

Zomato Merges With Blinkit – What's New?

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Zomato Blinkit Merger

The merging of Zomato and Blinkit illustrates the increasing competitiveness among companies that deliver goods in 10 minutes or less. Blinkit has faced stiff competition from start-ups such as Zepto and Dunzo, and the focus on 10-minute deliveries has sharpened, despite reports on the current unprofitability of the business model – something that has worried potential investors, considering the already narrow profit margins of grocery retail and online delivery. [1]

Zomato now competes in both the fast-food delivery and general supermarket industries, which it previously investigated but failed to gain a presence in. The company intends to invest in the ecosystem surrounding it to make the operation of a quality meal delivery service more affordable over time. Over the last year, it invested USD 225 million in Blinkit, Shiprocket, and Magicpin to achieve its goal of establishing quick e-commerce in India. [2]

Logistics Of the Zomato Blinkit Merger

Zomato's board of directors authorized the all-stock acquisition or a "share swap" of Blinkit for INR 4,447 crore. Zomato will purchase 33,018 shares of common stock from Blink Commerce Pvt Ltd. Up to 628.5 million fully paid-up equity shares of Zomato, each with a par value of INR 1, will be issued and distributed in this transaction at INR 70.76 per share.²

What Are Share Swaps?

Share swaps are corporate agreements between two or more companies to exchange equity-based assets, such as shares or stocks, for those of the other. Mergers and acquisitions (M&A) through share swaps are a possibly profitable investment option due to the Indian government's tax neutrality scheme. Cash-based M&As frequently necessitate significant financial considerations, making it challenging even for a company with a high degree of liquidity at the time. In this case, a share exchange-based M&A through share exchanges is advantageous. However, four legal points to consider arise. They are:

- Permission from the Competition Commission of India
- Securities and Exchange Board of India Regulations
- National Company Law Tribunal Approval
- Application of the Income Tax Act

Legal Overview Of The Share Swap Merger

Competition Commission Dodge

As per the CCI order S.O.988 (E) & 989 (E), *"acquisitions where enterprises whose control, shares, voting rights, or assets are being acquired have assets of not more than INR 350 crore in India or a turnover of not more than INR 1,000 crore in India"*, are free from the CCI's merger and acquisition rules for five years. [3]

Due to the "de minimis" of the current merger, Zomato and Blinkit were not required to alert the CCI. To simplify company operations, the government has extended this exemption for another five years, until March 2027. Zomato acquired Uber Eats India a few years ago based on the same understanding of competition law.

Role Of Securities And Exchange Board Of India

A merchant banker registered with the Securities and Exchange Board of India must value the shares of the domestic firm in exchange transactions. This need is more onerous than for "standard share issuances and transfers", where the price can be validated by professionals such as chartered and cost accountants.

The share swap plan is accompanied by several shareholder rights and shareholder governance concerns. If new shareholders are given the same conditions as present shareholders, a conflict may arise because both the acquirer and the target frequently have investors at different phases of the company's life cycle.

Company Law Effect

A merger must be approved by the National Company Law Tribunal (NCLT) in India and further, according to the Companies Act, a merger requires the permission of at least 75% of the relevant shareholders and creditors. Additionally, in the case of an unlisted corporation, there must also be a report from a registered valuer appointed by the board of directors or audit committee. Before the annual general meeting, the share swap ratio and this share exchange transaction must be declared.

Taxation Requirements

To be tax neutral, a merger must transfer all of the merging company's assets and liabilities to the merged business, and at least 75% of the merging company's shareholders must become shareholders of the merged firm. If shareholders of the merging firm obtain shares in the combined company in exchange for the transfer and the merged company is an Indian corporation, the shareholders are exempt from capital gains tax on the gains under Indian tax law.

Section 68 of the Income Tax Act would not apply to a transaction involving the exchange of shares since in a share swap, the shareholders receive shares of the acquiring company as part of the deal, and it is not a share transfer. As a result, the capital gain tax does not apply to the purchased company's investors.

Furthermore, tax authorities rigorously monitor merger arrangements including the transfer, rollover, and set-off of losses from the merging entity solely to avoid taxes. A merger plan approved by the NCLT is typically regarded as tax-neutral unless Indian tax authorities believe the agreement was structured to avoid paying taxes or violate general anti-avoidance rules.

Concluding Remarks

A share exchange merger is likely to generate post-integration and governance

red flags. Corporate governance may necessitate negotiations between the companies regarding the composition of the merged company's board of directors, which may include a few former directors of the merging company, as well as the degree of dilution of existing shareholders' shareholdings, voting rights, and influence over management decisions. In light of the availability of finance at enticingly low-interest rates, all of these aspects must be considered in the context of a share exchange merger versus a share sale or asset sale transaction.

In the actual world, the share swap plan is accompanied by several shareholder rights and shareholder governance concerns. If new shareholders are given the same conditions as present shareholders, a conflict may arise because both the acquirer and the target frequently have investors at different phases of the company's life cycle. It is critical to find the ideal level of leverage and to balance the interests of numerous investors. Despite its shortcomings, the share exchange method is gaining popularity. It enables purchases even when the transaction is not financially viable due to a cash shortage. It is advised that all contractual requirements relevant to the share swap, including shareholder rights, be negotiated and documented during the term sheet stage of the transaction.

1. <https://www.bain.com/about/media-center/bain-in-the-news/2021/inside-the-economics-of-10-minute-grocery-delivery-startups-which-eke-out-higher-margins-with-pricier-convenience-store-goods-and-less-choice/>
2. https://www.business-standard.com/podcast/companies/what-does-the-merger-with-blinkit-mean-for-zomato-and-its-shareholders-122032100040_1.html
3. https://www.business-standard.com/article/companies/zomato-board-approves-acquisition-of-blinkit-for-rs-4-447-cr-122062401018_1.html
4. [Competition Commission of India, Notification regarding \(a\) de minimis exemption; \(b\) relevant assets and turnover in case a portion of an enterprise or division or business is being acquired, taken control of, merged or amalgamated with another enterprise: S.O. 988\(E\), 989 \(E\),](#)
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