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DOI: *https://doij.org/10.10000/IJLMH.118654*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 7 | Issue 6

2024

Takeover Theories and the Concept of Takeover

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ABSTRACT

The Securities and Exchange Board of India ("SEBI") introduced the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ("Takeover Code, 1997") to regulate the acquisition of shares and voting rights in public listed companies in India. The Securities and Exchange Board of India ("SEBI") had been considering reviewing and amending the Takeover Code, 1997 for quite some time now. In July, 2020, SEBI has introduced third amendment to the Code with minor amendments.

A Takeover Regulations Advisory Committee was constituted under the chairmanship of Mr. C. Achuthan ("Achuthan Committee") in September, 2009 to review the Takeover Code, 1997 and give suggestions. The Achuthan Committee provided its suggestions in its report, which was submitted to the SEBI in July, 2010. After taking into account the suggestions of the Achuthan Committee and feedback from the interest groups and general public on such suggestions, the SEBI finally notified the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("Takeover Code, 2011") on 23 September 2011. The Takeover Code, 2011 will be effective from 22 October 2011. SEBI has, however, clarified that any open offer, for which a public announcement has already been made, would be governed by the Takeover Code, 1997.

The Takeover Code, 2011 adheres to the framework and principles of the Takeover Code, 1997 but the changes that it brings about are significant. The first and second section of the article attempts to study the various theories of takeovers and in that background highlight the evolution of the takeover regulations in India. It also commemorates a brief overview of the U.K. and U.S.A takeover regulations for a coherent understanding of the regulations in India. The last section of the paper is a summary of the rationale behind making key changes in the 1997 Takeover Code in India. Hence, the paper is relevant in the present for scholars, advocates and judges.

Keywords*: Takeover Code, SEBI, security law, mergers, acquisitions, spin-off, strategies.*

I. INTRODUCTION

All our daily newspapers are filled with cases of mergers, acquisitions, takeovers, spin-offs, tender offers, & other forms of corporate restructuring. Thus important issues, both for business

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decision and public policy formulation have been raised. No firm is regarded safe from a takeover possibility. Takeovers, or at least a mechanism for facilitating takeovers, provide at least four benefits for shareholders and the market in general: better allocation of resources, synergy gains, better management, discipline, and more accurate market valuation. There are various aspects and theories of takeover revealing numerous motives that stimulate investors (bidders) in the market for corporate control to compete for the right to manage the assets of other companies (targets). These motives are not only numerous and different in nature, they can also be conflicting and dynamically changing during the process of each takeover.[2]

Mergers and takeovers are permanent form of combinations which vest in management complete control and provide centralized administration which are not available in combinations of holding company and its partly owned subsidiary. During the late 1950s and early 1960s, several large corporations began acquiring other companies to diversify their operations. Diversification allowed them to offset their losses in a failing industry with profits from other unrelated, successful industries. As a result, The United States and Europe adopted laws governing the process and substance of tender offers. Despite convergence in many other areas of law, the U.S. and the European Union took radically different approaches to regulating hostile takeovers and their respective paths seemed to be diverging rather than converging. The E.U. has aboard neutrality requirement and a mandatory bid for all outstanding shares, while the U.S. does not. The best explanation for the current state of the law comes from the institutions that have the responsibility for interpreting and creating takeover regulations. In the U.S., this means Delaware courts. In the E.U., it is the European Commission and parliament. [3]

M&A and Takeovers are the powerful ways to achieve corporate growth, but because of their complex nature, to protect the interest of all the parties, curb the malpractices and to facilitate orderly development these activities are regulated by a takeover code inmost part of the world. In India after liberalization Govt. started to regulate these activities through introduction of takeover code by the market regulator, SEBI.[4] This code has gone through various major and minor changes since then to respond the challenges it faced during implementation and also to overcome its shortcomings.[5] A Takeover could take place through different methods. A

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[2] Swati Gupta, Monica Agarwal, Samreen Farooqui, *Takeover Saga: A Study Pertaining to Indian Scenario,* [unpublished, archived at The Indian Institute of Planning and Management Library].
[3] *Id.*
[4] Cheryl Conner, The Good, the Bad and the Tragic, FORBES, (March 17, 2013), *available at* http://www.forbes.com/sites/cherylsnappconner/2013/03/17/the-good-the-bad-and-the-tragic-stories-of-acquisition-for-growth/, (Last visited on November 29, 2013).
[5] Swati Gupta, Monica Agarwal, Samreen Farooqui, *Takeover Saga: A Study Pertaining to Indian Scenario,* [unpublished, archived at The Indian Institute of Planning and Management Library].

company may acquire the shares of an unlisted company through what is called acquisition under Section 395 of the Companies Act, 1956. However where the shares of the company are widely held by the general public, it involves the process as set out in the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, as amended in 2002, 2004and 2006 respectively.[6]

With taking over, it's also important to understand how takeover bids work, to know as much as possible about the different players in the game, and to understand the specific details (including conditions) of the bid. The acquirer company can definitely gain a lot through best strategies used at the right time. Overall, the concept of Takeover is very popular these days and on the more positive side takeovers may be critical for the healthy expansion and growth of the firm. There are various companies which gained from the strategy of takeover. For ex. Raasi Cements acquired India Cements, Tata Steel acquired Corus, Tata Motors acquired, Jaguar Land Rover, P&G acquired Gillette, and Tech Mahindra acquired Satyam Computers. The details of these cases are given further in this research paper.

II. JURISPRUDENCE OF TAKEOVER

Takeovers are taking place all over the world. Those companies whose shares are under quoted on the stock market are under a constant threat of takeover. In fact every company is vulnerable to a takeover threat. The takeover strategy has been conceived to improve corporate value, achieve better productivity and profitability by making optimum use of the available resources in the form of men, materials and machines. Takeover is one of the most popular strategies followed by the corporate sector all over the world.

(A) Definition

The act or an instance of assuming control or management of or responsibility for something, especially the seizure of power, as in a nation, political organization, or corporation. [7]

American Heritage Dictionary

The acquisition of ownership of one company by another company, usually by purchasing a controlling percentage of its stock or by exchanging stock of the purchasing company for that of the purchased company. It is a hostile takeover if the management of the company being taken over is opposed to the deal. A hostile takeover is sometimes organized by a corporate

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[6] *Id.*

[7] *Takeover Definition, available at* http://www.macmillandictionary.com/dictionary/british/takeover, (Last visited on November 19, 2024).

raider.[8]

(B) Takeover Theories

As a foundation for analyzing the many forms of restructuring that have emerged, were view alternative theoretical explanations of their motives and consequences.

Differential Managerial Efficiency:

Management of a more efficient acquiring firm can bring up the level of efficiency of the acquired firm, providing both social and private gain. Acquiring firm‘s management complements the management of the acquired firm through its experience in the industry. Excess managerial talent by the acquiring firm can be put to use in the acquired firm (managerial synergy). This talent may be applied by direct entry into a new market. New entry may be expensive if the firm with excess managerial capacity does not have other non-managerial organizational capital relevant to that market.[9]

Inefficient Management:

In the case of totally inept management, mergers serve as a means of providing discipline to the managerial markets where the only way to get rid of inept management is through taking over the company.[10]

Operating Synergies:

Economies of scale allow large firms to operate more efficiently than smaller firms due to indivisibility of resource inputs. Management and financial functions may also generate economies of scale. Vertical integration may also generate economies through more efficient co-ordination of the production process.

Financial Synergies:

Internal funds allow a less costly and more efficient means to finance expansion than reliance on external funds. This would allow cash-rich firms to provide financing for cash-poor companies.[11]

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[8] *Takeover*, THE AMERICAN HERITAGE DICTIONARY, *available at* http://www.ahdictionary.com/word/search.html?q=takeover&submit.x=-783&submit.y=-210, (Last visited on November 29, 2013).

[9] Roberta Romano, A Guide to Takeovers: Theory, Evidence and Regulation, 1(1) YALE LAW SCHOOL LEGAL SCHOLARSHIP REPOSITORY (1999).

[10] *Id.*

[11] Roberta Romano, A Guide to Takeovers: Theory, Evidence and Regulation, 1(1) YALE LAW SCHOOL LEGAL SCHOLARSHIP REPOSITORY (1999).

Pure Diversification:

For shareholders, diversification at the shareholder level is equivalent to diversification at the firm level, but should be cheaper, since acquisition costs are much less. For managers, firm diversification is much preferable since human capital is concentrated in a specific firm and depends on the fortunes of that firm. By diversifying, managers gain more job security and perhaps the firm gains lower labor costs.

Strategic Realignment:

Change can be effected more quickly by entry into a new product or market through merger than through direct entry. Where values are ephemeral, it may pay to acquire rather than to build.

Undervaluation:

The market may not fully reflect the true value of a potential acquisition, which may be known by competitors and managers in the industry with access to privileged information.

Agency problems & Managerialism:

Agency problems in relationships arise whenever the two parties do not have exactly the same objective function. Benefits to one of the parties can come at the expense of another party. In the context of the differences between objectives of management and shareholders, agency problems can lead to inefficiencies these inefficiencies may be resolved by means of the market's discipline of managers through takeovers or the threat of takeovers.[12]

Information and Signaling:

Information is not shared equally between parties in a transaction. Sellers and job applicants know more about the item offered or skills available than buyers or employers. Managers know more about the condition of the firm than investors or the managers of an acquiring firm.[13]

Market power:

Any merger will increase market share, but market share may not be translated into higher profits and higher share value.[14]

III. HISTORY OF TAKEOVER

The United States and Europe, whatever their differences, have for some time represented the

[12] *Id.*
[13] Roberta Romano, A Guide to Takeovers: Theory, Evidence and Regulation, 9, YALE LAW SCHOOL LEGAL SCHOLARSHIP REPOSITORY (1999).
[14] *Id.*

world's two great powers. Their collective history, social ties, and economic dependence make them partners on the global stage. While the threats of terrorism, new superpowers, and economic degradation confront the two with perhaps insoluble problems, they still stand out as beacons of progress in many areas: technological advancement, democratic government, and justice. They are also the centers of the world's leading financial institutions and multinational corporations. In many ways, U.S. and European corporate governance systems are similar and converging, and long-standing differences are disappearing as transatlantic cooperation and governance codes expand. Convergence has only grown with the fall of the Soviet Union and the liberalization of much of Eastern Europe. But one intractable area of corporate governance has remained untouched by the larger trend of convergence. Laws in the United States and the European Union regulating hostile takeovers, one of the more remarkable and headline-grabbing events in a corporation's life have remained strikingly dissimilar. The behaviour of acquiring companies and target companies are subject to entirely different requirements under U.S. and E.U. law. It has never adequately been explained why the divergence in this one area of law has resisted, and indeed increased in the face of, broader trends favouring assimilation.[15]

(A) The U.S. Framework

The regulation of takeover law in the United States has received a massive amount of attention in scholarly literature and in judicial discourse. A survey of this literature is not within the scope of this paper. It is appropriate, however, to discuss the broad outlines of the framework for assessing the legality of takeovers. At the same time, such a discussion must address a variety of sources of law: federal statutes, state statutes, and judicial decisions interpreting common law duties.[16] This section will focus on these three sources, and more specifically, the Williams Act, the Unocal/Revlon Line of case decisions, and state anti-takeover statutes.[17]

(B) The Williams Act

The modern era of federal regulation of tender offers began in 1968, when Congress passed the Williams Act as an amendment to the Securities Exchange Act of 1934. The Act's purpose, according to its sponsor Sen. Harrison Williams, was to ―make the relevant facts known so that shareholders have a fair opportunity to make their decision.

To this end, the Act provides rules governing takeover offers in two basic areas: first, it requires

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[15] Mike Wright, Ken Robbie & Steve Thompson, Corporate Restructuring, Buy-Outs And Managerial Equity: The European Dimension, 3 J. APPLIED CORPORATE FINANCE, 47, (1991).

[16] John C. Coffee, Regulating the Market for Corporate Control: A Critical Assessment of the Tender Offer's Role in Corporate Governance, 84, COLUMBIA LAW REVIEW (1984).

[17] John Armour and David A. Scheel Junior, The Divergence of U.S. and U.K. Takeover Regulation, REGULATION, (2007).

offertory to disclose information about the offer, and, second, it establishes procedural requirements governing tender offers. So, the Williams Act imposes some minimal requirements on acquiring corporations in the process of a tender offer. The acquiring corporation must disclose the purpose of the acquisition, offer plans for future major changes in the target, and pay the same price for all tendered shares. SEC regulations also make a corporation liable for false or misleading statements in relation to a tender offer. The substances of a board‘s duties during a tender offer are mainly regulated by fiduciary duties as interpreted by courts.[18]

Duties

Federal regulation makes up only a small part of the rules that apply to takeovers. In fact, the main line of cases addressing directors' duties to a corporation during takeovers interprets state law fiduciary duties. Unfortunately, this means that there are different jurisdictions, in each of which the source of law is different. Fortunately, corporate law in the United States is heavily influenced by Delaware case law. The expertise and flexibility of the Delaware Court of Chancery has attracted a majority of large publicly trade corporations to incorporate in Delaware, and that court‘s rulings carry influence beyond the state‘s borders.[19]

(C) State Anti-Takeover Statutes

In addition to federal regulations and state law fiduciary duties, takeover law is also regulated by state anti-takeover statutes. These statutes tend to be less even-handed in their application, giving protection to in-state Corporation from potential out-of-state acquirers. They have gone through three generations of development, and differences between states abound, leading one commentator to observe that ―state takeover acts are similar to snowflakes if you think you have found identical ones, you are probably not looking closely enough.

However, some discussion of their key characteristics is necessary to complete the picture of U.S. takeover regulation.

(D) The E.U. Framework

Just like in the United States, the European Union has a number of jurisdictions in each of which laws related to takeovers can differ in significant ways. Unlike the United States, however, the E.U. has adopted a comprehensive takeover directive that governs most of the important

[18] *The Williams Act: A Truly "Modern" Assessment*, HARVARD LAW BLOG, *available at* http://blogs.law.harvard.edu/corpgov/files/2011/10/The-Williams-Act-A-Truly-Modern-Assessment.pdf, (Last visited on November 19, 2024).
[19] *Id.*

elements of a tender offer. Passed in 2004 after several previous failed versions, the E.U. Directive on Takeover Bids attempts to ―harmonize takeover regulation in the 27 member states. While many of its provisions are relatively standard (ensuring that a bid is made public and that offertory publish information about themselves), it also institutes some reforms that are radically different from the American regime and that are considered quite controversial. This paper will focus on the three principle innovations of the E.U. takeover directive: the mandatory bid rule, the board neutrality rule, and the breakthrough rule. Together, these rules put critical restrictions on what both a raider and a target corporation‗s board can do during takeover battles.[20]

(E) Mandatory Bid Rule

The first pillar of the E.U. directive is the mandatory bid rule, which requires that an acquiring corporation must make a bid for all the outstanding shares of a corporation. This requirement stands in stark contrast to the law in the United States, which has no requirement to buy unwanted shares. At the same time, the directive gives some flexibility to member states to work around the rule. Under Article 5, an individual who acquires a threshold percentage of shares of a company that give him control of the company must make a bid for all the securities of the company at an equitable price. The threshold percentage is defined by the member states. An equitable price is defined as the ―highest price paid for the same securities by the offertory over a period of time to be determined by the member states. The supervisory authorities of the member states are authorized to adjust the equitable price in accordance with declared criteria. The takeover directive, then, gives a certain amount of leeway to member states in defining the base rules for mandatory bids, but the bid is mandatory once the threshold is met. A look at the number of derogations that countries have provided at the level of law, though, shows just how flexible a directive can be.[21]

(F) Board Neutrality

The E.U. Directive on Takeover Bids also addresses the question of whether directors are permitted to adopt defensive measures in response to a hostile tender offer. In the United States, the answer is that they may do so if they have reasonable grounds to believe the takeover is a threat and the measures are themselves reasonable. In sharp contrast, the E.U. takeover directive provides that directors are held to a strict rule of neutrality. According to Article 9 of the

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[20] Allen Ferrel, *Why Continental European Takeover Law Matters*, (Discussion Paper No. 454, John M. Olin Center for Law, Economics, and Business, Harvard Law School, 2003).
[21] Allen Ferrel, *Why Continental European Takeover Law Matters*, (Discussion Paper No. 454, John M. Olin Center for Law, Economics, and Business, Harvard Law School, 2003).

Directive, once a board has learned of a tender offer, it may not take ―any action, other than seeking alternative bids, which may result in the frustration of the bid. Defensive measures are by their nature aimed at frustrating a bid, so almost all of them are presumptively a violation of Article 9. The Directive does, however, state that directors no longer have an obligation of neutrality if the general meeting of shareholders grants authorization for such measures. It is interesting to note that the directive specifically mentions two kinds of defensive measures, approving of one and disapproving of another. First, it expressly allows the white knight defense and the poison pill.[22]

Ireland goes even further, giving the supervisory body the power to exempt corporations from the rules in exceptional circumstances and ―in other circumstances.

(G) Breakthrough Rule

In addition to board neutrality, the takeover directive gives another strong tool to raiders: the breakthrough rule. The breakthrough rule ensures that, in the event of a takeover, the corporation operates strictly according to a one-share-one-vote system, voiding all inconsistent arrangements, whether in the articles of association or in contractual agreements. One of the more controversial and complicated provisions of the directive, this rule serves to greatly facilitate hostile takeovers. Article 11 of the directive state that, once a bid has been made public, any restrictions on the transfer of securities are not to apply vis-à-vis the offerer during the validity of the tender offer. In addition, restrictions on voting rights will not apply in the general meeting of shareholders that decides on defensive measures. [23]Finally, if the offerer has acquired at least 75% of the voting capital, then

(i) Any restrictions on transfer or voting and any extraordinary rights of shareholders to appoint or remove directors are not to apply, and

(ii) Multiple vote securities will carry only one vote at the first general meeting of shareholders called by the offerer. Taken together, these provisions make it more difficult for a controlling block holder, as well as incumbent directors, to exercise disproportionate control of a company. They can no longer use multiple voting rights and transfer restrictions to block a hostile tender offer, and must instead compete for control. Once again, no similar rule exists in the United States.

(H) Opt-Outs and Exemptions

As a final note on the mechanics of the E.U. Takeover Directive, it should be mentioned that

[22] *Id.*
[23] *Id.*

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the provisions regarding board neutrality and the breakthrough rule are optional. Article 12 of the directive states that member states may opt out of these requirements. If they do so, however, they must give corporations the option to apply the two rules, a decision that must be made by the general meeting of the shareholders. Further, member states may exempt companies that decide to implement the board neutrality and breakthrough rules from these requirements in the event that an acquiring company that does not apply the rules launches an offer for them. These provisions are designed to give flexibility to member countries with different traditions in corporate governance, but also to reassure companies that they will not be disadvantaged by their decision to take part in the directive‘s rules.[24]

(I) Indian Scenario

Mergers and takeovers are prevalent in India right from the post independence period. 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. But policy of decontrol and liberalization coupled with globalization of the economy after 1980s, especially after liberalization in 1991 had exposed the corporate sector to severe domestic and global competition. This had been further accentuated by the recessionary trends, resulted in falling demand, which in turn resulted in over capacity in several sectors of the economy. Companies started to consolidate themselves in areas of their core competence and divest those businesses where they do not have any competitive advantage. It led to an era of corporate restructuring through Mergers and Acquisitions in India.[25]

a. Scenario Prior to 1990

The first attempts at regulating takeovers were made in a limited way by incorporating a clause, viz. Clause 40, in the listing agreement, which provided for making a public offer to the shareholders of a company by any person who sought to acquire 25% or more of the voting rights of the company. Before 1990s M&A and takeovers were regulated by Companies Act, 1956, IDRA 1951, MRTP Act, 1969, FERA, 1973, and SCRA, 1956 (with respect to transfer of shares of listed companies vide clauses 40Aand 40B). It was frustrating to the person who wanted to achieve corporate growth through this route. For example, in case of MNC related

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[24] Allen Ferrel, *Why Continental European Takeover Law Matters*, (Discussion Paper No. 454, John M. Olin Center for Law, Economics, and Business, Harvard Law School, 2003).

[25] Refine Takeover Code, THE ECONOMIC TIMES, *available at*, http://articles.economictimes.indiatimes.com/keyword/takeover-code, (Bangalore edn., December 1, 2013).

acquisitions, provisions of the FERA applied which imposed a general limit on foreign ownership at 40%. In addition, MRTP gave powers to the union government to prevent an acquisition if it was considered to lead to concentration of economic power to the common detriment.[26]

Moreover, in the event of a hostile bid for the company, the board of a company had the power to refuse transfer to a particular buyer, thereby making it almost impossible for a takeover to occur without the acquiescence of the management of the target company.[27]

Problems:

In the due course, Govt. found that the companies circumvented the threshold limit of 25% for making a public offer, simply by acquiring voting rights a little below the threshold limit of 25%. Besides it noted that it was possible to acquire control over a company in the Indian context with even holding 10% directly. Existing provisions were also not sufficient to consider issues like pricing and change in the management and control.[28]

IV. RELEVANT CASE

1. Swaraj Paul- Escorts/ DCM:

In 1980s London-based NRI Swaraj Paul sought to control the management of two Indian companies, Escorts Limited and DCM (Delhi Cloth Mills) Limited by picking up their shares from the stock market. Paul apparently used the tacit support of the then Prime Minister Indira Gandhi. But he had to face major obstacle from government-run financial institutions. Like the Life Insurance Corporation opposed him and the two companies refused to register the transfer of shares in his name. Promoters of the two companies - the Nanda and Shri Ram families also used their political links to defeat Paul. Though Swaraj Paul failed to fulfill his dream of controlling Escorts and DCM, but was successful in highlighting how particular families were able to exercise managerial control over large corporate entities despite holding a minuscule proportion of the concerned company's shares.[29]

<u>Scenario During 1990</u>

Govt. in consultation with SEBI made following amendments in the Clause 40 of Listing Agreement: -i. Lowering the threshold acquisition level for making a public offer by the

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[26] Swati Gupta, Monica Agarwal, Samreen Farooqui, *Takeover Saga: A Study Pertaining to Indian Scenario,* [unpublished, archived at The Indian Institute of Planning and Management Library].
[27] *Id.*
[28] *Id.*
[29] Kushan Mitra, *DCM has survived Splits and Takeover Bids,* BUSINESS TODAY, (JUNE 28, 2011 *available at* http://businesstoday.intoday.in/story/dcm-among-100-year-old-indian-companies/1/16501.html, (Last visided on November 29, 2024).

acquirer, from 25% to 10%.

ii. Bringing within its fold the aspect of change in management and control (even without acquisition of shares beyond the threshold limit), as a sufficient ground for making a public offer;

iii. Introducing the requirement of acquiring a minimum of 20% from the shareholders;

iv. Stipulating a minimum price at which an offer should be made;

v. Providing for disclosure requirements through a mandatory public announcement

vi. Requiring a shareholder to disclose his shareholding at level of 5% or above to serve as an advance notice to the target company about the possible takeover threat

Problems:

These changes helped in making the process of acquisition of shares and takeovers transparent, provided for protection of investors' interests in greater measure and introduced an element of equity between the various parties concerned by increasing the disclosure requirement. But the clause suffered from several deficiencies- particularly in its limited applicability and weak enforceability. Being a part of the listing agreement, it could be made binding only on listed companies and could not be effectively enforced against an acquirer unless the acquirer itself was a listed company. The penalty for non-compliance was one common to all violations of a listing agreement, namely, delisting of the company's shares, which ran contrary to the interest of investors. The amended clause was unable to provide a comprehensive regulatory framework governing takeovers.[30]

Scenario Post 1990

In 1992 SEBI was given statutory power to regulate the substantial acquisition of shares and takeovers. In November 1994 SEBI issued Substantial Acquisition of Shares and Takeovers Regulation, 1994 'The Regulations preserved the basic framework of Clause 40A & 40B by retaining the requirements of - initial disclosure at the level of 5%, threshold limit of 10% for public offer to acquire minimum percentage of shares at a minimum offer price and making of a public announcement by the acquirer followed by a letter of offer.

Several new provisions were introduced enabling both negotiated and open market acquisitions, competitive bids, revision of offer, withdrawal of offer under certain circumstances and restraining a second offer in relation to the same company within 6 months by the same acquirer,

[30] Swati Gupta, Monica Agarwal, Samreen Farooqui, *Takeover Saga: A Study Pertaining to Indian Scenario*, [unpublished, archived at The Indian Institute of Planning and Management Library].

post offer public holding etc. The take-over code covers three types of takeovers-negotiated takeovers, open market takeovers and bailout takeovers (to help financially weak companies which do not fall under the purview of BIFR).[31]

Features:

- Requiring a shareholder to disclose his holding at 5%
- Threshold limit at 10% for making public offer
- Changes in management and control dropped as a requirement for making open offer. If holding crosses to15% than open offer compulsory (No creeping facility for promoters)
- Min. price offered to shareholders through open offer will be average of 26weeks high and low
- Price can be paid either in cash or through exchange of shares
- If a person were to cross the threshold of 10%, he must make a public offer to acquire a minimum of 20% of the share capital of the company, and consequent upon such offer, the public share holding must not fall below 20%. In addition, if a person holding more than 10% shares in a company, and who has not made any public offer before, were to acquire any further shares, the public offer will have to be made to the extent of the difference between his present holding and 30%
- Acquisition of shares in companies pursuant to a scheme of arrangement or reconstruction including amalgamation or merger or demerger under any law or regulation, whether Indian or foreign has been exempted from the public offer provisions. However, prima facie it does not exempt international acquisitions or mergers carried out under normal course of business as a result of which there is a change in control of an Indian listed company. For that matter, the Code defines control very broadly to include both direct and indirect control;[32]

Problems:

The above provisions raised some issues. First, in companies where public holding was less than 20%, or might fall below that level to comply with the minimum public offer requirement, it was not possible to comply with the requirement of maintaining a minimum level of post offer

[31] Swati Gupta, Monica Agarwal, Samreen Farooqui, *Takeover Saga: A Study Pertaining to Indian Scenario,* [unpublished, archived at The Indian Institute of Planning and Management Library].
[32] *Id.*

public holding. The two provisions were thus conflicting with each other.

Second, a harmonious construction of all the three provisions implied that if a person was holding more than 30%, no public offer was required to be made by him, for further acquisition of shares in the company, even though he has not made any public offer earlier to reach his present holding.

Third, it was not clear from the three provisions whether full offer for a company could be made, i.e. a bid for 100% shares of the company could be made.[33]

Relevant Case

2. Sesa Goa-Mitsui:

In 1996, Mitsui of Japan acquired the parent company of Sesa-Goa India Limited, a publicly traded listed company in India. As a result of this acquisition, Mitsui indirectly became the single largest shareholder of Sesa-Goa. The question then raised was whether Mitsui should make an open offer to other shareholders of Sesa-Goa under the Takeover Code. Mitsui applied to SEBI stating that the Takeover Code should not be triggered as the change in control of Sesa-Goa was a result of its acquisition of Sesa-Goa's parent. Luckily for Mitsui, the case was evaluated under the1994 takeover code and the Ministry of Finance ruled that under the 1994 takeover code, SEBI had no jurisdiction over the developments abroad and therefore could not pass sentence on something that happened outside its jurisdiction and thereby no open offer was required.[34]

Committee on Takeover Code

A Committee was therefore set up by SEBI in November 1995, under the Chairmanship of Justice P.N. Bhagwati, former Chief Justice of India, to review the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1994.Committee discussed all the issues, which came up before SEBI in the course of administration of the Regulations over the past two years or so, keeping in view the imminent scenario in the corporate sector following the economic reforms.[35] The Committee examined the principles and practices and the regulatory framework governing takeovers in as many as 14 countries. The Committee noted that the regulatory framework in these countries had evolved over a period of time drawing extensively

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[33] Swati Gupta, Monica Agarwal, Samreen Farooqui, *Takeover Saga: A Study Pertaining to Indian Scenario,* [unpublished, archived at The Indian Institute of Planning and Management Library].

[34] *Decks cleared for Sesa Goa-Sterlite Merger with Bombay High Court nod,* THE ECONOMIC TIMES (August 12, 2013), *available at* http://articles.economictimes.indiatimes.com/2013-08-12/news/41332993_1_sesa-goa-ltd-sesa-sterlite-sterlite-industries, (Last visited on November 29, 2024).

[35] *Capital Markets and the Takeover Code – Emerging Reform Issues* presented at Seminar at IICA, (New Delhi, August 17, 2010), *available at* http://www.iica.in/images/Papers.pdf (Last visited November 29, 2024).

upon the corporate culture and practice in these countries. Committee submitted its report in January, 1997 based on the recommendations of this committee, SEBI enacted―Substantial Acquisition of Shares and Takeover Code 1997.[36]

V. Evolution of the Takeover Code in India

1. Justice P.N. Bhagwati Committee

The SEBI appointed committee on takeover code headed by Justice P. N. Bhagwati to study the effect of takeovers and mergers on securities market and to suggest the provisions to regulate takeovers and mergers stated the necessity of a takeover code on the following grounds:

- The confidence of retail investors in the capital market is a crucial factor for its development. Therefore, their interest needs to be protected.
- Any exit opportunity shall be given to the investors if they do not want to continue with the new management.
- Full and truthful disclosure shall be made of all material information relating to the open offer so as to take an informed decision.
- The acquirer shall ensure the sufficiency of financial resources for the payment of acquisition price to the investors.
- The process of acquisition and mergers shall be completed in a time bound manner.
- Disclosures shall be made of all material transactions at earliest opportunity. The objective of the Takeover code is to regulate in an organized manner the substantial acquisition of shares and takeovers of a company whose shares are quoted on a stock exchange i.e. listed company. In a limited sense these regulations also apply to certain unlisted companies including a body corporate incorporated outside India to an extent where the acquisition results in the control of a listed company by the acquirer.[37]

2. Substantial Acquisition

The most important point to be understood is what would constitute substantial acquisition under these regulations? Substantial acquisition as such has not been defined under the regulations, nor has it been defined in any other related Acts. Nevertheless, if we read through regulations 10 and 11, the question as to what constitutes substantial acquisition is made

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[36] *Capital Markets and the Takeover Code – Emerging Reform Issues* presented at Seminar at IICA, (New Delhi, August 17, 2010), *available at* http://www.iica.in/images/Papers.pdf (Last visited on November 19, 2024). See http://www.sebi.gov.in/commreport/bagawati-report.html (Last visited on November 29, 2013).
[37] *Id.*

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relatively very clear. The following for the purpose of these regulations can be considered as substantial acquisition:[38]

(a) Acquisition by a person or two or more persons acting together with common intention, 15% or more shares or voting rights of the target company

(b) Acquisition by a person or two or more persons acting together with common intention, who have already acquired 15% or more but less than 55% of share or voting rights, further acquire 5% or more of share capital or voting rights in the same financial year ending on 31st March. An important point to be noted from the summary of regulations above is that not only the acquisition of shares but also the acquisition of voting rights would also constitute substantial acquisition. It is to be noted that voting rights of a shareholder are accompanied with the shares of the company. Until a person is a registered shareholder of a company he cannot have the voting rights, but there are cases when a person has paid the consideration for the share but an official instrument of share transfer has not been formulated, in such case a power of attorney to transfer the voting rights of the transferor can be formulated or the transferee may demand for a proxy from the transferor or he may make the transferee exercise the voting rights as he demands. Maybe this was the reason why acquisition of voting rights have been expressly mentioned in the regulations as far as substantial acquisition is concerned.

3. Takeover Regulations Advisory Committee under the Chairmanship of Mr. C Achuthan

Taking into consideration the growing level of M&A activity in India, the increasing sophistication of takeover market, the decade-long regulatory experience and various judicial pronouncements, it was felt necessary to review the Takeover Regulations of 1997.

Accordingly, SEBI, vide its order dated September 4, 2009, constituted the Takeover Regulations Advisory Committee with the mandate to examine and review the Takeover Regulations of 1997 and to suggest suitable amendments, as deemed fit.

The Committee believes that the stated objectives of the Takeover Regulations of 1997 continue to remain valid and relevant. As the Committee is recommending substantive changes to the Takeover Regulations of 1997, it decided to draft a new text of Takeover Regulations.

It is important to restate the fundamental objectives of the Proposed Takeover Regulations. These are:-

To protect the interests of investors in securities and the securities market, taking into account

[38] *Id.*

that both the acquirer and the other shareholders or investors and need a fair, equitable and transparent framework to protect their interests;[39]

To balance the various, and at times, conflicting objectives and interests of various stakeholders in the context of substantial acquisition of shares in, and takeovers of, listed companies.

To provide each shareholder an opportunity to exit his investment in the target company when a substantial acquisition of shares in, or takeover of a target company takes place, on terms that are not inferior to the terms on which substantial shareholders exit their investments;

To provide acquirers with a transparent legal framework to acquire shares in or control of the target company and to make an open offer;

To ensure that the affairs of the target company are conducted in the ordinary course when a target company is subject matter of an open offer;

To ensure that the affairs of the target company are conducted in the ordinary course when a target company is subject matter of an open offer;

To ensure that fair and accurate disclosure of all material information is made by persons responsible for making them to various stakeholders to enable them to take informed decisions;

To regulate and provide for fair and effective competition among acquirers desirous of taking over the same target company; and

To ensure that only those acquirers who are capable of actually fulfilling their obligations under the Takeover Regulations make open offers.[40]

VI. Salient features of the takeover regulations 2011

Open Offer Obligation

Initial Trigger.-Acquisitions of an aggregate of 25 % or more voting rights in a target company would require the acquirer to make an open offer.[41]

Creeping Acquisition Trigger- An acquirer holding 25 % or more voting rights in a target company is allowed to acquire additional voting rights in the target company up to 5 % within a financial year, without making an open offer.[42]

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[39] Sandeep Kanoi, *Achutan Committee on Takeover Regulations submits Report to SEBI*, TAX GURU, *available at* http://taxguru.in/sebi/achuthan-committee-on-takeover-regulations-submits-report-to-sebi.html, (Last visited on November 19, 2024).

[40] *Id.*

[41] Regulation 3(1), SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011.

[42] Regulation 3(2), SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011.

Control Trigger- Regardless of the level of shareholding and acquisition of shares, acquisition of control over a target company would require the acquirer to make an open offer.[43]

Indirect Acquisitions- Acquisition of shares or voting rights in, or control over any entity that would enable the acquirer to exercise or direct the exercise of such percentage voting rights in, or control over the target company, as would attract the obligation to make an open offer, would be regarded as an indirect acquisition, requiring the acquirer to make an open offer.[44]

If the indirectly acquired target company is a predominant part of the business or entity being acquired, the Proposed Takeover Regulations would treat such indirect acquisition as a direct acquisition for all purposes. [45]

Voluntary Open Offer - Shareholders holding shares entitling them to exercise 25 % or more of the voting rights in the target company may, without breaching minimum public shareholding requirements under the listing agreement, voluntarily make an open offer to consolidate their shareholding.[46]

Offer Size -General Rule- Any open offer under the Proposed Takeover Regulations would be for 100 %, i.e., for all the shares held by all the other shareholders of the target company.[47]

Exception for Voluntary Open Offer- As an exception to the 100 % offer rule, a voluntary open offer can be made for the acquisition of shares representing at least 10 % but shall not exceed such number of shares which will take the holding of the acquirer and persons acting in concert with him to beyond maximum non-public shareholding permitted under the listing agreement.[48]

An acquirer who has acquired shares in the preceding fifty two weeks would not be eligible to make such a voluntary open offer. Such an acquirer would also be barred from making any acquisition for six months after the open offer.[49]

Upon a competing offer being made, such an acquirer would be permitted to increase his offer

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[43] Regulation4, SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011.
[44] Regulation 5(1), SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011.
[45] Regulation 5(2), SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011.
[46] Regulation 6, SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011.
[47] Regulation 7(1), SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011.
[48] Regulation 7(2), SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011.
[49] Regulation 6, SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011.

size to a normal full-sized open offer within fifteen business days.[50]

Public Shareholding - An acquirer, who is making a mandatory offer triggered by either substantial acquisition (viz. above 25 %) or acquisition of control, but not pursuant to creeping acquisition, would be permitted to state upfront while making the open offer that if his holding in the target company along with persons acting in concert crosses the delisting threshold pursuant to the open offer, the target company may be delisted. If such an intention to delist is not stated upfront, or the response to the open offer is such that the public shareholding could fall below the minimum level required under the listing agreement but remains above the delisting threshold, the acquirer would be required to either bring his holding down to ensure compliance by the target company with the listing agreement, or proportionately reduce both his acquisitions under the agreement that triggered the open offer and the acquisitions under the open offer.[51]

Exemption from open offer obligations

Exemptions have been streamlined and classified on the basis of the specific charging provision from which exemptions would be available, with conditions for eligibility for such exemptions. Some of the areas where changes have been recommended include increase in voting rights due to buy-back of shares, schemes of arrangement that do not involve the target company, certain inter se transfers, corporate debt restructuring and rights issues.[52]

SEBI would continue to have the power to grant exemption from making an open offer. SEBI would also continue to have the discretion to give relaxation from strict compliance with procedural requirements and the same would be linked to specific conditions that would have to be met. However, the requirement of making a mandatory reference to a Panel by SEBI before granting an exemption has been done away with and such requirement has now been made discretionary.[53]

Offer Price

The minimum price payable as the offer price continues to be regulated and shall be the highest of:

the negotiated price under the agreement that attracted the open offer; volume-weighted

[50] Regulation 7, SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011.
[51] *Id.*
[52] Regulation 10, SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011.
[53] Regulation 11, SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011.

average price paid by the acquirer and persons acting in concert in the preceding fifty-two weeks; highest price paid by the acquirer or persons acting in concert with him during the preceding twenty-six weeks;

sixty trading day volume weighted average market price (for frequently traded shares).

To compute the offer price for indirect acquisitions, in addition to the above parameters, any higher price paid during the period between contracting of the primary transaction and the public announcement has also to be considered.

In case of indirect acquisitions of the target company, the offer price would stand increased at the rate of 10 % per annum calculated on a pro-rata basis for the period from the date of the primary transaction being announced in the public domain until the date of actual detailed public statement in respect of the target company. Such revised offer price shall be payable to all shareholders who tender their shares in the open offer.[54]

Mode of payment- The offer price may be paid in the form of cash or securities like shares, convertibles, secured debt instruments of the acquirer or of persons acting in concert with him or a combination of these modes. To ensure that the equity shares given in consideration for the open offer are liquid, eligibility conditions have been stipulated. However, if shares of the target company carrying more than 10 % voting rights have been acquired for cash in the preceding 52 weeks, shareholders to whom the open offer is made may opt to receive the offer price only in cash.[55]

Conditional offers.

An acquirer may make an open offer conditional as to the minimum level of acceptance. Where an offer is made conditional upon minimum level of acceptances, the acquirer and persons acting in concert with him shall not acquire, during the offer period, any shares in the target company.[56]

Competing offers- An acquirer having made a voluntary offer is permitted to switch to a normal full-sized offer when a competing offer is made. Within twenty-one business days from expiry of the offer period, any competing acquirer would be free to negotiate and acquire the shares tendered to the other competing acquirer, at the same price that was offered by him to the public.

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[54] Regulation 8, SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011.

[55] Regulation 9, SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011.

[56] Regulation 19, SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011.

However, the holding of the acquirer and persons acting in concert with him ought not to increase beyond the maximum permitted non-public shareholding.[57]

Completion of transaction that triggered the open offer- The agreement that attracts an open offer obligation may be acted upon during the pendency of the open offer provided 100 % of the consideration payable under the open offer is placed in escrow. An agreement that triggered an open offer obligation would have to be completed within twenty-six weeks after the offer period.[58]

Governance Issues

The board of directors of the target company would be required to conduct the operations of the target company in the ordinary course and consistent with past practice. Material transactions outside the ordinary course of business cannot be undertaken during the offer period, either at the level of the target company or at the level of any subsidiary of the target company without approval of shareholders of the target company.[59]

A committee of independent directors of the target company shall be formed to consider and give its reasoned recommendations on the open offer, which shall be published by the target company. No appointment of representatives of the acquirer to the board of directors of the target company would be permitted unless the acquirer places in escrow 100 % of the consideration under the open offer in cash. Such appointment may be made only after the deadline for making competing offers expires. During the pendency of competing offers, irrespective of the amount deposited in escrow account by acquirers, there shall be no appointment of additional directors to the board of directors of the target company.[60]

Activities and Timelines in open offer process -Timelines of various activities in the open offer process have been revised. A normal open offer process would be completed within 57 Business Days from the date of Public.

VII. Certain case studies on takeovers

1. Takeover of Rassi Cements by India Cements Background

Shri N. Srinivasan, an industrialist, is the Vice Chairman & Managing Director of the India

[57] Regulation 20, Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.
[58] Regulation 22, Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.
[59] Regulation 26, Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.
[60] Regulation 24, Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

Cements Ltd .(ICL). ICL is one of the largest cement producers in south India. The company has a strong presence in the states of Tamil Nadu, Kerala and Andhra Pradesh. Cement constituted approximately 97% of ICL's total revenues. Besides cement, the company has a presence in wind energy and real estate. In early 1998, ICL had six cement plants, three each in Tamil Nadu and Andhra Pradesh and its capacity had increased to 5.2 mtpa. ICL entered Andhra Pradesh by acquiring the Chilamakur plant from Coromandel Fertilizers in 1990. In September 1997, ICL took a 100% stake in Visaka Industries Ltd through its subsidiaries and associate companies. Also in 1998,ICL acquired the Yerranguntla plant from the Cement Corporation of India (CCI).[61]

Raasi Cements was promoted by Raju and his son-in-law, N P K Raju in 1978. Other than cement, the group also had interests in ceramics and paper. Raasi's cement division had a capacity of 1.60 mtpa. Raasi seemed to be an attractive target for ICL as it was a relatively low cost producer. Analysts felt that Raasi failed to capitalize on its low production cost, because of its weak marketing set-up, particularly in Kerala and Tamil Nadu. As a result, Raasi tended to dump the cement in its weak markets thereby putting pressure on other players in the region. The takeover of Raasi also would help in rationalization of various markets between ICL and Raasi, and interchangeable use of Sankar, Coromandel and Raasi brand names.

Industry Profile

In the late 1990's the Indian cement industry was a highly fragmented one. There were117 plants belonging to 59 companies spread across the length and breadth of the country, with an installed capacity of 109.97 mtpa. In the early 1990s, the industry expanded considerably as new plants with large capacities came up. The success of the economic reforms of the early 1990s was a boost to the expansion plans of the cement companies. However, in the mid and late 1990s, as demand for cement declined, the share prices of most companies fell. In the late 1990s, acquisitions triggered off consolidation in the cement Industry. The process of consolidation started in 1998 with ICL taking over Visaka Cement and CCI's plant at Yerraguntla, (Andhra Pradesh) and Grasim taking over Dharani Cement and Shri Digvijay Cements. Also, in 1998, Lafarge, a French building material multinational took over Tata Iron and Steel Co's(Tisco) 1.7 mtpa plant. The main reason for the sudden spate of acquisitions was that overcapacity had squeezed margins, making it impossible for the smaller, inefficient players, especially in the north and west, to carry on with their operations. Capacity had grown by 9% a year, whereas

[61] *Takeover of Raasi Cements by India Cements* (2001 ICMR INDIA, *available at* http://www.icmrindia.org/free%20resources/casestudies/raasi-cements-takeover1.htm, (Last visited on November 29, 2013).

demand had grown by only 7%.[62] The industry was operating at an average capacity of 81% in 1996-97, 1% less than in the previous year. But most plants need to operate at over 85% capacity utilization to make a profit. In contrast to the northern and western regions, in the late 1990s, Southern region had a deficit of cement. In the late 1990s, both Larsen & Toubro (L&T) and Gujarat Ambuja Cements Limited (GACL) tried to set up their private jetties in Kerala to procure shipments from their respective Gujarat plants. However, the local cement lobby thwarted their attempts, and as a result, neither L&T nor GACL was able to set up a jetty. Some supplies were transported using the Bombay Port Trust's jetty services in Kerala. But as their market prices were non-competitive, the shipments were stopped. Analysts felt that the attempts by cement producers from the north and west India to transport cement to the south was likely to meet resistance in future especially in the coastal markets. Demand in this region was driven by the housing sector in Kerala and Tamil Nadu, and large infrastructural developmental work in Andhra Pradesh. During the period 2000-05, demand for cement was expected to grow at 10-12% per annum. With the industry operating at 85% capacity, the regional deficit for cement in the southern region was expected to grow by 20-30% in 2000-05. Therefore, prices were expected to increase by at least 5%-6% p.a. in 2000-05. Analysts felt that the acquisition drives by companies like ICL, Grasim, L&T and GACL in the late 1990s was only the first phase of a long awaited consolidation process in the Indian cement industry. Nowhere in the world were there 117 cement plants spread over 59 companies. They felt that the number of companies would fall to a single digit number by 2005.Companies with smaller capacity would either sell out or close down operations.[63]

The Deal

Analysts felt that if ICL was indeed interested in Raasi and was buying its stock, then it was probably doing so in the belief that the family, despite Raju's assertion, would sell out. Raju had no sons, but his three sons-in-law were involved with the running of the company, and at least one of them seemed to be interested in selling out. ICL was no stranger to Raasi. In 1995, one of Raju's sons-in-law sold the 0.68 million shares in his possession (roughly 4 per cent of the company's equity) to Srinivasan, on the understanding that the shares would be bought back in more favorable times. According to Raju this was done without his knowledge. Since then, ICL had been quietly increasing this stake. The company bought an additional 0.13 million shares in1996-97 at an average price of Rs 90, taking its stake to around 5%. When the share dipped

[62] *Id.*

[63] *Takeover of Raasi Cements by India Cements* (2001 ICMR INDIA, *available at* http://www.icmrindia.org/free%20resources/casestudies/raasi-cements-takeover1.htm, (Last visited on November 29, 2024).

to Rs 50 in October 1997, it was an opportune moment for ICL to increase its holdings in Raasi and by late 1997; ICL increased its stake in Raasi to 8%.[64]

By January 1998, Srinivasan had accumulated 18.03% of Raasi's equity, both through open market purchases as well as by buying out the stake of an estranged faction of the Raju family. In February 1998, Srinivasan announced an open offer to acquire an additional 20% of Raasi's equity. He offered Rs 300 per share, 72.41% above the stock market price of Rs 174 on February 26, 1998. Raasi's shareholders seemed to find it hard to turn down his offer. On March 1, 1998, the state-owned APIDC sold its 2.13% stake in Raasi to ICL. Subsequently, a Chennai-based stockbroker, Valampuri & Co., cornered 1.40 % of Raasi's equity from the market for Srinivasan, taking ICL's stake in Raasi to 21.56%.Srinivasan was also negotiating with V.P. Babaria, a transporter for both ICL and Raasi, to pick up his 7% stake in the latter. If Babaria sold his stake, ICL's stake in Raasi would go up to 28.56%. With more than 25% of Raasi's equity in his kitty, Srinivasan would be in a position to veto any special resolution put up for the approval of Raasi's shareholders. A confident Srinivasan told Business Today in Chennai: "Raju cannot wish me away and that's irrespective of the response ICL will elicit for its public offer, which will be open between April 15 and May 15, 1998." Unwilling to take any chances, Raju planned to execute a series of defensive maneuvers to stall Srinivasan. Raasi could get its shareholders to approve the hiving-off of the 39.5% stake it owned in SVCL. But this could be opposed by the financial institutions as Raasi had promised BIFR, while taking over the sick company, which it would not dispose of the shares. Raju also had the option of making a counter-offer to his shareholders, and weaning away potential sellers from Srinivasan. But this was an expensive option, (Raju needed approximately Rs 100 crore to make a counter bid) and he did not seem to have the funds to pull it off. Raju's efforts to find a 'white knight' didn't succeed either. R. Kunjitapadam, technical adviser and vice chairman, Raasi, said, "Some companies did try to help us out of the crisis. We were looking for assistance in the form of a white knight, or joint participation in developing the company further, and parting at a later date." Raasi approached three sources - Kumar Mangalam Birla (Chairman, A.V. Birla Group), GACL and Switzerland's Holder Bank. Birla wanted a 51% stake while GACL seemed to prefer a takeover. Raju then made a final attempt by talking to Holder bank, but the latter wanted to merge Raasi with its Indian enterprise, Kalyanpur Cements. Raju expected help from the Andhra Pradesh government and other state industrialists who were against ICL's takeover bid. However, Mr. Chandra Babu Naidu, the Chief Minister of Andhra Pradesh, refused to meet a delegation of state industrialists who wanted to present Raju's case. His only comment to the

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[64] *Id.*

sale of APIDC's stake in Raasi was, "The old man will be unhappy". In March 1998, realizing his predicament, Raju began to negotiate with Srinivasan to sell his 33% shares in the company. In an exclusive interview to Business India Raju said, "Though I had 33% of the shares and associates held 10%, I needed another Rs.1billion for 51%. I did not want to incur further debts. It will take me ten births to repay them. Let this child of mine be happy, even if it's with a new owner."[65]

After protracted negotiations with an ICL team which flew down from Chennai to Hyderabad, Raasi decided to let ICL buy its shares at Rs.286 a share. In April 1998, Business World reported, "On paper Raju has reaped a harvest of Rs. 1.49 billion on this deal. But after deduction of all dues and shares for friends and relatives from the promoters' stake of 33%, Raju will net only Rs 30 million in his personal account."Commenting on the sell-out, Srinivasan said, "We are happy that Dr B V Raju and his associates have agreed to sell their stake in Raasi Cement. The consolidation process will be beneficial to both companies as it would result in production, marketing and distribution synergies." [66]"At a later date, we plan to merge both the companies", he added. The takeover of Raasi by ICL led to a new controversy over the ownership of SVCL. SVCL was of strategic importance to both ICL and Raju. In early 1998, when ICL made known its intention to take over Raasi, it was believed that SVCL, in which Raasi had a 39.5% stake, would be part of the deal. However, when ICL came up with its open offer for Raasi, it discovered that the latter's entire stake in SVCL had been sold to some of the promoter's group companies. In late 1997, Raasi had convened a couple of board meetings and its shares in SVCL were divested at Rs10 each, allegedly to Raju's friends and relations. Till the eventual takeover was complete no one questioned this deal. After the takeover of Raasi, ICL examined Raasi's books and found that it had violated the Securities & Exchange Board of India (SEBI) takeover guidelines which prohibited the target management from disposing off any asset during the open offer period. ICL complained to SEBI that Raasi had divested its 39.5% holding in SVCL in favor of nine firms controlled by Raju, in violation of the SEBI takeover code and the Companies Act. SEBI ordered an investigation into the legality of this share transfer and the Hyderabad City Civil Court was to judge how far the transfer was to the shareholder of Raasi. Company sources said that Srinivasan would try to convince the courts that the shares were sold at a throwaway price of Rs 10. This would make the deal detrimental

[65] *Takeover of Raasi Cements by India Cements* (2001 ICMR INDIA, *available at* http://www.icmrindia.org/free%20resources/casestudies/raasi-cements-takeover1.htm, (Last visited on November 29, 2024).

[66] *Takeover of Raasi Cements by India Cements* (2001 ICMR INDIA, *available at* http://www.icmrindia.org/free%20resources/casestudies/raasi-cements-takeover1.htm, (Last visited on November 29, 2024).

to shareholders' interests under Section 397 of the Companies Act, 1956, which dealt with "prevention of oppression," and defined oppression as "lack of probity and fair dealing in the affairs of a company to the prejudice of its members."[67]

In August 1998, Raju and his associates announced an open offer for a 20 per cent stake in SVCL at Rs 25 per share to increase their share from 39.5% to around 60%. On September 4, 1998, SEBI allowed Raju to go ahead with his open offer. Confident of the success of the open offer Raju increased the original offer price of Rs 25 per share to Rs 100 in September 1998. Meanwhile, in August 1998, Raju also picked up a26.21% stake in SVCL, buying the shares of Industrial Development Bank of India (13.16%), Industrial Credit and Investment Corporation of India (6.53%), and the Industrial Finance Corporation of India (6.52%). With this acquisition he increased his holdings in SVCL to 65.71%.Raju then tried to raise his stake in SVCL to over 90%. If all went well, Raju could delist the company by making another open offer to the remaining shareholders. Even if he had to return the 39.5% stake to Raasi, he would still hold a controlling stake of over50%. If SEBI was convinced that the share-transfer was detrimental to the interests of Raasi's shareholders, it had two options. One, the transfer could be reversed: Raju could be legally forced to return the 39.5% stake to Raasi. Or, SEBI could direct Raju to pay the difference of Rs 90 per share to Raasi. In mid 1999, almost a year after SEBI started its investigations; it was yet to make a public statement on what its investigations had revealed. In October 1999 Raju sold his disputed 39.5% stake in SVCL to ICL. In a compromise reached in Hyderabad, Raju sold his shares for Rs 1.15 billion, at Rs. 120 a share. Commenting on the surrender, Raju said, "I have had a long and successful innings, but the younger generation of the family is more interested in high technology areas like software. In view of my age and keeping in mind the interest of the stakeholders in SVCL, we decided to divest in favour of ICL." With this, ICL acquired 88.55% of SVCL's paid up capital. All cases relating to the matter, pending before SEBI were dropped. In December 1999, ICL Securities Ltd. (ICLSL), along with ICL and Raasi made an offer for the purchase of the remaining shares of SVCL (constituting 11.45% of the equity share capital) at Rs. 98.25 per share. By the end of 2000, SVCL became a subsidiary of ICL.[68]

Problems:

B.V. Raju's first demand was that there shall exist a buyback provision in law for the defender.

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[67] *Id.*

[68] *Takeover of Raasi Cements by India Cements* (2001 ICMR INDIA, *available at* http://www.icmrindia.org/free%20resources/casestudies/raasi-cements-takeover1.htm, (Last visited on November 29, 2024).

(The Companies Act has been subsequently amended to permit buyback of securities by a company subject to certain conditions).

ICL decided to pay out a whopping Rs. 300 per share of RCL. This price far exceeded the book value of the target. The ICL lenders raised serious doubts as to how this would affect ICL's balance sheet. However, in the end, ICL was able to justify the price satisfactorily.

Raju sold out before the institutions did. ICL did not need to buy out the institutions, certainly not at the exorbitant open offer price. Institutions like UTI, which held 12% of RCL even threatened to approach SEBI in order to pursue ICL to purchase its stake in the open offer.

Post Takeover Synergy

• Combined cement capacity of ICL increase up to 8 mtpa.

• Operating income of ICL-Raasi combine grew by 55% due to availability of high cement capacity and steep rise in income. The company was able to reduce its freight charges and utilize resources efficiently. Synergy increase its market share from 15% in 1998 to 25– 26% in 1999. It had combined synergy to achieve value addition and greater penetration in southern region. Combined synergy leads to expansion of plants to enhance productivity and efficiency to produce nearly 10 million tons in 2001. Burden of debt due to acquisition is very high seen from rising debt equity ratio. In order to realize the synergy the leverage should be brought down and cash flow should be generated. Existing distribution infrastructure of Raasi helps ICL to leverage this to reduce the freight and other costs.[69]

Conclusion

At the end, the takeover resulted as a successful one. Following are the details of the company after takeover: The whole company currently has a production capacity of 9.1Mt/year. ICL with subsidiary Raasi cement is going well, so the takeover is valuable. A source said that ICL sells about 90% of its production in Kerala, Andhra Pradesh and Tamil Nadu, all this is due to capacity improved by acquisition of cement companies like Raasi cements.

With this acquisition, India Cements emerged as south India's largest cement manufacturer with about 7.5 million tonnes per annum Capacity. Both companies combined will enjoy a market share of 35 per cent in the south India.

2. <u>Tata Steel's Takeover of Corus</u>

On January 31, 2007, India based Tata Steel Limited (Tata Steel) acquired the Anglo Dutch

[69] *Id.*

steel company, Corus Group Plc (Corus) for US$ 12.04 billion. The merged entity, Tata-Corus, employed 84,000 people across 45 countries in the world. It had the capacity to produce 27 million tons of steel per annum. Tata Steel outbid the Brazilian Steelmaker Companhia Siderurgica Nacional's (CSN) final offer of 603 pence per share by offering 608 pence per share to acquire Corus. Tata Steel had first offered to pay 455 pence per share of Corus, to close the deal at US$ 7.6 billion on October 17, 2006. CSN then offered 475 pence per share of Coruson November 17, 2006. Finally, an auction was initiated on January 31, 2007, and after nine rounds of bidding, Steel could finally clinch the deal with its final bid 608 pence per share, almost 34% higher than the first bid of 455 pence per share of Corus.[70] The deal is the largest Indian takeover of a foreign company and made Tata Steel the world's fifth-largest steel group.

Background

Tata Steel, formerly known as TISCO (Tata Iron and Steel Company Limited), was the world's 56th largest and India's 2nd largest steel company with an annual crude steel capacity of 3.8 million tonnes. It is based in Jamshedpur, Jharkhand, India. It is part of the Tata Group of companies. Post Corus merger, Tata Steel is India's second large stand second-most profitable company in private sector with consolidated revenues of Rs1,32,110 crore and net profit of over Rs 12,350 crore during the year ended March 31,2008. The company was also recognized as the world's best steel producer by World Steel Dynamics in 2005. The company is listed on BSE and NSE; and employs about 82,700 people (as of 2007).[71]

Corus was formed from the merger of Koninklijke Hoogovens N.V. with British Steel Plc on 6 October 1999. It has major integrated steel plants at Port Talbot, South Wales; Scunthorpe, North Lincolnshire; Teesside, Cleveland (all in the United Kingdom) and IJmuiden in the Netherlands. It also has rolling mills situated at Shotton, North Wales(which manufactures Colorcoat products), Trostre in Llanelli, Llanwern in Newport, South Wales, Rotherham and Stocksbridge, South Yorkshire, England, Motherwell, North Lanarkshire, Scotland, Hayange, France, and Bergen, Norway. In addition it has tube mills located at Corby, Stockton and Hartlepool in England and Oosterhout, Arnhem, Zwijndrecht and Maastricht in the Netherlands. Group turnover for the year to31 December 2005 was £10.142 billion. Profits were £580 million before tax and £451million after tax.

[70] Kimberly Freeman, Achieving Global Growth through Acquisition: Tata's Takeover of Corus , JOURNAL OF CASE RESEARCH IN BUSINESS AND ECONOMICS (2007).

[71] Kimberly Freeman, Achieving Global Growth through Acquisition: Tata's Takeover of Corus , JOURNAL OF CASE RESEARCH IN BUSINESS AND ECONOMICS (2007).

Industry Profile

The Indian steel industry is more than 100 years old now. The first steel ingot was rolled on 16th February 1912 - a momentous day in the history of industrial India. Steel is crucial to the development of any modern economy and is considered to be the backbone of the human civilization. The level of per capita consumption of steel is treated as one of the important indicators of socio-economic development and living standard of the people in any country. It is a product of a large and technologically complex industry having strong forward and backward linkages in terms of material flow and income generation. All major industrial economies are characterized by the existence of a strong steel industry and the growth of many of these economies has been largely shaped by the strength of their steel industries in their initial stages of development. India is the seventh largest steel producer in the world, employing over half a million people directly with a cumulative capital investment of around Rs. one lakh crore. It is a core sector essential for economic and social development of the country and crucial for its defense. The Indian iron and steel industry contributes about Rs.8,000 crore to the national exchequer in the form of excise and custom duties, apart from earning foreign exchange of approximately Rs. 3,000 crore through exports. Consumption of finished steel grew by 5.9 % and increased to 24.9 million tones. Steel consumption is likely to increase in the at a rapid pace in future due to large investments planned in infrastructure development, increase urbanization and growth in key steel sectors i.e. automobile, construction and capital goods.

Problems

Though the potential benefits of the Corus deal were widely appreciated, some analysts had doubts about the outcome and effects on Tata Steel's performance. They pointed out that Corus' EBITDA (earnings before interest, tax, depreciation and amortization) at8 percent was much lower than that of Tata Steel which was at 30 percent in the financial year 2006-07.

Final Deal Structure

- $3.5 – 3.8bn infusion from Tata Steel ($2bn as its equity contribution, $1.5 – 1.8bnthrough a bridge loan)
- $5.6bn through a LBO ($3.05bn through senior term loan, $2.6bn through highyield loan)

Financing the Acquisition

By the first week of April 2007, the final draft of the financing structure of the acquisition was worked out and was presented to the Corus' Pension Trusties and the Works Council by the senior management of Tata Steel. The enterprise value of Corus including debt and other costs was estimated at US$ 13.7 billion.[72]

The Synergies

There were a lot of apparent synergies between Tata Steel which was a low cost steel producer in fast developing region of the world and Corus which was a high value product manufacturer in the region of the world demanding value products. Some of the prominent synergies that could arise from the deal were as follows:

Tata was one of the lowest cost steel producers in the world and had self sufficiency in raw material. Corus was fighting to keep its productions costs under control and was on the lookout for sources of iron ore. Tata had a strong retail and distribution network in India and SE Asia. This would give the European manufacturer an in-road into the emerging Asian markets. Tata was a major supplier to the Indian auto industry and the demand for value added steel products was growing in this market. Hence there would be a powerful combination of high quality developed and low cost high growth markets. There would be technology transfer and cross-fertilization of R&D capabilities between the two companies that specialized in different areas of the value chain. There was a strong culture fit between the two organizations both of which highly emphasized on continuous improvement and ethics. Tata steel's Continuous Improvement Program Aspire with the core values: Trusteeship, integrity, respect for individual, credibility and excellence. Corus's Continuous Improvement Program The Corus Way‘ with the core values: code of ethics, integrity, creating value in steel, customer focus, selective growth and respect for our people.[73]

Future Outlook

Before the acquisition, the major market for Tata Steel was India. The Indian market accounted for sixty nine percent of the company's total sales. Almost half of Corus' production of steel was sold in Europe (excluding UK). The UK consumed twenty nine percent of its production. After the acquisition, the European market (including UK) would consume 59 percent of the merged entity's total production.[74]

3. <u>Tata Motor’s Takeover of Jaguar Land Rover</u>

In June 2008, India-based Tata Motors Ltd. announced that it had completed the acquisition of

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[72] Kimberly Freeman, Achieving Global Growth through Acquisition: Tata’s Takeover of Corus , JOURNAL OF CASE RESEARCH IN BUSINESS AND ECONOMICS (2007).
[73] *Id*.
[74] Kimberly Freeman, Achieving Global Growth through Acquisition: Tata’s Takeover of Corus , JOURNAL OF CASE RESEARCH IN BUSINESS AND ECONOMICS (2007).

the two iconic British brands - Jaguar and Land Rover (JLR) from the US-based Ford Motors for US$ 2.3 billion.[75]

Background

Tata Motors is India‘s largest automobile company, with consolidated revenues of USD 20 billion in 2009-10. It is the leader in commercial vehicles and among the top three in passenger vehicles. Tata Motors has products in the compact, midsize car and utility vehicle segments. The company is the world's fourth largest truck manufacturer, the world's second largest bus manufacturer, and employs 24,000 workers. Since first rolled out in 1954, Tata Motors has produced and sold over 4 million vehicles in India.

Jaguar Land Rover is a business built around two great British car brands with exceptional design and engineering capabilities. Jaguar Land Rover‘s manufacturing facilities are in the UK. JLR was set up by Ford Motor Company in 2002 as a single entity to manage the businesses of both Jaguar Cars which they acquired in 1989, and Land Rover which was acquired from BMW in 2000. JLR was acquired from Ford by Tata Motors in 2008.[76]

Industry Profile

The automotive industry in India grew at a computed annual growth rate (CAGR) of 11.5 percent over the past five years, the Economic Survey 2008-09 tabled in parliament on 2nd July‘09 said.

The industry has a strong multiplier effect on the economy due to its deep forward and backward linkages with several key segments of the economy, a finance ministry statement said. The automobile industry, which was plagued by the economic downturn amidst a credit crisis, managed a growth of 0.7 percent in 2008-09 with passenger car sales registering 1.31 percent growth while the commercial vehicles segment slumped 21.7 percent. Indian automobile industry has come a long way to from the era of the Ambassador car to Maruti 800 to latest TATA Nano. The industry is highly competitive with a number of global and Indian companies present today. It is projected to be the third largest auto industry by 2030 and just behind to US & China, according to a report. The industry is estimated to be a US$ 34 billion industry. Indian Automobile industry can be divided into three segments i.e. two wheeler, three wheeler & four wheeler segment. The domestic two-wheeler market is dominated by Indian as well as foreign players such as Hero Honda, Bajaj Auto, Honda Motors, TVS Motors, and Suzuki etc. Maruti

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[75] Tata's Acquisition of Jaguar & Land Rover: A collector's item or business deal? , THE ECONOMIC TIMES, http://articles.economictimes.indiatimes.com/keyword/jaguar-land-rover, (Last visited on November 19, 2024).
[76] *Id.*

Udyog and Tata Motors are the leading passenger car manufacturers in the country. And India is considered as strategic market by Suzuki, Yamaha, etc. Commercial Vehicle market is catered by players like Tata Motors, Ashok Leyland, Volvo, Force Motors, Eicher Motors etc. The major players have not left any stone unturned to be global. Major of the players have got into the merger activities with their foreign counterparts. Like Maruti with Suzuki, Hero with Honda, Tata with Fiat, Mahindra with Renault, Force Motors with Mann.[77]

The Deal

Tata Motors is the largest manufacturer of commercial and passenger vehicles in India. In 2008 Tata Motors acquired from Ford Motor Company the two luxury car brands Jaguar and Land Rover (JLR). The stock market's immediate reaction to the JLR acquisition was negative. In the few days following the announcement of the JLR acquisition, the stock price of Tata Motors underperformed the Sensex index by about 5%. Balaji Jayaraman of Morgan Stanley said, buying Jaguar and Land Rover was―value-destructive given the lack of synergies and the high-cost operations involved.[78]

However, Tata Motors' officials expressed confidence in the deal's long-term potential. Managing Director Ravi Kant said the company was "pretty confident that Jaguar and Land Rover will add positively to our consolidated balance sheet." "People are free to make their own opinions, but I think time will prove who is right," Kant said. Instead, the stock performance of Tata Motors worsened over the next year, and its shares under performed the Sensex index by 36%. It is, of course, true that this period coincided with the recent economic turbulence in the world, and a significant downturn in the global automotive market.[79]

Ford purchased Jaguar and Land Rover for $5 billon and sold them to Tata Motors for about half that price after several years of operating losses. It is difficult to see how Tata Motors would have greater synergies than Ford with JLR. There are no significant synergies between Tata Motors and JLR. The two companies operate in different geographic markets, selling cars with different technology to very disparate customer segments. Around the same time, Tata Motors was launching its much-publicized car the Tata Nano, the world‘s cheapest car. Kant issued a clear directive: keep these vehicle lines separate and distinct. "Each is going to chart its own future and own course, he says."The conflict would come if we were to try to put them together."

Tata has experience taking over global brands, and its strategy has been to let each business run

[77] Tata's Acquisition of Jaguar & Land Rover: A collector's item or business deal? , THE ECONOMIC TIMES, http://articles.economictimes.indiatimes.com/keyword/jaguar-land-rover, (Last visited on November 19, 2024).
[78] *Id.*
[79] *Id.*

its own entity, with modest input from the home office. This is consistent with the view that there are minimal synergies between the two companies. Tata Motors financed the acquisition with debt significantly increasing its risk profile. The company's ratio of EBITDA earnings to interest paid, an inverse measure of the firm's debt risk, used to be in the range 9 to 11 during the years 2005-2007; after the acquisition, the coverage ratio dropped to 5.9 in 2008. By comparison, the coverage ratio for some successful auto companies in 2008 was: 86 for Toyota, 45 for Nissan, and 31 for Audi. As mentioned earlier, Tata Motors had problems in refinancing him bridge loan in 2009.While discussing the disappointing performance of Corus and JLR, Ratan Tata conceded in an interview with.[80]

The Sunday Times in 2009 that, with hindsight, he might have gone too far too fast, but that nobody saw the crash coming. ―If one had known there was going to be a meltdown then yes [Tata went too far] but nobody knew. Both the acquisitions were made, I would say, at an inopportune time in the sense that they were near the top of the market in terms of price. Even if we accept the view that the timing of the JLR acquisition was unfortunate, there is still no positive rationale for the acquisition. Lacking synergies, Tata Motors was behaving as a conglomerate in acquiring JLR. There is much evidence that such conglomerate diversification does not create shareholder value; in fact, conglomerates on the average trade at a discount to their break-up value. This situation is made worse if Tata Motors overpaid for the JLR acquisition, even if inadvertently. ICICI Securities values JLR at only about $850 million in 2010, in contrast to the acquisition price of $2.3 billion.[81]

Problems

•Sales of JLR declined by 11.4% during the 2nd quarter ending Sep.2008

•Tata motors had to pump in funds to keep JLR on the move

•With not much of cash generation internally, additional investments of funds would only add to the debt and interest burden of the company

•For the quarter ending Dec2008, the sales volumes of JLR decreased by 35.2%to 49,186

•By the end of 2008, retail vehicle sales were reported at 10.8 million-around 2million lower than the sales reported in 2007

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[80] Tata's Acquisition of Jaguar & Land Rover: A collector's item or business deal? , THE ECONOMIC TIMES, http://articles.economictimes.indiatimes.com/keyword/jaguar-land-rover, (Last visited on November 19, 2024).
[81] *Id.*

Post Takeover Synergy

In less than three years after its acquisition, Jaguar Land Rover has metamorphosed from a millstone around Tata Motors' neck into its crowning jewel. In the June 2010quarter, JLR division accounted for nearly 70% of the company's net profit and over 60% of its revenues on the consolidated basis. This was more than what the market has expected and the stock is up by nearly 150% in the past two trading sessions. Jaguar Land Rover global sales in December 2009 were 21,134 vehicles, higher by 33% and Jaguar sales for the month were 4,794, higher by 5%, while Land Rover sales were16,340, higher by 45%.[82]

Future Outlook

Tata Motors had formed an integration committee with senior executives from the JLRand Tata Motors, to set milestones and long-term goals for the acquired entities. One of the major problems for Tata Motors could be the slowing down of the European and US automobile markets. It was expected that the company would address this issue by concentrating on countries like Russia, China, India, and the Middle East.

4. <u>P&G's Takeover of Gillette</u>

Cincinnati-based P&G announcing its investment deal to acquire Boston-based Gillette for $57 billion, the stage was set for it to become the world's largest consumer products company with annual sales of $60.7 billion.[83]

Background

William Procter, a candle maker, and James Gamble, a soap maker, formed this global and Fortune 500 Corporation in 1837. Procter and Gamble (P&G) is headquartered in Cincinnati, Ohio. These two entrepreneurs and inventors were immigrants from England and Ireland respectively; who have chosen for some reason to settle in the Cincinnati area. The company manufactures a wide variety of consumer goods including beauty, household, health and wellness products. In the early parts of 2007, P&G was the 25th largest U.S Company by revenue, 18th largest by profit, and 10th in Fortune's Most Admired Companies list.[84]

―Touching Lives, Improving Life is the corporate motto which is exemplified in the 138,000 employees and loyal customers worldwide. The worldwide demand for P&G' s products and

[82] Tata's Acquisition of Jaguar & Land Rover: A collector's item or business deal? , THE ECONOMIC TIMES, http://articles.economictimes.indiatimes.com/keyword/jaguar-land-rover, (Last visited on November 29, 2013).
[83] *Chris Isidor,*P&G to buy Gillette for $ 57B,http://money.cnn.com/2005/01/28/news/fortune500/pg_gillette/, CNN MONEY, (Last visited on November 19, 2024).
[84] *Chris Isidor,*P&G to buy Gillette for $ 57B,http://money.cnn.com/2005/01/28/news/fortune500/pg_gillette/, CNN MONEY, (Last visited on November 19, 2024).

services has forced management to focus on global marketing and innovation. This worldwide marketing and innovation success was achieved by making sure that what P&G produce is of highest quality and most importantly is what customers need. P&G is very adaptable to changing customer demands by carefully and clearly defining its innovative strategies. Gillette is a brand of Procter & Gamble currently used for safety razors, among other personal hygiene products. Based in Boston, Massachusetts, it is one of several brands originally owned by The Gillette Company, a leading global supplier of products under various brands, which was acquired by P&G in 2005. Their slogan is "The Best a Man Can Get ". The original Gillette Company was founded by King Camp Gillette in 1895as a safety razor manufacturer. On October 1, 2005, Procter & Gamble finalized its purchase of The Gillette Company. As a result of this merger, the Gillette Company no longer exists. The merger created the world's largest personal care and household products company.

The Gillette Company's assets were initially incorporated into a P&G unit known internally as "Global Gillette". In July 2007, Global Gillette was dissolved and incorporated into Procter & Gamble's other two main divisions, Procter & Gamble Beauty and Procter & Gamble Household Care. Gillette's brands and products were divided between the two accordingly.

Industry Profile

FMCG industry is alternatively called as CPG (Consumer Packaged Goods) industry. It primarily deals with the production, distribution and marketing of consumer packaged goods. The Fast Moving Consumer Goods (FMCG) is those consumables which are normally consumed by the consumers at a regular interval. Some of the prime activities of FMCG industry are selling, marketing, financing, purchasing, etc. The industry also engaged in operations, supply chain, production and general management. Some common FMCG product categories include food and dairy products, glassware, paper products, pharmaceuticals, consumer electronics, packaged food products, plastic goods, printing and stationery, household products, photography, drinks etc. and some of the examples of FMCG products are coffee, tea, dry cells, greeting cards, gifts, detergents, tobacco and cigarettes, watches, soaps etc. Examples of FMCG also includes a wide range of frequently purchased consumer products such as toiletries, soap, cosmetics, tooth cleaning products, shaving products and detergents, as well as other non-durables such as glassware, bulbs, batteries, paper products, and plastic goods. FMCG may also include pharmaceuticals, consumer electronics, packaged food products, soft drinks, tissue paper, and chocolate bars.

The Deal

On January 28, 2005, Cincinnati-based P&G announced its investment deal to acquire Boston-based Gillette for $57 billion to become the world's largest consumer goods company. The annual sales of the combined entity would be $60.7 bn. After its purchase of Gillette, P&G would have 21 billion-dollar brands with a market capitalization of $200bn. According to the deal, P&G will be paying 0.975 for each share of Gillette, valuing the acquisition at a 20% premium to shareholders of Gillette.[85]

The shareholders of P&G are apprehensive of the company's share prices being diluted. To avoid such problems, P&G has promised to buy back its shares, worth $18-$22billion, over the coming 12-18 months. P&G plans to pay Gillette 40% in cash and the rest 60% in stock. Marketing guru Al Ries feels that, "The extra 20% premium paid by P&G for Gillette's stock is going to make it 20% more difficult for the deal to pay dividends to stock holders". By acquiring Gillette, P&G will be adding the world's best shaving products to its portfolio. This is what P&G's CEO A G Lafley thinks is necessary to overtake their close competitors, particularly in developing countries. Both the firms' CEOs termed the deal as a friendly move, and added that it would benefit both the firms equally. According to analysts, the merging companies had many similarities a corporate history that is more than a century old, billion-dollar brands, and pioneering consumer product marketing initiatives. The merger was also said to have been based on a different model where innovation was the focus rather than scale. It was called a unique case of acquisition by an innovative company to expand its product line by acquiring another innovative company. Analysts described the merger as a "perfect marriage". Some analysts felt that regulatory concerns raised by the merger could relate to product overlaps between both companies, in order to determine whether the combined firm would have the power to set prices. There were concerns that strong overlaps in toothbrushes and toothpaste could result in regulators seeking some divestitures, although P&G would like to keep as many Gillette brands as it can. However, according to Christo Lassiter, a law professor and antitrust specialist at the University of Cincinnati, the deal would easily win regulatory approval, as P&G and Gillette mostly sold different products to different customers. Lassiter also said the government had realized that preventing US companies from expanding would make them vulnerable to foreign competition. So it has become tolerant of big mergers.[86] Objections, however, were expected to come from European Union antitrust regulators in Brussels, as the deal would give the merged company added strength in the overseas markets.

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[85] *Chris Isidor,*P&G to buy Gillette for $ 57B,http://money.cnn.com/2005/01/28/news/fortune500/pg_gillette/, CNN MONEY, (Last visited on November 19, 2024).
[86] *Id.*

Valuation of the Deal

Based on P&G's closing price on January 26, 2005, its offer of 0.975 P&G shares for every share of Gillette translated into an implied offer price of $54.05 per share. This price fell somewhere in the middle of a series of valuations prepared by investment bankers ranging from $43.25 to $61.90.A valuation based on public market reference points, including Gillette's 52 - week trading range and a present value of Wall Street price targets, would have priced Gillette's stock at $43.25 to $45.00. A valuation analysis based on discounted cash flows was more favorable. One such valuation that incorporated only the cash flows from Gillette in its current form valued the shares at $47.10. A second valuation that took into account the potential cost savings resulting from the combination of Gillette and P&G valued the stock at $56.60. Cost savings were expected to be realized in purchasing, manufacturing, logistics, and administrative costs. A third valuation that incorporated total synergies (both cost savings and capitalizing on complementary strengths) valued the stock at $61.90 per share. This valuation included not only the cost savings, but also potential revenue synergy opportunities that a combined firm might realize, including the increased market power that a combined firm would wield in dealing with large retailing firms such as Wal-Mart. Finally, a sum-of-the-parts valuation established a price of $52.50 per share. The valuation of the proposed acquisition was also compared with recent acquisitions, both in the sector and across similarly sized companies, to ensure that the compensation paid to Gillette's shareholders was in line with recent transactions. The total transaction value at the implied offer price of $54.05 per share was $57.177 billion. This would make the deal structure a 60% stock and 40% cash deal, although on paper it was a pure stock-swap.[87]

Problems

- The merger would result in around 6,000 job cuts, equivalent to 4% of the two companies' combined workforce of 140,000. Most of the downsizing will take place to eliminate management overlaps and consolidation of business support functions.
- Cultural problems absence because of geographical proximity.
- P&G is considered a promote-from-within company, and already had a lot of executive talent at the top. Therefore, absorbing Gillette's management to their satisfaction could be difficult

[87] *Chris Isidor,*P&G to buy Gillette for $ 57B,http://money.cnn.com/2005/01/28/news/fortune500/pg_gillette/, CNN MONEY, (Last visited on November 19, 2024).

- P&G's ability to handle this massive cultural assimilation would decide the success or failure of this acquisition.
- Overlaps of some brands

Post Takeover Synergy

Both the companies expected the merger to bring tremendous synergies. With Gillette, P&G is nearly a $70 billion company. We have 22 brands each with annual sales over$1 billion. In the United States, 99 percent of households use a P&G product. Acquisition added about 20% to P&G sales, long term sales growth estimate to 5-7% a year. Operating margin expected to grow by 25 % by 2015 from 19% in 2003 and the companies expected cost savings are $14-16 billion from combining back-room operations and new growth opportunities. Also more resources are available to enable intensive collaborative supply chain initiatives in a more cost-effective way and merger also brought down the advertising and media costs owing to greater bargaining power.[88]

Future Outlook

Some analysts felt that the P&G-Gillette merger was a defensive move by P&G to check the growing power of retailers. In the retail industry, there has been a struggle for power between vendors and retailers, and retailers have taken the upper hand recently. Some analysts felt that the deal was a right move as it aimed at product diversification.

Davis Dyer, a corporate historian and author of Rising Tide, opined that acquiring Gillette would round out a personal care product range that tilted heavily toward women. According to analysts, the P&G-Gillette deal created merger pressure for competitors in the industry. They also added that P&G would have at least some time in hand before its rivals catch up with it. Most of the competitors were in bad health, and needed to reformulate their strategies in light of this deal. So P&G could focus on integration without having to bother too much about competition.[89]

1. **<u>Tech Mahindra's Takeover of Satyam Computers</u>**

Mahindra Satyam is a Brand identity of Satyam Computer Services Limited. Satyam Computer Services Limited was founded in 1987 by B Ramalinga Raju. Mahindra Satyam is a part of the USD 7.1-billion Mahindra Group which is one of the top 10 industrial firms based in India.

On April 13, 2009, the government appointed board of India-based Satyam Computer Services

[88] *Chris Isidor*,P&G to buy Gillette for $ 57B,http://money.cnn.com/2005/01/28/news/fortune500/pg_gillette/, CNN MONEY, (Last visited on November 19, 2024).
[89] *Id.*

Limited (Satyam) announced that Tech Mahindra Limited (Tech Mahindra), a joint venture between the India-based conglomerate Mahindra &Mahindra and the UK-based BT Plc had been chosen as the preferred bidder for the acquisition of the beleaguered Satyam.

Background

Tech Mahindra Limited is a global leader in providing end-to-end IT services and solutions to the Telecom industry. Over 18,000 professionals service clients across various telecom segments, from multiple offshore development centers across cities in India and the UK; and sales offices across Americas, Europe and Asia-Pacific. Having serviced premium telecom companies worldwide, for nearly two decades, Tech Mahindra combines deep domain expertise in OSS (Operations Support Systems) and BSS (Business Support Systems) systems, intellectual leadership and a global workforce advantage to provide services to leading players in the telecom ecosystem. Tech Mahindra provides a wide variety of services ranging from IT strategy and consulting to system integration, design, application development, implementation, maintenance and product engineering. Through a rich Telecom heritage, TechMahindra has built long-term sustainable relationships with telecom customers deliver IT services that help them achieve significant ROI and the greatest competitive advantage in the telecom marketplace. Majority owned by Mahindra & Mahindra, India's fifth largest commercial group, in partnership with BT Plc (BT), Europe's second largest telecom service provider, TechMahindra has grown rapidly to become the 8th largest software exporter in India (Nasscom 2006).

Satyam Computer Services Ltd. is a business and information technology company. It delivers consulting, systems integration and outsourcing solutions. It becomes the first company to launch a secondary listing on Euronext Amsterdam under NYSE. The company‘s subsidiary, Satyam BPO Limited, provides finance and accounting services, knowledge process outsourcing and customer contact services, technical helpdesk support and p2p (procure to pay) outsourcing services.

Industry Profile

The Indian Information Technology Industry accounts for a 5.19% of the country's GDP and export earnings as of 2009, while providing employment to a significant number of its tertiary sector workforce. More than 2.5 million people are employed in the sector either directly or indirectly, making it one of the biggest job creators in India and a mainstay of the national economy. In 2010-11, annual revenues from IT-BPO sector is estimated to have grown over US$76 billion compared to China with $35.76billion and Philippines with $8.85 billion. India's outsourcing industry is expected to increase to US$225 billion by 2020.The most prominent IT hub is IT capital Bangalore. The other emerging destinations are Chennai, Hyderabad, Kolkata, Pune, Mumbai, NCR and Kochi. Technically proficient immigrants from India sought jobs in the western world from the 1950sonwards as India's education system produced more engineers than its industry could absorb. India's growing stature in the information age enabled it to form close ties with both the United States of America and the European Union. However, the recent global financial crises have deeply impacted the Indian IT companies as well as global companies. As a result hiring has dropped sharply and employees are looking at different sectors like the financial service, telecommunications, and manufacturing industries, which have been growing phenomenally over the last few years.

The Deal

Mahindra Group Company has approached Satyam Computer Services, India‘s fourth-largest IT services company, for a cashless merger, according to reports. The merger between Tech Mahindra and Satyam formed the third-largest IT Company in the country. The company had created a special purpose vehicle to acquire Satyam, which some analysts had felt was done to ring-fence itself from any negative fallout of the acquisition. For instance, J.R. Verma of the Indian Institute of Management, Ahmadabad, had blogged around the time of the acquisition, ―If Satyam‘s liabilities turn out to be larger than the cash and other assets, Tech Mahindra can walk away and put Satyam into bankruptcy. If the liabilities turn out to be small, then Tech Mahindra can merge Satyam into itself and absorb the surplus assets.

With the company already merged, one is tempted to think that the management‘s assessment of the ―net worth‖ of the company has enhanced. This view is supported by another statement by the company that client attrition has practically stopped since the time of the acquisition. Besides, the company‘s open offer for 20% of Satyam‘s capital is unlikely to get any response. As a result, Tech Mahindra has subscribed to a fresh issue of shares and Satyam will end up with Rs.2,900 crore in cash (including the initial investment for a 31% stake).

Currently, there‘s cash sitting in Satyam‘s books, which has effectively been funded by debt on Tech Mahindra‘s books. In the event of a merger, the cash can be used to pay back the debt. It must be noted here that Tech Mahindra is making an attempt to reduce its reliance on debt through a planned QIP (qualified institutional placement) of aboutRs.1,000 cr. On April 13th 2009 Tech Mahindra took over major stakes of Satyam and finally on June 21st 2009 a new brand Mahindra Satyam was launched.

Problems

The process of Mahindra Satyam's merger with parent firm Tech Mahindra was put on hold due to the view of the ongoing investigations into Satyam fraud case by various agencies. Tech Mahindra had challenges built around everything from the brand, the governance, in terms of litigation, customers, everything. They lost a lot of customers in the first four or five months, with most of its customers in the insurance sector terminating agreements. But, one year on, they have been able to stop the customer churn completely. They also faced challenges to do with people. Between 17 December (2008) and 13 April (2009), there was a lot of insecurity. The fact is that everymonster.com had every CV of every employee looking for a new job and as a company they needed to downsize on top of this. Having lost so many accounts, they had no choice but to downsize at that moment. That was another big challenge.

Post Takeover Synergy

According to industry experts, the deal was expected to make Tech Mahindra one of the top tier companies in the Indian IT industry. Satyam was Mahindra & Mahindra's largest acquisition. It catapulted Tech Mahindra from the seventh position to the fourth in the Indian IT industry.

Conclusion

The merger of Tech Mahindra & Satyam definitely proved to be a beneficial deal for both the companies as they saved time and money by just creating a new but reliable brand. Creating a totally new entity would have been much more difficult because it is much more difficult to establish a successful brand name. As both the companies have a good image in the market it was a better option to merge both the companies and create a new brand. Due to the financial status of Satyam, Mahindra was able to take over the majority stakes of Satyam and take over the company.

VIII. Conclusion

Substantial acquisition of shares in, or takeover of, a listed company impacts a host of stakeholders, such as, the acquirer, the target company, the management and the public shareholders. It is critical that the legal framework regulating such substantial acquisition of shares and takeovers is precise, unambiguous and predictable, and balances multiple, and at times, conflicting interests of such stakeholders. For instance, the public shareholder of the target company would be keen to get the highest possible price for his shares, while the acquirer would want to shoulder the least possible financial and regulatory burden. The target company may wish to support, oppose or remain neutral to, a transaction, often depending on who the acquirer is. It then falls upon the regulator to balance the interests of various stakeholders and to provide for a fair, equitable and transparent regime that addresses the concerns of all stakeholders.[90]

In drafting the Proposed Takeover Regulations, the Achuthan Committee adopted an approach of balancing and calibrating such conflicting objectives. While the Committee believes that the Proposed Takeover Regulations, by and large, strike such a balance, the Regulations do recognize and accord primacy to the goal of protection of the interests of the public shareholders in takeover situations.

The Committee observed that several international jurisdictions require that pursuant to a change in control, acquirers must make an offer for 100 % of the outstanding voting capital of a company. The Committee also observed that a majority of the suggestions received from the public in this regard sought increase in the offer size. Should a shareholder desire to exit a target company at the offer price mandated under the Takeover Regulations, there ought to be no reason for the law to pre-empt him from a complete exit.

There is no obligation on the shareholders to sell their shares to the acquirer. The Committee is mindful of an apprehension voiced about the lack of required bank finance presently available to Indian acquirers for Indian acquisitions. Therefore, acquirers instead have to approach diversified public markets or private investors to finance acquisitions.

The Committee therefore felt that if the acquirer declares his intention to delist the target company, and the shares tendered in response to the open offer enable him to cross the delisting threshold, such a company should be allowed to delist.

The very decision to make a creeping acquisition which does not lead to a change in control, and thereby trigger an open offer would be a voluntary one, and therefore, one ought to differentiate between an open offer triggered by voluntary consolidation and an open offer triggered by a substantial acquisition or a change in control. Therefore, such an avenue for delisting under the Takeover Regulations would be available only in the case of open offersmade pursuant to substantial acquisition of shares in, or a change of control over a target company.

The Committee believes that within the constraint of different levels of shareholding threshold as prescribed under different regulations, the framework as suggested would best reconcile various regulatory provisions contained in the Takeover Regulations, Delisting Regulations and

[90] Mr. C. Achuthan, Report of the Takeover Regulations Advisory Committee, SEBI, (July 19, 2010) *available at* http://www.sebi.gov.in/cms/sebi_data/attachdocs/1287826537018.pdf, (Last visited on November 19, 2024).

the Listing Agreement and the SCRR.[91]

The Committee observed that in the UK, the first trigger point is at 30 %. Initial trigger points in other jurisdictions such as Singapore, Hong Kong, EU and South Africa were also found to be in the range of 30 % to 35 %. These trigger levels were set primarily based on the level at which a potential acquirer can exercise de facto positive control over a company, viz. the level at which the potential acquirer is likely to be able to get a majority of votes cast in a general meeting of shareholders.

In India, the Companies Act recognizes any holding in excess of 25 % as the threshold at which special resolutions can be blocked. Taking into account both the ability of promoters to exercise *de facto* control at 25 %, and the law governing special resolutions, 30 % threshold would be too high. Thus the Committee concluded that since a holding level of 25 % permits the exercise of *de facto* control over a company, this could be fixed as the appropriate open offer trigger threshold in the Indian context.[92]

The Committee underscored the fact that the creeping acquisition route is meant to facilitate consolidation by persons already in control or holding substantial number of shares. Therefore, the Committee does not find it necessary to disturb the current policy in this regard in that gross purchases (ignoring any sales or dilution of stake due to equity issuances in which the existing shareholder did not participate) would count towards ascertaining if this limit has been reached.

The Committee observed that it was desirable to underline and emphasize that acquisition of *de facto* control, and not just *de jure* control should expressly trigger an open offer obligation. The Committee also felt it desirable to clarify that merely by virtue of holding the position of a director or officer of a target company, such a person ought not to be regarded as being in control over the target company.[93]

Thus, the Committee believes that the Takeover Regulations should make an eventual transition to a regime, in which the offer price has no linkage with the market price parameter.

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[91] *Id.*
[92] Mr. C. Achuthan, Report of the Takeover Regulations Advisory Committee, SEBI, (July 19, 2010) *available at* http://www.sebi.gov.in/cms/sebi_data/attachdocs/1287826537018.pdf, (Last visited on November 19, 2024).
[93] *Id.*

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