COMPANIES ACT, 2013 DYNAMICS AND ITS INFLUENCE ON IMMOVABLE PROPERTIES VALUATION

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1.0. Preamble

Companies involve appraisal process in understanding the worth and in expansion of the business. To regulate their proper ideology, they instigate to see a baseline value for the business and develop a strategy to improve the profitability of the business. To determine the improved value per share, they also focus on identifying the weakness of the business to refocus the operational efforts to improve the profitability and the bottom line. Under remote circumstances, they increase the value of the business for an exit strategy and to evaluate an offer and negotiate a strategic sale of a business.

1.1. Need for valuation under Companies Act 2013

- For Buying & funding for the New Project
- To evaluate the Equity Value
- Financial Reporting Purposes
- Determine the intrinsic value
- Determine the value for Insolvency and Liquidation
- Determine the value for winding up, Merger & Acquisition
- Merger, Demerger and Acquisition
- Sale or Restructuring the Business
- Issue of Shares, Sweat Equity, Buy Back
- Impairment of Assets
- FDI and Foreign Exchange related transaction.
- Legal and Statutory obligation.

1.2. Companies (Registered Valuers and Valuation) Rules, 2017

The Companies (Registered Valuers and Valuation) Rules, 2017 (the Rules), notified by the Central Government in exercise of powers conferred by section 247 read with Sections 458, 459 and 469 of the Companies Act, 2013 (18 of 2013), define a valuer and lay down rules governing a valuer including eligibility, qualification and registration of valuer.

1.3. Section 247. Valuation by registered valuers.— (1) Where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the assets) or net worth of a company or its liabilities under the provision of this Act, it shall be valued by a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed and appointed by the audit committee or in its absence by the Board of Directors of that company.

1.4. IBBI Registered Valuer: An IBBI Registered Valuer is a professional authorized by the Insolvency and Bankruptcy Board of India (IBBI) to provide valuation services for various assets such as land, buildings, plant and machinery, securities, and financial assets.

1.5. With effect from February 01, 2019, only registered valuers can undertake valuation under
(i) **Companies Act, 2013**
(ii) **Insolvency and Bankruptcy Code, 2016**.
However, any valuer (registered or unregistered) may continue to render valuation services under any other law which has not stipulated requirement for valuation to be undertaken by a registered valuer.

1.6. Insolvency and Bankruptcy Code, 2016
IBBI (Amendment) Regulations, 2018 - The Gazette of India – Extraordinary - Part III, Section 4 - Published by Authority - New Delhi, 06.02.2018 **-** IBBI Notification New Delhi, the 6th February, 2018 - No. IBBI/2017-18/GN/REG024
In the Insolvency and Bankruptcy Board of India Regulations, 2016 in sub-regulation (1) of regulation (2) (i) after clause (h), the following clauses shall be inserted, namely: -
(ha) **"Evaluation matrix"** means such parameters to be applied and the manner of applying such parameters, as approved by the committee, for consideration of resolution plans for its approval;
(hb) **"Fair value"** means the estimated realizable value of the assets of the corporate debtor, if they were to be exchanged on the insolvency commencement date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had acted knowledgeably, prudently and without compulsion;"
(ii) For clause (k), the following clause shall be substituted, namely: -

(k) **"Liquidation value"** means the estimated realizable value of the assets of the corporate debtor, if the corporate debtor were to be liquidated on the insolvency commencement date."

2.0. Companies Act, 2013

Under the Companies Act, 2013, the registered valuers can undertake valuation under Corporate Restructuring & Insolvency (compromises, arrangements and amalgamations').

2.1. Section –I compromise arrangement and mergers

Chapter XV (Section 230 to 240) of Companies Act, 2013(the Act) contains provisions on 'Compromises, Arrangements and Amalgamations', that covers compromise or arrangements, mergers and amalgamations, Corporate Debt Restructuring, demergers, fast track mergers for small companies/holding subsidiary companies, cross border mergers, takeovers, amalgamation of companies in public interest etc..

2.2. For the following sections, a valuation report in respect of the shares and the property and all assets, tangible and intangible, movable and immovable, of the company by a registered valuer must be enclosed**.**

1. Section 230-231 deals with compromise or arrangements
2. Section 232 deals with mergers and amalgamation including demergers
3. Section 233 deals with amalgamation of small companies (also called fast track mergers)
4. Section 234 deals with amalgamation with foreign company (also called cross border mergers)
5. Section 235 deals acquisition of shares of dissenting shareholders.
6. Section 236 deals with purchase of minority shareholding.

3.0. Bases of Value

3.1. Book Value - It is the total cost of purchasing a security. It includes any transaction charges related to the position (such as commissions) and is adjusted for reinvested distributions, return of capital, corporate actions and any subsequent purchases. There are three important formulas for book value:

Book value of an asset = total cost - accumulated depreciation.

Book value of a company = assets - total liabilities.

Book value /share (BVPS) = (shareholders' equity - preferred stock) / average shares outstanding.

3.2. Going concern value- It is a value that assumes the company will remain in business indefinitely and continue to be profitable. Going concern value is also known as total value. Going concern value is always greater than the liquidation value.

3.3. Intrinsic Value – It is the anticipated or calculated value of a company, stock, currency or product determined through fundamental analysis. It includes tangible and intangible factors. Intrinsic value is also called the real value and may or may not be the same as the current market value.

3.4. Extrinsic Value –Extrinsic value measures the difference between the market price of an option, called the premium, and its intrinsic value. Extrinsic value is also the portion of the worth that has been assigned to an option by factors other than the underlying asset's price. When option price is greater than the intrinsic value, difference price is called as extrinsic value.

3.5. Market Value – Market value is the price an asset would fetch in the market, based on the price that buyers are willing to pay and sellers are willing to accept. It may also refer to the market capitalization of a publicly traded company, calculated by multiplying the number of outstanding shares by the current share price

3.6. Fair Market Value – Fair market value is the price a business, property or other asset would sell for in an open and competitive market where the buyer and seller have adequate information of relevant facts, a reasonable time to complete a deal, are under no compulsion, are acting in their own interests and mutually agree on the price.

3.7. Fair value - Refers to the actual worth of an asset, which is derived fundamentally and is not determined by the factors of any market forces. Market value is solely determined by the factors of the demand and supply, and it is the value that is not determined by the fundamental of an asset. (Accounting standards).

3.8. Fair Market Value of a share - its average trading price on a given day must be considered. This is essential because the price data of marketing can often contain mistakes, and knowing the FMV can help you make better investment decisions in the stock market.

3.9. Written-down value is the value of an asset after accounting for depreciation or amortization. Depreciation is used for physical assets while amortization is used for intangible assets. The present worth of a previously purchased asset is represented through its written-down value

3.10. WDV under the Income Tax Act - Where the asset is acquired in the previous year, the actual cost of the asset shall be treated as WDV. Where the asset is acquired in an earlier year, the WDV shall be equal to the actual cost incurred less depreciation actually allowed under the Act.

3.11. Stamp duty value definition under Section 55 –with effect from the 01.04.2021

Stamp duty value means the value **adopted or assessed or assessable** by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of the immovable property.'

3.12. A **historical cost** is a measure of value used in accounting in which the value of an asset on the balance sheet is recorded at its original cost when acquired by the company. The historical cost method is used for fixed assets under generally accepted accounting principles.

4.0. Income Tax Act, 1961:

4.1. Section 45 (3) The profits or gains arising from the transfer of a capital asset by a person to a firm or other association of persons or body of individuals (not being a company or a co-operative society) in which he is or becomes a partner or member, by way of capital contribution or otherwise, shall be chargeable to tax as his income of the previous year in which such transfer takes place and, for the purposes of section 48, the amount recorded in the books of account of the firm, association or body as the value of the capital asset shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.

4.2. Capital gains on distribution of assets by companies in liquidation.

Section 46 (1) Notwithstanding anything contained in section 45, where the assets of a company are distributed to its shareholders on its liquidation, such distribution shall not be regarded as a transfer by the company for the purposes of section 45.

(2) Where a shareholder on the liquidation of a company receives any money or other assets from the company, he shall be chargeable to income-tax under the head "Capital gains", in respect of the money so received or the market value of the other assets on the date of distribution, as reduced by the amount assessed as dividend within the meaning of sub-clause (c) of clause (22) of section 2 and the sum so arrived at shall be deemed to be the full value of the consideration for the purposes of section 48.

4.3. Section 56: A transfer of funds or property without any kind of value exchange is referred to as a transaction without consideration. Under Section 56, the fair market value of the money or the property obtained is taken into account for tax purposes in both situations.

4.4. Section 56 (2) (viib) levies tax on the company that has issued equity shares for more than their fair market value. For example, if the company has issued 10,000 shares for Rupees 100 each, the fair market value is determined at Rupees 10 per share**.**

4.5. Income Tax Rule, 1962

11U. Meaning of expressions used in determination of fair market value.-

For the purposes of this rule and rule 11UA,-[***]

(a) [Clause (a) omitted by the Income-tax (Sixth Amendment) Rules, 2018, w.e.f. 24-5-2018. Prior to its omission, said clause, as substituted by the Income-tax (Fifteenth Amendment) Rules, 2012, w.e.f. 29-11-2012.]

(b) "balance-sheet", in relation to any company, means,-

(i) for the purposes of sub-rule (2) of rule 11UA, the balance-sheet of such company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by the auditor of the company appointed under section 224 of the Companies Act, 1956 (1 of1956) and where the balance-sheet on the valuation date is not drawn up, the balance-sheet (including the notes annexed thereto and forming part of the accounts) drawn up as on a date immediately preceding the valuation date which has been approved and adopted in the annual general meeting of the shareholders of the company; and

(A) in relation to an Indian company, the balance-sheet of such company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by auditor of the company appointed under the laws relating to companies in force; and

(B) in relation to a company, not being an Indian company, the balance-sheet of the company (including notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by the auditor of the company, if any, appointed under the laws in force of the country in which the company is registered or incorporated;]

(ii) [in any other case - [Substituted by Notification No. S.O. 4213(E), dated 30.8.2018]

(c) "merchant banker" means category I merchant banker registered with Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);

(d) "quoted shares or securities" in relation to share or securities means a share or security quoted on any recognized stock exchange with regularity from time to time, where the quotations of such shares or securities are based on current transaction made in the ordinary course of business;

(e) "recognized stock exchange" shall have the same meaning as assigned to it in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(f) "registered dealer" means a dealer who is registered under Central Sales Tax Act, 1956 or General Sales Tax Law for the time being in force in any State including value added tax laws;

(g) "registered valuer" shall have the same meaning as assigned to it in section 34AB of the Wealth-tax Act, 1957(27 of 1957) read with rule 8A of Wealth-tax Rules, 1957;

(h) "securities" shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts(Regulation) Act, 1956 (42 of 1956);

(i) "unquoted shares and securities", in relation to shares or securities, means shares and securities which is not a quoted shares or securities;

(j) "valuation date" means the date on which the property or consideration, as the case may be, is received by the assessee.

4.6. 11UA. Determination of fair market value.

(1) For the purposes of section 56 of the Act, the fair market value of a property, other than immovable property, shall be determined in the following manner, namely,-

(a) valuation of jewellery-

(b) valuation of archaeological collections, drawings, paintings, sculptures or any work of art-

(c) valuation of shares and securities-

(a) the fair market value of quoted shares and securities shall be determined in the following manner, namely,-

(i) if the quoted shares and securities are received by way of transaction carried out through any recognized stock exchange, the fair market value of such shares and securities shall be the transaction value as recorded in such stock exchange;

(ii) if such quoted shares and securities are received by way of transaction carried out other than through any recognized stock exchange, the fair market value of such shares and securities shall be,-

(a) the lowest price of such shares and securities quoted on any recognized stock exchange on the valuation date, and

(b) the lowest price of such shares and securities on any recognized stock exchange on a date immediately preceding the valuation date when such shares and securities were traded on such stock exchange, in cases where on the valuation date there is no trading in such shares and securities on any recognized stock exchange;

(b) the fair market value of unquoted equity shares shall be the value, on the valuation date, of such unquoted equity shares as determined in the following manner, namely:-

[Sub-clause (b) substituted by the Income-tax (Twentieth Amendment) Rules, 2017, w.e.f. 1-4-2018. Prior to its substitution, said clause, as amended by the Income-tax (Fifteenth Amendment) Rules, 2012, w.e.f. 29-11-2012]

The fair market value of unquoted equity shares = $(A+B+C+D - L) \times (PV) / (PE)$, where,

A = book value of all the assets (other than jewellery, artistic work, shares, securities and immovable property) in the balance-sheet as reduced by,-

(i) any amount of income-tax paid, if any, less the amount of income-tax refund claimed, if any; and

(ii) any amount shown as asset including the unamortized amount of deferred expenditure which does not represent the value of any asset;

B = the price which the jewellery and artistic work would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer;

C = fair market value of shares and securities as determined in the manner provided in this rule;

D = the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property;

L = book value of liabilities shown in the balance sheet, but not including the following amounts, namely:-

(i) the paid-up capital in respect of equity shares;

(ii) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;

(iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;

(iv) any amount representing provision for taxation, other than amount of income-tax paid, if any, less the amount of income-tax claimed as refund, if any, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;

(v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;

(vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;

PV = the paid up value of such equity shares;

PE = total amount of paid up equity share capital as shown in the balance-sheet;]

(c) the fair market value of unquoted shares and securities other than equity shares in a company which are not listed in any recognized stock exchange shall be estimated to be price it would fetch if sold in the open market on the valuation date and the assessee may obtain a report from a merchant banker or an accountant in respect of which such valuation.

(2) Notwithstanding anything contained in sub-clause (b) of clause (c) of sub-rule (1), the fair market value of unquoted equity shares for the purposes of sub-clause (i) of clause (a) of Explanation to clause (viib) of sub-section (2) of section 56 shall be the value, on the valuation date, of such unquoted equity shares as determined in the following manner under clause (a) or clause (b), at the option of the assessee, namely:-

(a) the fair market value of unquoted equity shares = {(A-L) (PE)} x (PV) where,

A = book value of the assets in the balance-sheet as reduced by any amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act and any amount shown in the balance-sheet as asset including the unamortized amount of deferred expenditure which does not represent the value of any asset;

L = book value of liabilities shown in the balance-sheet, but not including the following amounts, namely:-

(i) the paid-up capital in respect of equity shares;

(ii) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;

(iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;

(iv) any amount representing provision for taxation, other than amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;

(v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;

(vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;

PE = total amount of paid up equity share capital as shown in the balance-sheet;

PV = the paid up value of such equity shares; or

(b) the fair market value of the unquoted equity shares determined by a merchant banker [***] [Words] as per the Discounted Free Cash Flow method (1) (i) (ii) (a) (b) (1)

5.0. Mergers, Demergers, Amalgamations, and Merger & acquisitions (M&A)

5.1. Merger

Mergers and acquisitions are commonly done to expand a company's reach, expand into new segments, or gain market share. All of these are done to increase shareholder value.

A merger is an agreement that unites two existing companies into one new company. A merger usually involves combining two companies into a single larger company.

A merger happens when a company finds a benefit in combining business operations with another company in a way that will contribute to increased shareholder value.

In theory, a merger of equals is where two companies convert their respective stocks to those of the new, combined company. Corporate mergers and acquisitions can vary considerably in the time they take to be completed. There are a number of individual steps that need to be successfully completed by two public companies before they are legally combined into a single entity. There are many types of mergers.

5.1.1. Horizontal Merger: If two or more companies that are involved in the same business activity and are competitors merge together, it is called Horizontal Merger. If these companies are in direct competition for the same product type and market and merge together, it would be horizontal merger. The main benefit of this kind of merger is that it eliminates competition and helps the firm to increase its market share, customer base, revenue and profits.

Examples are 1. Lipton India & Brooke bond, 2. Bank of Mathura with ICICI Bank

5.1.2. Vertical Merger: It increases cost efficiency, as wasteful activities are removed from operations. If two or more companies that are involved in different stages of the operation of manufacturing merge together, it is called Vertical merger. If a supplier firm merges with a customer firm, it would be a vertical merger. This kind of merger is usually adopted to secure the supply of essential goods, and avoid any disruption and interruption in supply of goods.

They offer a high margin of profit and also cost saving, since manufacturers share is no longer there. This is opted for the smooth supply of raw materials to the acquiring party.
An example of vertical merger is a car manufacturer purchasing a tire company. Such a vertical merger reduces the cost of tires for the automaker and potentially expands its business by allowing it to supply tires to competing automakers. Another example is Reliance and FLAG Telecom group

5.1.3. Concentric Merger: If two or more companies that operate in the same industry but not in the same line of products of business merger together, it is called Concentric Merger. After such a merger, a new company is formed all together so as to become more competitive. This also helps increase the customer base. Such mergers offer opportunities to corporate firms to venture into other areas of the industries to reduce risk and more access to resources. Markets that were unavailable before would also be available now.

5.1.4. Conglomerate Merger: If two or more companies that have no common business areas or no common business activity merge together, it is called Conglomerate Merger. This merger is usually adopted to diversify into new industries, which helps reduce risks. The main risk of such a merger is the sudden shift in business operations. Such a merger is further divided into Pure Conglomerate and Mixed Conglomerate merger.
When both companies have nothing in common, business operations of both companies are unrelated, it is called Pure Conglomerate merger. When both companies merge together to expand customer or market base, it is called Mixed Conglomerate merger.
Example is Reliance Industries taking over Reliance Petroleum Limited (RPL), and L&T and Voltas Ltd. It can be a merger when the entity merges itself with the entity which provides raw material to complete the product or make finished goods. Examples are: Godrej Soaps Ltd. with Gujarat Godrej Innovative Chemicals Ltd.

5.2. Amalgamation

Section 2(1B) of the Income Tax Act, 1961 defines amalgamation as the “merger of either one or more companies with another company or merger of two or more companies to form one company in such a manner that:
All the property/liability of the amalgamating company/companies becomes the property/liability of amalgamated company. Shareholders holding minimum 75% of the value of shares in the amalgamating company (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.

Amalgamation is also an agreement between two or more corporate firms, to create a new entity by exchange of shareholding. It is a transaction where two or more corporations pool their resources and operations, and combined to form a single corporation. It can also refer to an event where the assets and liabilities of two or more corporate organisations are invested in another organisation, which is the merged organisation.

A merger is basically a mutually agreed decision of organisations for the joint ownership of a corporate entity. Merger in simple terms means the combination of two or more corporations into one single organisation. In India, laws do not use the term merger, rather they use the word “amalgamation”.

5.3. Demerger

The separation of a large company into two or more smaller organizations, particularly as the dissolution of an earlier merger. A demerger is a form of corporate restructuring in which the entity's business operations are segregated into one or more components. A demerger can take place through a spin-off by distributed or transferring the shares in a subsidiary holding the business to company shareholders carrying out the demerger. A de-merger allows a large company, such as a conglomerate, to split off its various brands or business units to invite or prevent an acquisition, to raise capital by selling off components that are no longer part of the business's core product line, or to create separate legal entities to handle

Demerger is the business strategy wherein company transfers one or more of its business undertakings to another company. Example: Wipro's information technology division is the best example of spin-off, which got separated from its parent company long back in 1980's.

5.3.1. Statutory demerger: Statutory demergers enable businesses to demerge without having to liquidate the original company. If the conditions for a statutory demerger are met, the distribution of assets to shareholders is an 'exempt distribution'. Other tax reliefs should reduce or remove other potential tax liabilities.

5.3.2. Liquidation demerger: Liquidation demerger involves the liquidation of a parent company and the transfer of its assets to two or more companies. ... The parent company is then dissolved, leaving two or more companies, each holding part of the assets of the original parent company.

5.3.3. Capital reduction demerger: During a Capital Reduction Demerger part of the group (“the demerged assets”) are split out under a new company owned by all or some of the original shareholders. The mechanism used to achieve the demerger is a reduction of part of the share capital of the original group and cancellation of those shares.

5.4. Mergers & Acquisition (M&A)

In acquisition procedure, one entity purchases the other entity. Generally, the acquiring entity is bigger than the acquired entity, whereas, in merger, new entity comes into existence but in the acquisition, no new entity is formed because the entity is acquired by the existing entity. In other words, Merger is the combination of two companies into one whereas acquisition is one company is taking over the other company.

An Acquisition means the process by which a company purchases another company or gains a majority in another organisation. One firm takes ownership of another corporate firm, because of this. Acquisitions are commonly known as Takeovers.

An acquisition takes place when an organisation's capital resources are utilized. Such capital resources include debt, cash, stock, etc. It involves two parties; the acquiring party and the acquired party. Acquiring party is the one that buys the majority of shares or gains ownership of the acquired company. Acquired party is the one that surrenders their majority of shares or ownership of the acquiring company. The latest trend in the Indian Corporate sector is the acquisition of foreign companies by the Indian businesses. There are many types of acquisitions.

Law deals with the purchase of one company by another (an acquisition), or the blending of two companies into a new entity (a merger). A merger is a process by which two companies join and one new company continues to exist. Corporate mergers and acquisitions can vary considerably in the time they take to be completed. This length of time may span from six months to several years. There are a number of individual steps that need to be successfully completed by two public companies before they are legally combined into a single entity.

5.4.1. Friendly Acquisition: In a friendly takeover, there is an agreement between the target company and the acquiring company. The acquiring company offers the target company which is accepted by the target company. This type of acquisition is generally done for the mutual benefit of both companies.

5.4.2. Hostile Acquisition: Unlike a friendly takeover, there is no agreement in a hostile takeover. The acquiring company secretly acquires the target company. Generally, in this kind of take-over, there is no or little mutual benefit. This kind of takeover takes place when the target company do not agree or gives its consent to the acquisition. Majority stake or ownership is taken secretly to force the acquisition. The merger is when two or more than two entity generally of the same size combine to form a new entity or joint organization, in merger both the entities may be equal partners.

5.5. Divestiture

Divestiture is the process of selling off subsidiary business interests or investments, or a divestiture is the partial or full disposal of a business unit through sale, exchange, closure at bankruptcy. The simplest form to understand divestiture is the sale of an asset by a company. It is essentially a way for a company to manage its portfolio of assets. As companies grow, they may find they are trying to focus on too many lines of business and they must close some operational units to focus on more profitable lines. Companies may sell off business lines if they are under financial pressure. By divesting, a company may be able to cut down its costs, repay its outstanding debt, reinvest and focus on its core business and streamline its operations. Thus, it can enhance shareholder value.

5.6. Restructuring

Restructuring is the corporate management term for the act of reorganising the legal, ownership, operational or other structures of a company for the purpose of making it more profitable or better organised for its present needs by Merger / amalgamation, Acquisition and takeover, Divestiture, Demerger, Reduction of capital, Joint venture and Buy back of securities

5.7. Major Mergers and Acquisitions

ITC acquired 100% equity shares of Sunrise Foods Pvt. Ltd.

Facebook invested in Jio Platforms for a 9.99% stake in Jio.

Zomato acquired Uber Eats via stock exchange and Uber got 9.99% of ownership in Zomato.

RIL acquired 60% of Vitalic Health and acquired 100% ownership in all Vitalic’s subsidiaries.

Merger of Hindustan Unilever Ltd with GlaxoSmithKline Consumer Ltd for Horlicks trademark.

Adani Green Energy Limited acquired SB Energy Holdings Limited (SB Energy India).

Thyrocare was bought by PharmEasy for $610 million.

Tata Sons acquired Air India. Of the sum, ₹2,700 crore was to be paid to the Government in cash and ₹15,300 crore of Air India’s debt was to be taken over by the Tata Sons.

Tata Group’s merger between **Air India and Vistara**, whereby Singapore Airlines (the owner of 49% of Vistara equity) will get ownership of 25.1% of the combined merged entity.

Adani Group – NDTV Merger - Adani Group, additionally purchased equity stake in NDTV.

HDFC Limited – HDFC BANK Merger – HDFC Bank and HDFC Ltd are merging to create a financial services conglomerate.

Acquisition of Ambuja Cement by Adani – Adani Group has acquired a stake in Ambuja Cements Limited from Holcim Group.

Year 2024:

Reliance's media companies have announced a merger with Disney India, resulting in their media assets to touch around $8.5 billion combined value.

Tech Mahindra merged with its wholly owned subsidiaries of the Company, Perigord Premedia (India) Pvt Limited and Perigord Data Solutions (India) Pvt Limited and Tech Mahindra Cerium Pvt Limited,.

July 2024 **- Adithya Birla group** (Ultratech Cements) acquires 55% shares in **India Cements**

Proposed Scheme of Arrangement amongst **ITC Limited** ('Demerged Company') and **ITC Hotels Limited** ('Resulting Company') will be in December 2024

6.0. Valuation Methods

One of the biggest steps in the M&A process is analyzing and valuing acquisition targets. This usually involves two steps:

Valuing the target on a standalone basis and valuing the potential synergies of the deal. To analyze the merged cash flow statement, start by adding both company's statements together. Once this is complete, review any changes you made to the tax rate or interest rate when analyzing the income statement. Valuing the company, either target on a standalone basis or by valuing the potential synergies of the deal has to be made.

1. Real estate value or Liquidation value
2. Relief from royalty
3. Book value
4. Enterprise value.
5. Multiples analysis
6. Discounted cash flows
7. Replication value
8. Comparison analysis
9. Influencer price point
10. Initial Public Offer valuation
11. Strategic purchase

6.1. Fair Market value of immovable assets

6.1.1. Net Asset Method: The net asset method values shares based on the company's net assets.

Net assets include tangible and intangible assets. Tangible assets consist of properties, inventory, equipment, receivables and so on.

Intangible assets include patents, trademarks, brand value, and intellectual property. One subtracts liabilities from the company's net assets to determine the net asset value (NAV) per share.

This approach is precious for companies with substantial assets, such as real estate or manufacturing firms. This asset based approach provides a snapshot of a company's intrinsic value based on the company's assets. It is based on its underlying assets and offers investors insights into its tangible worth beyond its market value.

6.1.2. Discounted cash flow method: Discounted cash flow, or DCF, is a common method of valuing investments that produce cash flows. It is also a common valuation methodology used in analyzing investments in companies or securities. The approach attempts to place a present value on expected future cash flows with the assistance of a "discount rate".

6.2. Valuation Date as per Rule 11 UA - Rule 11UA of the Income Tax prescribes the valuation methodology for determining the FMV of various types of assets (including unquoted equity shares).

For the purposes of section 56 of the Act, the fair market value of an immovable property, shall be determined as per the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property on the **"valuation date"**.

6.3. Land component: For the land component the prevailing circle rate / guideline rate / ready reckoner rate (meaning the stamp duty value) on the valuation date can be obtained in the prescribed manner and date from the local registration office, in which area the property is located.

6.4. Building component: The building component may be a Manufacturing / production building, offices, go-downs, ancillary structures like staff / labour quarters, toilet blocks, power room, etc. Hence, cost approach is duly applied in determining the fair market value of the building embracing the replacement cost method.

6.5. Procedure to be assumed: Subsequently, this scheming is required by the reviewing authority of the central government departments under both Companies Act / Income Tax Act, the registered valuer can exercise by instigating the standard Plinth Area Rate method. Both CPWD & State PWD rates are available for the location and construction period. It is advisable to implement CPWD standard Plinth Area Rate in general.

6.6. Depreciation under Companies Act / Income Tax Act

As per section 32(1) of the IT Act depreciation should be computed at the prescribed percentage on the WDV of the asset, which in turn is calculated with reference to the actual cost of the assets. In the context of computing depreciation, it is important to understand the meaning of the WDV and the actual cost.

If the asset is acquired in the previous year the actual cost shall be treated as WDV. If the asset is acquired in the earlier year, the WDV shall be equal to the actual cost incurred less depreciation permitted or allowed under the law.

6.7. Companies Act Section 123 - Schedule II - Useful lives to compute depreciation

PART 'A'

Depreciation is the systematic allocation of the depreciable amount of an asset over its useful life. The depreciable amount of an asset is the cost of an asset or other amount substituted for cost, less its residual value.

The useful life of an asset is the period over which an asset is expected to be available for use by an entity, or the number of production or similar units expected to be obtained from the asset by the entity.

For the purpose of this Schedule, the term depreciation includes amortization.

Without prejudice to the foregoing provisions of paragraph 1,-

(i) The useful life of an asset shall not ordinarily be different from the useful life specified in Part C and the residual value of an asset shall not be more than five per cent of the original cost of the asset:

Provided that where a company adopts a useful life different from what is specified in Part C or uses a residual value different from the limit specified above, the financial statements shall disclose such difference and provide justification in this behalf duly supported by technical advice

PART 'B'

The useful life or residual value of any specific asset, as notified for accounting purposes by a Regulatory Authority constituted under an Act of Parliament or by the Central Government shall be applied in calculating the depreciation to be provided for such asset irrespective of the requirements of this Schedule.

PART ‘C’

Subject to Parts A and B above, the following are the useful lives of various tangible assets

Nature of assets	Useful Life
I Buildings [NESD]	
(a) Buildings (other than factory buildings) RCC Frame Structure	60 Years
(b) Buildings (other than factory buildings) other than RCC Frame Structure	30 Years
(c) Factory building	-do-
(d) Fences, wells, tube wells	5 Years
(e) Others (including temporary structure, etc.)	3 Years
V Furniture and fittings [NESD]	
(i) General furniture and fittings	10 Years
(ii) Furniture and fittings used in hotels, restaurants and boarding houses, schools, colleges and other educational institutions, libraries; welfare centres; meeting halls, cinema houses; theatres and circuses; and furniture and fittings let out on hire for use on the occasion of marriages and similar functions.	8 Years

Notes.—

1. “Factory buildings” does not include offices, go-downs, and staff quarters

2. Where, during any financial year, any addition has been made to any asset, or where any asset has been sold, discarded, demolished or destroyed, the depreciation on such assets shall be calculated on a *pro rata*-basis from the date of such addition or, as the case may be, up to the date on which such asset has been sold, discarded, demolished or destroyed.

The following information shall also be disclosed in the accounts, namely:—

3. (*i*) depreciation methods used; and (*ii*) the useful lives of the assets for computing depreciation, if they are different from the life specified in the Schedule.

4 (a) Useful life specified in Part C of the Schedule is for whole of the asset and where cost of a part of the asset is significant to total cost of the asset and useful life of that part is different from the useful life of the remaining asset, useful life of that significant part shall be determined separately.

6.8. Methods of Calculating Depreciation

6.8.1. Declining balance method: This method is also known as constant or equal percentage method of depreciation. The constant percentage method is referred to as the linear method.

Total Depreciation = $(1 - (1 - rd)^{m})$

rd = Rate of Depreciation = 1/N, M = Building age, N= Total life.

In this case, no scrap value is assumed.

In accounting terms, depreciation is used, for writing off the value of the asset over its useful life. It is the decrease in the value of the fixed asset due to use, time period and technological obsolescence.

This reducing balance method charges depreciation at a higher rate in the earlier years of an asset. The amount of depreciation reduces as the life of the asset progresses.

Depreciation per annum = (Net Book Value - Residual Value) x Rate%, where,

Net Book Value is the asset's net value at the start of an accounting period. It is calculated by deducting the accumulated (total) depreciation from the cost of the fixed asset.

Residual Value is the estimated scrap value at the end of the useful life of the asset. Rate of depreciation is defined according to the estimated pattern of an asset's use over its life term.

6.8.2. Straight line depreciation method: this method allocates the depreciable base of a property unit uniformly throughout its service life except when the estimate of service life is changed. Depreciation per cent D is calculated as:

$$D = \frac{\text{(Total life - Future life)}}{\text{Total life}} \times \text{(100\% less salvage value)}$$

This is a simple equation which is used for estimating depreciation of existing buildings. For estimating depreciation by this method, the total life, future life and percentage salvage value are necessary.

In this method of estimation of the total life of the structure there are no fixed rules for estimating the lives of various types of structures which depend upon many factors such as quality of construction, maintenance, etc.

This fixed percentage depreciation method is more widely used in depreciation calculations than any other. It is the one method most generally used for determining depreciation for tax purposes and for profit and loss financial statements. It is the method prescribed by most agencies.

7.0. Valuation Report

Registered Valuer must obtain information from the subject company for valuation of the asset class to be valued, before the assignment. He must collect and disclose all the details of the inputs, calculation, basis, assumption as a part in his report.

- ❖ Background information in respect of the assets
- ❖ Purpose of valuation
- ❖ Identity of the valuer & experts involved in the valuation.
- ❖ Date of appointment, valuation date, date of report
- ❖ Disclosure of valuer, interest or conflicts, etc.
- ❖ Procedure adopted in valuation, Valuation Standard
- ❖ Conclusions

7.1. Procedure adopted in Valuation under Companies Act - Rule 11UA of the IT Act

Details of immovable properties should be given in the format for **each unit (location wise)** incorporating the below

Property-wise listing of all immovable properties in each location

1. Name of the unit: --------------

2. Location of the unit: --------------

3. Land – Freehold / leasehold

a. On physical inspection, identification of the Survey numbers, Plot Nos, Ward, Block, Village/ Corporation, Taluk & District

b. Property wise stamp duty rate duly obtained from the concerned stamp duty authority of that location on the valuation date with the remarks of adopting the rates. (The value adopted or assessed or assessable by the authority of the Government for the purpose of payment of stamp duty in respect of the immovable property.

c. FMB, Topo-sketch, Sanction plan/ Extract issued by village Panchayat / Town /Corporation, Building Completion Certificate if available, Electricity service, connected load, to be taken as reference

4. Buildings – Factory buildings, Non- factory buildings (offices, go-downs, ancillary structures like staff / labour quarters, toilet blocks, power room, etc.)

a. In case of buildings mention the postal address (Flat No / House No/Door No), Floor, Building Name, location wise

3. Construction work under progress:

a. Name of the CWIP

b. Construction type

c. completion status

4. Property details should match with Gross Block & Net Block as per the Financials of the division (location wise)

5. Annexure II - Statement showing fair market value of Immovable Property as per rule 11(UA)

8.0. Conclusion

A valuer is expected to assume the following responsibilities while carrying out a valuation engagement.

He must exercise due diligence and care, make an impartial, true and fair valuation of assets that are being valued and also execute his talent in the valuation in accordance with the prescribed rules.

The government’s proposal to develop the Indian economy has increased the mergers & acquisitions of companies’ deals in India.

Along with this, interest of foreign Investors to invest in Indian companies and Indian market has also increased.

This would help India become a hub for foreign cross-border mergers.

Though it has increased competition among Multi-National Companies and local businesses which has also led to the downfall of many Indian companies.

We, the valuers have a diversified valuation field under the Companies Act and also have a significant role in contributing to the Indian economy.

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