GÖRG

Legal Update

Indian Investment in Germany

Indian Appetite for German Targets Likely to Stay Strong Throughout 2013

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Indian investment in Germany is nothing new – over the past decade, major German companies were frequently acquired by Indian purchasers. Transactions such as the purchase of generic pharmaceuticals maker Betapharm by Indian Dr. Reddy's (2006) and the acquisition of Repower Systems AG by Indian wind turbine supplier Suzlon (2007) established India as a significant investor in Germany, in many fields on par with or exceeding China in transaction value and scope.

Even though the number of global cross-border deals fell in the first half of the past year, strong Indian interest in German-market acquisitions continued throughout 2012. In particular, according to recent studies, in the first half of 2012, 11% of India's outbound acquisitions involved Germany – up strongly from a 6% aver age in 2011.[1] Major inbound Indian deals made headlines in an otherwise generally weak year, in particular, Indian/UAE Microsol's April 2012 acquisition of the operative business of insolvent solar cell maker Solon SE, Piramal's purchase of a major molecular diagnostics portfolio from Bayer in May, Rain Commodities' October purchase of German chemicals manufacturer Rutgers with over 1,000 German-based employees and, very recently, Indian RK Wind's December 2012 purchase of the assets and IP rights from German Powerwind. Further afield, Infosys' purchase of the Swiss Lodestone consulting group, including its essential German presence, was inked in October 2012.

Investment continues in core sectors of interest

Inbound transactions to date are generally consistent with the traditional areas of Indian investment in Germany, namely in technology, infrastructure capabilities, manufacturing, services and consumer products. For the German market, inbound M&A activity into Germany from India sometimes largely resembles inbound M&A from China and it is now not uncommon to have both

[1] See e.g. ATKearney, Mergers and Acquisitions between developed and developing countries, von Hoyningen- Huene, 20 July 2012

Chinese and Indian parties bidding on a larger target. Important differences between Chinese and Indian investors exist, however, and it is a mistake for the German market to regard purchasers from India and China as interchangeable. Both strategic goals and practical implementation can differ significantly.[2] In particular, the investor groups that can be tapped from each of these countries can be very different, with Indian investors frequently consisting of publicly-held companies or large family businesses.

A major recent development in inbound German capital investment from India is that much more of this investment is now driven directly from India, and not via London or elsewhere. Bilateral business ties between India and Germany have grown extremely close over the past decade. Even in the area of major project finance, typically a London-based domain, the need for an English intermediary has decreased correspondingly.

The large number of Indian companies already carrying on business in Germany (e.g. Wipro, TCS, Global Reliance and many others) provides tangible proof that Indian investment in Germany can be successful and sustainable. In increasing numbers, Indian investors are not seeking German targets in order to repatriate e.g. IP, know-how and brands. Instead, these investors wish to use existing German operations as a launch pad for a broader European presence. Indian investors have proven to be savvy buyers, especially where distressed German assets are involved, and even though India's history of outbound investment is generally shorter than e.g. that of England or the US, Indian buyers compete on an equal footing with buyers from these countries.

[2] Practitioners report that Indian purchasers tend to act very "pragmatically", while the sovereign fund context of some Asian capital investment can result in additional procedural and decision-making dimensions

Good reasons for Indian investment in Germany to continue apace

There are good reasons to be confident that this 2012 trend will continue in 2013. These reasons are based both in India and Germany. Primarily, Indian businesses have become more streamlined, outward-focused and competitive in the recent past, are already active further afield in core global markets and are better positioned than ever to identify, review and acquire targets of interest. The surging Indian domestic market has often equipped them with the necessary financing to enable foreign expansion and low interest rates, coupled with increasing trust in Indian markets on the part of global lenders, means third-party financing is also readily available.

Second, this development has been accompanied by the increasing global awareness and sophistication of their domestic advisors; the larger Indian law firms now spend up to 40% of their time working on larger cross-border matters. In a well-documented trend, increasing numbers of Indian lawyers, accountants and other professionals who were raised and trained in England, the US and Canada have relocated back to India to assist Indian service providers to meet – or exceed – global best practices and standards. German advisors in turn have become "culturally fluent" in dealing with Indian clients; even domestic firms aggressively court Indian business ties and clients.

Third, competition in core sectors of the Indian market – especially those involving consumer products and services, but including infrastructure and technology – has become so intense that a major Indian player frequently now needs global backing (financial, technological, logistics and product pipeline) simply to compete effectively in its own domestic market. Diversified global operations can better position Indian businesses to weather the (sometimes volatile) turbulence of the Indian market and can offer critical leverage in specific areas (such as green energy, where Germany remains at the technological forefront). Equally important – as business growth forecasts in India itself recede slightly foreign growth can become an imperative.

Finally, for Indian companies that are eager to commence operations in Germany (and Europe as a whole), the acquisition of a German business can be crucial to acquiring a known brand, local trust and a sales and distribution base with intimate local market knowledge.

Germany itself offers numerous reasons to be viewed as a natural target-rich environment for Indian businesses. In the midst of European uncertainty and market scepticism, the relative stability of the German market and German businesses means that both the domestic market and the investment framework in Germany are widely regarded as predictably safe and consistent. Germany's traditional technological advantages play to Indian investors keen to acquire proven quality and processes; access to the fertile German R&D market is seen as an additional benefit. If know-how is king, German research infrastructure still wears the European crown. The products, of course, are portable and are frequently easily transferable to the Indian market.

In spite of the relative lack of a substantial generational Indian community in Germany, investments in Germany over the past decade have proven that Indian investment here can flourish. Indian banks such as ICICI, with a strong Frankfurt presence, compete with German state banks (which have comparable capitalisation) on equal terms and perhaps with greater cultural fluency to finance cross-border Indian-German acquisitions. Over 50 Indian-owned or managed businesses have recently settled in Bavaria alone.[3] Just over a decade after German Chancellor Gerhard Schröder expressed a wish for the aggressive recruitment of Indian immigrants to assist in building Germany's information tech economy, Indian companies are showing that they can now buy out the German firms that once might have poached their key employees.

Special focus: distressed German investments

As a number of recent and prominent Indian investments in the wind and solar industry (Microsol, RK Wind) have shown, distressed German investments may be particularly attractive for Indian investors. In fact, Indian investment in distressed German businesses has a colourful pedigree: In the most well-known case, in 2009, Megha Mittal prominently acquired the established German brand Escada out of insolvency. In 2011, Hindusthan National Glass also acquired Agenda Glas AG, a distressed German glass manufacturer. Some of these investments have not always proven successful; the Ruia group's 2011 purchase of insolvent Bauer & Schaurte, later Acument (insolvency in 2012) and Reliance's
2004 investment in Trevira (insolvency 2009) are examples where a strong Indian partner was ultimately unable to turn around an ailing German business.

Distressed investments can frequently be broadly restructured in the context of insolvency (particularly with regard to personnel) and an investment in a distressed business may be greeted with significant goodwill, especially where an entire local community is affected by the insolvency of a major stakeholder company.

Depending on the condition of the distressed business, an insolvency can represent a 'clean break', permitting a

[3] Source: www.invest-in-bavaria.de, 11 January 2013

purchaser to exercise above-average discretion in reshaping an existing business. For Indian investors in particular, this flexibility can be attractive. Ingrained business structures can be broken apart more easily and the target business more reliably shaped to model the investor's particular strategic focus. The shock of a near insolvency or an actual insolvency proceeding can open up an opportunities for a 'traditional' business to kick-start a more entrepreneurial focus.

Depending on the investor's primary goals, the extensive flexibility enjoyed under German insolvency law also means that an administrator may be able to offer an investor a bespoke package of attractive assets, including IP, discrete finishing facilities or distribution networks that may complement an Indian investor's immediate needs.

Engaging in the process of identifying and evaluating distressed assets still requires in-depth local market knowledge (both since Germany is exceptionally decentralised and because many mid-cap companies in pre-insolvency distress may look only within their immediate regional markets for potential purchasers), as well as the ability to quickly assemble a team of advisors and to assess the prospects of the business and various restructuring scenarios from legal and commercial perspectives. Such engagement in turn is based on trust – both in the knowledge and capabilities of a potential Indian investor to rapidly evaluate a promising target, and in the know-how and reputation of their German resources to obtain a persuasive place at the table in negotiations and bidding.

We expect that Indian direct investment into Germany is much more likely to increase than to diminish and we are confident that Indian investors will be presented with a range of unique German opportunities in 2013, including those that involve distressed M&A scenarios. Indian investors are gathering greater experience and expertise with the German market; likewise, German businesses are increasingly looking toward India for resourceful and powerful investors, especially in traditionally US- and UK-dominant fields such as chemicals, engineering and high-tech processing. The inhabitant of the next CEO desk in a major components business in Stuttgart or services provider in Leipzig may well have been born in Gujarat and educated in Mumbai. We see nothing but opportunity for all involved in that vision.

Note

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