Mergers & Acquisitions Trend Report

PROVIDING INSIGHTS ON DEAL ACTIVITIES 2017 ONWARDS

HAMMURABI & SOLOMON PARTNERS

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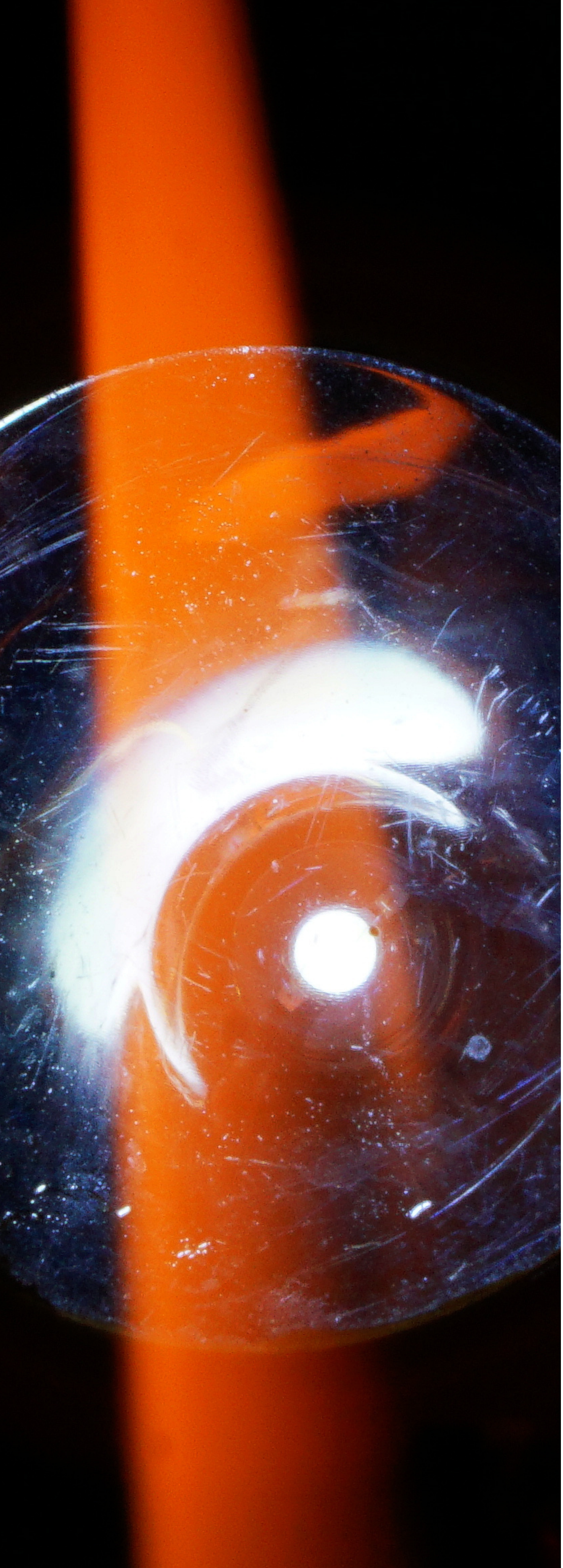

Disclaimer

This document captures the list of M&A deals on the basis of information available in the public domain. Information has been obtained from various sources including – Ernst & Young's report of 'Transactions Annual', VCC Edge data, Grant Thornton's dealtracker and certain others. The information cited has been duly credited to its sources.

This report has been prepared on certain assumptions (wherever necessary). Hence, if different assumptionswere to be applied, the outcomes and results would be different. The aim of this report is to highlight trend in M&A activity from 2017 till first half of 2020.

M&A DESK

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Table of Content

MAJOR DEALS OF THE YEAR (2017)

- **Vodafone-Idea Merger**- In an announcement of Country's biggest telecom consolidation deal, Vodafone and Idea decided to merge their Indian operations in a deal of $23B[1].
- **HPCL-ONGC Deal-** In furtherance of the objective of the Government to give capacity to Central Public Sector Enterprises to bear high risks and avail economiesof scale[2], State-owned Oil and Natural Gas Corporation (ONGC) acquired 51% stake in public sector refiner Hindustan Petroleum Corporation Limited.
- **Reliance Infrastructure-Adani Transmission deal** – In an attempt to build market-leading distribution company, Gautam-Adani led Adani Transmissions closed a deal for purchase of Reliance Infrastructure's power generation and distribution business in Mumbai[3].
- **Bharat Financial Inclusion and IndusInd Bank Merger-** In order to scale up its microfinance business, IndusInd Bank acquired non-bank lender, the scheme of arrangement of the same was approved on June 10, 2019 by NCLT[4].
- **Flipkart-eBay Deal-** Flipkart closed a massive funding round with Tencent, eBay and Microsoft worth $1.4B. As a part of this deal, Flipkart bought eBay's India Operations. The deal would help Flipkart to compete with its rival Amazon[5].

TOTAL DEALS

India Inc. saw a total 1,022 deals in mergers and acquisitions for the year 2017, amounting to $46.8B. The breakdown deals have been done:

	Count	**Value (US$ million)**
Domestic	682	37,939
Inbound	203	6,517
Outbound	137	2,356
Total	**1022**	**46,812**

Note: The above chart is an analysis by Ernst & Young of Thomson ONE data.

[1] https://www.reuters.com/article/us-vodafone-m-a-idea-idUSKBN16R07R

[2] https://economictimes.indiatimes.com/industry/energy/oil-gas/ongc-buys-govts-entire-51-11-stake-in-hpcl-for-rs- 36915-crore/articleshow/62729805.cms?from=mdr

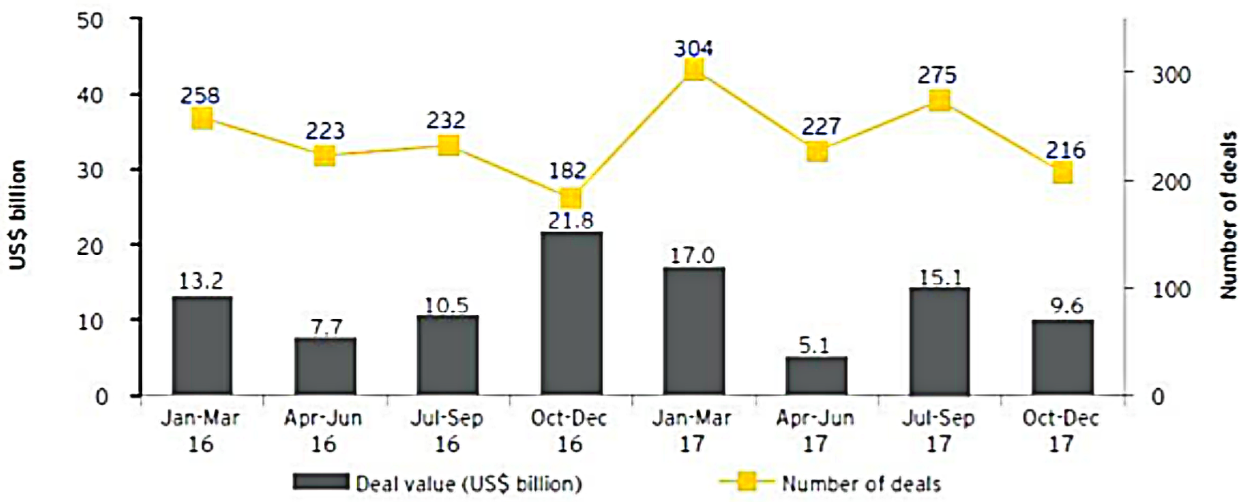
[3] https://www.financialexpress.com/industry/adani-transmission-ties-up-rs-13250-crore-of-funds-to-buy-reliance-infrastructure-assets/1144569/

[4] https://bfsi.economictimes.indiatimes.com/news/banking/indusind-bank-bharat-financial-merger-to-be-effective- from-july-4/69867636

[5] https://www.livemint.com/Companies/RjjyJUShEtiZ2DjgzUBczM/Flipkart-to-buy-eBay-India-as-part-of-14-billion-fundrais.html

QUARTERLY DEALS FOR YEAR 2017

Exhibit 26: Quarterly deal activity



Source: EY analysis of Thomson ONE data

TOP SECTORS - (IN TERMS OF DEAL VALUE)

Industries	Deal Value (in US$ billion)
Telecommunications	14.6
Oil & Gas	6.2
Infrastructure	5.4
Financial Services	4.6
Technology	4.5

Note: The above sectors mentioned is the analysis of Thomson ONE data by Ernst & Young in its report – 'Transactions Annual'.

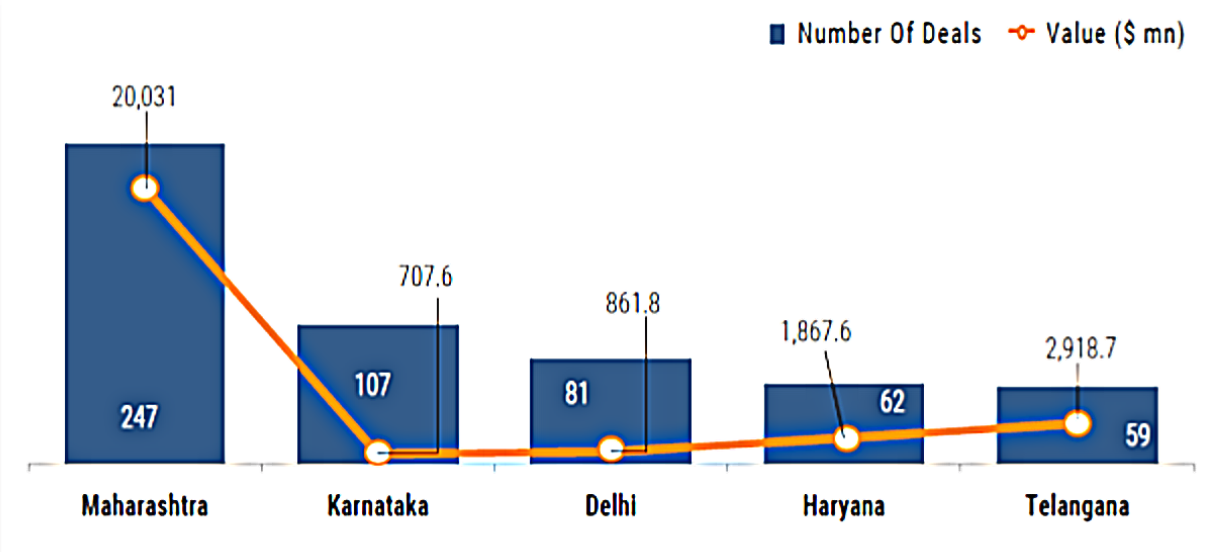
DEALS ABOVE ONE BILLION DOLLARS

The year 2017 saw a decline in $1B+ deals – it saw 8 deals, as compared to 12 in 2016. The breakdown of these deals are as follows:

1. Inbound deal – The only inbound deal for 2017 was **Flipkart-eBay acquisition.**
2. Domestic deals – 7 big deals were seen, the deal volume of which contributed approximately 60% to the total deal volume of the year. The breakdown of deals is as follows:
    - Vodafone-Idea Merger
    - Bharat Financial inclusion and IndusInd Bank
    - ONGC-HPCL acquisition
    - Reliance Infrastructure-Adani Transmission deal
    - Other 3 were internal restructuring deals worth $5.3B

REGIONAL TRANSACTIONS (2017)

Top 5 states which have witnessed maximum M&A deal transactions both in terms of numbers and values



Note: 2018 Annual Deal Report by VCC Edge

TOTAL DEALS (2018)

India Inc. saw a total 966 deals in mergers and acquisitions for the year 2018, amounting to $81.43B. The breakdown deals have been done:

	Count	Value (US$ million)
Domestic	625	43,248
Inbound	143	22,678
Outbound	123	4,213
Others	75	11,287
Total	**926**	**81,426**

Note: The data for the above chart is taken from 2019 Annual Deal Report by VCC Edge.

***Note: In the report of Grant Thornton "Annual Dealtracker- 2019" total number of deals crossed $100 billion.**

MAJOR DEALS OF THE YEAR (2018)

- **Flipkart-Walmart acquisition** – In the biggest ecommerce deal, US-based Walmart acquired 77% stake in Bengaluru-based Flipkart for $16B[1]. Walmart aimed to extend their B2B sales across India. Its biggest competitor is Amazon and Paytm Mall.
- **Bharti Infratel-Indus Tower merger** - Slated to become second-largest tower company in the world, a new unit i.e. Indus Towers Limited will have more than 1,63,000 towers and presence across 22 circles in India[2]. This deal can help Vodafone Idea and Bharti Airtel in meeting AGR dues to the government.
- **Tata Steel BSL Ltd and Bamnipal Steel Ltd** – A wholly owned subsidiary of Tata Steel – Bamnipal Steel Limited acquired Bhushan Steel (BSL), marking the resolution of first case under Insolvency & Bankruptcy Code (IBC) [3].

[1] https://economictimes.indiatimes.com/industry/services/retail/softbank-ceo-confirms-walmart-flipkart-deal/articleshow/64093437.cms?from=mdr

[2] https://www.businesstoday.in/current/corporate/bharti-infratel-proceeds-with-scheme-of-arrangements-for-indus-towers-merger/story/414750.html

[3] https://www.livemint.com/Companies/zQJ1nAquZndCvPo0baMCeO/Tata-Steel-unit-completes-acquisition-of- Bhushan-Steel.html

- **HUL-GSK Merger** – A definitive agreement was entered into between Hindustan Unilever Limited (HUL) and GlaxoSmithKline Consumer Healthcare Limited (GSK) and a scheme of arrangement was approved by requisite authorities. The merger is in consonance with the aim HUL to expand its Food and Refreshment business in India [1].
- **UPL-Arysta LifeScience acquisition** – Board of Directors of UPL Limited agreed to acquire Arysta LifeScience Inc, to become world's largest crop protection companies for $4.2B. Arysta LifeScience is a global provider of innovative crop protection solution.
- **Novelis-Aleris deal** – In an attempt to set global footprint, American subsidiary of Hindalco Industries Limited – Novelis agreed to buy Aluminium products maker Aleris Corporation for $2.6B. The deal gave Novelis access to aluminium supply market.
- **HCL-IBM acquisition** – In the largest purchase ever by Indian IT firm, HCL Technologies Limited will spend $1.78B to purchase eight software products from International Business Machines Corporation (IBM)[2]. The large-scale deployments of these products provide us with a great opportunity to reach and serve thousands of global enterprises across a wide range of industries and markets," said C Vijayakumar, president and CEO of HCL Technologies[3].
- **ReNew Power Ventures-Ostro Energy takeover** – In the biggest M&A deal in renewables sector, ReNew Power Ventures took over Ostro Energy for $1.66B. With this deal, ReNew would be the largest renewable energy company in India[4].

[1] https://www.cnbctv18.com/retail/hul-completes-merger-of-gsk-consumer-with-itself-5602721.html

[2] https://www.livemint.com/Companies/ON6ssZvJbSE3ubLhxClS7L/HCL-Technologies-to-buy-certain-IBM- software-assets-for-18.html

[3] https://www.bizjournals.com/newyork/news/2018/12/07/ibm-selling-indian-tech-company-1-8-billion-in.html

[[4] https://economictimes.indiatimes.com/industry/energy/power/renew-power-to-buy-ostro-in-biggest-renewables- sector-deal/articleshow/63573333.cms?from=mdr

TOP SECTORS

	Count	Value (US$ million)
Consumer Discretionary	177	19,971.45
Materials	84	19,729.44
Telecommunication services	9	7,417.88
Information Technology	254	6,695.35
Energy	10	5,878.99
Consumer Staples	50	5,408.26

The cumulative contribution of sectors like e-commerce, manufacturing, energy, IT, agriculture, banking, pharma to deal values for the year 2018 stands at 73% [1].

BILLION DOLLAR DEALS

The year 2018 saw 21 billion-dollar deals including both Private Equity Investments and Strategic Investments (M&A). Strategic deals accounted for 15 in volume. 2018 saw deal volumes go down; however, due to big-ticket investments, deal values grew [2].

Top M&A transactions in 2018 were:

1. Flipkart-Walmart acquisition
2. Tata Steel-Bamnipal steel limited
3. Indus Towers-Bharti Infratel Limited
4. HPCL-ONGC
5. Arysta LifeScience-UPL Corporation Limited

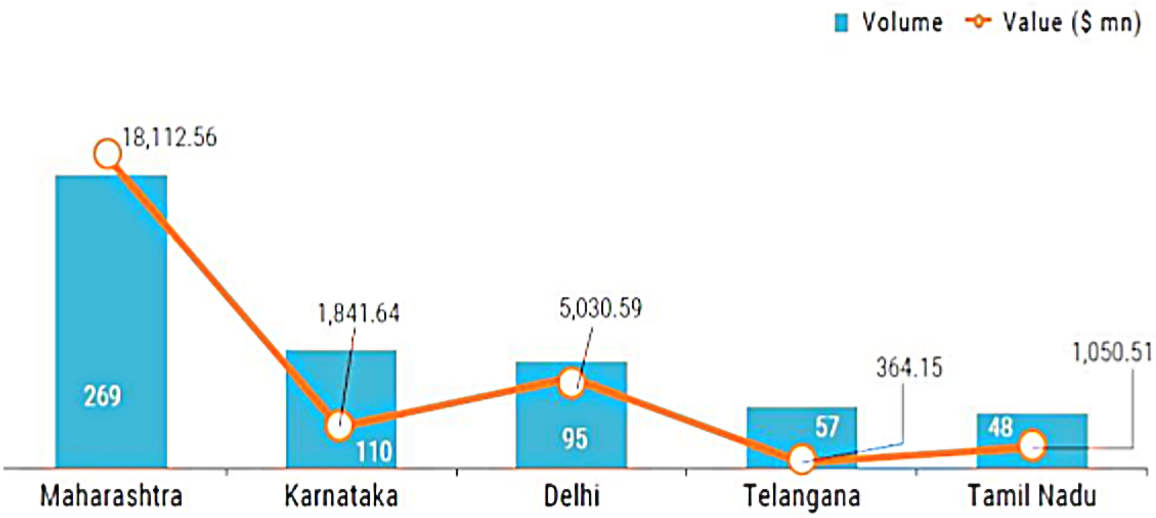
Note: In 2017, HPCL-ONGC deal was announced and effectuated in January 2018. For the purpose of this report, author has classified that deal under '2017'.

[1] Grant Thornton 2019 dealtracker

[2] Deals in India: Annual review and outlook for 2019 https://www.pwc.in/assets/pdfs/publications/2018/deals-in- india.pdf

REGIONAL TRANSACTIONS (2018)

Top 5 states which have witnessed maximum M&A deal transactions both in terms of numbers and values-



Note: 2019 Annual Deal Report by VCC Edge.

TOTAL DEALS (2019)

India Inc. saw a total 881 deals in mergers and acquisitions for the year 2019, amounting to $37.05B. The breakdown deals have been done:

	Count	Value (US$ million)
Domestic	553	20,544
Inbound	145	12,277
Outbound	97	1,962
Others	86	2,271
Total	**881**	**37,054**

Note: The data for the above chart is taken from 2019 Annual Deal Report by VCC Edge.

TOP DEALS OF 2019

- **Essar Steel-Arcelor Mittal acquisition-** Joint venture of Essar Steel and Nippon Steel completed the $5.7B acquisition of Essar Steel India Limited, an integrated steel producer in India under the route of Insolvency & Bankruptcy Code, 2016.
- **Gruh Finance & Bandhan Bank merger-** Scheme of amalgamation was approved by NCLT benches after shareholders of Kolkata-headquartered bank decided on acquisition of Gruh finance[1]. This acquisition gave Bandhan Bank a home finance company to diversify its operations.
- **Bhushan Power and Steel & JSW Steel-** Resolution plan of JSW Steel was approved by NCLT for acquisition of bankrupt Bhushan Power and Steel under Insolvency & Bankruptcy Code, 2016.
- **Oravel Stays and RA Hospitality acquisition-** This deal relates to acquisition of equity securities by RA Hospitality Holdings, Cayman-Island based company in Oravel Stays Private Limited, the parent company of OYO.

[1] https://www.financialexpress.com/industry/banking-finance/gruh-finance-merger-with-bandhan-bank-completes/1738877/

- **Larsen & Toubro and MindTree acquisition-** Marking India's first hostile takeover of software developer, L&T, in order to expand its information technology business, raised its stake to 60% in Bengaluru-based company.
- **IndInfravit-Sadbhav merger-** IndInfravit trust completed the acquisition of nine road infrastructure projects of Sadbhav Infrastructure project. For the same, definitive documents have been entered into by parties to transaction[1].
- **Vijaya Bank & Dena Bank and Bank of Baroda merger-** Likely to become the third-largest Indian bank, Bank of Baroda has been merged with Vijaya Bank and Dena Bank. Swap ratio for the proposed merger was approved by Boards of both PSUs[2].
- **Total-Adani Gas acquisition-** Total SA acquired 37.4% stake in Adani Gas – the firm that retails gas to automobiles and households[3].

TOP SECTORS

	Count	Value (US$ million)
Materials	68	10,044.54
Financials	99	7,714.96
Industrials	137	4,085.74
Information Technology	238	6,351.23
Utilities	43	2,901.20
Total	**585**	**31,097.67**

In terms of deal value, manufacturing sector led with a contribution of 29% to total M&A deal values for the year. It was followed by Energy sector (16%). Information Technology sector led the deal volumes of 2019 with contribution of 18%, followed by Start-ups and Pharma (28% cumulative) [4].

[1] https://www.constructionweekonline.in/12827-indinfravit-completes-acquisition-of-eight-road-projects-of-sadbhav-infrastructure-project
[2] https://cfo.economictimes.indiatimes.com/news/cabinet-approves-the-merger-of-vijaya-bank-dena-bank-with- bank-of-baroda/67351536
[3] https://www.livemint.com/industry/energy/total-buys-37-4-stake-in-adani-gas-for-rs-5-662-crore- 11571025324749.html
[4] Grant Thornton Annual Dealtracker 2020

BILLION DOLLAR DEALS

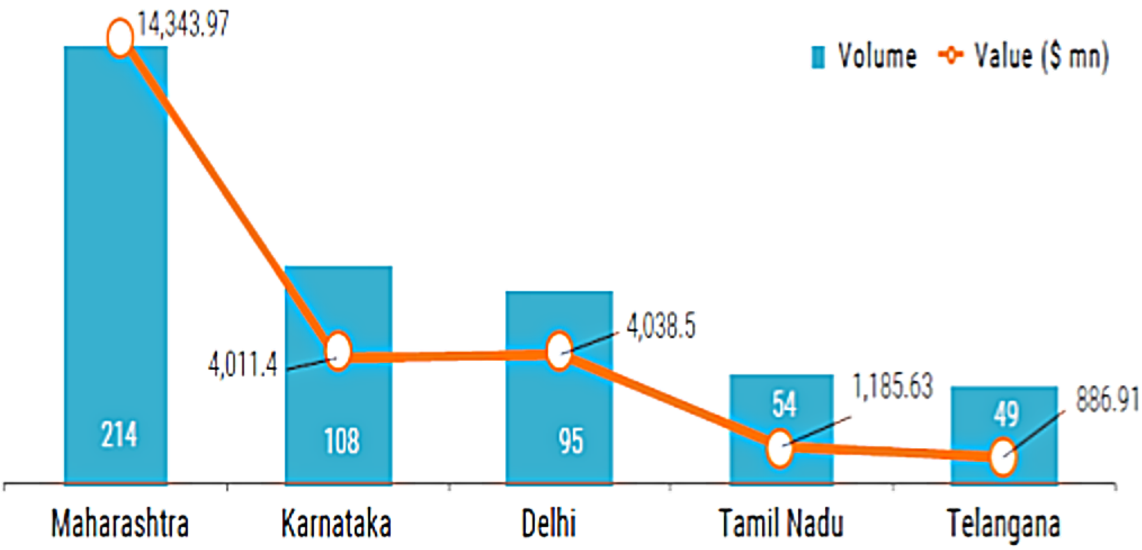
The year 2019 saw 11 billion-dollar deals including both Private Equity Investments and Strategic Investments (M&A). Slowdown in deals in this year was seen owing to Big-billion dollar deals declines in the year 2019[1]. The fall in big deals could be attributed to general elections and uncertainty surrounding it[2].

Top billion-dollar transactions in 2019 were:

Deals	Value (US$ billion)
Arcelor Mittal-Essar Steel acquisition	5.9
Gruh Finance-Bandhan Bank merger	3.1
Bhushan power and steel-JSW Steel acquisition	2.7
Oravel Stays-RA Hospitality deal	1.5
Mindtree and L&T acquisition	1.4

REGIONAL TRANSACTIONS-

Top 5 states which have witnessed maximum M&A deal transactions both in terms of numbers and values-



Note: 2019 Annual Deal Report by VCC Edge.

[1] https://www.pwc.in/assets/pdfs/services/deals/deals-in-india-annual-review-and-outlook-for-2020.pdf
[2] Grant Thornton Annual Dealtracker 2020

TOTAL DEALS (2020 - H1)

On account of Pandemic, deal activity slowed in first half of 2020 as compared to first half of 2019. However, the deal value in H1-2020 increased as compared to H2-2019. The overall slowdown in M&A activity can be attributed to Covid-19 which has made investors pessimistic in nature regarding their investments.

Total deal value in first half of 2020 remains at $22.3B. An important aspect to consider in H1-2020 is the deal values of inbound activity.

	Deal type (USD Billion)
Inbound	8.6
Other	13.8
Total	22.3

Note: The above information is taken from – "Deals in India: Mid-year review and outlook for 2020 – pause and consolidation" by PwC.

M&A ACTIVITY BY DEAL TYPE

	Deal type (USD Billion)
Domestic	53%
Inbound	39%
Outbound	2%
Other	6%

The first half witnessed $12B of domestic deals, a major chunk of which is the contribution of consolidation in stressed situations.

[1] "Deals in India: Mid-year review and outlook for 2020 – pause and consolidation" by PwC

TOP DEALS OF 2020

- **Facebook-Jio Deal-** In the biggest investments this year, Jaadhu Holdings LLC, wholly owned subsidiary of Facebook invested $5.7B for the stake of 9.99%. This is aligned with aim of American Internet company to expand its operations in India.
- **GMR Airports-Groupe ADP Acquisition-** GMR Infrastructure Ltd., company that operates Hyderabad and Delhi airports decided to sell its stake in its airports' business to Groupe ADP. A share purchase agreement was signed[1].
- **Adani-Krishnapatnam Port deal-** Adani Ports, India's largest private port operator and Special Economic Zone Ltd (APSEZ) has completed the acquisition of Krishnapatnam Port Co Ltd (KPCL) for an enterprise value of ₹12,000 crores[2].
- **Yes Bank Limited and Investor group-** There was infusion of $1.4B into Yes Bank by consortium of banks led by State Bank of India.
- **Union Bank and Corporation Bank amalgamation-** Union Bank became fifth largest public sector lender after amalgamating Andhra Bank and Corporation Bank into itself. The amalgamation is expected to generate cost and revenue synergies[3].

TOP SECTORS

Note: This data is taken from quarterly deal tracker Q1-2020

	Volume	Value (US$ million)
IT and ITes	18	1,397
Start-up	14	414
Pharma, Healthcare and Biotech	10	344
Manufacturing	9	1,219
Automotive	7	551
Banking and Financial services	5	1,408
Energy and Natural resources	4	1,316

[1] https://www.airport-technology.com/news/groupe-adp-completes-acquisition-of-49-stake-in-gmr-airports/

[2] https://www.livemint.com/companies/news/adani-ports-sez-completes-acquisition-of-krishnapatnam-port-for-12-000-crore-11601951160424.html

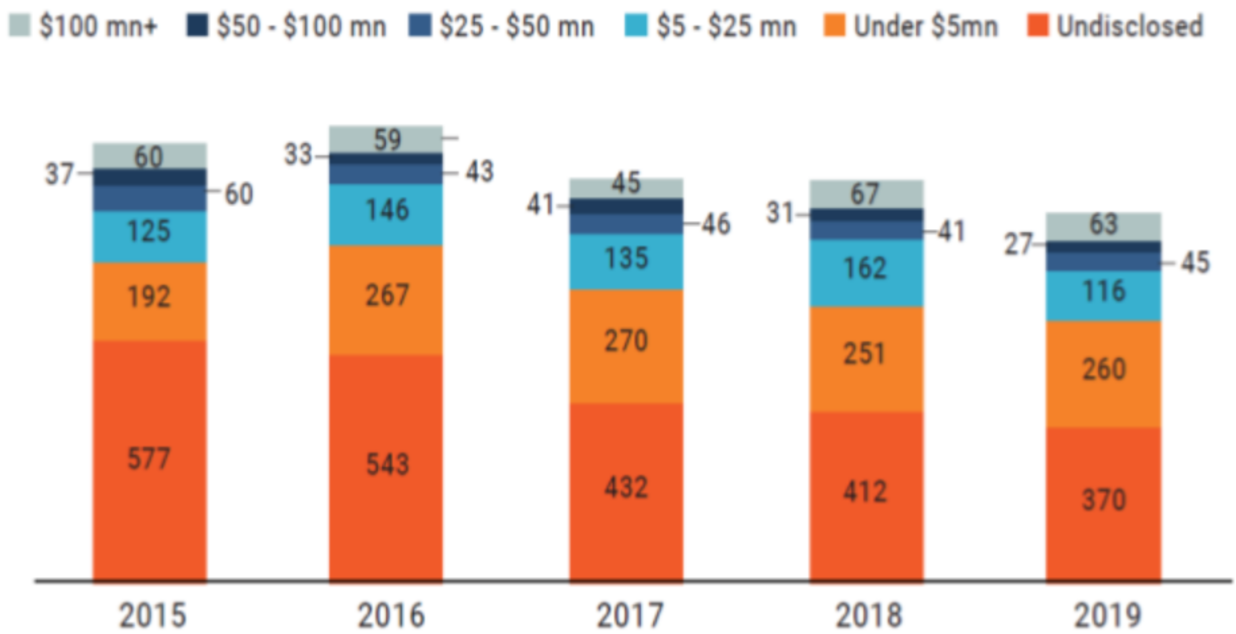
[3] https://economictimes.indiatimes.com/industry/banking/finance/banking/union-bank-becomes-5th-largest-psb-post-merger-with-andhra-bank-corporation-bank/articleshow/74934961.cms?from=mdr

COMPARATIVE ANALYSIS OF DEAL VOLUMES AND VALUES

Sectos	Deal Volume			Deal Value		
	2017	2018	2019	2017	2018	2019
IT and ITeS	70	66	81	1,018	5,614	1,663
Start-up	91	113	78	701	788	2,584
Pharma, Healthcare and Biotech	35	36	46	2,232	2,527	2,566
E-commerce	21	24	20	2,112	16,887	1,150
Media & Entertainment	21	29	21	408	1,605	240
Retail and Consumer	25	25	28	651	5,306	1,389
Banking and Financial services	25	33	32	3,166	2,784	1,725
Manufacturing	33	42	37	1,184	16,040	8,110
Energy and Natural Resources	12	19	18	1,860	12,249	4,539
Automotive	9	7	13	237	260	500
Education	8	14	13	35	273	383
Hospitality and Leisure	8	10	12	261	576	551
Professional/Business services	19	17	12	99	96	86
Telecom	9	6	4	25,016	19,260	40
Real Estate	7	6	5	424	541	305
Agriculture & forestry	6	13	5	313	4,353	324
Infrastructure Management	9	8	7	640	635	1,451
Transport and Logistics	3	3	9	45	133	381
Aerospace and Defence sector	2	3	2	24	403	3

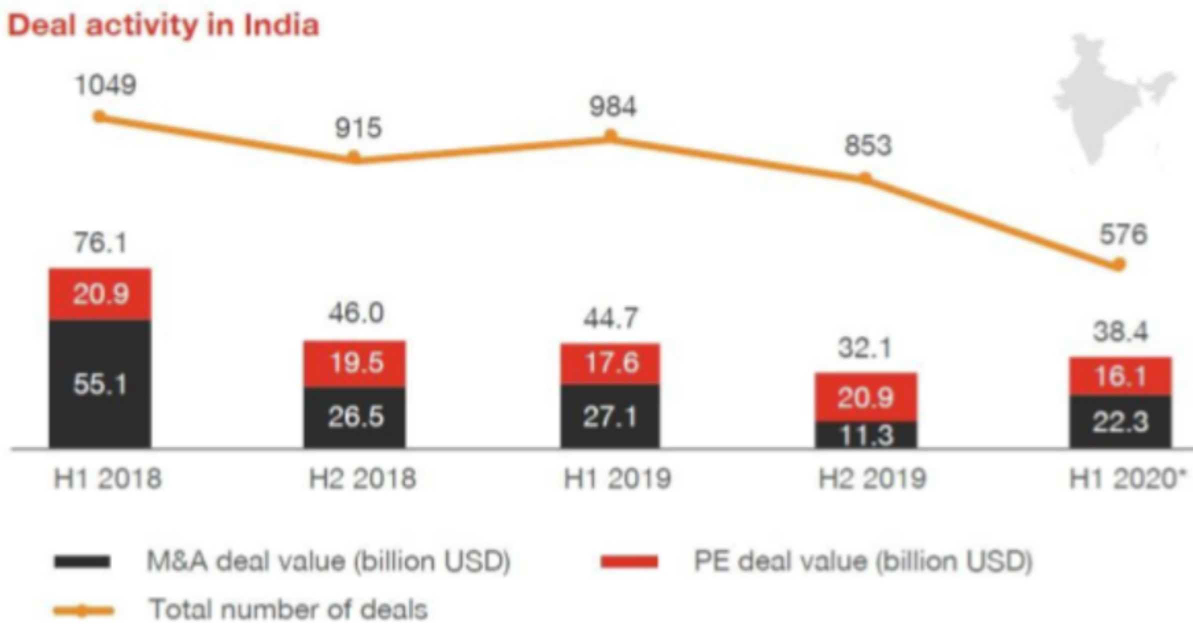
Note: Annual Dealtracker 2020 Grant Thornton

DEAL ANALYSIS WITH TRANSACTION SIZE



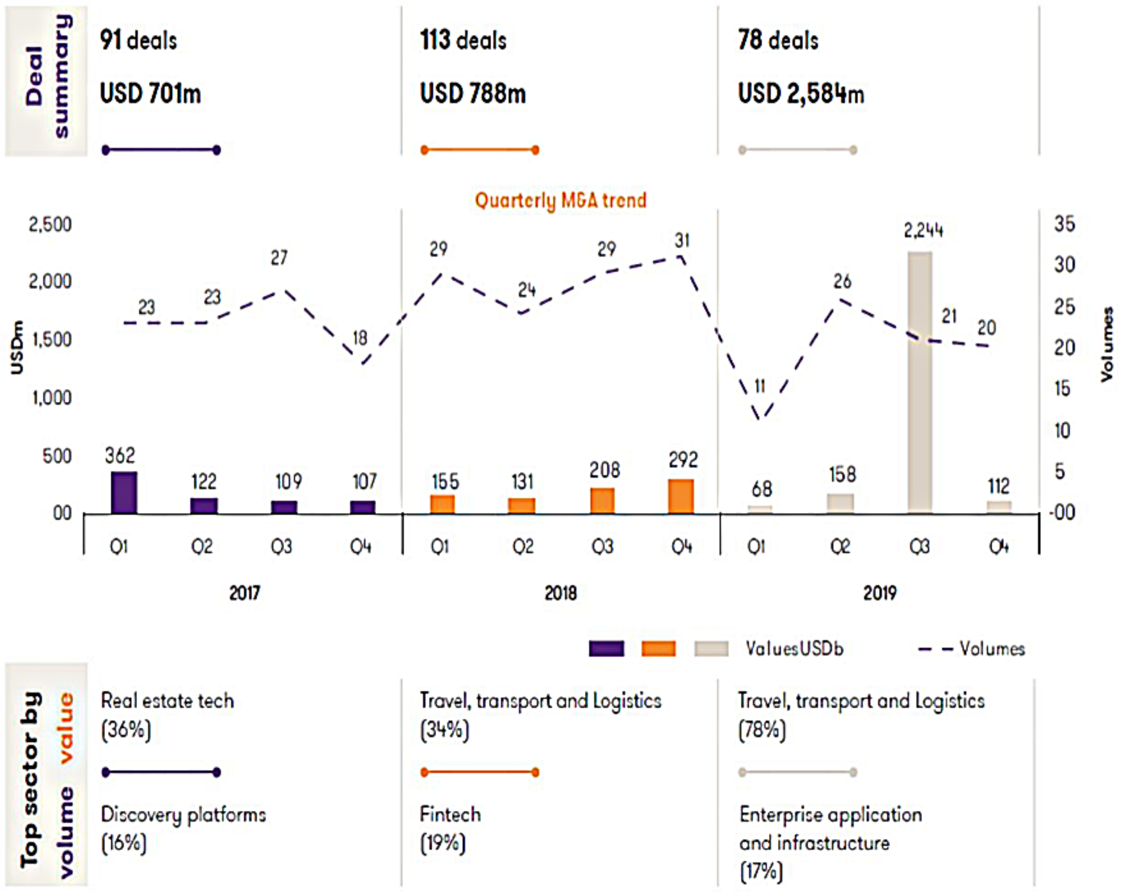
Note: 2019 Annual Deal Report by VCC Edge

COMPARATIVE ANALYSIS OF DEAL ACTIVITIES IN INDIA



Note: "Deals in India: Mid-year review and outlook for 2020 – pause and consolidation" by PwC.

COMPARATIVE ANALYSIS OF M&A TREND IN INDIAN START-UPS SECTOR



Note: “Annual Dealtracker 2020” by Grant Thornton

EXPECTATIONS IN THE END OF 2020

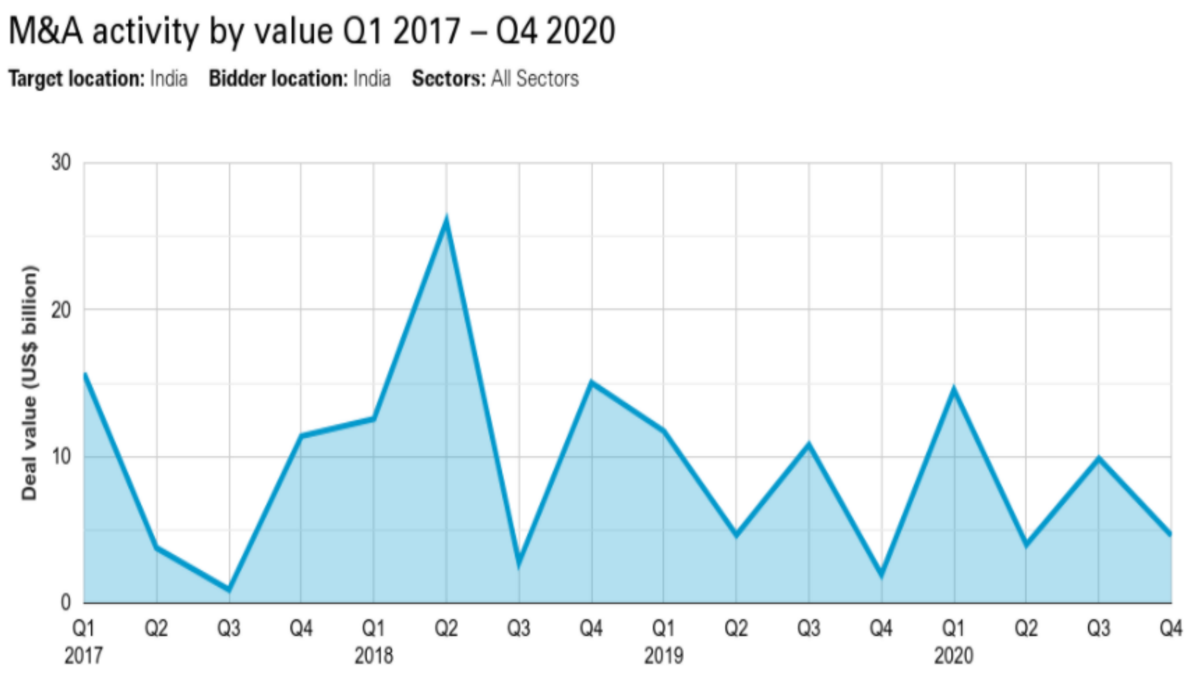
COVID-19 crisis has made organizations to rebuild themselves and be more focused towards digital enablement. In the year 2020 it was Consolidation that was majorly witnessed in the year 2020 and is expected to be seen in 2021 as well in M&A activities in India. M&A activities in India can show resilience because of many reasons like continued divestment of state-owned assets, reforms in laws governing M&A activities. Attractive policies and reforms and business friendly environment.

According to PwC India Annual review and outlook 2021: MSMEs will be an integral part of India’s future. India has been given a momentous opportunity to establish itself as a global manufacturing hub, which in turn will drive the expansion of manufacturing capabilities and garner investor interest. Healthcare, pharmaceuticals and education have emerged as key focus sectors in 2020 and will continue to see an influx of investments. Technology has been a driving force behind operational continuity of several organisations during the pandemic and a number of strategic investments in this space are expected. Real estate, being an integral contributor to India’s gross domestic product (GDP), will also play a crucial role in revival of both employment opportunities as well as the economy at large.

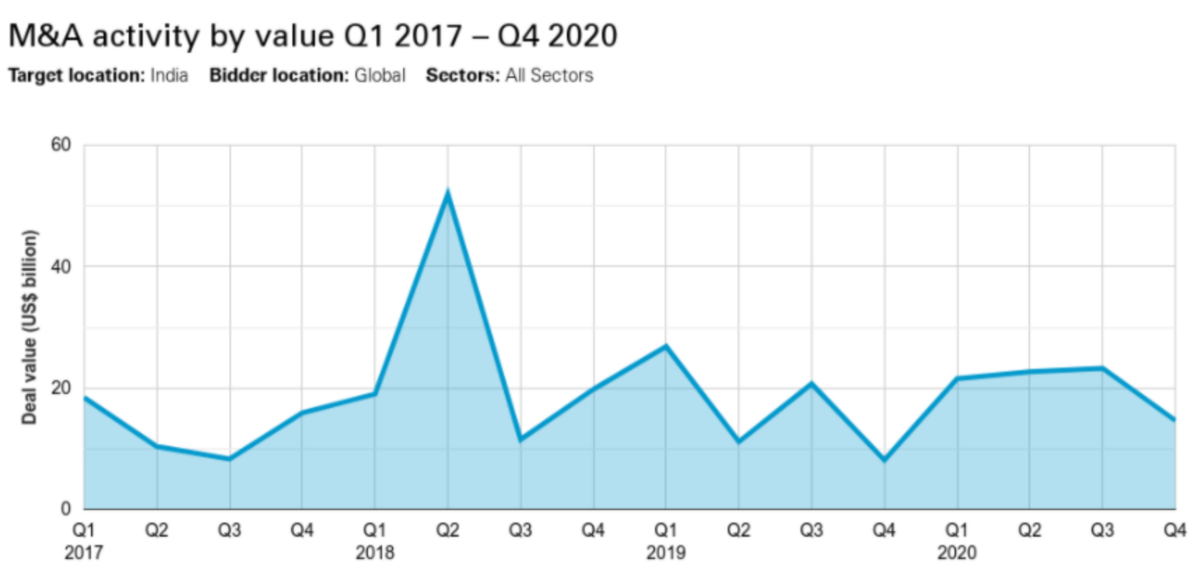

M & A

2018: M &A ACTIVITIES HIT AN ALL-TIME HIGH IN THE PAST FOUR YEARS

It was in the year 2018 that the total value of deals in M&A activities reached highest in the last four years. The year 2018 was marked with the total number of deal value crossing $100B.



Source: White & Case's M&A explorer powered by MergerMarket



Source: White & Case's M&A explorer powered by MergerMarket

Insolvency resolution process led by Insolvency and Bankruptcy Code enabled distressed deals that resulted in the growth of M&A deals in India. According to the report of CII and Bain and Co. 2018, in particular, was a blockbuster year for M&A. About 70% of the growth in M&A activity in 2018 was led by distressed deals, enabled through the corporate insolvency resolution process under IBC (Insolvency and Bankruptcy Code). Global as well as domestic players are looking for the opportunities in the distressed assets. Regulatory reforms in India has made India attractive place for M&A activities.

According to consultancy major PwC, the deal value this year across both private equity (PE) and strategic (M&A) transactions has broken all previous records by reaching USD 100 billion across 1,640 transactions by December 3 itself.

The largest deal in M&A in India in 2018 was of Flipkart acquired by Walmart, a US based retail giant. Walmart took 77% stake in Indian retailer Flipkart. The value of this deal is $16 billion. This step is taken by Walmart as a result of it's competition with Amazon.

Domestic M&A transactions

M&A activities in India were led by domestic deals at around $57.3 billion thus, increasing the number of announced domestic deals by 17% from previous year. Cross border transaction amounted to $69.2 billion.

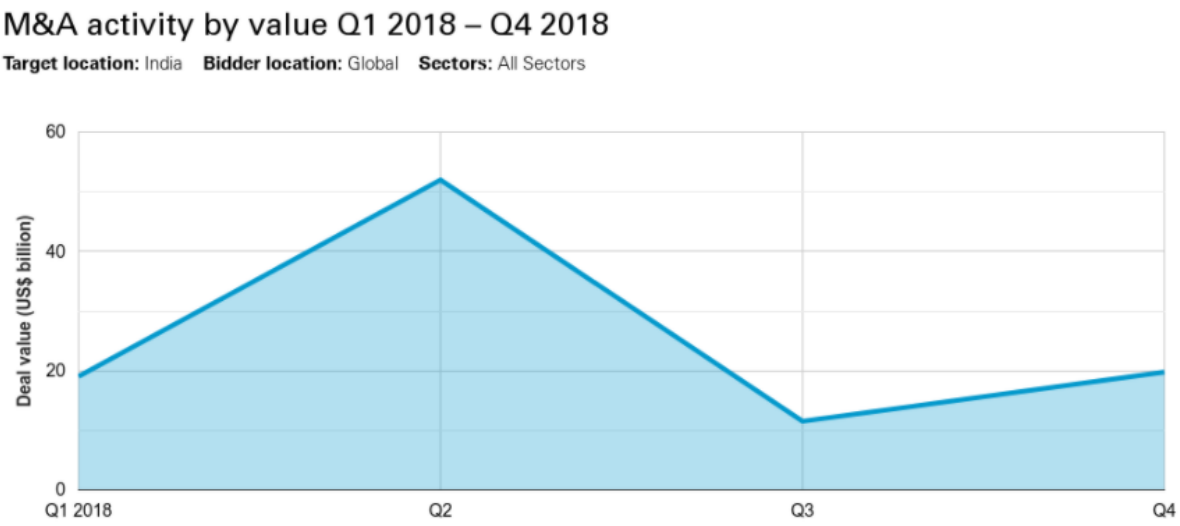
The retail sector led in terms of deal value which was followed by Materials and Healthcare sector.

Cross border deals value more than double from previous year

Total cross border M&A activities doubled as compared to 2017 and amounted to $69.2 billion. The reason for such increase is due to the increase in inbound activities.

Inbound deals reached $55.5 billion in 2018 which is a 77% increase in total value from 2017. Outbound deals reached $13.4 billion in 2018. This is the highest in India since 2010.

[1] https://economictimes.indiatimes.com/news/company/corporate-trends/deal-tally-tops-100-bn-for-india-inc-in-2018-ma-buzz-may-grow-louder-in-new-year/articleshow/67177299.cms?from=mdr



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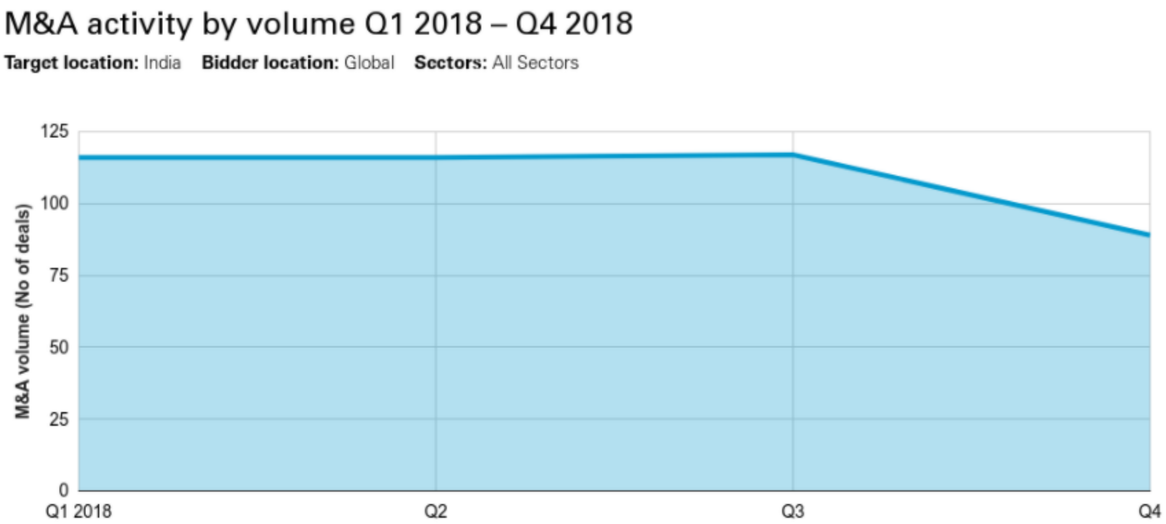


Source: White & Case's M&A explorer powered by MergerMarket

MEGA DEALS OF THE YEAR 2018

The year 2018 was one of the most successful year for M&A activities in India crossing around $100B values in terms of deals. Well, it indeed becomes pertinent to have a look at the mega deals of the year 2018. The most important deal that grabbed the attention was in the e-commerce industry. It was Walmart's acquisition over Flipkart in India. This deal was valued at $16 billion. Also, this deal has become the biggest deal in the e-commerce industry. This deal was the largest contributor in the inbound deal which alone contributed 18% in the total deal value.

Another mega deal of the year 2018 was in the telecom industry. The deal between Vodafone and Idea which amounted to around $14 billion. This deal was entered into by both the merging companies in order to raise funds and cut the debts.

In outbound merger, the deal between UPL Ltd. and Arysta Lifescience that amounted to $4.2 billion was biggest in agricultural sector.

In Consumer goods deal, the deal between Hindustan Unilever Ltd. and GlaxoSmithKline Consumer Healthcare Limited amounting to $4.5 billion was biggest deal.

IMPACT ON INDIAN START-UPS OF M&A ACTIVITIES

In India M&A activities in the year 2018 had a very positive impact on Indian start-ups which is evident from the fact that total number of deals volume is highest in the start-ups which shows the growing attractiveness towards start-ups of India. The total volume in start-ups contributed 24% in the total volume in in M&A activities in India. Investors also found start-ups attractive. Some of the major deals in the Indian Start-ups were ANI Technologies Pvt Ltd acquired Vogo Automotive Pvt Ltd, Kwang Yang Motor Co Ltd acquisition over Twenty Two Motors Pvt Ltd, Alibaba Group Holding Ltd acquisition over Paytm E-commerce Pvt Ltd, Essel Infraprojects Ltd- Esssel Green Mobility acquisition over ZipGo Technologies Pvt Ltd, Alibaba.com Singapore E-commerce Pvt acquisition over BusyBees Logistics Pvt Ltd-Xpressbees.

TOP 10 DEALS OF THE YEAR

If we look at the top ten deals of the year 2018, we will find that in the list it is the e-commerce industry that has attained first position. E-commerce industry is followed by telecom industry, energy and natural resources industry and then manufacturing industry. Let's have a look at the top ten deals of the year 2018[1]:

Walmart's acquisition over Flipkart was the **biggest deal** in India and it contributed the highest deal value amounting $16 billion. This deal was the biggest in the e-commerce industry. In this deal Walmart acquired over 77% stake in Flipkart Online services Pvt Ltd. This step taken by US based giant Walmart was a result of it's increased competition with Amazon.

Second highest deal was in the telecom industry between Bharti Infratel Ltd. and Indus Towers Ltd. which amounted to $14.6 billion.

In the **third** place, the highest amount of deal value recorded was the acquisition over Hindustan Petroleum Corporation Ltd (target) by Oil and Natural Gas Corporation Ltd (acquirer) that amounted to $5.8 billion in which the acquirer took controlling stake of the target company of 51%.

The **fourth** highest deal was in manufacturing sector, between Tata Steel Ltd (acquirer) and Bhushan Steel Ltd (target) which amounted to $5.5 billion. In which the acquirer company took over 73% controlling stake of the target company.

The **fifth** highest deal was recorded in the retail and consumer sector. This deal was between Hindustan Unilever Ltd and GlaxoSmithKline Consumer Healthcare Limited. This deal amounted to $4.5 billion and in this deal acquirer company acquired 100% stake in the target company.

The **sixth** highest deal was in the agriculture and forestry sector. This deal was between UPL Ltd and Arysta Lifescience Inc. This deal amounted to $4.2 billion and the acquirer company acquired 100% stake in the target company.

The **seventh** highest deal was in the telecom industry. The deal was between Reliance Jio Infocom Ltd (acquirer) and Reliance Communications Ltd (target) in which Reliance Jio Infocom acquired Reliance Communications Ltd. The deal amounted to $3.8 billion.

[1] Annual Dealtracker 2019 by Grant Thornton

At number **eight** was the deal between Adani Transmission Ltd and Reliance Infrastructure Ltd- Mumbai power business. The deal was in the energy and natural resources sector and this deal amounted to $2.9 billion in which the acquiring company acquired 100% stake in the target company.

The **ninth** highest deal was in the Manufacturing sector between Hindalco Industries Ltd-Novelis Inc (acquirer) and Aleris Corporation(target). This deal amounted to $2.6 billion in which acquiring company acquired 100% stake in the target company.

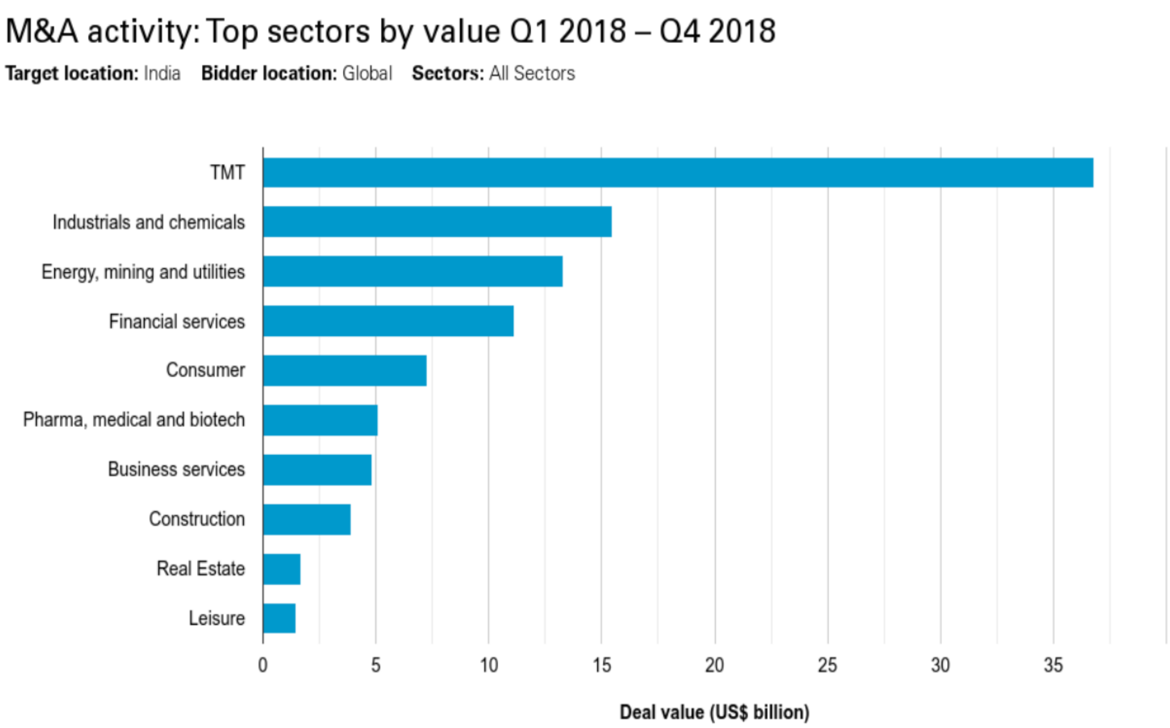
The **tenth** highest deal was also in the manufacturing sector. This deal was between Schneider Electric SA (acquirer) and Larsen & Turbo Ltd-Electrical and automation business(target). This deal amounted to $2.1 billion and in this deal the acquiring company acquired 100% stake in the target company.

SECTOR WISE ANALYSIS

- **Telecom:** Total number of deals in telecom industry was 6 and total amount of deal value in 2018 was $19,260 billion which was the highest deal value of the year and this sector contributed 21% of total deal value in the M&A activities in India in the year 2018.
- **E-commerce:** In the e-commerce industry total number of deals reached were 24 in 2018 as compared to 21 in 2017. Total amount of deal value that was contributed by e-commerce sector in M&A activities in India in 2018 was$16,887 billion.
- **Manufacturing**: Manufacturing sector saw 42 deals and total deal value in this sector was $16,070 billion in the year 2018 as compared to $1,184 billion in the year 2017.
- **Energy and natural resources:** The total amount of deal value in energy and natural resources was $12,115 billion and total deal volume was 18.
- **IT and ITeS:** This sector contributed total deal value of $5,622 billion and deal volume was 65 in the year 2018 in India.
- **Pharma, healthcare and biotech:** In this sector total number of deal value was $2,503 billion and total deal volume in this sector was 36.
- **Retail and consumer:** In this sector total number of deal volume was 25 which was same as 2017 but the deal value increased and was $5,306 billion in 2018 in India.
- **Media and entertainment:** Total number of deal volume in this sector was 29 and total amount of deal value in this sector was $1,605 billion.
- **Agricultural and forestry:** Total amount of deal volume in this sector was 12 and total number of deal value in this sector was $4,399 billion.
- **Banking and financial services:** Total amount of deal volume in this sector was 32 and total amount of deal value was $2,717 billion.
- **Start-up:** Total amount of deal volume in this sector was the highest as compared to other sectors in India in the year 2018. The total amount of deal volume in this sector was 114 which was 24% of the entire deal volume of the year 2018. The deal value in this sector was $793 billion.
- **Real estate:** In this sector total amount of deal volume was 6 and total amount of deal value was $541 billion.
- **Hospitality:** This sector contributed a total deal volume of 10 and the total deal value was $576 billion.

DOMINATING SECTORS IN M&A ACTIVITIES IN 2018

The sector that dominated in M&A activities in India in the year 2018 was telecom sector which contributed the total deal value of $19,260 billion which contributed 21% of total value in the year 2018 in M&A activities in India. This sector was followed by e-commerce sector which had a total deal value of $16,887. Walmart acquisition over Flipkart was major contributor of this sector. After this sector, it was manufacturing sector that got highest deals value after telecom sector and e-commerce sector which was $16,070 billion. Then we had energy and natural resources sector that dominated the M&A activities in India after the above-mentioned sectors. Total number of deals in this sector amounted for $12,115 billion this sector was followed by IT sector that had total number of deal value of $5,622 billion.



Source: White & Case's M&A explorer powered by MergerMarket

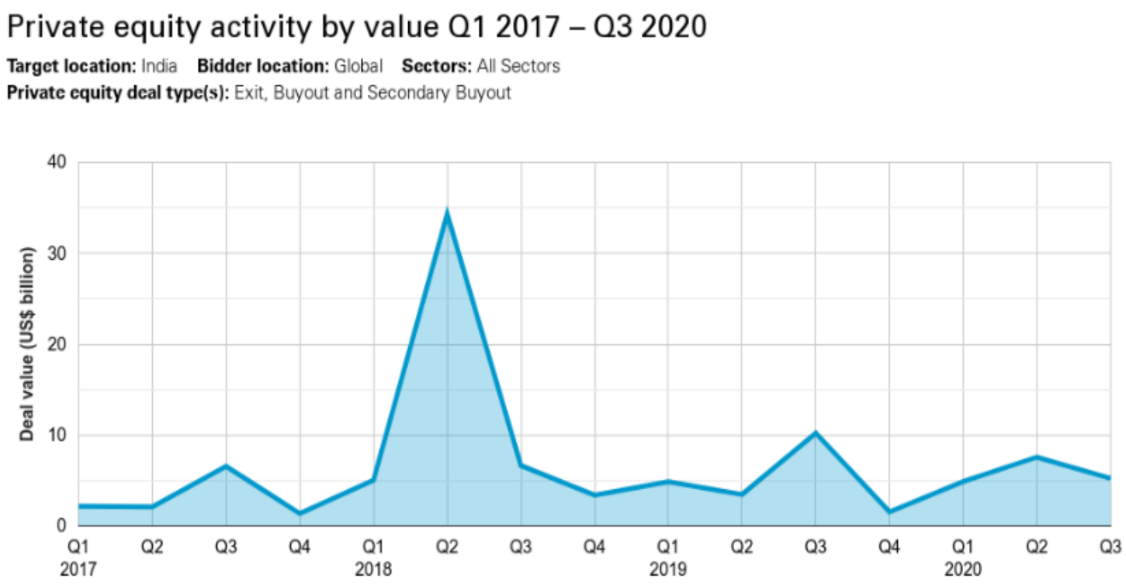
MOST ACQUISITIVE NATIONS

Total number value of cross border M&A deals in India was $38.5 billion. USA was the most acquisitive nation in India. USA based companies that acquired in India total value of such acquisitions was around $18.6 billion which was 72%of total inbound M&A deals in India. After USA, France and Singapore were the top countries that contributed in the overall inbound M&A deals in India in the year 2018. Top deals of India with USA were in the e-commerce sector, agricultural and forestry sector, manufacturing sector, IT and ITeS sector and Pharma, healthcare and biotech sector.

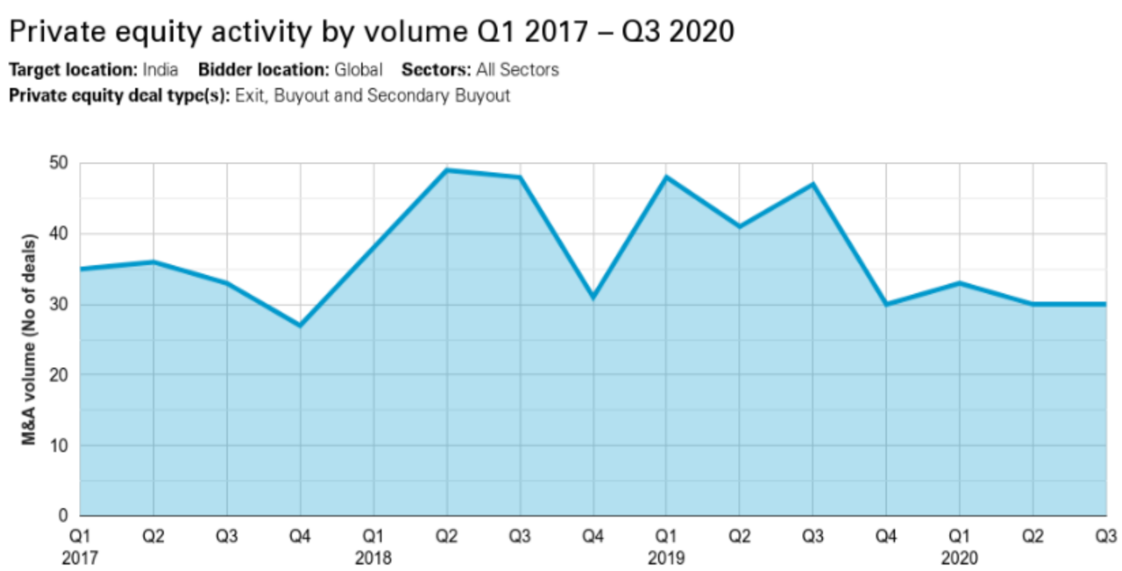

PRIVATE
EQUITY

PRIVATE EQUITY INVESTMENT IN LAST 3 YEARS

The year 2019 was a notable year for private equity players as investments grew by exponential size both in value and volume. The year also saw decline in exit values as compared to previous years; the reason could be attributable to IPO market unpredicability. The competitive vigor increased significantly owing to investments from big global players as 2017-19 witnessed 662 active funds as compared to 553 in 2015-17.



Source: White & Case's M&A explorer powered by MergerMarket



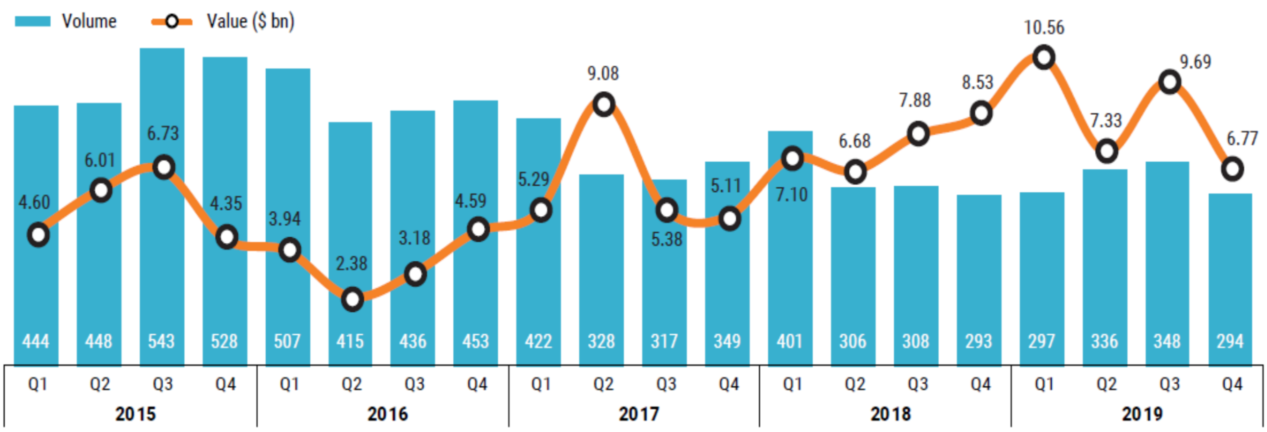
Source: White & Case's M&A explorer powered by MergerMarket

Increasing investment sentiments was dampened with the onset of 'black-swan event' i.e. Covid-19 Pandemic which emerged as major concern for private equity players as equity of domestic businesses was heavily eroded due to stringent lockdown for initial few months. The chief reason why deal value in 2020 seems similar to previous years is because of heavy investment in Reliance. Similar to Reliance, big corporations would be able to navigate through this time of uncertainty with ease as compared to small-cap and mid-cap companies who are facing severe liquidity crunch.

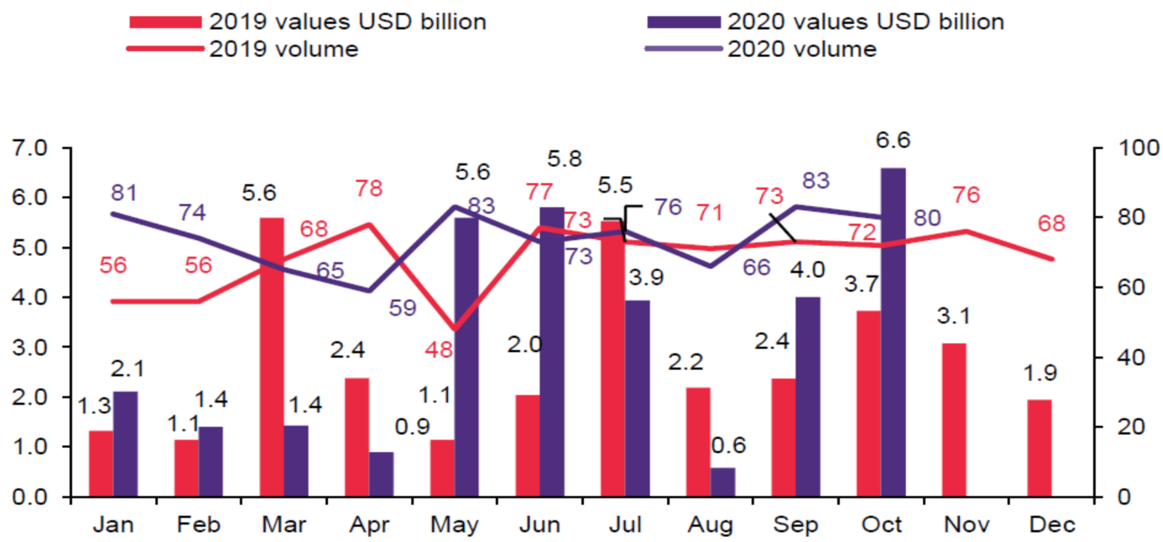
The Pandemic has induced in a lot of significant changes including consumer behavior which calls for drawing attention towards sectors like IT, ITeS and SaaS as these sectors are in demand. After the relaxation in lockdown and spurt in business activities, transformation in sentiments could be seen in terms of revenue generation. Optimism level of businesses have been shown at 63%. PE players are moving towards buy-and-build approach and attempting to adapt to highly dynamic situation. India still remains a lucrative destination for investments.

(Entry of 7 start-ups in unicorns in 2019 out which 4 are in B2B business showcases the importance of this sector)

In lieu of attracting PE investments, Government has been proactive by releasing economic stimulus package and recently, SEBI has eased capital raising norms for listed companies. These attempts are made to attract PE players and increase their stake at attractive valuations.



PE snapshot



2019 values USD billion
2019 volume
2020 values USD billion
2020 volume
7.0
6.0
5.0
4.0
3.0
2.0
1.0
0.0
100
80
60
40
20
0
Jan
Feb
Mar
Apr
May
Jun
Jul
Aug
Sep
Oct
Nov
Dec

EQUITY

TYPES OF PRIVATE EQUITY INVESTMENT

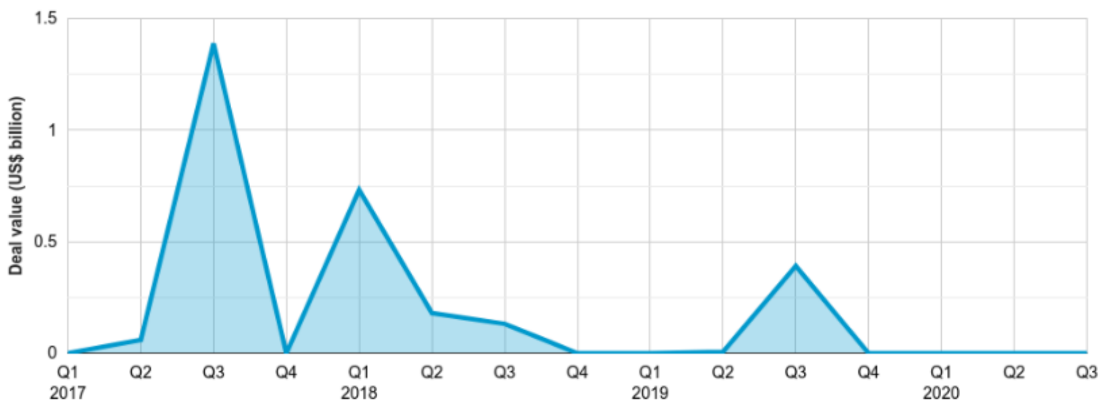
Construction and Real Estate:

Whenever private equity investment in construction sector is considered following assets construe an integral part of the investment:

- Public Utilities: Gas, Electricity, Water Filtration/Distribution, Communications infrastructure
- Transportation: Airports, Sea Ports, Highways, Roadways, Bridges, Rail
- Social Utilities: Hospital, Education Institutions, etc.
- Energy Related: power, oil and gas pipelines, oil terminals, renewable energy assets

Private equity activity by value Q1 2017 – Q3 2020

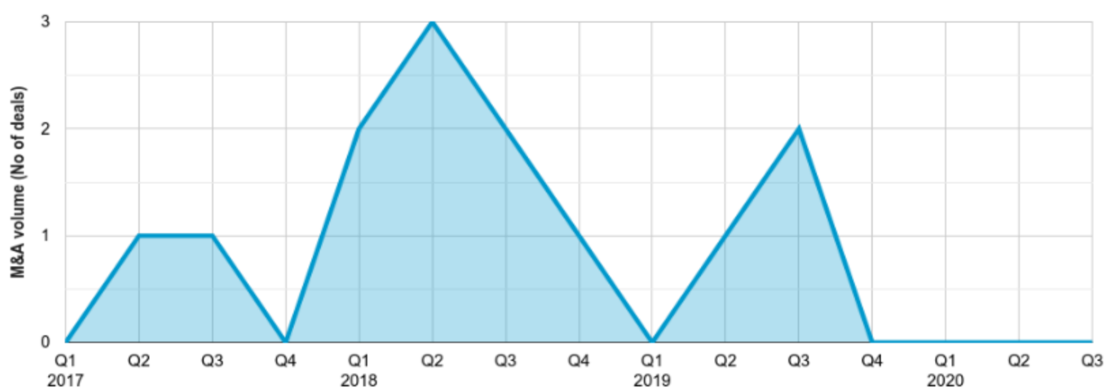
Target location: India **Bidder location:** Global **Sectors:** Real Estate
Private equity deal type(s): Exit, Buyout and Secondary Buyout



Source: White & Case's M&A explorer powered by MergerMarket

Private equity activity by volume Q1 2017 – Q3 2020

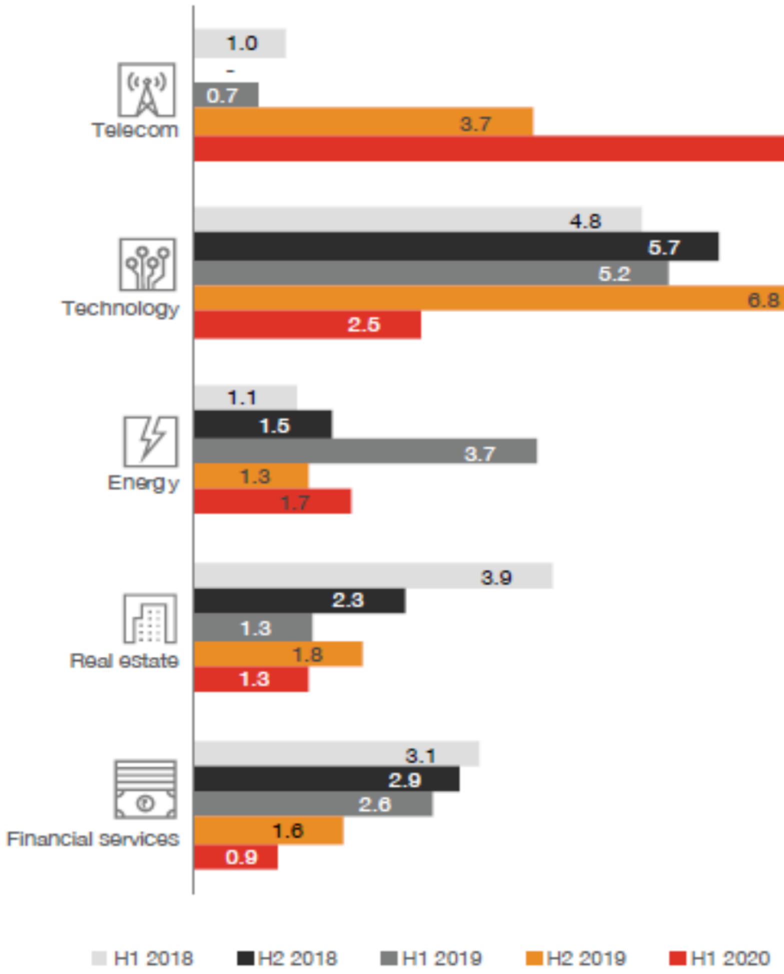
Target location: India **Bidder location:** Global **Sectors:** Real Estate
Private equity deal type(s): Exit, Buyout and Secondary Buyout



Source: White & Case's M&A explorer powered by MergerMarket

2018 was the best year for PE investments in real estate sector as investment was at whopping $8.8B. In 2019, it declined by 23%. The fall could be attributed to decline in investments in residents and office. Developers' margin was reduced after removal of Input Tax Credit (ITC) for input items under GST. Apart from this, the cost of cement, steel and labor went up making it difficult to allure investments in this sector in 2019. Greenfield sector was not preferred owing to socio-economic-political scenario.

Top five sectors attracting PE investments (in USD billion)



PE investments in debt and equity

($ million)

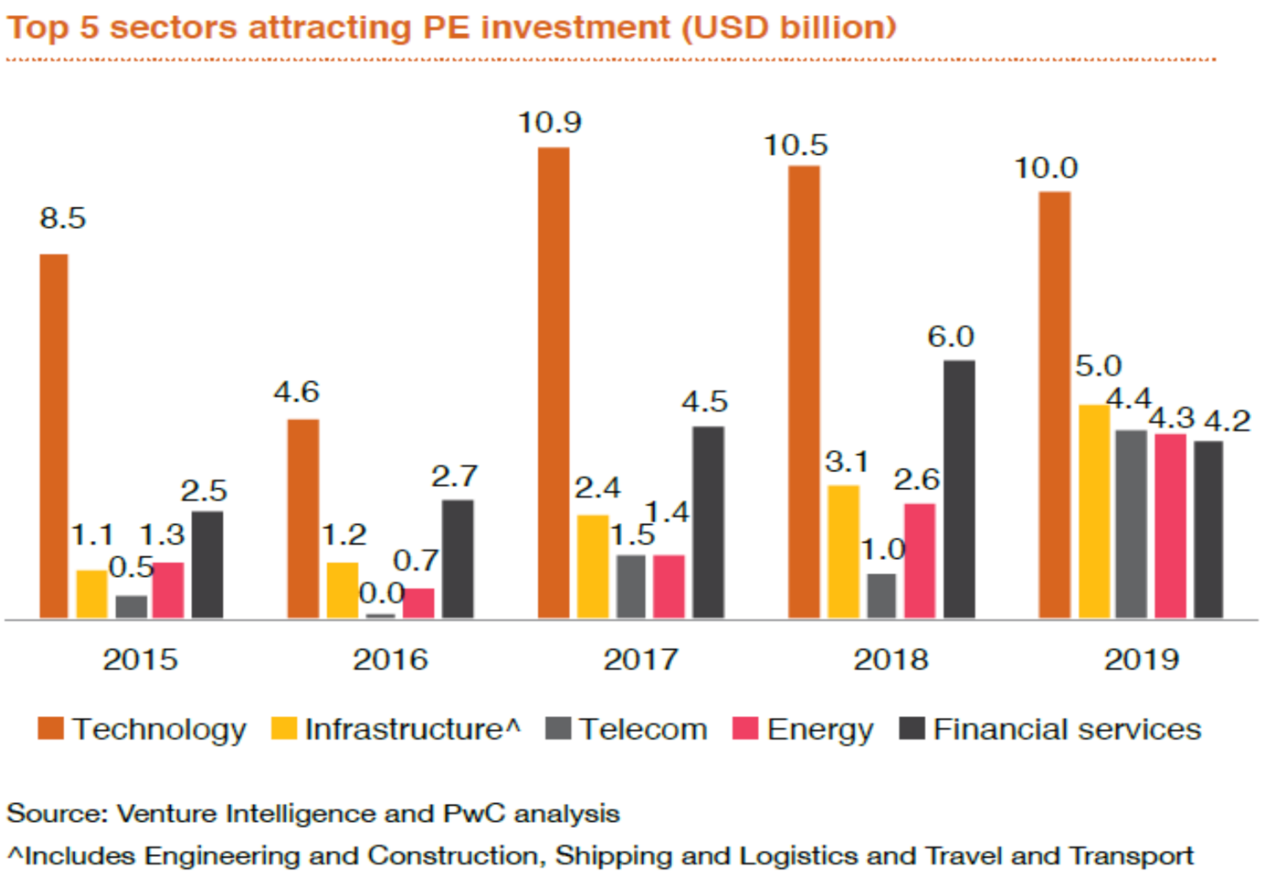
Real estate asset class	2019	Jan-May 2019	Jan-May 2020	5-month % change (Y-o-Y)
Office	2,946	1,009	141	-86
Retail	922	397	0	-100
Warehousing	1,895	1,508	57	-96
Residential	717	469	40	-91
Grand total	6,480	3,383	238	-93

Source: Knight Frank Research, Venture intelligence

The first half of 2020 witnessed $1.3B investment in real estate sector. A careful analysis shows that more than 90% of investments were made in first quarter when the impact of Covid-19 was not felt. Till 30th September 2020, real estate sector attracted PE investment of $2.3B as the sector was hit hard by Covid-19 and consequential economic slowdown. The sector was facing issues like liquidity, labor shortage. The value of transactions fell by 57% compared to same period last year[1].

Technology:

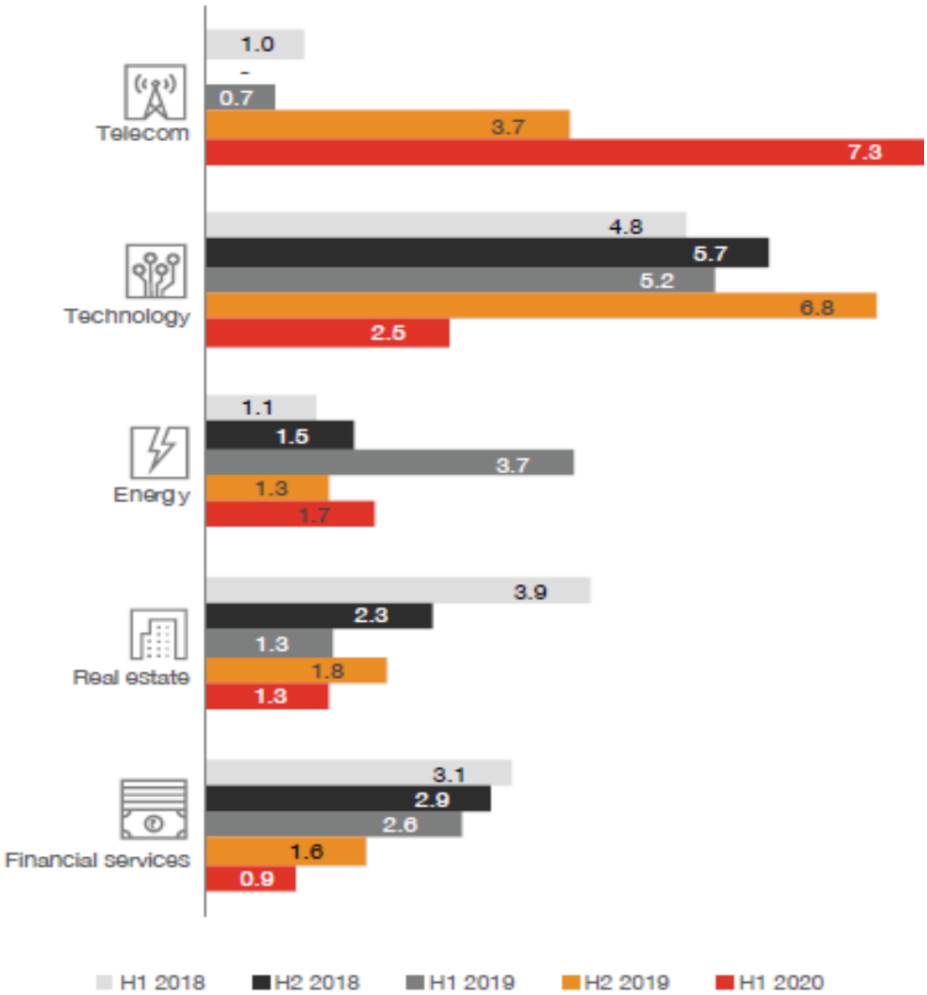
Technology sector was the attractive segment in the year 2019 despite marginal decline in deal value. The year witnessed heightened deal activity with six large deals. This year marks the shifting focus of investors on TMT (Tech, Media & Telecom) sector as investors' interest has been shown to be inclined towards digital transformation, cloud technology, data analytics/AI and software products from earlier focus on ERP/CRM and retail POS[2].



[1] Investments in Real Estate – Trends in PE Investments – Q3 2020'

[2] Grant Thornton 2020

Top five sectors attracting PE investments (in USD billion)



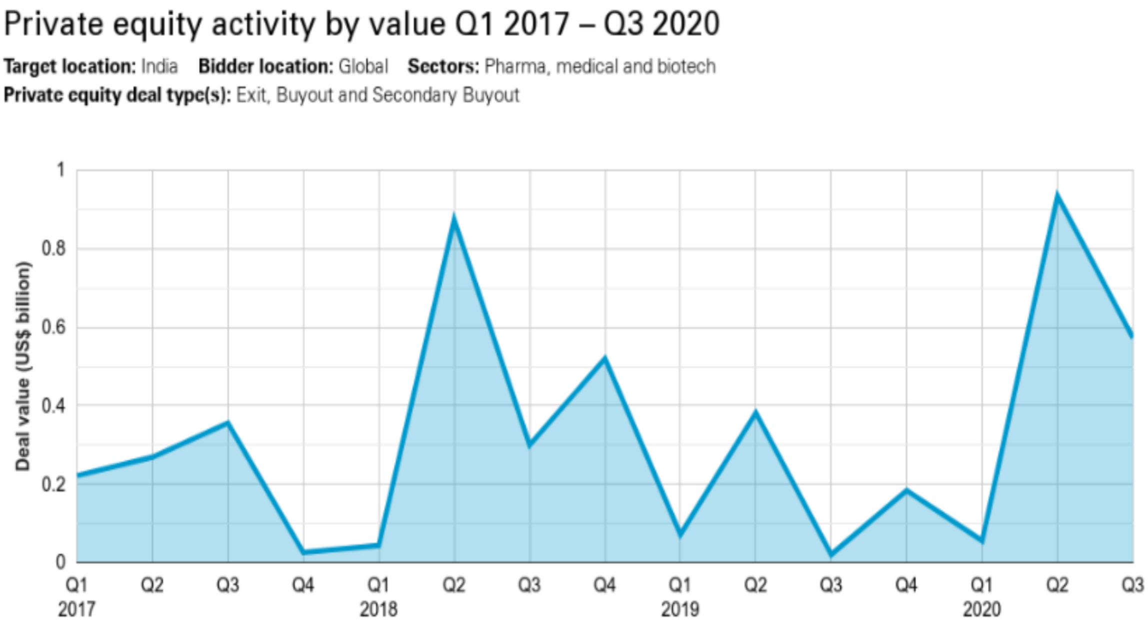
Source: Venture Intelligence

Despite Covid-19 induced liquidity crunch, "Technology" remained as top sector for PE investment. Faster adoption of new technologies and behavioral changes like contactless purchasing became the reason for resiliency of this sector in second quarter.

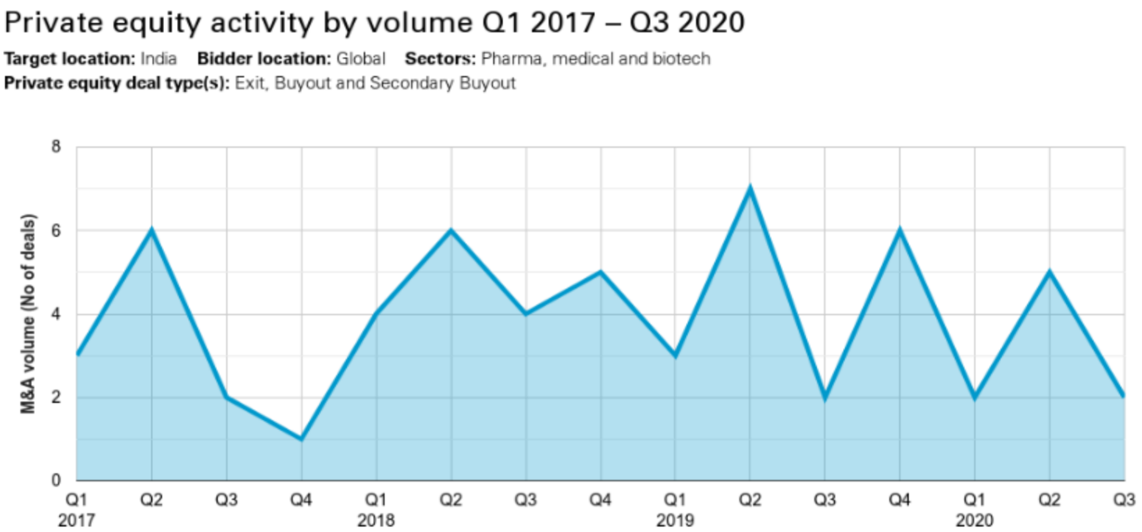
In July 2020, Technology was the top sector with investment worth $963M across 10 deals. Top sectors which dominated in first half of 2020 – Consumer technology, Software as a Service (SaaS), and BFSI as they amounted to 55% of total investments. With the increasing demand for at-home services, educational technology, vertical e-commerce and food-tech grabbed the attention of investors.

In June 2020, Jio platforms managed to raise $4.6B by Silver Lake, Mubadala Investment, Abu Dhabi Investment Authority and TPG Capital on account of its emerging stature as Tech Company. PE Investors like Blackrock, Sands Capital, Alkeon Capital have joined hands to invest in Byju's, leading ed-tech company. Recently, Silver Lake announced $500M infusion in Byju's by joining hands with other existing investors. VC investments remained intact in 2020 as there was large fundraises by Unacademy, Byju's, Swiggy, Curefit.

Pharma, Healthcare and Biotech:



Source: White & Case's M&A explorer powered by MergerMarket

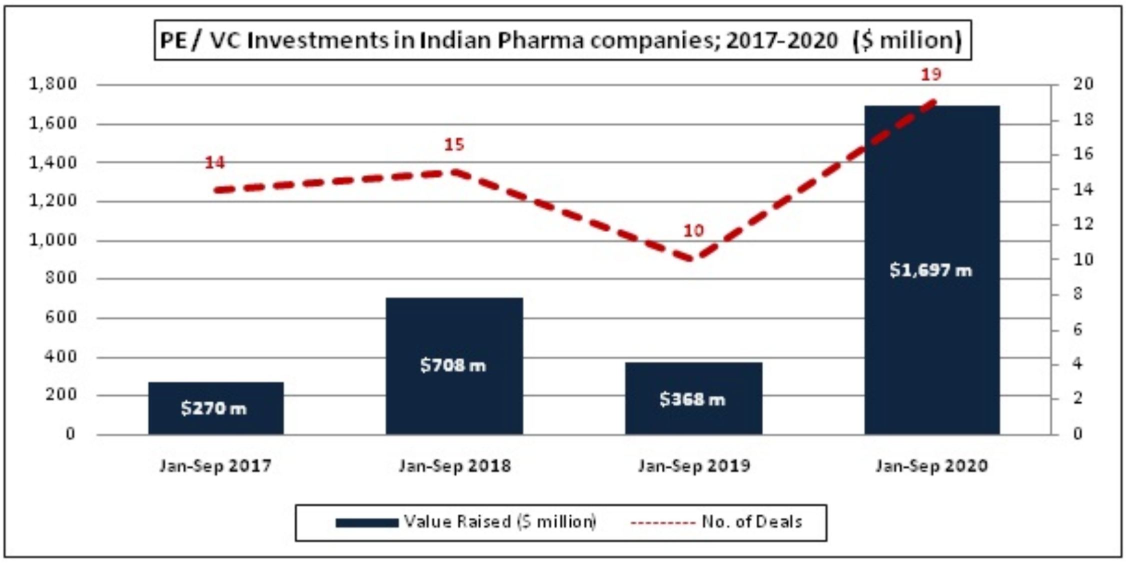


Source: White & Case's M&A explorer powered by MergerMarket

India – world’s third largest manufacturer of drugs by volume seems to have remained resilient despite shock given by Covid-19. A growth of 3.5 times was seen in PE/VC investments in pharmaceutical companies which translates to touching $1.69B during January to September 2020. The last year 2019 witnessed just $825M deals. It showcases the sustained confidence of investors in this sector’s growth potential because of impositions of restrictions on pharma imports from China.

PE-VC Investments in Pharmaceutical Companies (2017 - 2020 YTD)

Year	No. of Deals	Amount ($M)
2020 YTD	**19**	**1697**
Jan-Sep YTD	19	1697
2019	**18**	**825**
Jan - Sep	10	368
2018	**20**	**875**
Jan - Sep	15	708
2017	**18**	**395**
Jan - Sep	14	270



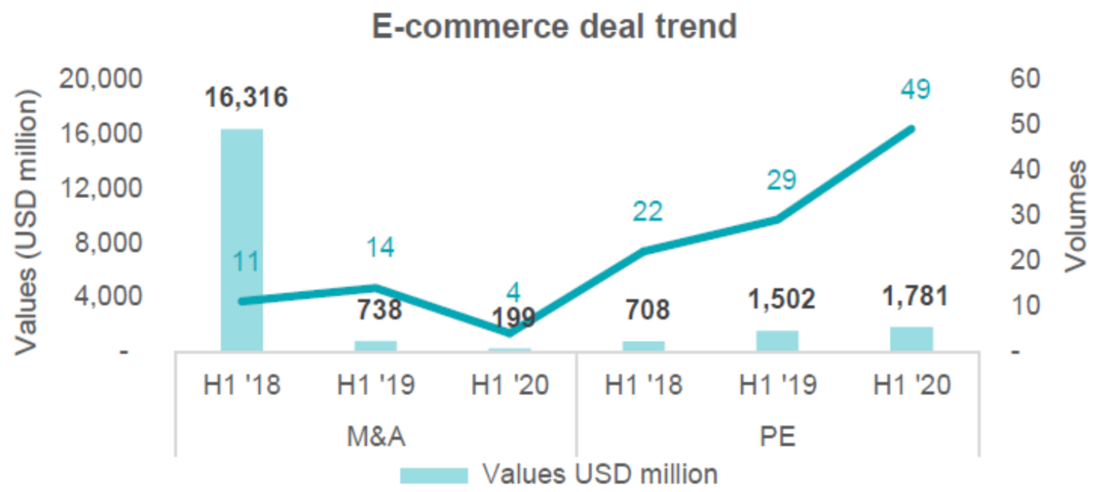
Data Source: Venture Intelligence

The reasons attributable to improved investors' sentiment are: Covid-19 has blazed a trail for focus on healthcare again, India pharma companies running clinical trials for rolling out vaccine, shift from Chinese manufacturing of drugs to Indian manufacturing. If the breakdown of this sector is looked into, Drug manufacturing/API Companies, biotech companies, consumer health and welfare space – witnessed growth by 195%, 413%, and 27% respectively. Some major deals in 2020 were Carlyle's $490 million investment in Piramal Phara, KKR's $414 million investment in JB Chemicals, and Carlyle's $210 million investment in SeQuent Scientific.

This sector shall continue to remain attractive to investors owing to the need for prevention of such similar pandemic in the future and increased priority towards healthcare. Drug discovery and API companies will continue to garner attractive investments.

E-commerce:

E-commerce has been the leading sector in last 4 years and in 2017 it emerged as largest sector in terms of deal value primarily because of fund-raise by Flipkart. The tremendous trust placed by PE/VC community in e-commerce showcases the expected level of growth. In 2019, across 503 transactions, investments were made for $16.8B. However, in 2020, PE-VC investments grew by 12% in first six months to $18.8B; the biggest contributor being investment in Jio Platforms. Reliance Industries' digital platform garnered attention of marquee global investors like KKR & Co., Silver Lake, Vista Equity Partners, General Atlantic, Mubadala, ADIA, and TPG by selling its stake. This heavy investment showcases the potential of e-commerce even at the time of Pandemic as there has been rise in digital transactions, digital literacy and burgeoning rural e-commerce. Apart from these colossal opportunities, stimulus provided by Government of India in its Digital India Program and "Make in India" have made India one of most thrilling destinations to invest in across the world.



The resilience in this sector can be witnessed by the fact that healthy activities could be seen in e-commerce sector despite challenged thrown by new e-commerce policy and Data Protection Bill. Investments by Softbank, Tiger Global and Alibaba in online companies like Ola, Lenskart, Delhivery and Paytm highlights the fundamental potential of this sector. The further growth in this sector can be seen with the growing pace of digital payments, online financial services and behavioral changes owing to increased time spent on digital productivity and digital leisure.

[1] India Private Equity Report 2020

Food and Agriculture:

With a significant contribution of 16% to Gross Domestic Product (GDP), employment of substantial number of Indian workforce, and dependency of certain sectors like retail, chemicals and e-commerce, Agriculture is the key sector of Indian Economy. Food & Agriculture sector witnessed $881M worth of transactions across 83 deals in 2019 as compared to $647M across 42 deals in 2018. Research has suggested food-tech segment accounted or one in every three deals as its deal value is highest despite low number of deals.

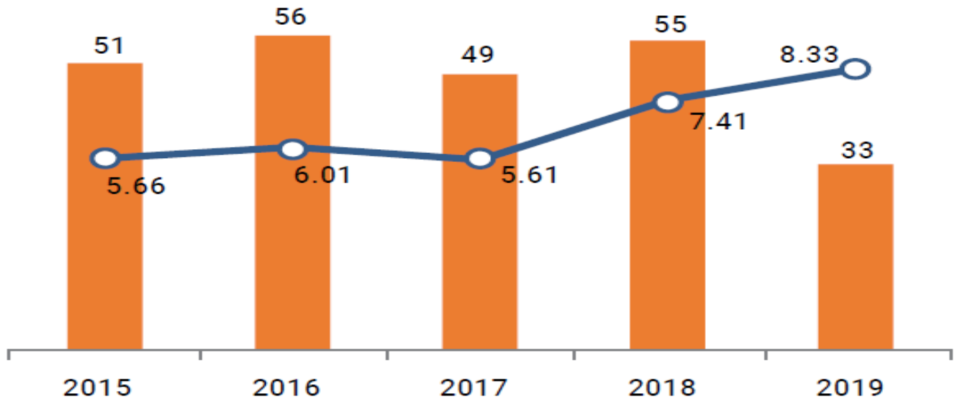
Agricultural ecosystem has been undergoing innovation with India’s flourishing data digitalization, data analytics, AI and SaaS technology. The further boost has been given by reforms of the government such as deregulation of APMC market. After the Pandemic, Government has brought in a slew of reforms in order to encourage investment in this sector-

- The Farmer (Empowerment and Protection) Agreement on price Assurance and Farm Services Ordinance, 2020 which provides for better returns for farmers and better safeguards owing to formalized contracts.
- Amendment to Essential Commodities Act – which encourages investment in areas like warehousing and cold chain storage.
- Reforms in produce selling process – which tends to lessen the cost for agritech startups that procure produce from farmers to sell to wholesalers and retailers and pull apart the monopoly of APMC.

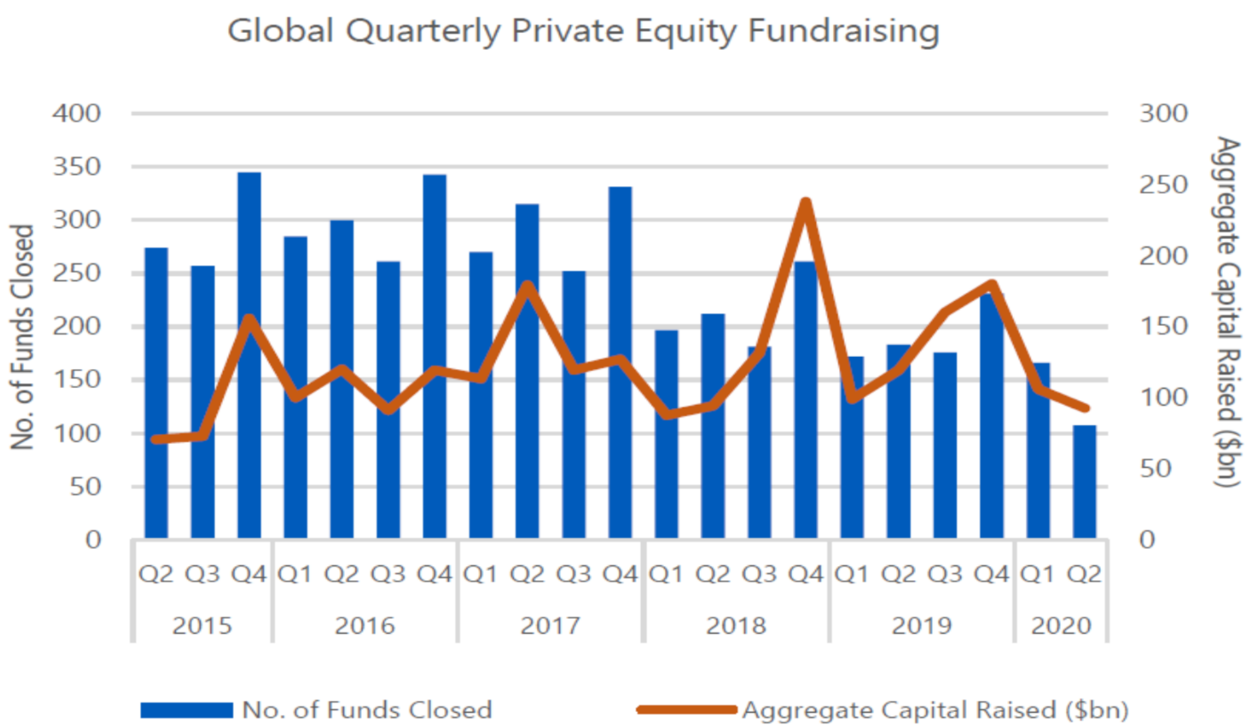
Thus, regulatory reforms would play a major role in attracting investments in this sector. The government set the target of doubling farmers’ income from $1,481 per annum to $2,692 by 2022. Adoption of technology would be play prominent role in future of Agricultural industry.

FUNDS RAISING

The year 2019 witnessed the number of funds raised falling down by 40% but the amount raised showed improvement which was an all-time high at $8.33billion. It showcases the transition in investment behavior of limited partners towards 'selective investment'. Investors had been expecting fundraising environment to be challenging before COVID owing to slow economy and selective investment pattern of PE firms.

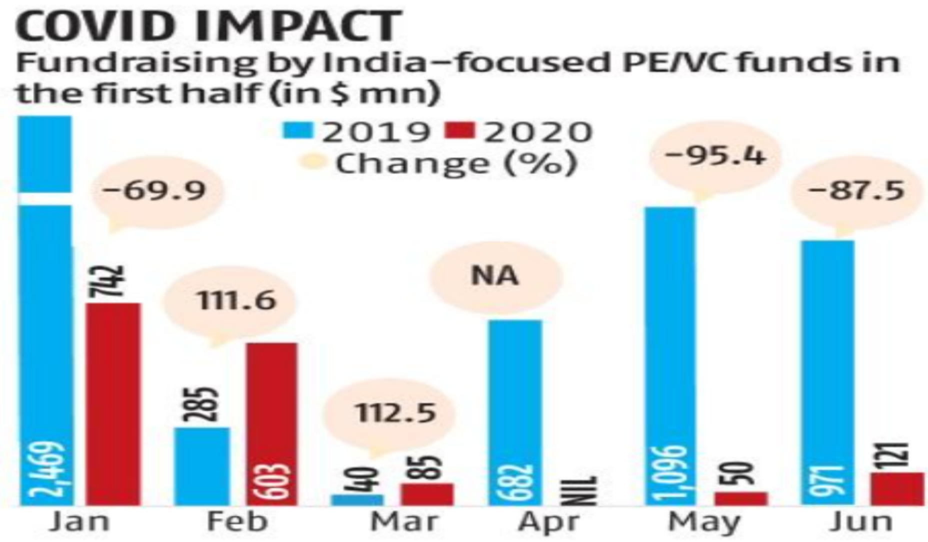


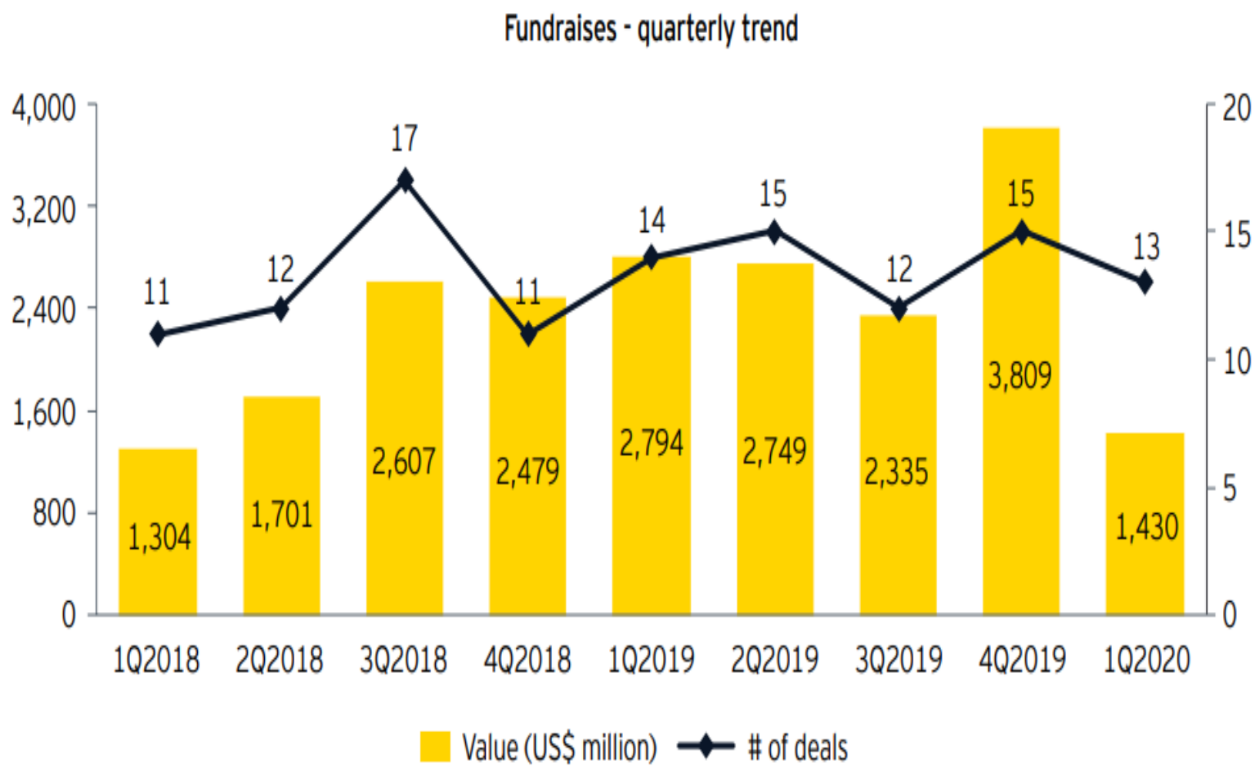
The impact of the Pandemic could be seen in Q2 of 2020 as global amount of capital and fundraising fell drastically, down approximately 50% as compared to Q4 of 2019[1]. The impact can be attributable to 'inability to exercise due diligence' in the time of Pandemic as physical meetings have been substituted now.



[1] Paulweiss data, PE fundraising at a glance

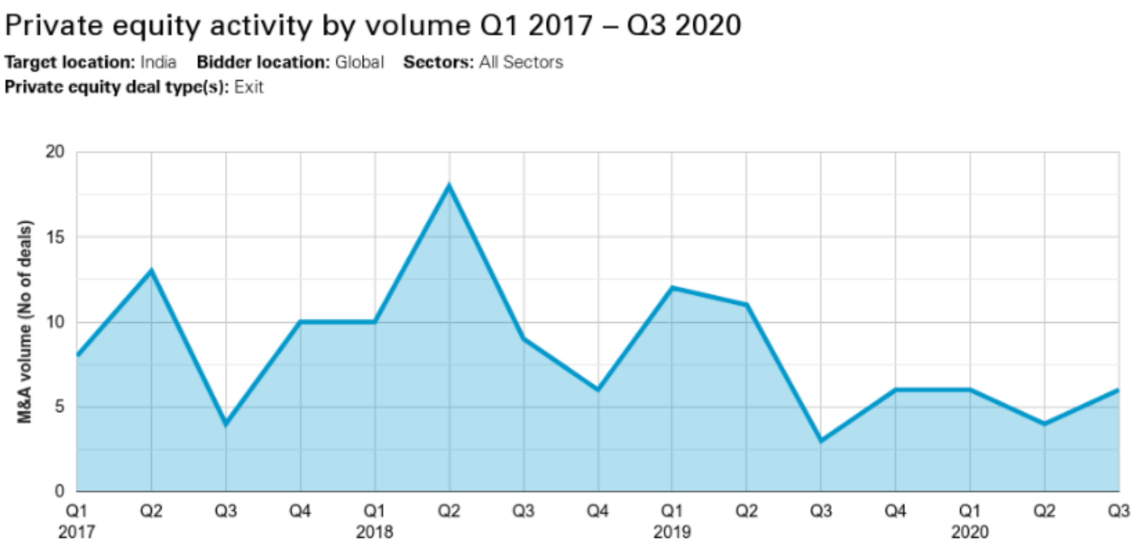
PE firms shall play significant role in providing capital and industry expertise to cash-starved businesses and also in the path to recovery. Despite the Pandemic, sectors such as SaaS, Fintech and e-commerce continue to gain investors' traction[1]. Nascent GPs may find hardship in raising funds in the near future. However, consolidation in PE/VC sector could pave way for higher investments as these consolidated funds together hold potential to attract higher LPs.

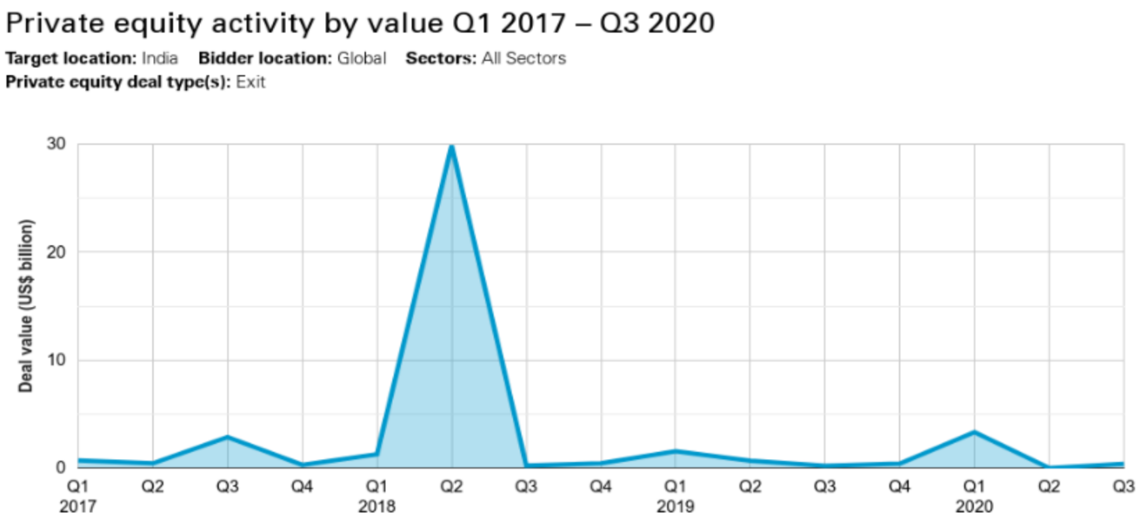




[1] Bain Co's India PE Report 2020

PRIVATE EQUITY EXITS

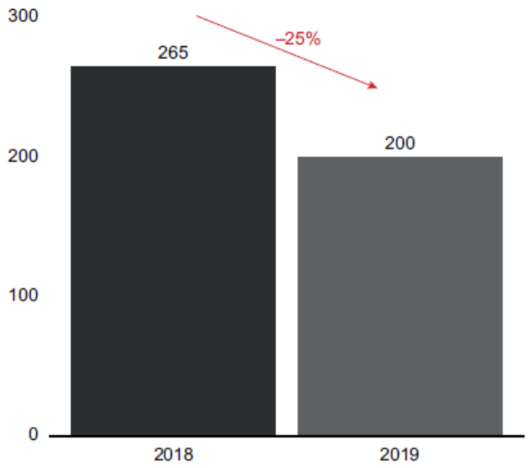


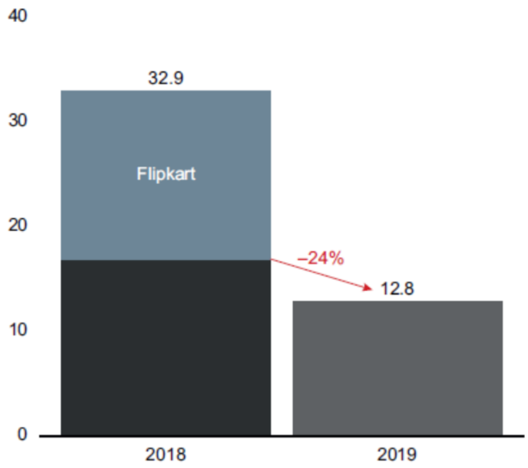


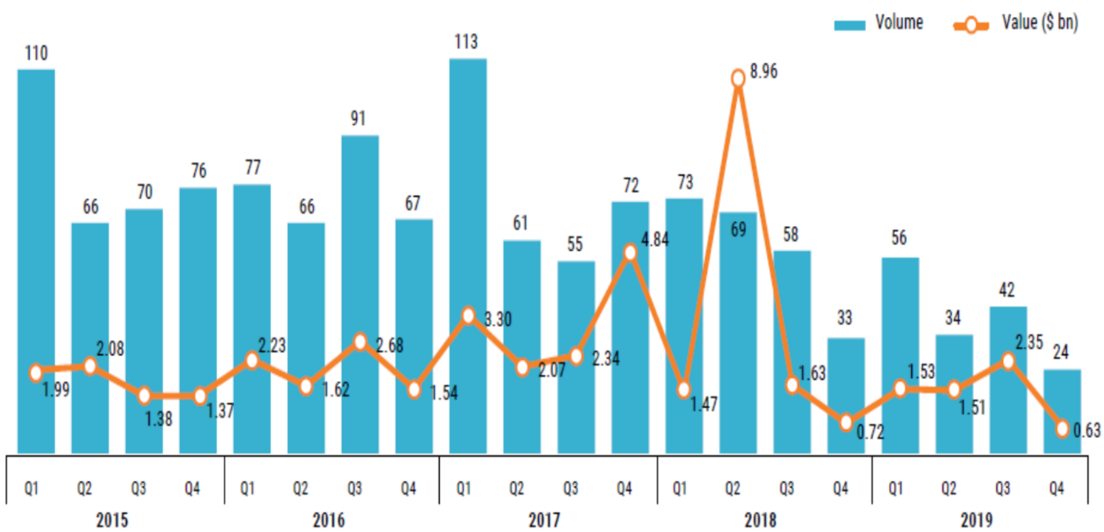
For private equity exits, there are two vital exit choices taken into consideration—the timing and the exit channel. The key external components that decide the timing and channel for an exit incorporate the predominant financial conditions of the economy, the period of the economic cycle and the impression of valuations in the business sectors.

A decline in exit deals was witnessed in 2019 as compared to previous 2 years, the reason for the same is attributable to IPO market unpredictability and macroeconomic softness as highlighted by investors[1]. Strategic sale was seen as preferred mode of exit. Despite this, returns on investment remained strong.

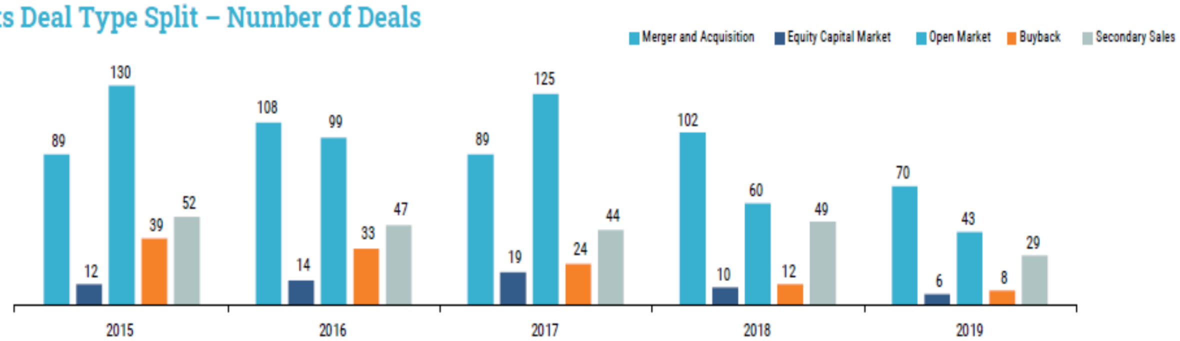
[1] Bain and Co. report 2020





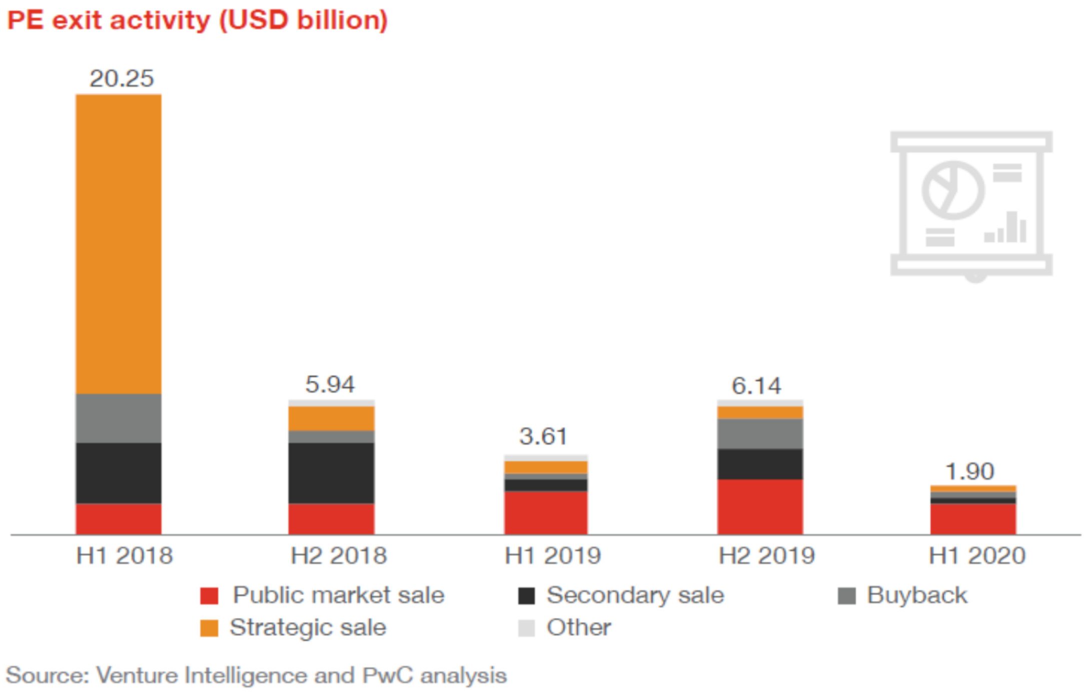


PE Exits Deal Type Split – Number of Deals



M&A exit route once again was the most preferred route for private equity investors to unlock their investments. This was followed by open market exits and secondary sale.

Due to Covid-19, the first half of 2020 experienced decline in deal exits. It declined by 47% compared to same time last year and 69% compared to second half of 2019. A careful quarter-wise analysis would reveal that due to low valuations of businesses, the deal exit was at its lowest in second quarter of 2020 when the actual impact of Covid-19 was felt[1]. Investors tend to hold their money in such environment. The third quarter witnessed jump in exit deals, but could not reach the level of first quarter.



	PE-VC exits		VC exits	
Quarter	No. of Deals	Amount ($ mn)	No. of Deals	Amount ($ mn)
Q3 2020	40	1,558	16	299
Q2 2020	17	376	9	34
Q1 2020	40	2,532	23	451

Source: Venture Intelligence, Data as of November 2

[1] https://www.thehindubusinessline.com/data-stories/data-focus/pe-vc-exit-deals-rebound-in-q3-2020/article33115489.ece

CHALLENGES IN PRIVATE EQUITY INVESTMENT

1. Foreign Direct Investment Policy Revision:

In order to curb opportunistic takeover of Indian Companies which are in distress due to Covid-19 induced lockdown, Department for Promotion of Industrial Policy & Promotion (DPIIT) released Press Note 3 restricting investments from land-bordering nations of India by putting those investments under "Government Approval Route"[1]. The Press Note stipulates clearance from ministry concerned for any investment coming from China. The loose wording of Press Note extends to scrutinizing investments if "Beneficial owner" of such investment is situated in China.

In the absence of clarity on definition of "Beneficial ownership", PE funds which have investments from China may be required to seek government approval, which may result in delaying urgent financing of cash-starved Indian businesses, thereby dampening investors' sentiment.

2. Coping with dynamic situation and expansion of scope of "Due Diligence"

With the onset of Covid-19, priorities in sectors have changed along with consumer demands as investors are focusing more on ed-tech, healthcare and pharmaceuticals; the construction of investment deals will undergo a significant change as physical meetings have been substituted with virtual meetings due to Covid-19 and exercising due diligence in such a time would be a vital factor in constructing potential deals.

PE funds will have to use their commercial diligence to understand how the pandemic has reshaped the customer fundamentals and channels market in order for them to align it with their priority sectors. PE funds would need to expand its due diligence to take into account non-financial factors as well, like analysis of growth trajectory, potential disruptors. These funds will have to be more concerned with equipping themselves about potential risks of businesses, supply chain issues, cyberattacks.

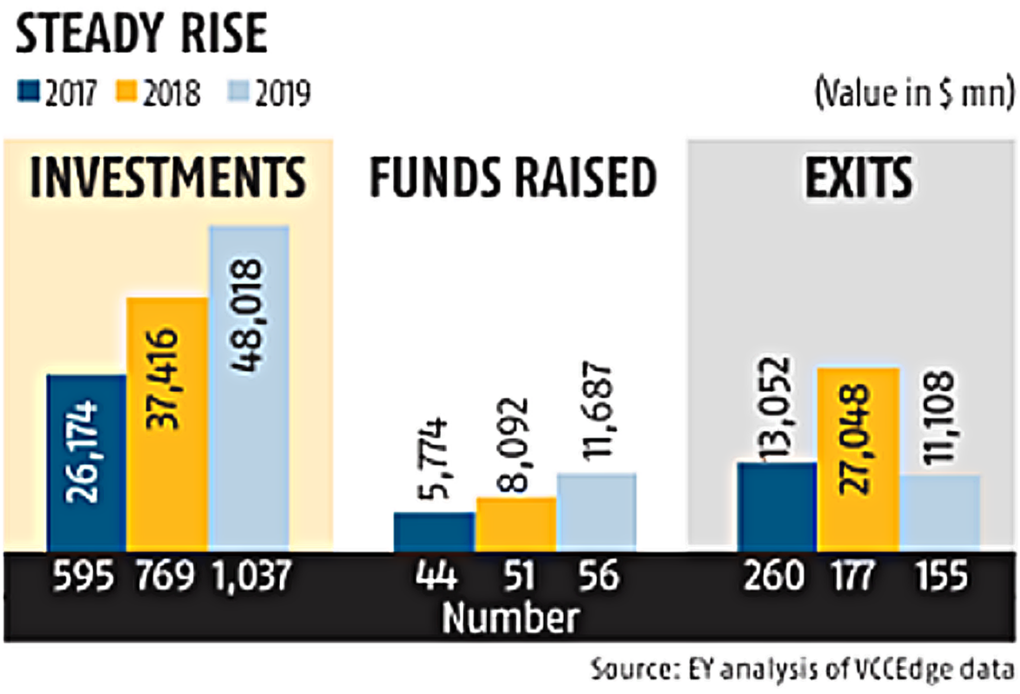
Thus, PE funds will have to deal with a lot of challenges thrown by Covid-19.

[1] https://dipp.gov.in/sites/default/files/pn3_2020.pdf

IMPACT ON INDIAN ECONOMY

The contribution of Private Equity and Venture Capital has been significant to Indian economy as PE-VC investments grew to $40B in FY20 as compared to $15B in FY15. The slowdown could be seen in first quarter of FY21 due to Pandemic. In terms of job creation, more than 26 lakh employment opportunities have been created by Start-ups backed by PE-VC investors, an increase of 27% from the preceding year. In 2018 and 2017, the number of creation of jobs were 20.5 lakh and 16.5 lakh respectively[1]y. Apart from direct/indirect job creation, these investments have given stimulus to freelance work and other professional services.

By making certain amendments to Finance Act 2019 and Income Tax Act 1961, corporate tax reductions highlighted the intent on part of Government to create competitive business environment, which is likely to generate productivity, jobs and investments. PE-VC funds have penetrated more than $200B in last 15 years[2]. Apart from being quality source of capital, it helps domestic business turn globally competitive. It is aligned with the aim of Government in formalizing the economy.



[1] http://ivca.in/wp-content/uploads/2020/02/IVCA-Zinnov-Wealth-Creation-Report.-Creating-Value-for-1.3-Billion.pdf

[2] https://www.livemint.com/opinion/online-views/opinion-pe-investor-and-promoter-need-to-work-together-1564509759558.html

The last 3 years witnessed PE-VC investments growth at CAGR of 44%. The cumulative investments received outperform investment received during period of 10 years i.e. 2007 and 2016. A tremendous increase of contribution of PE-VC capital to Indian Economy could be seen from being 0.7% of GDP in 2016 to its current level of 1.7%.

The overall impact of such capital is to seen in creation of direct and indirect jobs, enabling technology-led solutions, building a digital economy, new infrastructure, new business models and enhanced capacities. While, the near-term challenges posed by Covid-19 have slowed investments, but investors still remain confident about long-term potential of the Country.

ROUTE AHEAD

Progressive tax policies & incentives, and providing support to start-up ecosystem by ensuring efficient framework for garnering investors' interest played prominent role in heightened domestic as well as foreign funds in 2019. Global pension funds as well as SWFs have been enlarging their footprint in India. Despite Covid-19 which gave PE investments a shock in first few months due to low valuations, PE investments would be net-gainer as preferred source of capital. Absence of availability of fresh investments and presence of solid dry powder with PE funds would change the outlook towards investment as the priority of PE funds would be to re-deploy capital in portfolio companies and assist them in navigating the crisis. A strong rebound activity is expected in a few sectors such as healthcare, insurance, e-commerce and fintech. Third quarter of 2020 witnessed investors' inclination turning towards these sectors as Sequoia India, Accel Partners, Matrix Partners, Better Capital, SAIF Partners and Nexus venture partners emerged as top investors in seed stage as well as growth stage.

Leveraging of strategic and operational know-how by FMs can help their portfolio companies come out of the crisis and blaze a trail for better valuations. Their historic experience and value-creating capabilities coupled with lessons learnt from Pandemic would emerge as key reasons for performance of this industry.

[1] https://www.ey.com/en_in/private-equity/how-india-is-emerging-as-one-of-the-leading-destinations-for-global-pe-vc-capital

NEED FOR A REGULATORY FRAMEWORK

In order to bolster foreign investors' sentiments specially post Covid-19, Government has introduced a lot of significant amendments in its policies as sentiments are the function of robust legal environment. With this aim, various proactive reforms have been taken - changes in restricting investments from land-bordering nations by putting it in under "government approval route" in order to prevent opportunistic takeover/acquisition of Indian firms which are in distress, setting aside DDT to remove cascading effect of tax thereby assisting foreign creditors to take credit at home country, and FDI relaxation in certain sectors.

Regulatory framework strengthening could impact deal momentum in PE as reforms like introduction of RERA, GST, IBC and new investment structures like InvITs and REITs made significant contribution to heightened deal activities in 2019.

The unprecedented Covid-19 did put a setback to the industry in first quarter, but the overall sentiment remains positive owing to attractive valuations. The proper effectuation of "Atmanirbhar Package" announced by Government will decide the road to re-emergence. The overall economic recovery and momentum in deals would depend upon response of the Government with its reforms.

COMPANIES (COMPROMISES, ARRANGEMENTS AND AMALGAMATIONS) AMENDMENT RULES, 2020

The Ministry of Corporate Affairs has notified the Companies (Compromises, agreements, and amalgamations) amendment rules, 2020 to change the Companies (Compromises, agreements, and amalgamations) rules, 2016. The Companies are not responsible.

The following sub-rules should be placed after sub-rule (4) in rule 3, namely: –

“(5) An application for arrangement for an offer to take over under subparagraph (11) of section 230 shall be made by a member of the company when such member holds, along with all other Members, a minimum of three-fourths of the shares in the company and the request for the acquisition of any remaining share of the company has also been made.
Explanation I. – “shares” indicates the company's holding shares and includes all securities, such as depository receipts, entitling the holder thereof to exercise voting rights.
Explanation II.- Any transfer or conveyance of shares by a contract, arrangement, estate, or any change in accordance with any legislative or regulatory requirement shall be subject to nothing under this Sub-Rule.

(6) An application of arrangement for takeover offer shall contain:

a. The registered valuer report which, after taking into consideration the following variables, provides specifics of the share valuation offered to the acquired member:–
    i. Highest price for the acquisition of shares in the recent 12 months paid by any person or group of persons.
    ii. the fair price of the company's actions which the registered value adjustment company will determine following the valuation parameters, including net return value, book value of shares, earnings per share, multi-priced earnings against the average of the industry and other common parameters for assessing the company's share.
b. Bank account details, which must be opened by one member individually, wherein the entire amount of the takeover offer is not equal to one half of total consideration.[1]”

[1] https://www.scconline.com/blog/post/2020/02/05/companies-compromises-arrangements-and-amalgamations-amendment-rules-2020/

MCA ISSUES A CIRCULAR ON SETTING A DATE FOR SCHEMES OF ARRANGEMENT:

A clarification about the interpretion of the provision of paragraph 232(6) of the Act 2013 of the Companies was published by the Ministry of Corporate Affairs (MCA).

The MCA has emphasised that in the instance of amalgamation or mergers, the firms that are parties to the scheme should pick and declare a 'appointed date' after considering the requirements of the act, applicable regulations, common practices, and judgments made by various NCLTs. This 'appointment date' It may be a particular calendar date or may be related to event occurrence, like the satisfaction of a prerequisite that the scheme's parties have agreed upon[1].

GREEN CHANNEL APPROVAL MECHANISM BY COMPETITION COMMISSION OF INDIA

Green Channel Approvals are a way to accelerate approval process of certain kinds of combinations. In exact terms, The 'Green Channel' is described by the Competition Commission of India ('CCI') as an automated procedure of approval for the combinations which, after filing the Notice as prescribed, is deemed approved.[2]

With the addition of a new Regulation 5A to the CCI (Procedure for the transaction of regulations concerning combinations), 2011 Regulation has given effect to the green channel mechanism. (“Combination Regulations”) Vide a modification of August 13, 2019 (“Amendment”)[3].

Recent development in relation to the Green Channel Route includes the relaxation provided by allowing E-filing of combination notices under Green Channel due to Covid 19 pandemic[4]. In addition, it was found that Green Channel Routes were approved every 1 out of 5 combinations[5] Sixteen combinational notifications were submitted under the Green Channel route, as of 14 September 2020 (from a total of 84 notified combinations over this period since the beginning of the Green Channel route, i.e. around 19 percent)[6].

[1] https://taxguru.in/company-law/mca-clarifies-doubts-appointed-acquisition-date-with-respect-mergers-amalgamations.html

[2] https://www.cci.gov.in/sites/default/files/press_release/PR82019-20.pdf

[3] http://egazette.nic.in/WriteReadData/2019/210553.pdf

[4] https://www2.deloitte.com/content/dam/Deloitte/in/Documents/tax/in-tax-relaxations-announced-by-competition-commission-of-india--due-to-covid-19-noexp.pdf

[5] https://www.business-standard.com/article/companies/1-out-of-5-combinations-given-approval-under-green-channel-route-cci-120081701599_1.html

[6] https://www.mondaq.com/india/antitrust-eu-competition-/988168/one-year-of-the-cci39s-green-channel39-route-for-deemed-approval-of-combinations

MERGERS & ACQUISITIONS' INCLUSION UNDER IBC

Section 5(26) of the Insolventness and Insolvency Code ('IBC') offers an explanation that includes the Resolution Plan, “provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation and demerger”. Subsequently, if the Competition Act 2002 defined u/s 5 combinations were included in the Resolution Plan, CCI would be authorised. The IBC has fueled mass M&A dynamics in the country, led by acquisitions with Bhushan Steels, Reliance Communications and Fortis Healthcare (USD 7.4 billion) (USD 1.2 billion). The IBC has escalated its operations in distressed merger and acquisition in India to $104.5 billion in 2018 in transactions involving Indian enterprises[1].

[1] https://www.ijedr.org/papers/IJEDR1903007.pdf

RECENT DEVELOPMENT IN MERGER CONTROL IN INDIA

The Competition Act 2002, together with the Competition Committee of India, which regulates the merger control regime in India, was modified significantly. The Competition Act 2011 (Commpetition Act) also included a procedure for the transaction of companies related to combinations (MCA), and the notifications issued by the Ministry of Corporate Response.

The Key changes in Law include –
With the addition of a new Regulation 5A to the CCI (Procedure for the transaction of enterprises concerning combinations), 2011 Regulation has given effect to the green channel mechanism. ("Combination Regulations") vide an amendment dated 13 August 2019 ("Amendment")[1].

On 30 October 2019, the CCI enhanced the filing fee which is payable along with the merger notification to the CCI from INR1.5 million (USD 19,629) to INR2 million (USD 26,172) for notification in Form I and; and INR5 million (USD 65,429) to INR6.5 million (USD 85,057) for notification in Form II.

CCI published a revised guidance to its notes to Form I on 27 March 2020 (Guidance Note), The Guidance Note, inter-alia, provides clarity on the (i) definition of complementary activities, to include those products/services that are related and are used together (eg, printers and ink cartridges); and (ii) details of special rights acquired pursuant to a combination, including affirmative/veto rights, information rights and the acquisition of any other rights or advantages of commercial nature. Further, it clarifies that market facing information needs to be provided for three years only where the parties have a combined market share of 10% or more in any of the defined relevant markets.

On 11 March 2020, the MCA issued an exempt notice of five year compulsory compliance with the Competition Act for the five years until 11 March 2025 which exempts banking companies which are put into a moratorium by the Reserve Bank of India pursuant to Section 45 of the Banking Regulation Act, 1949.

[1] http://egazette.nic.in/WriteReadData/2019/210553.pdf

FEMA (NON-DEBT INSTRUMENTS RULE), 2019.

The Central Government notified Rules 2019 on Foreign Exchange Management (Non-Debt Instruments) on 17 October 2019 ("NDI Rules"), Substituting the former Foreign Exchange Management Regulation, 2017 (transfer of security issue by a person living outside India) ("TISPRO") And the Regulation of 2018 on Foreign Economic Exchange Management (India, procurement and transfer of real property).

Foreign currency management (non-debt instruments) (amendment) regulations of 2019 was the most current developments under these rules. ("Amendment Rules") The 5th of December 2019. That revision incorporates mainly the elements labelled in Press Note 4 of 2019 which the Department of Industry and Internal Trade recently released.

The following key changes in the rules have been brought up[1].

1. Replacement of Rule 7 with Rule 7A – This provides that the pricing guidelines provided in the NDI rules shall apply to the subscription of shares by person resident outside of India through rights issue.
2. Clarification in the sourcing norms applicable in Single Brand Retail Investment - The exemption of 3 years provided from sourcing norms shall not be applicable from the earlier of opening of first store or online retail.
3. Conditions for Disinvestments by Foreign Portfolio Investor: - The Securities Exchange Board of India or the Reserve Bank of India shall apply additional requirements to such disinvestment.

AMENDMENT TO THE SEBI (ISSUE OF CAPITAL & DISCLOSURE REQUIREMENTS) REGULATIONS, 2018 (ICDR REGULATIONS)

SEBI revised the Regulations 2018 on SEBI (Capital and Dissemination Requirements) (ICDR Regulations) and the Takeover Regulations to allow for more contracting flexibility as a boost to stressed company acquisitions and to make it easier for them to raise more capital In the ICDR Regulations, SEBI adopted Regulation 164A, which absolves stressed listed companies from the 26-week pricing rule applicable to preferential allotments and permits them to offer shares to latest promoters at a price tied to 2-week VWAP through preferential allotment. Acquisitions that fulfil the requirements of Regulation 164A are likewise exempted from the Takeover Regulations' tender offer duties.

[1] https://www.azbpartners.com/bank/amendment-to-the-fema-non-debt-instruments-rules-2019/

RECENT CHANGES IN SEBI TAKEOVER REGULATIONS

The Substantial Acquisition of Shares and Acquisitions Regulations 2011 ("Takeover Regulations') had authorised revisions by the Securities and Exchange Board of India ("SEBI"), through a communication dated 29 July 2019, to the prerequisites for release of burden requirements[1].

In accordance with the modification, the term "encumbrance" was greatly enlarged to additionally cover: In accordance with Regulation 28(3):

i. any limitation of the free marketable securities of shares under any name, whether directly or indirectly implemented;

ii. promise, liability, negative link, non-disposal enterprise;

iii. Any pact, transaction or condition or arrangement of any type of burden, whether carried out directly or indirectly, by any name that is named.

The amendments raise the regulation 3 creeping acquisition limitations from 5% to 10% per financial year. However, this exemption is only applicable for the 2020-21 fiscal year and only relates to the purchase of promoter shares through preferred offers[2].

Most recently, the takeover code was amended on May 05, 2021[3], by which Regulation 3(5) was added which provides that, the limit be raised from 25 percent to 49 percent for specified securities held by Institutional Trading Platforms now known as Innovators Growth platform.

A combination of modified legislation effectively enables promoters with between 25percent and 75percent shares of the company to improve their interest on three separate pathways during the duration of the modifications.

First of all, they can purchase up to 5 percent of the shares from the existing mechanism, either on the market or through negotiated buys from existing shareholders, throughout the course of a fiscal year. Second, by preferentially issue the firm shares through the new window set up for that purpose, they can acquire 5 percent more shares. Alternatively, the first and second steps above can be combined and 10% can be achieved via a priority problem. Thirdly, they can volunteer for at least 10 percent of the shares under Regulation 6, even though the first two ways have already obtained shares in the past[4]

[1] https://www.mondaq.com/india/securities/841422/recent-amendments-to-sebi-takeover-regulations-and-insider-trading-regulations

[2] https://indiacorplaw.in/2020/06/promoter-friendly-amendments-to-the-sebi-takeover-regulations.html

[3] https://www.sebi.gov.in/legal/regulations/may-2021/securities-and-exchange-board-of-india-substantial-acquisition-of-shares-and-takeovers-amendment-regulations-2021_50077.html

[4] https://indiacorplaw.in/2020/06/promoter-friendly-amendments-to-the-sebi-takeover-regulations.html

KEY NCLT/NCLAT JUDGMENTS

APPLICATION OF FOREIGN LAW

1. THE ADJUDICATING AUTHORITY HAS NO JURISDICTION TO DECIDE THE LEGALITY AND PROPRIETY OF A FOREIGN DECREE

Case: Usha Holdings LL.C. & Anr v Francorp Advisors Pvt Ltd (Company Appeal (AT) (Insolvency) No. 44 of 2018)

The NCLAT judgement dates back to 30 November 2018, which stated that the NCLT was not enforceable or not when a foreign order was issued in India while admitting or rejecting the debt claim under the Insolvency and Bankruptcy Code of 2016. It was decided that the NCLT would not determine whether a foreign decree is legal or enforceable in India (IBC).

The NCLT has declined to accept a foreign decree from a US courthouse as proof of the debt payable by Francorp Advisors Pvt Ltj. to Usha Holdings LL.C in an application under section 9 of the IBC to the Corporate Insolvency Resolution Process Inc. (Operational Creditor) (CIRP).

The NCLAT found that the CIRP does not place the Adjudicating Authority, i.e., the NCLT, in the capacity of a "Court," citing Binani Industries Limited v Bank of Baroda & Anr (Company Appeal (AT) (Insolvency) No. 82 of 2018). As a result, even if there is non-compliance with Indian laws, an entity that does not have the authority of a "Court" cannot examine the legitimacy or constitutionality of a foreign decision[1].

CROSS-BORDER DEMERGERS NOT ALLOWED UNDER THE COMPANIES ACT.

NCLT Ahemdabad:- The NCLT's Ahmedabad bench decided in Sun Pharmaceuticals Industries Limited Judgment dated 19 December 2019, in CP(CAA) No. 79/NCLT/AHM/2019 in CP(CAA) No. 38/NCLT/AHM/2019 The FEMA Cross Border Merger Regulation, 2018 does not authorise cross-border demergers pursuant to Section 234 of the Companies Act, 2013, and.

The Bench noted that:

1. In Section 234 of the Company Act, which deals with the merger or amalgamation of a firm with a foreign corpus, we do not find the word compromise, arrangement or demerger. As a consequence, the demerger of Indian firms by foreign companies could be construed as forbidding and vice versa.
2. The Companies' Rules, 2016 (Rule 25A) concerning compromise, arrangements and amalgamation) are also quiet on mergers;
3. The FEMA Cross Border Regulations, which included demergers in their draft, do not include demergers in their final form, obviating the need for cross-border demergers.

[1] https://www.mondaq.com/india/insolvencybankruptcy/771542/the-nclat-rules-that-the-adjudicating-authority-has-no-jurisdiction-to-decide-the-legality-and-propriety-of-a-foreign-decree

2. NCLT HAS THE DISCRETION TO MODIFY ARRANGEMENTS, BUT ONLY WHEN COGENT; OTHERWISE DEEMED UNWARRANTED[1]

Case: Accelyst Solutions Pvt Ltd v. Freecharge Payment Technologies Pvt Ltd, Company Appeal (at) No.15/2021, decided on 24-03-2021

Miheer H. Mafatlal v. Mafatlal Industries Ltd. (1997) 1 SCC 579, which was later upheld in Hindustan Lever v. State of Maharashtra, (2004) 9 SCC 438, was cited and relied on by the NCLAT in this judgement. Even the Court thought it was appropriate to make a reference to it. The following passages were taken into consideration when quoting them:

> *"…11. While exercising its power in sanctioning a scheme of arrangement, the Court has to examine as to whether the provisions of the statute have been complied with. Once the Court finds that the parameters set out in Section 394 of the Companies Act have been met then the Court would have no further jurisdiction to sit in appeal over the commercial wisdom of the class of persons who with their eyes open give their approval, even if, in the view of the Court better scheme could have been framed…" The subsequent paragraphs laid down the broad contours of the jurisdiction of the company court in granting sanction to the scheme. Further quoted, "…the Court will have no further jurisdiction to sit in appeal over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval to the scheme even if in the view of the Court there would be a better scheme for the company and its members or creditors for whom the scheme is framed…".*

MEETINGS

3. NCLAT CLEARS AMBIGUITY OVER NCLT'S POWER TO DISPENSE WITH THE MEETINGS OF SHAREHOLDERS & CREDITORS IN A SCHEME OF ARRANGEMENT/ AMALGAMATIONS

Case: DLF Phase–IV Commercial Developers Limited & Others (National Company Law Appellate Tribunal), Company Appeal (AT) No. 180 of 2019

The National Company Law Appellate Tribunal (NCLAT) overturned the ruling of the National Company Law Tribunal (NCLT), Chandigarh Bench, as being per incuriam in a historic decision. This was due to the fact that it denied the dispensation of certain shareholder and creditor meetings of Applicant Companies, claiming that such dispensations are not permitted under Section 230-232.

[1] https://www.scconline.com/blog/post/2021/03/25/arrangements/

SCHEME

NCLT CAN REJECT A SCHEME OF ARRANGEMENT IF IT IS NOT IN PUBLIC INTEREST

Case: Wiki Kids Limited and another v. Regional Director and Other, Company Appeal (AT) No.285 of 2017

In this instance, the NCLAT upheld the NCLT ruling to reject an amalgamation regime, since it gave the promoters of the amalgamating corporation an unreasonable benefit.

The merger could not be approved on the grounds of ‘public interest' because it benefited only the promoters. The NCLAT affirmed the NCLT's finding that the merger was not in the public interest, refusing to authorise it. According to the NCLAT, the "NCLT has a duty to act in the public interest." The NCLAT used precedents like Miheer Mafatlal and Hindustan Lever to include terms like "public interest" and "commercial morality" in the scope of the tribunal's sanction.

4. NCLAT ON SCOPE OF PUBLIC INTEREST

Case: Union of India Ministry of Corporate Affairs v. Delhi Gymkhana Club Ltd. & Ors., Company Appeal (AT) No. 94 of 2020

In this case, in an appeal alleging oppression and mismanagement the NCLAT evaluated the interim relief appeal issued by the National Company Law Tribunal, hereinafter known as the 'NCLT.' As far as the public interest is concerned, it was held that it cannot be construed as the en masse interest of all citizens, but that where the interest of a segment of the general citizenry of any age group, gender, or belonging to any strata of society is affected as a class, public interest can be safely said to be involved, aside from individual legal rights. The Central Government was ruled that its views on the fact that business affairs are managed in a manner which would be detrimental to the public interest are to be recorded by the central government and that expressing that view is a sine qua non to the NCLT application under Section 241(2) of the company's law.

Merits of the scheme cannot be considered at the application stage.

Case: MEL Windmills Pvt. Ltd. vs. Mineral Enterprises Ltd & Anr. Company Appeal (AT) No. 04 of 2019

NCLAT in video Order from the Bangladesh Order of 27.05.2019 set aside the Order observing that the Order “It is manifestly clear that at the stage of calling of meeting of creditors/members for consideration of the scheme of compromise or arrangement the Tribunal is not required to examine the merits of the scheme qua the proposed compromise/ arrangement. Any such indulgence on the part of Tribunal would fall foul of the provision engrafted in Section 230 (1) of the Act and would be without jurisdiction”

NCLT ON SCHEME OF ARRANGEMENT AND TAX AVOIDANCE

Case: Gabs Investments Pvt. Limited and Ajanta Pharma Limited

The ITD was the only serious objection the NCLT received in this case. The NCLT had the option of establishing the scheme or approving it subject to taxation determined by the ITD.
The NCLT found that the strategy was unreasonable, given the promoters own the AJANTA PHARMA shares directly and indeed still retain the same percentage of shares before and after merging. The pattern of facts shows that the scheme would just benefit and enable the common promoters of transferee or transferred companies to have unfair benefits and that it has just been structured to benefit them without any public interest.

VALUATION

5. NCLAT DIRECTS FOR REVALUATION OF COMPANY’S SHARES AND PAYMENT AS COMPANY'S GROWTH HAD CHANGED DRAMATICALLY.

Case: Piyush Dilipbhai Shah vs. Syngenta India Limited & Ors., Company Appeal (AT) No. 208 of 2020

In this scenario the share capital of an enterprise has been reduced. NCLAT reassessed the company's shares and reimbursed the fair price decided by the valuer because public shareholders / non-promotors' shareholders had not been adequately compensated because the valuation done in 2017 was taken into account even though three years had passed and the company's growth had changed dramatically.

6. NCLAT ON DIFFERENCE OF OPINION BETWEEN TWO MEMBERS OF A BENCH

Case: R Narayanasamy v. The Registrar of Companies, Tamil Nadu, Company Appeal (AT) No.171 of 2020

In this case, the NCLT's denial of the company's appeal for restoration of its name was contested before the NCLAT, and the NCLAT bench gave differing judgments, after which it was sent to a third member. The NCLAT's third member held that if there is a difference of opinion between two members of a bench of the NCLAT and a judgement has been issued with no majority decision allowing or rejecting the appeal, the NCLAT may follow the procedure outlined in section 98 of the Code of Civil Procedure, 1908. According to the aforementioned clause, if there is no majority in a Judgement modifying or reversing the decree against which the Appeal has been filed, such decree must be affirmed if point of law is not the source of difference, and therefore the NCLT's decree was confirmed.

REPRESENTATION AND WARRANTY

7. VIOLATION OF REPRESENTATION OR WARRANTY MUST BE DECIDED BY AN APPROPRIATE FORUM

Case: Aura Real Estate Private Limited v. Innovative Ideals & Services (India) Private Limited, TCP No. 470/IBC/NCLT/MB/MAH/2017[1]

The Petitioner has provided several and contradictory estimates of the purported excess amount in this instance. Furthermore, NCLT was not informed of the true status of the outstanding debt.

Therefore, NCLT held that the quantity of modules to be provided under the Purchase Orders could not have been changed unilaterally by the Corporate Debtor. As a result, the question of the quality of the products and services offered requires additional investigation, and whether a violation of representation or warranty has occurred must be decided by an appropriate forum.

[1] 2019 SCC OnLine NCLT 1959

TRANSFER OF SHARES

8. A COMPANY HAS NO INHERENT POWER TO REFUSE THE TRANSFER OF SHARES

Case: Vintage Hotels (P) Ltd. & Anr. V. Ahamed Nizar Moideen Kunhi Kunhimahin, Company Appeal (AT) No. 408 of 2018

The NCLAT concluded that, under the law, a company has no inherent authority to deny a share transfer or registration, leaving the decision in the hands of the company or its directors at their discretion. The discretionary right to deny a 'Transfer of Shares' is not to be used in an intentional, arbitrary, dishonest, inventive, or capricious manner, according to the law.

If the discretionary authority is exercised arbitrarily, the NCLT, upon hearing the parties, It may, in accordance with Section 58(5) of the Companies Act, reject or order the transfer or transmission to be registered by the Company within ten days. The NCLT was also ruled to be authorised to order the correction of the register or the company to compensate the aggravated party losses.

9. COMPETITION ACT

In Western Electric & Trading Company & Anr. Vs. Competition Commission of India & Ors., the NCLAT held that it would not be fit to interfere with the penalty imposed by the Competition Commission of India merely on the ground that the penalised party is a small family firm or is a small scale industry and the net profit for the entire year is not high.

10. GROUP CONSOLIDATION AND INSOLVENCY

i. Binani Industries Ltd & Ors. Vs. Bank of Baroda & Ors.

It is necessary to strike a balance between the rights of both operational and financial creditors when the emphasis is placed on maximising the debtor's assets.

ii. Edelweiss Asset Reconstruction Company Limited v Sachet Infrastructure Pvt Ltd

The National Company Law Appellate Tribunal (NCLAT) consolidated the insolvencies of five linked companies in a judgement issued in September 2019. In order to establish whether insolvencies should be combined the NCLAT has analysed various operational relationships between the several connected enterprises for the growth of the city development, and consolidation has been considered relevant to the interests of property purchasers.

iii. Moons Technologies Ltd. & Ors V. Union of India & Ors, Order dated 30.04.2019

In this case, it was held that the argument that, while Section 396 of the Companies Act of 2013, provided a "Power of Central Government to provide for amalgamation of companies in the public interest," it should not be misinterpreted to result in arbitrary outcomes. The fact that the Central Government chooses to use the authority given by section 396 of the Companies Act, 2013, does not mean it is beyond the scope of judicial review.

Further, in the case of State Bank of India v. Videocon Industries Limited & Ors, Bombay, NCLT Order of 8 August 2019 to activate the 'consolidation' process, which contains basic controlling considerations, and includes an inclusive list. (1) Joint supervision, (2) Joint directors, (3) Joint assets, (4) Joint liabilities, (5) Interdependence, (6) Financial interlacing, (7) Resource pooling, (8) Survival co-existence, (9) complex subsidiary interlacing; 10) interlinked accounts, 11) interlinked liabilities, 12) single unit economics, 13), interlinked shares, 14) interlinked consolidated accounts interlinked dependency; and 15) common resource pooling, etc. It's not a comprehensive list.

In the case of Axis Bank Limited and others v Lavasa Corporation Limited, the NCLT via an order dated 26 February 2020 held that the parent's insolvency has an impact on the subsidiary's insolvency process As a result, the financial dependency of the subsidiary on the parent Corporate or Group entities must be extensively reviewed, and insolvencies in the Lavasa Group were eventually consolidated for the benefit of creditors, resulting in profit maximization for group stakeholders.

OTHER KEY JUDGMENTS

11. OPERATIONAL AND FINANCIAL CREDITORS NOT EQUAL

Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors (Civil Appeal No. 8766-67 of 2019)

Operational and financial creditors cannot be handled on a same footing, as this is not permitted nor desired under the IBC. The NCLT and NCLAT do not have the authority to dispute the CoC's business judgement.

12. APPLICATION OF FOREIGN LAW

Vijay Karia v. Prysmian Cavi E Sistemi SRL, SLP (CIVIL) NO.8304 OF 2019

Arbitration by an individual arbitrator in London in respect of a violation by the Parties of a Joint Venture Agreement under the Londoner Court of International Arbitration Rules (2014). One reason the lawsuit argued was the arbitral ruling contravened Indian government politics and could not be enforced due of the FEMA violation. The Supreme Court ruled, in a landmark decision, that the award would not be rejected on account of a violation of FEMA, which contradicts Indian fundamental legislation.

NTT Docomo v. Tata Sons Ltd (2017) SCC OnLine Del 8078: Enforceability of put options

Where the obligations of the Indian Party are absolute under the contract, the Indian party shall be liable, in spite of the limits set for FEMA, for damages incurred in the abuse of the contract by the arbitral tribunal.

13. VALUATION

Securities Appellate Tribunal Order in the matter of Tenneco Inc v. SEBI, decided on 7 November 2019.

The Federal-Mogul Goetze (India) Limited (FMGL) 8 Open offer price, which is combined with the Tenneco Inc. parent business. Since shareholdings of the target firm were seldom exchanged in exchange, a total of 372.10 rupees and 397.66 rupees were recruited from two independent valuers to establish their value. On the basis of these valuation evaluations, the open offer to FMGL shareholders was made at 400 rupees. SEBI engaged a third valuer, which came in with a price of 600 rupees, following numerous shareholders' complaints over open offer prices, and encouraged the acquirer to amend the open offer pricing. In accordance with the SEBI judgement, the SAT referred to the subjective nature of the appraisal.

Aurora UK Bidco Limited v. SEBI, 2020 SCC OnLine SAT 92.

Similarly, in this case SEBI had issued an order appointing an independent valuer in response to shareholder concerns, which was challenged in the SAT. The SAT, on the other hand, had refused to intervene in this matter, and the independent valuer's appraisal is still pending.

14. INADEQUATE OR INACCURATE DISCLOSURES

Inappropriate or improper communications have been one of the key challenges experienced by M&A transaction parties in India, but the legislation continues to grow.

SEBI Adjudication Order No. EAD/KS/MKG/AO/215/2018-19, dated 19 December 2018

The sharehood shareholder argued during the purchase of Tirrihannah Business Limited that the purchase of shares in the target firm had not been made public. In this occasion SEBI imposed a monetary penalty on the promoter of the company.

15. LACK OF LOCUS AND BONA FIDE OF CLAIMANT

Abdul Wahid Abdul Gaffor Khatri and Ors v. Safe Heights Developers Pvt Ltd and Ors, Bombay High Court, Company Appeal No. 22 of 2013 in CLB/Company Petition No. 52 of 2012 decided on 24 February 2018

Bombay High Court rejected an appeal from the ruling of a court of corporate law claiming that, among other things, the shareholders (formerly business managers) came before court with dirty hands, disguising important events such as acts of misconduct such as running a parallel executive board, holding meetings without notice, appointing or removing them from court.


M&A

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