separate areas of focus in the defense sector for each such company.

It is to be seen how far the ADAG Group is able to take Pipavav in achieving the vision that the original founders had seen for the company. With the exit from the CDR on the horizon and biddings for orders worth over USD 5 billion (landing platform docks and helicopter manufacturing) already ongoing, it seems that Reliance Defense and Engineering, the new name of Pipavav Defense and Offshore Engineering Company Limited seems to be in good hands.

"For the Anil Ambani group, defence will be the frontline business. Ambani is already building his team-A and will now have access to 450 highly trained officials who set up the Pipavav project."

-Anonymous[38]

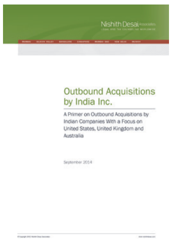
With the government pushing 'Make in India', it is to be seen if the Anil Ambani group is able to leverage on its new 'frontline business' to catapult it into one of the biggest defense manufacturers of the world.

38. http://www.business-standard.com/article/companies/rajesh-dhingra-anil-ambani-s-go-to-man-for-defence-foray-115030500935_1.html

The following research papers and much more are available on our Knowledge Site: www.nishithdesai.com

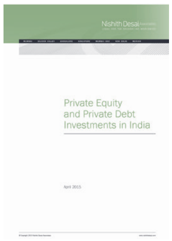
Mergers & Acquisitions in India

May 2015



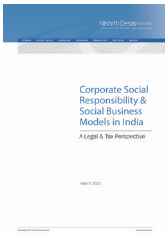
Outbound Acquisitions by India-Inc

September 2014



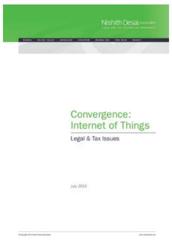
Private Equity and Private Debt Investments in India

June 2015



Corporate Social Responsibility & Social Business Models in India

March 2015



Convergence: Internet of Things

July 2015

E-Commerce in India

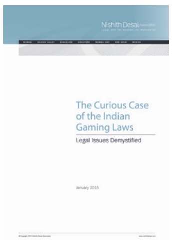
July 2015

Fund Structuring and Operations

July 2016

Doing Business in India

June 2016



The Curious Case of the Indian Gaming Laws

September 2015

NDA Insights

TITLE	TYPE	DATE
Thomas Cook – Sterling Holiday Buyout	M&A Lab	December 2014
Reliance tunes into Network18!	M&A Lab	December 2014
Sun Pharma –Ranbaxy, A Panacea for Ranbaxy's ills?	M&A Lab	December 2014
Jet Etihad Jet Gets a Co-Pilot	M&A Lab	May 2014
Apollo's Bumpy Ride in Pursuit of Cooper	M&A Lab	May 2014
Diageo-USL- 'King of Good Times; Hands over Crown Jewel to Diageo	M&A Lab	May 2014
Copyright Amendment Bill 2012 receives Indian Parliament's assent	IP Lab	September 2013
Public M&A's in India: Takeover Code Dissected	M&A Lab	August 2013
File Foreign Application Prosecution History With Indian Patent Office	IP Lab	April 2013
Warburg - Future Capital - Deal Dissected	M&A Lab	January 2013
Real Financing - Onshore and Offshore Debt Funding Realty in India	Realty Check	May 2012
Pharma Patent Case Study	IP Lab	March 2012
Patni plays to iGate's tunes	M&A Lab	January 2012
Vedanta Acquires Control Over Cairn India	M&A Lab	January 2012
Corporate Citizenry in the face of Corruption	Yes, Governance Matters!	September 2011
Funding Real Estate Projects - Exit Challenges	Realty Check	April 2011

Research @ NDA

Research is the DNA of NDA. In early 1980s, our firm emerged from an extensive, and then pioneering, research by Nishith M. Desai on the taxation of cross-border transactions. The research book written by him provided the foundation for our international tax practice. Since then, we have relied upon research to be the cornerstone of our practice development. Today, research is fully ingrained in the firm's culture.

Research has offered us the way to create thought leadership in various areas of law and public policy. Through research, we discover new thinking, approaches, skills, reflections on jurisprudence, and ultimately deliver superior value to our clients.

Over the years, we have produced some outstanding research papers, reports and articles. Almost on a daily basis, we analyze and offer our perspective on latest legal developments through our *"Hotlines".* These *Hotlines* provide immediate awareness and quick reference, and have been eagerly received. We also provide expanded commentary on issues through detailed articles for publication in newspapers and periodicals for dissemination to wider audience. Our *NDA Insights* dissect and analyze a published, distinctive legal transaction using multiple lenses and offer various perspectives, including some even overlooked by the executors of the transaction. We regularly write extensive research papers and disseminate them through our website. Although we invest heavily in terms of associates' time and expenses in our research activities, we are happy to provide unlimited access to our research to our clients and the community for greater good.

Our research has also contributed to public policy discourse, helped state and central governments in drafting statutes, and provided regulators with a much needed comparative base for rule making. Our *ThinkTank* discourses on Taxation of eCommerce, Arbitration, and Direct Tax Code have been widely acknowledged.

As we continue to grow through our research-based approach, we are now in the second phase of establishing a four-acre, state-of-the-art research center, just a 45-minute ferry ride from Mumbai but in the middle of verdant hills of reclusive Alibaug-Raigadh district. The center will become the hub for research activities involving our own associates as well as legal and tax researchers from world over. It will also provide the platform to internationally renowned professionals to share their expertise and experience with our associates and select clients.

We would love to hear from you about any suggestions you may have on our research reports. Please feel free to contact us at
research@nishithdesai.com

Nishith Desai Associates
LEGAL AND TAX COUNSELING WORLDWIDE

MUMBAI

93 B, Mittal Court, Nariman Point
Mumbai 400 021, India

tel +91 22 6669 5000
fax +91 22 6669 5001

SILICON VALLEY

220 S California Ave., Suite 201
Palo Alto, California 94306, USA

tel +1 650 325 7100
fax +1 650 325 7300

BANGALORE

Prestige Loka, G01, 7/1 Brunton Rd
Bangalore 560 025, India

tel +91 80 6693 5000
fax +91 80 6693 5001

SINGAPORE

Level 30, Six Battery Road
Singapore 049 909

tel +65 6550 9856

MUMBAI BKC

3, North Avenue, Maker Maxity
Bandra–Kurla Complex
Mumbai 400 051, India

tel +91 22 6159 5000
fax +91 22 6159 5001

NEW DELHI

C–5, Defence Colony
New Delhi 110 024, India

tel +91 11 4906 5000
fax +91 11 4906 5001

MUNICH

Maximilianstraße 13
80539 Munich, Germany

tel +49 89 203 006 268
fax +49 89 203 006 450

NEW YORK

375 Park Ave Suite 2607
New York, NY 10152

tel +1 212 763 0080