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## ACQUI-HIRE: A GAME CHANGER DURING AND POST PANDEMIC

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### ABSTRACT<sup>1</sup>

*The global pandemic has been catastrophic to all the sectors and the stock market is at record highs. It is expected that acqui-hiring will survive and thrive in 2021 too. Acqui-hiring refers to the process of acquisition of a company to acquire its employees and hiring of its staff. This research paper will help us in understanding the impact of COVID-19 on Acqui-hiring and also help us in finding how Acqui-hiring is beneficial in the current pandemic situation. With the acqui-hiring of a company, its customers are also available for the parent company which gives an effortless customer base to the organization. Apart from adding more employees to the talent pool, the organisation gets its hands on the special market intelligence created by the start-up which reduces time taken to penetrate the market. This helps reinvigorating a company and increasing the potential of the company. Organizations should review their employee base, determine the shortcomings and strategize to spot and fill their job roles as well. Recruiting authorities will need to skilfully work towards identifying the gap between demand and supply of the workforce and plan a move in accordance with the availability of resources. Since acqui-hiring is primarily concerned with getting the employee base of the acquiree, it is important to allocate more funds to the second tier. New opportunities are coming up as various new practices are taken up by the corporations all over the world. There are various corporations that are prepared to turn crisis into opportunity and intend on growing their companies during and after COVID-19. They intend to continue to do strategic revenue growth deals similar to their core acqui-hiring strategy over prior years.*

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## I. INTRODUCTION

The humanitarian and economic disruptions resulting from the global pandemic have affected companies in India and around the world. Today, human loss and tragedy of the COVID-19 pandemic makes for a highly uncertain economy. Therefore, finding talent with up to date skills is a serious challenge to a company's growth these days. Currently, everyone lives in the era of "capitalism with a conscience"<sup>2</sup>, and hence to keep up with the changing times, there is a call for innovation. This is why primary focus has to be laid on the human capital, and not on the technological assets.

Mergers, Arrangements and Amalgamations have been dealt with under Sections 230-240 of the Companies Act, 2013. They are a critical tool for momentous growth of Indian businesses. Merger is combining of any two entities into one which thus leads to a merger of all the assets and liabilities under one corporation. It can be expressed as: A+B → C. The Act also provides for the procedure of amalgamation, merger of listed companies with unlisted ones, Fast Track Mergers<sup>3</sup>, Cross Border mergers<sup>4</sup>, powers of the Central Government and demerger. Acquisition refers to when one firm purchases and owns the other firm and the acquiring company obtains the majority stake in the acquired firm. It can be expressed as A+B → A/B.

Recently, with respect to corporate control and acquisitions that have been realised, the innovative performance has become more important in shaping Mergers and Acquisitions ("M&A") policy of giant companies. According to Andy Brogan, "Large and financially strong companies continue to have appetite for strategic deals including bolt-on acquisitions and the current crisis will also likely provide suitable opportunities."<sup>5</sup>

M&A also have a leading role to play in the rapid vaccine development for the pandemic. It all began with a much publicized merger of equals to create a global leader in pharmaceuticals- AstraZeneca. Last year, AstraZeneca approached Gilead Sciences to capture its interests in a

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<sup>2</sup> Rohan Aniraj, *The process of Acqui-hiring in India*, Brillpedia (Jun 23, 2020) <https://www.brillpedia.net/post/the-process-of-startups-and-acquihiring-in-india>

<sup>3</sup> The Companies Act, No. 8, Acts of Parliament, 2013 (India)

<sup>4</sup> The Companies Act, No. 8, Acts of Parliament, 2013 (India)

<sup>5</sup> Ian Simm, *Assessing energy merger and acquisition opportunities in a time of pandemic*, Energy Voice (Nov 10, 2020, 3:00 PM), <https://www.energyvoice.com/oilandgas/268066/mergers-and-acquisitions-opportunities-covid-19/>

potential health-care merger.<sup>6</sup> The hunt for effective vaccines saw firms like Merck-Themis and Novavax-Praha-Serum Institute of India come together to combat the virus.

This research paper will fulfil the gap and help everyone in understanding the impact of COVID-19 on Acqui-hiring and also help everyone in finding how Acqui-hiring is beneficial in the pandemic situation. It will also acknowledge the issue whether acqui-hiring is beneficial in the same way as it was in the past crises or is there any difference in the present situation of the pandemic.

## II. WHAT IS THE CONCEPT OF ACQUI-HIRING?

Acqui-hiring is a combination of two concepts- acquisition and hiring, referring to the process of acquisition of a company to acquire its employees and hiring of its staff. Acqui-hiring, also known as Talent Acquisition, is an act or instance of buying out a company primarily for the skills and expertise of its staff, rather than for the products or services it supplies. The quality of talent available in start-ups is extremely beneficial for already established corporations as they are flexible, calculative and extremely focused.

Acqui-hiring is cosmetic in nature as the parent company gets the desired talent, the employees get bonuses and investors get a significant return.<sup>7</sup> Acqui-hire is basically when the acquirer values the talent and skills of the team more than the products and services of a start-up company and the business that they have helped build. Acquisition, on the other hand, is when the acquirer values both the team and the business associated with it.

An acqui-hire has two commonly used structures.<sup>8</sup> In the first structure, the buyer acquires the assets of the start-up and hires its employees. Investors in the start-up will receive their investment back but the founder will not receive any money for his or her equity in the start-up. The second structure is similar to an employee recruiting arrangement where the buyer hires the employees of the start-up (including the founder) and pays them a modest fee prior to the company's dissolution.

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<sup>6</sup> Ed Hammond, Aaron Kirchfeld, Dinesh Nair and Bloomberg, *AstraZeneca approaches Gilead for what would be biggest-ever healthcare merger*, Fortune ( Jun7, 2020, 5:38 PM), <https://fortune.com/2020/06/07/astrazeneca-gilead-merger/>

<sup>7</sup> KOLLER T., GOEDHART M., WESSELS D “VALUATION: MEASURING AND MANAGING THE VALUE OF COMPANIES” 202-210 ( Wiley, 5<sup>th</sup> ed. 2021)

<sup>8</sup> Jessica Dabiri, *How Does an Acqui-hire Work?*, PillsburyPropel (May 18, 2020, 10:30 AM), <https://www.pillsburypropel.com/guidance/how-acquihire-work-startup>

A study of the Asian financial crisis of 1997, the dot-com bubble of 2000 and the world financial crisis of 2008–09 bears out the conclusion that in past downturns, companies that pursued acquisitions in a methodical way turned out to outperform their peers. In each of those crises, companies that acquired in a strategic way performed significantly better than their peers that were either too conservative or relied on one megadeal to recover.

Acqui-hiring environment is positively affected by the government's Make in India initiative, designed to help the country's manufacturers expand their global market share while encouraging foreign companies to consider India as an offshore destination. One of the government's policies also protects the Indian companies from takeover by certain types of foreign investment.

Acqui-hiring transactions not only provide financial lifelines to start-ups with shorter funding runways or less balance-sheet strength but also help traditional companies realize their data and analytics aspirations—a win–win.

### III. MATERIALS AND METHODS

Conducting a good survey and recognizing the talent harbouring companies in the present COVID era, is definitely less-time consuming than hunting for excellent talents one by one. The biggest advantage is that the employees do not require any training as they already have experience and the parent companies need not spend energy in training them. With acqui-hires, corporations can significantly improve their operational efficiency and user experience in a very short span of time. With the acqui-hiring of a company, its customers are also available for the parent company which gives an effortless customer base to the organization. Apart from adding employees to the talent pool, the organisation gets its hands on the special market intelligence created by the start-up which reduces time taken to penetrate the market. This helps reinvigorating a company and increasing its potential.

#### DEAL STRUCTURE

The deal structure mainly depends on how valuable the talent of the new company and what it brings to the table. The target company should have no debts and if at all they have, the acqui-

hirer should be well aware of these debts when it is being acquired. The promoters should make sure that the debts are paid by the target company because when the team is hired for the talent, the liabilities remain the entity and therefore, the acquirer takes no responsibility for existing debts of the target. The terms mentioned in the employment contracts of the team members of the acqui-hiring company are:

- A minimum period of employment clause
- Vesting of the parent company's promoters
- A non-competent clause for the promoters

The start-ups are acquired on two structures at a price lesser than their valuation; they can be cash deals or an unusual scenario where the founders run their start-ups as a subsidiary of the large business. However, acqui-hiring is only done by companies who have cash to spend and since medium and small-sized companies are facing lots of issues in the wake of the pandemic, their hiring is depending on interviewing and networking.

A due diligence of all types of financial and legal documents of the young company should be done to be sure about their debt, corporate structure and compliance situation. Checking the existing employment agreements and of the target company is also mandatory. However, until the pandemic hit, the due diligence was very limited as usually just the team is hired and not the entire target company.

## **NEW DUE DILIGENCE ISSUES**

Acqui-hirers have started undertaking extra due diligence to assess the pandemic's effect on the start-ups business. The expanded due diligence issues include:

In the current scenario where physical contact is almost impossible, what strategies should the organisation implement to get to know the key employees of the nascent companies.

How has the acqui-hired company's workforce been impacted by the pandemic? Does it have enough employees to continue the business?

Who are the key employees of the start-up company and what happens to the business if they succumb to COVID-19?

What is the acqui-hired company's cash position and does it have enough liquidity to fund its near-term obligations?

What is the effect of "work from home" for employees and what expenses would be incurred to provide equipment to employees working from home?

What are the termination rights under key contracts and do the acqui-hired company's contracts include "force majeure" clauses that may enable it to terminate or suspend the agreement?

Is the start-up overly dependent on the suppliers in geographic regions that are hard hit by the pandemic?

Is the acquired company in compliance with state and local orders related to the pandemic and are there any solvency risks involved?

## **REVIEWING WORKFORCE STRATEGY**

Organizations should review their employee base, determine the shortcomings, and strategize to spot and fill their job roles. The hiring and acquisition process will also have to be performed virtually and the challenges that come with hiring during COVID-19 will need to be tackled efficiently, restricting the acquirers' field of vision significantly. Recruiting authorities will need to skilfully work towards identifying the gap between demand and supply of the workforce and plan a move in accordance with the availability of resources.<sup>9</sup>

## **DETERMINE BUYOUT AMOUNT**

The general structure for an acqui-hire buyout is composed of the following two-tiers.<sup>10</sup>

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<sup>9</sup> Sya Rose, 'Acqui-hiring: A smart recruitment Strategy' Sya Rose (Nov. 20, 2020),

<https://syaroseus.medium.com/acqui-hiring-a-smart-recruitment-strategy-280bc88d9abc>

<sup>10</sup> 'Acqui-Hiring', Collar Search (Aug 13,2020), <https://www.collarsearch.com/blog/acqui-hiring-a-game-changer-at-the-time-of-covid-19/>

- The first tier is used to acquire the firm in the form of cash or stock and also for compensating the investors and shareholders. To determine this tier's amount, it is necessary to keep tabs on the finances of the acquiree. This is a key factor in the time of pandemic since most of the firms can settle for a cheaper price than they initially would have.
- The second tier is compensation for the employees and it is advisable for organizations to use up the saved amount from tier one to compensate the employees in tier two. The prime benefactors in this tier would be the employees targeted by the acquirer and not the investors and shareholders. It is necessary to keep long-term benefits in the employee proposals to incentivize them as there can be defections.

### **ALLOCATION OF FUNDS**

During this time it is important to position the company in a way that is to its strategic advantage. Since acqui-hiring is primarily concerned with getting the employee base of the acquiree, it is important to allocate more funds to the second tier and investors and stakeholders might also pressurize into allocating more funds to the first tier.

### **ELEMENTS OF ACQUI-HIRING THAT CALL FOR ATTENTION**

There are various elements that call for attention during acqui-hiring. There is lack of in-person engagement during COVID-19. Bringing in a start-up as a new team can cause resentment amongst the existing workers of the parent company. It can be a bumpy ride for both the teams and this would turn into hostility. The rules of such large corporations are more restrictive for most of the start-ups. Many employees in start-ups will have to move in a different city which is not advisable in the light of the ongoing pandemic. The biggest disadvantage for the parent company is the risk where the hirer assumes that the new team would join the team without any contract. Even if there is a contract, it may provide out clauses for situations in which a competitor performs a buyout. It can be overcome by crafting a smart deal where the talent feels incentivized to stick around and work for the parent company. Another concern could be the cost. Many corporations are suffering from financial losses during the pandemic and their reckless decision to make a lot of acqui-hires could make their financial condition even worse.

## Soft-Landing

Any inevitable acqui-hire is called a soft landing. These are on surge during the global pandemic. The goal is to softly land the employees and assets and the founders have no leverage while negotiating with acquirers. These usually happen when the start-ups fail to gather the required capital after the first attempt. It would ultimately lead to failure of the business. Many start-ups feel that running a business is hard and therefore they are relieved when a corporation buys them out. It is therefore beneficial for start-ups to have a constant backup of talented employees. This technique helps build a solid IT roadmap and ensures that both the companies realize the most value out of the deal. Bringing soft-landing in time helps make strategic decisions while transforming challenges into opportunities.

## IV. DISCUSSION

COVID-19 is truly turning out to be the black swan event of each and everyone's lifetimes and it will have profound near- and long-term consequences on talent markets around the world. Against this backdrop, some firms are seeing this as an opportunity to acqui-hire start-ups primarily for their talent.

As inferred from previous economic crises, acqui-hires hype significantly during and post a crisis. A similar surge is happening as the world's economy lay crippled in the wake of COVID-19.<sup>11</sup> The pandemic has remarkably increased digitization leading to a huge gap between demand and supply of tech labour. This has also led to various organizations looking to acquire talented individuals in the fields of technology like cybersecurity and cloud computing. Many organizations are looking at this as an opportunity to acqui-hire a start-up to optimize their overall security.

### Relevance of Acqui-Hiring in the current pandemic

There are numerous companies that have used acqui-hiring as a go-to-market strategy to stay ahead in the competition. Some of the acqui-hires in the Indian start-up sector include:

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<sup>11</sup> 'Acqui-Hiring', Collar Search (Aug 13,2020), <https://www.collarsearch.com/blog/acqui-hiring-a-game-changer-at-the-time-of-covid-19/>

- A traditional watch-making firm- 'The Titan Company' owned by Tata Group, recently acqui-hired HUG Innovations to strengthen its smartwatches and wearables division.<sup>12</sup>
- Google recently acqui-hired an app named Superpod, which allows the users to post questions and receive quick answers from experts, to boost Google Assistant's capabilities.
- Swiggy, the Bengaluru based unicorn acqui-hired Kint.io<sup>13</sup> which is a Bengaluru based AI start-up that ensured a better computer vision and a premium experience for its customers by leveraging the resources and network of the Swiggy ecosystem.
- KPMG India recently acqui-hired Shivansh Solutions, a consulting and implementation services provider, to supplement its technology implementation practice by retaining the young company's directors and the core team of SAP consultants.
- Leading tech-enabled logistics marketplace, LetsTransport, recently completed the acqui-hire of the team of a mobile app development startup, Pixlcoders, to strengthen its technology, supply chain and applications divisions.<sup>14</sup>
- A leading mobile application development company, Alphonic Network Solutions, acqui-hired Roaring Studios, a digital startup to augment its web and mobile app development.
- Flipkart acqui-hired Mallas Inc., a digital media distribution firm and launched a music service called Flyte after the acquihire.<sup>15</sup>
- India's largest telecom service provider- Airtel, acqui-hired AuthMe Services, a startup that focused on artificial intelligence-based solutions. The telecom major also got the intellectual property rights for two flagship solutions developed by AuthMe- Callup AI (a chat and voice assistant that uses the power of AI to effectively resolve customer queries over chat and phone calls) and Fintech OCR (an Optical Character Recognition pipeline built for financial documents).

<sup>12</sup> Telephone Interview with Ravi Kant, CEO, Titan Company (Feb 12, 2020).

<sup>13</sup> 'Swiggy acqui-hires Bengaluru-based AI start-up Kint.io', Economic Times, (Feb 4, 2019, at 23)

<sup>14</sup> Wajiha Wahab, 'LetsTransport- Bengaluru based logistics start-up acquires Pixlcoders', Laffaz, (Mar 3, 2020, 10:04 AM), <https://laffaz.com/letstransport-bengaluru-logistics-startup-acquires-pixlcoders/>

<sup>15</sup> Ashna Ambre, 'Acqui-hiring: Trending now in India', Livemint, (Aug 15, 2020, 2:45 p.m.), <https://www.livemint.com/Companies/Pml220a2SVdicqEGjYBeEM/Acquihiring-Trending-now-in-India.html>

With all of the principal players working remotely, the effective use of technologies, techniques and collaborative tools has become more critical as the parent company, the start-up, acquirers, providers of Acqui-Hiring financing and legal and financial advisors adjust to the changed environment. For both existing Acqui-Hiring deals that survive the pandemic and new deals that entered into during the pandemic, it is expected that their timelines will be extended as each stage of the transaction will likely take longer to accomplish.

## **V. CONCLUSION**

This is a challenging time for start-ups as the markets are devastated and there are fewer opportunities but acqui-hiring could be the best possible strategy for them to survive in this recession. For start-ups, COVID-19 has created various paradoxes in terms of what lies in their future. There will be a similar acqui-hiring surge post-pandemic with multiple firms announcing plans to acquire emerging talents and accelerate their efforts to build vocation capabilities.

In spite of this sobering, there are various corporations who are prepared to turn crisis into opportunity and intent on growing their companies during and after COVID-19. They intend to continue to do strategic revenue growth deals similar to their core acqui-hiring strategy over prior years. Some skilled corporate acquirers are simultaneously shopping across multiple strategic deal-types and some intend to opportunistically acqui-hire distressed companies or target entirely nascent companies to further diversify the talent mix.

The start-ups promising pandemic and recovery era plays are greatly in demand and have multiple potential acqui-hirers. The talent retention of the team will need to be creative, compelling, and yet simple enough to win the bid. The considerations taken into account for acqui-hiring new companies during COVID-19 are also evolving as the world adapts to the pandemic. Corporate acqui-hirers that strategically determine to make hay during this unprecedented economic breakdown will be the ones most able to prevail as economic activity rebounds. **IN CRISIS LIES OPPORTUNITY!**

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