

6. MODES OF WINDING UP

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ABSTRACT

This project entails determining the probability of hostile takeovers in India, as well as the structure defined by SEBI as a result of its interpretation of the takeover regulation code. This project also explores how a company's management should protect itself against hostile takeovers, as well as whether the law supports or hinders management in this regard. The project will also try to compare and contrast the old and new takeover regulations, as well as demonstrate how the new takeover regulations of 2011 are filling in the holes in the 1997 takeover regulations code. Lastly, the paper points out the importance of the takeover code with reference to the three waves of hostile takeovers which surged in India at different timelines and how these waves have brought about the necessity to have strict takeover regulations code placed.

INTRODUCTION

Mergers and takeovers are common in India appropriate from the post freedom period. Be that as it may, But Government policies of balanced economic development and to curb the concentration of economic power through introduction of Industrial Development and Regulation Act-1951, MRTP Act, FERA Act etc. made hostile takeover almost impossible and only a very few M&A and Takeovers took place in India prior to 90s.¹ In any case, approach of decontrol and advancement combined with globalization of the economy after 1980s, particularly after progression in 1991 had uncovered the corporate area to extreme residential and worldwide rivalry. This had been additionally highlighted by the recessionary patterns, brought about falling interest, which thus brought about overcapacity in a few divisions of the economy. Organizations began to solidify themselves in zones of their centre ability and strip those organizations where they don't have any upper hand. It prompted a

¹ *Takeover defence*, <https://docu.tips/documents/takeover-defence-5c1284a214748> (last visited Aug 12, 2021).

time of corporate rebuilding through Mergers and Acquisitions in India. Mergers and Acquisitions (M&A) action in India is blasting. The start of 2007 saw the marking of the biggest inbound arrangement in India's history, Vodafone's \$11.1 billion procurement of Hutchisson Essar, India's fourth biggest cell phone company, while Tata steels \$13.2 billion dollar securing of the European steelmaker, corus, which shut in January, 2007, featured a free for all of acquisitions of remote organizations by Indian corporate undertakings in the previous year.² Any takeover in India needs to agree to the arrangements of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 ("Takeover Code"). Hostile Takeovers is a kind of technique utilized for Corporate Restructuring. There are different techniques like Mergers and Acquisitions, Leveraged Buyout, Spin offs, and so forth through which Corporate rebuilding might be finished.³ In India, hostile takeover is a feared word, might be since it is a strategy utilized which isn't majority rule in nature and to some degree unpalatable for the administration of an objective company.

MEANING

NEED FOR TAKEOVER CODE

In India exercises of the organizations from the perspective of M&A and takeover can be found in term of three waves. To begin with Wave: The main rush of takeover saw in India amid 80s and in the start of 90s. It was out and out not quite the same as present situation. There were not really any regulation and making a delicate offer was not mandatory. Takeover was considered as a willing buyer - merchant transaction. Amid this period a few cases were the place acquirer was a solid individual and washout were by and large little financial specialists e.g. Tata's securing of Special Steel and HLL's obtaining of Stepan Chemicals. Amid this period Swaraj Paul, RP Goenka, Manu Chabbria, Ambanis and Murrugappa assemble were the pioneers.⁴

² Murtuza Bohra, *Impact of Zenotech Case on Indirect Acquisitions*, COMPANY LAW JOURNAL, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1899028.

³ *Hostile Takeover*, CFI, <https://corporatefinanceinstitute.com/resources/knowledge/deals/hostile-takeover/>

⁴ *India has experienced only a handful of hostile takeover attempts*, LAW TEACHER (2021), <https://www.lawteacher.net/free-law-essays/business-law/india-has-experienced-only-a-handful-of-hostile-takeover-attempts-business-law-essay.php> (last visited Aug 12, 2021).

Second Wave: Second wave in the Indian setting however began after 1994. This was the time of Expansion, Consolidation and rebuilding and a checked move from well-disposed to hostile takeover was seen amid this period. Indeed progression of Indian economy, destroying of MRTP and Licensing administration, unwinding under FERA, accessibility of outside assets and so forth had prompted an ascent in the quantity of mergers and takeovers amid this period.

Third Wave: The wave picking up force now is the third wave. It is fundamentally unique in relation to prior two since part of Banks and FIS ends up critical at this point.⁵

On account of the many-sided quality of the idea of takeover, to secure the enthusiasm of little financial specialists and the objective company a need was felt to build up a code to direct the entire procedure of obtaining and takeovers in light of the rule of straightforwardness, decency and equivalent chance to all. The effect of the SEBI's drive on the takeover code in light of a legitimate concern for speculators is by all accounts unmistakable. As indicated by an introduction made by SEBI in 2001, presentation of takeover code has brought about an advantage of Rs. 4250 crores to the investors of different organizations.⁶

REGULATORY OBSTACLES TO HOSTILE TAKEOVERS

The Indian Companies Act, 1956 (hereinafter the "India Act") has been substantially adopted from the English Act. The India Act governs the incorporation, operation and winding up of companies in India. Despite the fact that the term 'takeover' has not been characterized, it is secured under the more extensive meanings of remaking and amalgamation in the India Act.⁷ The particular regulation managing takeovers in India was first enacted in 1994, and after that corrected in its present shape - Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (SEBI) Regulations, 1997 (the "Regulations"). Other

⁵ India has experienced only a handful of hostile takeover attempts, LAW TEACHER (2021), <https://www.lawteacher.net/free-law-essays/business-law/india-has-experienced-only-a-handful-of-hostile-takeover-attempts-business-law-essay.php> (last visited Aug 12, 2021).

⁶ Indian Takeover Code, <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.463.5251&rep=rep1&type=pdf>.

⁷ India has experienced only a handful of hostile takeover attempts, LAW TEACHER (2021), <https://www.lawteacher.net/free-law-essays/business-law/india-has-experienced-only-a-handful-of-hostile-takeover-attempts-business-law-essay.php> (last visited Aug 12, 2021).

regulations interrelated with corporate activities incorporate the Code of Civil Procedure, 1908, The Indian Trusts Act, 1882, SEBI (Prohibition of Insider Trading) Regulations, 1992 and The Partnership Act, 1932, among others. The Regulations have the statutory power of law and are additionally furnished with punishment arrangements for the infringement of the Regulations and the SEBI Act.

LACUNAS IN EXISTING TAKEOVER CODE AND REGULATIONS

In our SEBI takeover code is not full proof. Regardless it has a few lacunas and some kind of dubiousness. It is enhancing step by step and gaining from encounters. The 1994 archive was only a two-three-page rule and arranged swiftly. 1994 code was a far reaching and dynamic one. In spite of the fact that there were a few provisos in that code likewise, which corporate utilized for their advantages? Be that as it may, SEBI has completed an incredible activity to put a positive procedure in advance. To make our code full evidence one a legitimate co-task from all the concerned gatherings like controllers, Corporate, Bidders, Target Company's administration, FIs and so on is required.

In India takeovers, particularly hostile ones are as yet taken in negative sense. One ought not to overlook the essential pretended by takeover. It opens the concealed estimation of the shares, additionally set weight on the administration to work proficiently and hence contribute in Corporate Governance.

Controllers are required to secure the intrigue and right of the shareholders, check malpractices and guarantee a free, reasonable, straightforward and fair place for takeover. An examination demonstrated that in India 84% takeovers are occurring through the course of exception. This isn't just hostile to financial specialists yet in addition against the very motivation behind the takeover code. There are still a few regions where code isn't clear. One such begging to be proven wrong issue is what is implied for change in administration control, particularly when such changes are the after effect of a few plans at worldwide level. Arrangements identified with roundabout acquisition are likewise not clear.

In the code undue focal points are given to the promoter at the cost of little financial specialists, so at the appointed time SEBI should Endeavour to bring promoters likewise on a similar level.

Arrangements identified with acquisition of shares by Govt. Company are likewise require a change. As indicated by show code a govt. company can buy shares of another govt. company from govt. without making open offer, yet open offer will be fundamentally in the event of a privately owned business. This does not give a level playing field to privately owned businesses. It gives Govt. a simple leave course however not to little financial specialists. In this procedure FIs additionally have an imperative part to play. They ought to have a long haul point of view, as opposed to here and now benefit booking rationale, while settling on an open offer. Acquirers ought to guarantee full data to people in general and Make estimating choices appropriately.

A NEW WINDOW FOR TAKEOVERS

In 1990, as the huge private value support KKR (Kohlberg Kravis Roberts and Co) raged and obtained the American bread company RJR Nabisco Corp in a \$25 billion weighted buyout (LBO), the fight amongst RJR and KKR was recognized in a reasonably titled book 'Savages At The Gate' in print by budgetary columnist Bryan Burroughs.⁸ Presently in India, we may soon run over situations where numerous corporate bosses will hamburger about 'Brutes' at their doors since India's merger and acquisition (M&A) rules are set for a total modification from April 2011.

The guidelines will end up direct, more completely clear and free from numerous blockades that now come in the method for M&A. To update the 15-year old takeover rules, a week ago SEBI designated a panel, Takeover Regulations Advisory Committee, headed by C Achuthan, proposed clearing adjustments in numerous significant issues like open offer trigger, offer size, valuing standards, non-contend expenses, and so forth. Changes proposed by the Achuthan council are currently open for open mooting and, if endorsed, will turn into the new Takeover Code for the following budgetary year.

⁸ *Kohlberg, Kravis, Roberts & Co in 2003, BUSINESS STRATEGY, CASE STUDY*
<https://icmrindia.org/casestudies/catalogue/Business%20Strategy3/BSTA072.htm> (last visited Aug 12, 2021).

CONCLUSION

We have thoroughly reviewed the current regulatory opportunities for hostile takeovers in India as given by the takeover code in this project. Hostile takeovers aren't forbidden in the code, and they aren't prevented either. The entire purpose of the Indian legislators was to protect the interests of shareholders and investors during such a transaction. . However, policymakers implemented a very defensive strategy in the process, making hostile takeovers appear to be a feared ghost. Due to recent developments of globalization and opening up domestic markets to foreign players, this excessively protectionist stance was not preferred by major economic players around the world. Thus to cater to the needs of changing society the policy makers have come up with a new Takeover Code which would be implemented by 2011 in all probabilities. Thus on a concluding note this paper tries to evaluate and analyze these new prospects and challenges posed by regulatory mechanism of takeovers in India