

**TOPIC:**

**M&A in Indian Pharmaceutical Industry: Covid-19 Pandemic giving it an  
Edge**

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## **ABSTRACT**

*Around the globe, India is the largest supplier of the generic drugs and consists of a huge number of scientists and medical professionals who have the potential of taking the Indian Pharma Industry to a great height with their performance and capacity therefore, India holds quite an important position in the pharmaceutical market globally. Though the Covid-19 Pandemic disrupted the functioning of industries around the globe Indian Pharmaceutical Industry took control over the distressed situation above factors paved way for better deals of M&A for Indian Pharma Companies and India has emerged as a bright spot in order to crack better deals in Pharmaceutical sector in the year 2020.*

*The basic aim behind writing this paper is to analyse growth of M&A in the Pharmaceutical Industry and the impact of outbreak of the pandemic on the M&A deals especially for Indian Pharmaceutical sector. The researcher also lays emphasis on the implications of the situation created to the outburst of the pandemic in the future.*

***Keywords: Merger & Acquisition, Pharmaceutical Industry, Covid-19***

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## CHAPTER I: INTRODUCTION

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In India considering various data and the researches that have already been conducted it can invariably be said the the merger & acquisition activities has been quite steady and on the the growing tangent between the years 2015 to 2019. Depending upon the various analysis and data gathered, it can be stated the Indian Market has seen more than around 3600 M&A transactions which could amount to around 310 billion USD.<sup>1</sup>

Most of the transactions took place in the sectors of enery, telecom and industrial goods which account to around 60% of such M&A transactions in India. Naming few of the biggest deals in the history of M&A could be Walmart's 16billion USD acquisition of Flipkart in 2018, the Adani Transmission's 3billion USD acquisition of Reliance Power distribution business in the year 2018 and the first half of 2020 itself saw a huge deal in M&A when Facebook invested around 5700 billion USD in Jio Platforms.<sup>2</sup> This particular transaction in the first half of 2020 itself showed a huge leap in the Indian market and attracted the interest of various global investors in the Indian market in order to indulge in benefitting M&A transaction.

After the second time election of Modi Government in India to form the Central Government, the investors around the globe developed trust in the Indian market. The policies that were introduced and the stringent steps that were taken by the Central Government to develop a fair market boosted foreign investment in India and due to the IBC Code, 2016 there was development seen in the M&A transaction as well. The government provided relaxation in FDI norms and the ease of business led to faster increase in the M&A transaction.<sup>3</sup>

In the year 2019, this increase in number of M&A transaction took a back step due to the ongoing trade issues globally namely, the US-China trade issues, Hong Kong situation, Brexit and the drone strike in Saudi drew the trade market towards recession. These issues also created a rift in the Indian market and the M&A transactions that were surging at one point in time in the Indian market boosting the Indian economy as well took a back seat.

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<sup>1</sup> *Global Pharma looks in India: Prospects for growth*, PWC, (Mar', 30, 2021, 10:00PM)  
<https://www.pwc.com/gx/en/pharma-life-sciences/pdf/global-pharma-looks-to-india-final.pdf>

<sup>2</sup> Soumeet Sarkar, *Facebook to Invest in Ambani's Jio Platform*, (Mar', 30, 2021, 10:00PM)  
<https://www.bloombergquint.com/business/facebook-jio-deal-facebook-to-invest-dollar57-billion-in-mukesh-ambanis-jio-platforms>

<sup>3</sup> Id.

After the trade rift around 2019 which had put a break on the M&A transactions, the 2020, Covid-19 pandemic in the world has even not left the Indian market free of its effects. Many of the M&A transactions which could be beneficial for the Indian economy to a great extent have been stopped due to this pandemic effect including the privatization of Air India.

In Indian legislations, the term “*Merger*” has not been specifically defined anywhere under the Companies Act, 2013 or the IT Act, 1961. As per the general description of the term deduced through various researches, it can be defined as the combination of two or more companies or entities as one single entity which results in the combination of the assets, liabilities, etc in one name. The two entities merging generally have an objective of boosting their business, acquiring technology, getting access to different sectors in the market.

The Income Tax Act, 1961 defines the term “*amalgamation*”<sup>4</sup> however as merger of one or more companies with another entity to come under the name of one particular company. In India, *Sections 230-234 of the Companies Act, 2013* talks about the *schemes and arrangements or compromise*<sup>5</sup> between companies or its creditors, etc to complete a merger. Generally, mergers are of six kinds namely, horizontal merger, vertical merger, congeneric merger, conglomerate merger, cash merger and triangular merger.

The legislations in India with regards to any sort of arrangement between companies to merger as one is widely defined which brings under the umbrella all and any sort of arrangement or corporate restructuring that a company can undergo in India. In order to proceed with the M&A transaction, the companies would first need to make an application to the NCLT having jurisdiction over that company at that point in time.

The Covid-19 Pandemic breakout across the globe has disrupted the market and economy of many countries especially the developing nations but the Indian Pharmaceutical Industry is on the verge of holding a major chunk of the global market in 2020. There have been several researches conducted wherein it is analysed that the Indian Pharma can grow about 15-20% and might raise business to around 74 billion USD in 2020.<sup>6</sup> The Pharmaceutical Industry has been constantly seeing trends of mergers between multinationals in India which is also increasing business between Indian market and the Foreign Investors and the Pharma

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<sup>4</sup> Section 234, Companies Act, 2013.

<sup>5</sup> Id.

<sup>6</sup> *Covid-19 Challenges for the Indian Economy: Trade and Foreign Policy Effects*, (Mar', 30, 2021, 10:00PM) [https://aic.ris.org.in/sites/default/files/Publication%20File/COVID-19%20Report%202020%20Final%201-9\\_section-min\\_compressed.pdf](https://aic.ris.org.in/sites/default/files/Publication%20File/COVID-19%20Report%202020%20Final%201-9_section-min_compressed.pdf)

companies of India already have been huge outsourcing partners for the Pharma Companies around the world which was also seen in the beginning of the Pandemic and the Research & Development in India is gradually developing and innovating in its own self which is attracting the attention of the foreign investors as well.

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## CHAPTER II: PHARMACEUTICAL INDUSTRY: AN OVERVIEW

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### **2.1 Rapid Growth of the Industry**

There have been various researches and data collected and analysing those it can be clearly reinstated that the Indian economy is rapidly getting better and bigger. Around the globe, India is the largest supplier of the generic drugs and the pharmaceutical industry of the country supplies around 50% of the vaccines and fulfils the demands globally and at the same time provides US with 40% of the generic demands and 25% of all medicines in UK as well.<sup>7</sup>

India consists of a huge number of scientists and medical professionals who have the potential of taking the Indian Pharma Industry to a great height with their performance and capacity therefore, India holds quite an important position in the pharmaceutical market globally. Currently, if we analyse the researches that have been conducted we can deduce from those that the Indian Pharmaceutical Market currently provides 80% of the drug combatting AIDS globally.

The reports suggest that the Indian Pharmaceutical Sector is expected to surge to around 100billion USD and by the end of 2025, the Indian medical device market would grow to the expected cost of around 25billion USD. The FY20 shows that the export from Indian Pharma Market adds up to around 20.70billion USD which includes export of drugs in bulk, sugical and herbal products, etc.<sup>8</sup>

The biotechnology industry in India comprises of the bio-agriculture, the pharma sector, the bio-industry, etc which are expected ti increase at the rate of around 30% on an yearly basis in order to reach to the target of becoming market of 100billion USD by the year 2025

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<sup>7</sup> *World Investment Report, 2020*, (Mar', 30, 2021, 10:00PM) [https://unctad.org/system/files/official-document/wir2020\\_en.pdf](https://unctad.org/system/files/official-document/wir2020_en.pdf)

<sup>8</sup> Id.

wherein the domestic market reached to the turnover of around 18.12billion of USD in 2018 and later to 20.03billion by 2019 which clearly shows the pace towards growth and the upward graph.

In order to summarise the reason behind such a surge of rapid growth of the Pharmaceutical Market it can be stated that the industry plays a key role globally due to few of its unique characters namely, the dominance over the branded generics, the local entities play an important role in developing the capabilities of the market globally, the price of such drug a low as well as its manufacturing cost seems low on comparison in other countries. While these points have their own loopholes but it makes India rank third in context of volume production globally.

## **2.2 Expansion of the Pharma Industry**

Considering the various researches that have already been conducted and the data collected, it can be stated that the Indian Pharmaceutical Industry is steadily proceeding towards long term growth and it was earlier guessed by various researchers that the Indian Pharma market would rank in top 10 markets globally.

Mckinsey had conducted a research on Indian Pharma Market to analyse the market situation by the year 2015 around when India was undergoing some major reformations and the trajectories have shown nothing different but whatever was expected through the Mckinsey research.<sup>9</sup>

In the recent developments of 2020, the Government has also given its agreement to amend the existing FDI Policy with respect to the pharmaceutical sector to allow Foreign Direct Investment upto 100% under the automatic route for the manufacture of medicinal utilities, etc which are also subject to a few conditions and due to this, the drug industry in India gained FDI influx of around 16.50billion USD around March to April 2020 as per the data released by DPIIT.

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<sup>9</sup> *India Pharma 2020: Propelling Access*, (Mar', 30, 2021, 10:00PM)  
[https://www.mckinsey.com/~media/mckinsey/dotcom/client\\_service/Pharma%20and%20Medical%20Products/PMP%20NEW/PDFs/778886\\_India\\_Pharma\\_2020\\_Propelling\\_Access\\_and\\_Acceptance\\_Realising\\_True\\_Potential.ashx](https://www.mckinsey.com/~media/mckinsey/dotcom/client_service/Pharma%20and%20Medical%20Products/PMP%20NEW/PDFs/778886_India_Pharma_2020_Propelling_Access_and_Acceptance_Realising_True_Potential.ashx)

The Covid-19 Pandemic breakout across the globe has disrupted the market and economy of many countries especially the developing nations but the Indian Pharmaceutical Industry is on the verge of the holding a major chunk of the global market in 2020 which led to a lot of amendments as per the demands of the environment and the market.<sup>10</sup> Few of such developments leading to the expansion are as stated in the various reports are like in the month of April, 2020 affordable medicines achieved a record turnover of around 7.38million USD under the Pradhan Mantri Yojna, in the month of May, 2020 Jubilant Ltd. Entered into an agreement which was non-exclusive licencing agreement with Gilead Inc which is an US based medicine manufacturing company to manufacture and the sell the anticipated and most awaited as well as needed vaccine for Covid-19 named “*Remdesivir*” in India along with other 127 countries around the globe.<sup>11</sup>

### **2.3 Dominance of Private Companies over Government Healthcare Facilities: A Myth?**

In the wake of the global Covid-19 pandemic there have been many myths unfolded and one such exposed belief was the dominance of the private companies providing the healthcare facilities over the government initiated healthcare mechanisms. The pandemic also exposed the level of health infrastructure of countries around the globe and India has been no exception to that.

There had been challenges coming in manifolds as the Covid-19 crisis increased its spread around the country which was gradually leading to the fall of the healthcare systems and initially the way of handling the situation was obviously not adequate.

In this entire struggle the major setback was seen in the role of private sector and the expectation from the private companies in order to get control over the national crisis crippled and there have been several news reports stating the retrogradation of the private healthcare sector in their nature. The reports state that they denied care at several points, invariably higher fees were taken and several other acts which only showed they worked for

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<sup>10</sup> Ramgovind Kuruppath, *Covid-19 and M&A in India*, (Mar', 30, 2021, 10:00PM)  
<https://corporate.cyrilamarchandblogs.com/2020/04/covid-19-and-ma-in-india-navigating-risks-and-understanding-opportunities/>

<sup>11</sup> Supra Note 10.

their own company's benefit rather than providing help in strengthening the government in overcoming the situation created due to the pandemic outbreak.<sup>12</sup>

There are several myths associated with the private healthcare sector and few of them are like the reach of private sector is even to places where government benefits have not been provided whereas when actual reports are read through and analysed it can be clearly deduced that the growth of private pharma industry might have moved ahead positively on the trajectory in the past few years, the growth was mostly in the metropolitan area of the country which was also recognised by the National Health Policy, 2017.<sup>13</sup> Another major misconception lies in the statement that the Private Sector delivers around 80% of care and there are many other such myths still associated with the belief of private companies having dominance over government provided facilities.

However, the Government can be seen exercising its diligence in order to overcome the situation and has launched so many new policies to take a hold over the complete situation though there have been made several contrary remarks from the critics who find these initiatives and policies too little and at the same time less but it will only be clear in the future if such steps taken by the government in the wake of the Covid-19 pandemic resulted in favour of the government or otherwise.

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## CHAPTER III: INDIAN PHARMA INDUSTRY: AN OVERVIEW

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### **3.1 Indian Domestic Market: Background**

Indian Pharmaceutical has seen quite a good growth since a last decade now where in 2009 the pharmaceutical industry was worth around 11 billion dollar USD there has been forward growth only in the trajectory since then. There have been several researches conducted and data collected which showed already that the number would rise to around 30 billion USD by

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<sup>12</sup> Charu Sehgal, *Pharmaceutical Industry expected to see positive growth this year*, (Mar', 30, 2021, 10:00PM) <https://health.economictimes.indiatimes.com/news/pharma/pharmaceutical-industry-expected-to-see-positive-growth-this-year-charu-sehgal-deloitte-india/75639652>

<sup>13</sup> *National Health Policy, 2017*, (Mar', 30, 2021, 10:00PM) [https://www.nhp.gov.in/nhpfiles/national\\_health\\_policy\\_2017.pdf](https://www.nhp.gov.in/nhpfiles/national_health_policy_2017.pdf)

2020. The Indian pharma market has been rising rapidly and about 70% of the market is covered by the pharma industry only.<sup>14</sup>

The Federal Government in the year 1972 has enacted a law that would allow the local manufacturers of the market to produce drugs that were yet to get their patents and others without patent as well when they use different method of manufacturing the drug. During that time, the patenting system of the countries were not so much developed during then which helped a lot in growth of the domestic pharmaceutical market and the manufacturers developed novel drugs in that pretext which developed the market in manifolds.<sup>15</sup>

The generic houses of India gradually can be seen entering into strategic alliances with the pharmaceutical companies around the world in order to strengthen the generic portfolio for the Indian as well as the foreign entities to make generic drugs together. The companies like Pfizer can be seen entering into alliances with the Indian companies like Aurobindo, etc in order to promote and grow their business in the international markets as well. The Indian companies are not just trying to make alliances with the foreign pharmaceutical companies but are also trying to set up their own subsidiaries in the foreign lands.<sup>16</sup>

In the last few years, the Indian Pharmaceutical companies like DRL, CIPLA, and Lupin etc have stretched their arms in the International market as well and there are other companies like Glenmark, Aurobindo, etc who have their wholly owned subsidiaries in various countries around the world. DRL has business around the world and about 80% of its sales consists from the international market only. DRL had also acquired a German Pharma company named Betapharm and as a result of the acquisition DRL became one of the largest generic company globally which is also currently the largest supplier of generic drugs to US. In the year 2008 there had been around 57 merger and acquisition between the pharmaceutical companies involving an Indian Pharma company and since then there has only been a growth in M&A transactions with respect to the foreign companies and Indian pharma companies.<sup>17</sup>

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<sup>14</sup> *Indian Pharmaceutical Industry*, (Mar', 30, 2021, 10:00PM) <https://www.ibef.org/industry/pharmaceutical-india.aspx>

<sup>15</sup> Id.

<sup>16</sup> Supra Note 14.

<sup>17</sup> *Pharmaceuticals, 2019*, (Mar', 30, 2021, 10:00PM) <https://www.ibef.org/download/pharmaceuticals-mar-2019.pdf>

### **3.2 Growing Research and Development**

India accounts to around 1/7<sup>th</sup> of the world's population wherein it is home to around 1.3billion population which can be considered as an advantage in many instances but at the same time to maintain the health infrastructure of a country with such a population can be a difficult task for the Government. The data and government reports show that the pharmaceutical market in India had the turnover of around 20.03billion USD in the year 2019 wherein it was around 18.12billion USD in the year 2018 which was 9.8% surge in one year.<sup>18</sup>

Indian Pharmaceutical Market in the year 1969 accounted to around 5% of the domestic market and the global market had control over the market accounting to almost 95% of the share whereas data and reports show that the scenario by 2020 has changed upside down. Currently, Indian Pharmaceutical has around 85% control over the market. The pharma industry in India is regulated by the Ministry of Health & Family Welfare.

In the last few decades, the investment in the R&D infrastructure started to take a toll especially the homegrown ones. Due to the R&D wing of Indian pharma industry being following standard norms, practices, etc, helped the R&D wing to do exceptionally well and reach to the position it currently holds today globally. The R&D backup has facilitated the Indian pharmaceutical industry to grow rapidly as it helps to a great extent in manufacturing drugs at cheaper costs which otherwise would not be so easily possible.<sup>19</sup>

In the mid 1990s, the Indian government initiated a set of reforms and set of policies with regards to the Indian Pharmaceutical market which had the objective of mainly strengthening the private sector in research & development wherein the patent policy was of utmost importance for the reformation. The reforms that were initiated by the government slowly and gradually helped in the rise of research and development sector of the pharmaceutical market and as a result Indian markets started making certain new drugs which turned out to be of great benefit of the Indian pharmaceutical market which attracted the attention of the foreign investors towards the Indian Pharma Companies as well as the Foreign Pharma Companies.

The new developments in the Indian pharmaceutical industry and the strengthening of the manufacturing of generic drugs wherein many countries like US and UK got share of generic

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<sup>18</sup> Reji K Joseph, *The R&D Scenario in Indian Pharmaceutical Industry*, (Mar', 30, 2021, 10:00PM) [http://ris.org.in/images/RIS\\_images/pdf/dp176\\_pap.pdf](http://ris.org.in/images/RIS_images/pdf/dp176_pap.pdf)

<sup>19</sup> Supra Note, 18.

drugs from India resulted in the investment of foreign MNCs in the R&D sector as well and this led to the increase in the M&A transactions between the foreign companies and the Indian pharmaceutical companies.

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## **CHAPTER IV: LEGISLATIONS ON M&A TRANSACTIONS IN INDIA: AN OVERVIEW**

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### **4.1 Legal Framework: Companies Act, 2013**

Acquisitions in India are regulated by a number of provisions in the Indian Companies Act of 2013.<sup>20</sup> Acquisitions of shares can be via acquisition of existing shares of the target, or by subscription to new shares which are issued by the target. Talking about the transferability of shares, there are certain restrictions which are put on the transfer of shares. In case of private companies, the restrictions on transfer of shares are contained in the articles of association of the company.

The *section 230*<sup>21</sup> of the Act, read with Rule 3 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (made effected from February 2020), permits the shareholders of unlisted companies holding at least 75% of the securities with voting rights to make an offer for acquisition of any part of the remaining shares in such company, pursuant to an application of compromise or arrangement to be filed before the NCLT. When the offer for acquisition is approved by the NCLT, the minority shareholders would mandatorily be required to sell their shares to the acquiring shareholders. The mentioned method of squeeze out is only available in case of unlisted companies whereas in case of listed companies, they will be subjected to the regulations prescribed by SEBI in this regard.

The scheme of capital reduction is given under *section 66* of the Indian Companies Act, 2013. According to the provision, a company is permitted to reduce its share capital and prescribe the process for the same. There is a basic requirement for approval of such a

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<sup>20</sup> *Mergers and Acquisition, 2020* (Mar', 30, 2021, 10:00PM)

[https://www.nishithdesai.com/fileadmin/user\\_upload/pdfs/Research%20Papers/Mergers\\_Acquisitions\\_in\\_India.pdf](https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Mergers_Acquisitions_in_India.pdf)

<sup>21</sup> *Section 230, Companies Act, 2013.*

scheme of capital reduction. It must be approved by (i) the shareholders of the company through passing a special resolution (ii) NCLT by an order confirming the reduction. The creditors are given the right to object to the scheme for capital reduction.<sup>22</sup> The NCLT approves the reduction only if the debt owed to the objecting creditors is safeguarded. Furthermore, the NCLT also needs to give notice of application of reduction of capital to both the central government and SEBI. They will have a period of 3 months to file objections, if any. There is also a requirement to publish the NCLT order allowing the reduction in capital of a company.

Therefore, considering the enactment of these legislations has made the process of M&A fair and the regulations provided clarity over the adaption of M&A for the benefit of companies involved as well.

#### **4.2 Legislations other than Companies Act, 2013**

The provisions of Chapter V contained in ICDR regulations apply in cases of an acquisition of an Indian listed company wherein the issue of new equity shares or securities convertible into equity shares is involved. The Preferential Allotment Regulations set a floor price for an issuance.

In case the equity shares of the issuer have been listed on a recognized stock exchange for a period of 26 weeks or more as on the relevant date, the floor price of the shares shall be higher of the average of the weekly high and low of the volume weighted average prices of the stock of the company either (a) over a 26 week period; or, (b) a 2 week period preceding the relevant date<sup>23</sup>. In case the equity shares of the issuer have been listed on a recognized stock exchange for a period of less than 26 weeks as on the relevant date, the floor price of the shares shall be higher of (a) the price at which the equity shares were issued via initial public offer or value of price per share arrived under the scheme pursuant to which the equity shares of the issuer were listed; or (b) the average of the weekly high and low of the volume weighted average prices of the stock of the company during the period the stock has been listed prior to the relevant date; or (c) the average of the weekly high and low of the volume

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<sup>22</sup> Section 234, Companies Act, 2013.

<sup>23</sup> Section 164(1) of ICDR.

weighted average prices of the related equity shares quoted on a recognized stock exchange during the two weeks preceding the relevant date<sup>24</sup>.

The situation where the acquisition is contemplated by way of issue of new shares, or the acquisition of existing shares or voting rights, of a listed company, to or by an acquirer, then in that case, the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or say the Takeover Code will be applicable. The Takeover Code is the legislation which regulates both direct and indirect acquisition of shares or voting rights in, and control over a target company.<sup>25</sup> The main objectives of the Takeover Code are to provide the shareholders of a listed company with sufficient information about an impending change in control of the company or substantial acquisition by an acquirer and also provide them with an option to exit in case they do not want to sustain their shareholding in the company.

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## **CHAPTER V: M&A IN INDIAN PHARMACEUTICAL INDUSTRY: WAY FORWARD**

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### **5.1 Trend of M&A: Indian Perspective**

The Indian Pharmaceutical Companies eventually due to liberalization started marketing the generic drugs manufactured in India to US and countries in Western Europe and if we take the current statistics from various researches, it can be seen that the Indian companies currently export to around 65 countries around the globe. US is still the biggest importer of Indian generic drugs and though Indian companies are doing great they do face certain challenges as well.<sup>26</sup> These challenges are due to the competition given from Chinese and certain European manufacturers, lack of tariff barriers, lessening of profits in the generic

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<sup>24</sup> Section 164(2) of ICDR.

<sup>25</sup> *7 steps to successful merger acquisition* (Mar', 30, 2021, 10:00PM) <http://huconsultancy.com/7-steps-to-successful-merger-acquisition/>

<sup>26</sup> *M&A value in the Pharma Sector across India*, (Mar', 30, 2021, 10:00PM) <https://www.statista.com/statistics/735827/india-value-of-mergers-and-acquisitions-in-pharmaceuticals-sector/#:~:text=In%202018%2C%20India's%20pharmaceutical%20sector,to%20over%20four%20billion%20dollars.>

manufacture and selling, rising of other big companies around the globe might stand a competition for the Indian Pharmaceutical firms.

Due to all these reasons, the Indian Pharma companies are now strategically planning to strengthen the generic manufacturing so that none of the developing competitions can harm the business of Indian Pharma market. The Indian companies are therefore, planning to produce super generic drugs, make new innovations, etc so that the Indian Pharmaceutical Companies can compete with the rising global pharmaceutical companies.

The major advantage India has is the huge domestic market and the point India has the highest number of approved plants of US FDA which allows setting up of plants outside US as a result it offers low cost manufacture.<sup>27</sup> The companies in order to grow more try to seize opportunity through strategic mergers & acquisitions. The Indian companies have very well analysed the demands in and around the world and have hit the right point at the right time by aiming at expanding their market as well as the production capacity by opting for merger and acquisition with different foreign companies as well.

The Indian companies have also been keen towards developing their R&D sector in order to attract the attention of foreign investors and companies so that there are increased chances of better M&A opportunities and at the same time Indian companies as prefer M&A in order to strengthen the two entities which come together to grow better in the market would benefit more and stand firm against the competitors as well. The Indian companies are preferring M&A with foreign entities to improve the global competition and enter into new markets as per reports and data based on various researches.<sup>28</sup>

## **5.2 Leap in M&A between Pharma Companies in 2020**

The beginning of 2020 has not been good at all for the world and there can be hardly any sector that has not been affected due this Covid-19 Pandemic spread around the globe. Though there are several companies which could not cope up and prevent the effects from this pandemic. The companies in India with strong balance sheets have somehow prevented

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<sup>27</sup> Shaista Sami, *M&A in India's Pharmaceutical Sector*, (Mar', 30, 2021, 10:00PM)  
[https://www.researchgate.net/publication/321285495\\_Mergers\\_and\\_Acquisitions\\_in\\_India's\\_Pharmaceutical\\_Sector](https://www.researchgate.net/publication/321285495_Mergers_and_Acquisitions_in_India's_Pharmaceutical_Sector)

<sup>28</sup> *Carlyle sees India M&A accelerating in Pharma*, (Mar', 30, 2021, 10:00PM)  
<https://economictimes.indiatimes.com/markets/stocks/news/carlyle-sees-india-ma-accelerating-on-pharma-technology-deals/articleshow/77070601.cms?from=mdr>

the effect of coronavirus pandemic and are moving towards overseas acquisitions in order to transform the losses into valuable assets which were harmed by the pandemic outbreak.

Though the pandemic for some time in the start had put a stop on the M&A deals and as a result the downfall was seen around 23% believing the various reports and data analysed earlier in the first quarter of 2020 but in the last few months there can be seen recovery signs as there can be seen companies moving ahead in cracking a few M&A deals.

The trend shows that global investors are keen in following the footprints of Facebook and Google in order to capitalise funds in the country as per the reports of Carlyle Group.<sup>29</sup> Researches show that Asian countries have become investment destination of many countries around the globe currently.<sup>30</sup>

There have been two big announcements made by US companies which involves deal with two Indian Companies one of which is a pharmaceutical company. The deal announced mentions the acquisition of 20% stake in the Pharmaceutical Company of Ajay Piramal as per the reports. The pandemic hit situation has somehow paved way for better deals of M&A for Indian Pharma Companies and India has emerged as a bright spot in order to crack better deals in Pharmaceutical sector in the year 2020.<sup>31</sup>

There have been several ongoing issues between US and China since quite a few months now which can be clearly deduced from various reports as well and the rising tensions between the two countries has paved way for India to utilise the opportunity arising out of the situation as US not being in good relations with China would not like to trade for China goods or form alliances with Chinese companies rather would promote supply chain with India this would be a great opportunity for India companies to make good deals for strengthening their position in the Pharmaceutical Industry globally.<sup>32</sup>

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<sup>29</sup> Id.

<sup>30</sup> *A new Prescription: How Covid-19 has changed Indian Pharma*, (Mar', 30, 2021, 10:00PM) <https://thewire.in/business/how-covid-19-has-changed-indian-pharma>

<sup>31</sup> *Covid-19 Response for Pharma Companies*, Deloitte (Mar', 30, 2021, 10:00PM) <https://www2.deloitte.com/in/en/pages/risk/articles/in-ra-covid-19-response-for-pharma-companies.html>

<sup>32</sup> *Covid-19 and the great reset*, (Mar', 30, 2021, 10:00PM) <https://www.mckinsey.com/business-functions/risk/our-insights/covid-19-implications-for-business>

### **5.3 Key Factors involved in making M&A Decision**

The companies trying to crack M&A deals plan strategically on points of benefit after the deal is completed between the entities and few points of due diligence involved are as follows:

- **Financial matters:** The buyer would be concerned about the financial position of the company and the solvency position.<sup>33</sup> The historical statements of the company and the annual reports would be checked in order to check the financial position of a firm/company.
- **Technology/Intellectual Property:** This would include looking into the patents, trademarks, innovations of the company. Furthermore, the area of inquiry would be if the company has taken enough measures to protect its intellectual property.
- **Customers/sales:** This includes understanding the customer base of the company. If there are large customers across the country and abroad or concentrated customers. The preferences of customers are also looked into in order to know the taste of the customers associated with the company. Moreover, the satisfaction and review of customers are evaluated to know the relationship of the company with their customers.
- **Strategic Fit with the Buyers:** The buyer is concerned not only with the likely future performance of the target company as a stand-alone business; it will also want to understand the extent to which the company will fit strategically within the larger buyer organization, so this is an important factor included in the due diligence report.
- **Material Contracts of the company:** By material contracts of the company it means that all the agreements that the company has entered into in recent years which might affect the acquisition decision of the buyer should be taken into consideration. This also includes within its ambit any loans, guarantees, etc. made by the company.<sup>34</sup>
- **Litigation details:** Another crucial factor can be the litigation and suits pending against the company in the courts of law. The due diligence reports very much includes these details for better understanding of the legal position of the company.

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<sup>33</sup> Supra Note 28.

<sup>34</sup> Richard Harroch, "*The Impact of the Coronavirus Crisis on M&A*" (Mar', 30, 2021, 10:00PM) <https://www.forbes.com/sites/allbusiness/2020/04/17/impact-of-coronavirus-crisis-on-mergers-and-acquisitions/?sh=5f55a306200a>

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## CHAPTER VI: FINDINGS/ RECOMMENDATIONS

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The outbreak of the Covid-19 pandemic might not had be quite welcoming and had brought the economy around the world at halt where businesses were seen shutting and many finding it difficult to even meet the basic costs had also affected the M&A deals. Indian economy was not at any different space and the M&A drop might be similar to what it was during the 2008 financial crisis but in the later half quarter the companies took hold of the situation and then the recovery seemed quite different from what it was around the 2008 financial crisis.

In the year 2019, there has been a downward movement of M&A activities in the trajectory and the beginning of 2020 had already been quite challenging for every industry around the globe. Considering the demands of the situation, there had been several modifications introduced in the regulatory framework in order to facilitate economic activities in the country and to boost the falling economic trends.

India has been no different from other countries facing economic challenges but the corporate world still seemed to take control over the situations and the sector remained keen towards moving ahead in the business and benefit out of all possible opportunities coming its way.

In the last few months there has been a few significant M&A activity especially concerning the pharmaceutical sector which directly was proportional to the Covid-19 effect. The researches show there had been certain key factors that were necessary to be considered before doing an M&A deal but since the pandemic hit there needs to be certain modifications in those factors and currently the parties involving themselves in M&A deals should consider the valuation of assets of the companies involved, the monetary crunch the company might be facing, the relocation of funds that might be surplus, etc are a points that need to be taken into consideration before going for M&A transaction.

Post the Covid-19 there would be a shift towards more viable cost models and a major shift towards localisation of manufactured goods that can be expected mostly as per the sourced reports and analysed data in the last few months.

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## CHAPTER VII: CONCLUSION

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The final and ultimate objective of any firm/company around the world is continuous growth and survival with the evolving demands of the market and successful acquisition plays a vital role in fulfilling the end goals. In order to grow strong in the market and cut down the competition, at the same time earn profits and increase the shareholder's wealth, the acquisition transactions are like nuptial of firms which is a strategic initiative in the corporate world.

Considering the short-term effect of the Covid-19 crisis on M&A it can be expected that eventually it would lead to a change in perspective of the consumers and the priorities of the government towards the pharmaceutical and health sector which would also include shift of focus on the research and development associated with the pharma industry in India as it would enhance the opportunities of localisation as well.

The Covid-19 pandemic crisis is of a humanitarian one though in the second quarter of the year 2020 it resulted in a significant impact on the corporate sector and resulted in increased M&A activity which saw a boom in the last few months.