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GLOBAL TRENDS IN HOSTILE TAKEOVER: LEGAL IMPLICATIONS AND REGULATORY RESPONSES

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ABSTRACT

"This research paper consists of the everchanging scenario of hostile takeovers on a global scale, exploring the intricate legal implications and regulatory challenges faced by acquiring and target the different companies. This research also aims to provide nuanced insights into the global trends in hostile takeovers and their intersection with legal frameworks and regulatory responses. It does this by drawing on extensive literature reviews, case studies and comparative analysis. The research also aims to put forth feasible suggestions that are consistent with the values of esteemed academic institutions, stressing the advancement of equity, openness, and effectiveness in the hostile acquisition procedure. The study examines how different regulatory frameworks around the world affect the fairness and efficiency of hostile takeover processes. It suggests ways to promote greater international cooperation and the convergence of regulatory standards for more seamless cross-border transactions. First, legal frameworks must be improved to navigate the complexities of hostile takeovers and ensure a fair and transparent process while harmonising the interests of both parties. Second, major financial and statistical ambiguities must be identified and resolved in hostile takeover scenarios, with an emphasis on improving disclosure requirements and financial reporting standards for informed investor decision-making."

INTRODUCTION

Europe, from 2004-2008 saw a wave of takeovers in the market. This phenomenon is often categorised by economists as "The Sixth takeover wave".[34] This was the period of rapid global economic growth, low interest rates, high leverage, and an increase in credit availability all coincided with the activities. The takeover craze during the boom years of the sixth takeover wave is clearly depicted by statistics. Global takeovers exceeded 2.7 trillion dollars in 2004, a 40% increase over the previous year in 2003. "By 2007, this figure had risen to 4.1 trillion dollars in value before plummeting in the aftermath of the 2008 financial crisis. Takeovers reached previous highs of 3.8 trillion dollars in value during the IT-bubble takeover spree of 2000." This is what the global market witnessed earlier but the question here is that why are we talking about it? What are the recent trends? And finally, what relevance do this all have with this specific research paper?

To begin with our second question first, the recent trends in the global market may be termed as "a ride of a camel" because they are filled with all ups and downs, but overall, they are very steady. The use of the word *'slow'* in place of *'steady'* may have caused injustice with the ongoing trend. And this research paper will try to justify this point as well. Now talking abut the recent trend. It can be mentioned in two phases.

1. Beginning of 2022: Due to concerns about an imminent recession and rising interest rates, mergers and acquisitions were at an all-time low in 2022. According to *Refinitive and the Wall Street Journal,* the overall value of agreements

[34] Xavier Augutus, Monica Blasco, Joseph Grazia, "The Sixth Merger Wave and Wealth Effects of M&A Announcements: An Analysis of Large European Bidding Companies" (2017) European Accounting and Management Review, Volume 4, Issue 1, Article 2, November 2017.

decreased *37%* from a record high in 2021 to *$3.61 trillion*. This is the biggest reduction since 2001, when the value of worldwide transactions fell by half to *$1.68 trillion*.[35] Companies began to adjust in the beginning of 2023, changing the way they arrange deals to take advantage of market volatility and minimise costs to the best of their abilities.[36]

2. End of 2023: Due to a variety of circumstances, M&A activity has slowed throughout 2023. The financial landscape was characterised by a mix of recession fears and inflation. The *Federal Reserve's* decision to boost interest rates in order to combat inflation has made many participants sceptical of borrowing money at exorbitant rates. Then there's the market volatility that's arguably most visible in the financial industry, where several small to medium lenders in the United States have failed. Moving towards India, because the majority of Indian companies choose mergers and acquisitions, India has emerged as one of the top guns in terms of M&A. In 2023, numerous foreign investments were witnessed in various sectors and industries in India as part of M&A deals. The PLI Scheme, which was implemented in the third quarter of 2021 and is still in effect in 2023, also led in a flood of investments from international corporations, resulting in several mergers and acquisitions.[37] The budgets for 2021-22, 2022-23, and 2023-2024 were positively received by industrialists all over the world. India's continuing privatisation experiment appears to be motivating corporations to acquire enterprises and set up business in India.[38] The above explanation, to some extent satisfies our second question. Moving towards our first question. The reason why are we even bothering about specific data of last decade is because one of the prominent sub-topics of this addresses about the same and that is "cross-border hostile takeovers."[39]

RESEARCH QUESTIONS

1. How can legal frameworks be improved to manage issues of the global trend of hostile takeovers which poses intricate legal challenges, corporate governance, and disclosure requirements efficiently, guaranteeing a fair and transparent process while balancing the interests of acquiring and target companies?

2. How do international disparities in regulatory approaches affect the fairness and efficiency of the hostile takeover process, and what steps may be taken to promote greater international collaboration and regulatory convergence in order to support smoother cross-border transactions?

STATEMENT OF PROBLEM

As the economic world grows more linked, hostile takeovers are becoming a common occurrence. On the other hand, this movement brings with it complicated legal issues, problems with corporate governance, and transparency obligations. There are several obstacles to overcome in order to fairly and transparently strike a balance between the interests of target and acquiring corporations.

Furthermore, the intricacy is increased by differences in regulatory strategies between transnational authorities. These differences affect the takeover process's equity and efficiency, especially in cross-border mergers. It is essential to promote international cooperation and regulatory convergence in

[35] Christin Broughton, 'M&A Is Expected to Pick Up in 2023 as Companies Adapt to Tougher Conditions' (05 January 2023) <https://www.wsj.com/articles/m-a-is-expected-to-pick-up-in-2023-as-companies-adapt-to-tougher-conditions-11672874676>accessed on 08 January 2023.
[36] Sahsransh & Varun, 'SEBI Consults on Overhauling Delisting Framework: Key Issues and Analysis' (2023) <https://www.irccl.in/post/sebi-consults-on-overhauling-delisting-framework-key-issues-and-analysis#:~:text=This%20step%20is%20taken%20by,the%20effectiveness%20of%20delisting%20offers> accessed on 17 January 2024.
[37] National Investment Promotion and Facilitation Agency, Ministry of Electronics and Information Technology, Government of India.
[38] Aadya Conjeeveram, 'SEBI's Proposal to Link to Voluntary Delisting to a Fixed Price is Meritorious' (2023) <https://indiacorplaw.in/2023/12/sebis-proposal-to-link-voluntary-delisting-to-a-fixed-price-is-meritorious.html#:~:text=SEBI's%20proposed%20changes%20aim%20to,ex it%20prices%20during%20delisting%20attempts> accessed on 19 January 2024.
[39] Sanjam Arora and Prashant Khurana, 'SEBI's Proposal on fixed price delisting: A boost to public M&A' [2023] 2-3.

order to enable more seamless worldwide commercial exchanges.

The complex problems pertaining to hostile takeovers are summarized in this problem statement, which highlights the necessity of unified legal frameworks that successfully handle these difficulties.

OBJECTIVES OF THE PROJECT

This research project tries to completely address the intricacies of the global trend of hostile takeovers. To begin, it seeks to improve legal frameworks by identifying and proposing improvements that efficiently manage complex legal challenges, corporate governance issues, and disclosure requirements, while ensuring a fair and transparent process and balancing the interests of acquiring and target companies. Second, the project aims to *improve financial disclosure and reporting standards by categorising common financial conceptions in hostile takeover scenarios*, evaluating existing rules, and recommending regulatory enhancement measures to provide investors with more reliable information for informed decision-making. The research also aims to promote greater international collaboration and regulatory convergence by analysing the impact of oversight disparities on the fairness and efficiency of the hostile takeover process and proposing feasible solutions to promote harmonisation, resulting in smoother cross-border transactions.

MERGERS AND ACQUISITIONS

In the context of corporate law, the procedures by which businesses combine their activities or one firm buys another are referred to as mergers and acquisitions, or *M&A*. Under the Indian legal system, *M&A* transactions are subject to a number of laws and rules, such as the *Companies Act* of 2013 and the regulations of the *Securities and Exchange Board of India* (SEBI) and other relevant legislation. In India, mergers, acquisitions, and combinations are governed by the Companies Act, 2013, and its rules. Combinations are classified into two types: mergers and amalgamations, and demergers. The former entails merging two or more firms, whereas the latter requires transferring a company's assets to another or several companies.[40]

"The Companies Act largely governs mergers, acquisitions, and combinations. Approval must be obtained from different parties, including the board of directors, shareholders, and regulatory bodies such as the *National Company Law Tribunal* (NCLT), *Securities and Exchange Board of India* (SEBI), and *Competition Commission of India* (CCI). The Companies Act protects the rights of owners, creditors, and employees in company mergers." [41]

India has a well-established legal structure that strictly governs mergers, acquisitions, and combinations. Companies Act oversees company incorporation, management, and operation. This legal framework governs mergers, acquisitions, and combinations in India, which are commonly employed for business expansion or restructuring. The firms Act defines mergers as the combination of two or more firms, whereas acquisitions are the purchase of one company by another. *A combination refers to both mergers and acquisitions*. The *Companies Act* outlines procedures for mergers and acquisitions, including shareholder and regulatory approval, share valuation, and minority shareholder rights.

Approval by shareholders: *Mergers and acquisitions* require shareholder approval before proceeding. According to the *Companies Act*, proposals must be approved by at least *75%* of present and voting shareholders.[42]

Approval of Regulatory Authorities: The Act requires clearance from numerous regulatory authorities, including the *NCLT*, *CCI*, and *SEBI*.

[40] Kian Ganz, 'CAM, TTA, JSA bag biggest inbound M&A ever: Russian's $13 bn Essar Oil buy' (2016) <https://www.legallyindia.com/corporate-maa/cam-tta-bag-biggest-inbound-m-a-ever-russians-13bn-essar-oil-buy-20161015-8043> accessed on 23 January 2024.
[41] Backer McKenzie, 'A Global Guide To Take Private Transaction' [2020] 145-160.
[42] Companies Act, 2013.

The *NCLT* and *CCI* assess the impact of proposed mergers or acquisitions on competition and protect minority shareholders.

<u>Valuation of Shares:</u> The Companies Act establishes share valuation procedures to determine share exchange ratios in mergers and acquisitions. The valuation must be completed by an independent valuer appointed by the company's board of directors.

<u>Treatment of Minority Shareholders</u>: The Companies Act also provides protection for minority shareholders. Under the Companies Act, minority shareholders shares must be treated equally with those of dominant shareholders. Minority shareholders can object to mergers or acquisitions and request that the fair worth of their shares be evaluated by an independent valuer.

The Companies Act in India establishes a legal framework for mergers, acquisitions, and combinations. It covers shareholder and regulatory permission, share valuation, and minority shareholder rights.

DIFFERENT SETUPS OF HOSTILE TAKEOVER

Of all the corporate governance mechanisms, hostile takeovers are the most spectacular and pose the greatest threat to corporate law. There are two related ways in which a well-functioning takeover market improves corporate governance. There is an obvious, mutually beneficial relationship between the two companies if the bidder improves the target's performance through asset reconfiguration or by taking advantage of synergies, cause-and-effect connection between business valuation and the acquisition. Takeovers also provide an additional, tangential advantage. The threat of a takeover can keep management alert if they have cause to believe that a hostile bidder would suddenly step in and seize control if they manage the business poorly.

The optimal way to control the takeover market has been a topic of discussion among academics for more than 30 years.[43] *Frank Easterbrook* and *Dan Fischel* contended that the more the merrier.[44] In order to provide the company's shareholders the ultimate say in whether to accept a takeover offer, their passivity thesis suggested that management be forbidden from resisting one. The loyalty of managers to the company's best interests would much too frequently be eclipsed if the choice were left to them in order to protect their own employment at the target. Other critics countered that management need to have some leeway to stall an initial takeover offer. According to this perspective, managers need to be allowed to fight back against a takeover to the degree required to get the greatest outcome for the company's owners.[45]

COMPOSITE CONTOURS OF TAKEOVER REGULATIONS: US & INDIA

<u>FOR USA</u>: Commence with the core concepts of the "what" of takeover law. According to US law, bidders are free to offer for any proportion of the target company's shares, no matter how big or little. A *"mandatory bid"* requirement, which would have required bidders who purchased a sizable block of target shares to submit a bid for all of the target company's shares, has never been implemented under U.S. law. However, *U.S. tender offer regulations do mandate that the bidder maintain the bid open for a minimum of twenty days, pay an identical price for each share it purchases, and purchase a proportionate amount of each shareholder's shares in which she offers her shares.*

In order to put emphasis on shareholders to hurry to tender, the U.S. rules safeguard shareholders from so-called *"Saturday night*

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[43] John Armour, David A. Skeel Jr., 'Who Writes the Rules for Hostile T rites the Rules for Hostile Takeovers, The Peculiar Div eculiar Divergence of US and UK T gence of US and UK Takeover Regulation' (2007) Faculty Scholarship of Pen Carry Law <https://scholarship.law.upenn.edu/faculty_scholarship/687?utm_source=scholarship.law.upenn.edu%2Ffaculty_scholarship%2F687&utm_medium=PDF&utm_campaign=PDFCoverPages> accessed on 07 February 2024.

[44] Frank H. Easterbrook & Daniel R. Fischel, 'The Proper Role of a Target's Management in Responding to a Tender Offer' (1981) 94 HARV. L. REV. 1161, 1164.

[45] John C. Coffee, 'Regulating the Market for Corporate Control: A Critical Assessment of the Tender Offer's Role in Corporate Governance' (1984) 84 COLUM. L. REV. 1145, 1149.

special" bids, which are only available to the initial group of shareholders to submit a bid and are kept open for a brief period of time.[46] However, in the event that a bidder acquires control of the business, they cannot ensure shareholders that they would be eligible to liquidate all of their shares.[47]

Although shareholder-friendly regulations govern tender offer bidders in the United States, target manager's obligations in the event of an unwelcome takeover proposal are not treated the same way.[48] Target firm managers are free to employ a wide range of strategies to thwart takeover offers. The most notable of the countermeasures is the shareholder rights plan, sometimes known as the *poison pill*, which is intended to drastically reduce the stake of a hostile bidder in the event that the bidder purchases more than a certain amount of the target stock typically to *10%* or *15%.*[49] One of the ways that poison pills do this, or more precisely, how they would if they were ever activated, is by asking every shareholder of the target aside from the bidder to purchase a pair of shares of equity for the equivalent of one. *When a firm has a divided board of directors with a poison pill, the managers have virtually unlimited power to reject an unsolicited takeover offer.* U.S. targets are allowed to use other defenses in alongside poison pills & staggered boards, such as dissolution fees and other "lockup" clauses that are intended to seal an agreement with a preferred bidder while discouraging hostile bids.[50]

"The target managers judgment is not unqualified, nevertheless. Sometimes, in the midst of a hotly contested takeover fight, managers must eliminate takeover protections because they tip the odds in favour of one bidder."[51] However, target bidders have a great deal of leeway, especially if they want to "just say no" to any offer to buy the business. Furthermore, while *Delaware law* governs the majority of the country's largest firms and *Delaware* is unquestionably the most significant source of regulation, businesses that are established elsewhere also have broad indeed, sometimes considerably greater discretion to fight off hostile takeover offers.[52]

<u>FOR INDIA:</u> Comprehensive Takeover Regulations have been established by the *Securities and Exchange Board of India* (SEBI) to regulate significant acquisitions of shares in Indian companies. Transparency, minority shareholder protection, and market integrity are the three goals of these regulations.

The thresholds for disclosures and open offers are directed as when an acquirer's ownership of shares surpasses specific levels, such as 25%, 50%, or 75%, they are required to notify stock exchanges about the purchase and extend an open offer to remaining shareholders. The open offer price needs to be reasonable and determined by the state of the market. [53]

All owners who tender their shares will receive payment at the suggested price if the offer's response causes the delisting threshold as specified by *Delisting Regulation 21*[54] to be reached. All owners who submit their shares will receive payment at the open offer price if the aforementioned delivery barrier is not reached. Shareholders who have submitted shares for the delisting offer, however, have the right to withdraw those shares within five business days following the news that the delisting offer has failed. *The shareholder will not be entitled to the*

[46] Robert Sherill, 'The Saturday Night Special and Other Hardwares' (The New York Times, 10 October 1971) <https://www.nytimes.com/1971/10/10/archives/the-saturday-night-special-and-other-hardware-the-saturday-night.html> accessed 14 February 2024.
[47] *John Armour,*
[48] Melvin A. Eisenberg, 'CORPORATION AND OTHER BUSINESS ORGANIZATIONS: CASES AND MATERIALS 1136–40 (8th ed. unabr. 2000).
[49]SEC, 'Tender-Offer-FAQs' (SEC,2006) <https://www.sec.gov/Archives/edgar/data/802481/000119312506199094/dex996.htm>.
[50] *Revlon, Inc. v MacAndrews & Forbes Holdings, Inc.* [1985] 506 A.2d 173, 184 (Del. 1985).

[51] Lucian Arye Bebchuk, John C. Coates IV & Guhan Subramanian, 'The Powerful Antitakeover Force of Staggered Boards: Further Findings and a Reply to Symposium Participants', (2002) 55 STAN. L. REV. 885.
[52] David A. Skeel, Jr., 'A Reliance Damages Approach to Corporate Lockups', (1996) 90 Nw. U. L. REV. 564.
[53] SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011.
[54] *Delisting Regulations by SEBI* (Regulation-21).

open offer price if the tendered shares are withdrawn.

The suggestive price presented under the first delisting plan made in accordance with sub-*regulations 1 and 2* of *regulation 5A*[55], or the floor price established under the Delisting Regulations as of the pertinent date of next delisting attempt, will be the higher of the two. This is the floor price for a subsequent attempt at delisting. The floor price is the lowest price that may be obtained in accordance with *Regulation 8* of the Takeover Regulations; the company's book value as calculated in line with the Delisting Regulations explanation to sub-regulation (5) of *Regulation 22*.[56]

The open offer process consists of the method to buy shares from shareholders who are open to the public, the acquirer needs to submit a public bid. The price formula and the proportion of shares bought determine the size of the open offer and also from prior to the open offer, the acquirer must put money into the escrow account.[57] Open bids do not apply to some purchases (such as inter-se transfers amongst promoters, inheritance, etc.). Acquisitions made through preferential allotment and encroaching acquisitions (*up to 5% annually*) are excluded.[58]

When several bidders vie for the very same target firm, SEBI makes sure the process is equitable. The highest bidder, as long as they comply with regulations, wins. In case of *"Fair Price Determination"*, market prices, trade volumes, and valuation techniques must all be taken into account when determining the open offer price. SEBI keeps an eye on price standard compliance. *"Acquisition candidates and target firms are required to quickly disclose pertinent information"*. Financial information, goals, and ownership patterns are among the disclosures.

DEVELOPMENTS AND INITIATIVE IN INDIAN CORPORATE GOVERNANCE

Since the beginning of the liberalization process, policymakers have been interested in the topic of corporate governance. A number of actions have been taken in response to the expanding demands of the Indian market's dynamic corporate and economic structures from a global standpoint. Since 1993, there has been discussion on the possibility of re-codifying business law. To provide suggestions for enhancing the corporate structure, especially corporate governance and associated best practices, a number of high-level and expert groups were established. The *Sacchar Committee*, the *Narayana Murthy Committee*, the *Kumaramangalam Birla Committee* (KBC), and the *Naresh Chandra Committee* are a few of these panels.[59]

Established by the Ministry of Company Affairs, the Company Law Advisory Committee continuously assesses the need to promote improved corporate governance among the corporate sector's stakeholders. "In order to improve corporate excellence via governance and boost India's business reputation, a Study Group was established." The Government's exciting mission right now is to make it possible for Indian businesses to flourish in a market that is fiercely competitive worldwide, generate wealth for the country and its shareholders, and foster an atmosphere that is conducive to investment. However, in terms of execution, the emphasis has been on enhancing listed corporate governance thus far.

A Concept Paper was published in 2004 by the Ministry of Commerce (MoC) as a discussion paper to alter the 1956 Act.[60] The aim of the Concept Paper was to initiate a dialogue among stakeholders, specialists, and policymakers over the suggested structure of new corporate law. This law would cater to the needs of the rapidly evolving Indian economy

[55] *Ibid.*
[56] *Ibid.*
[57] Nishith Desai Associates, "Public M&As in India: Takeover Code Dissected" p.40-45, 52.
[58] *Ibid.*
[59] Sumant Batra, 'Corporate Governance of Non-Listed Companies in Emerging Markets' (2006) ISBN-92-64-03573-7.
[60] Concept Paper 2004, Ministry of Corporate Affairs.

and align it with global norms.[61] "A corporation must have a minimum of *two directors* according to Indian company law. *Three* is the figure for publicly traded firms. A director may be chosen by the shareholders of public businesses having paid-up capital of at least five crore rupees and/or one thousand small shareholders."[62] The corporation itself determines the board's size, subject to this condition. Any increase in directors above twelve in a subsidiary of a public corporation requires Central Government clearance, according to the proviso to Section 259[63] of the 1956 Act.

AUTONOMOUS NATURE OF CORPORATES

Corporate governance does not mean more stringent laws and fines. Enough accountability, openness, and disclosures are intended, as is adherence to relevant legal requirements. Simultaneously, it is imperative to acknowledge that the board of director's dominance is contingent upon the consent of shareholders. Presently, Indian corporations are encumbered with approval and compliance requirements that restrict board independence and impose an expensive, time-consuming, and complicated regulatory system that discourages corporatization. The extensive list of compliance obligations, including paperwork that the corporations must file, is included in Schedule 1 below.[64] The various Central Government permissions that must be acquired are listed in Schedule 2.[65] Several of the criteria in this list can be avoided by securing the consent of the shareholders at a general meeting, submitting the required paperwork to the suggested centralized organisation, and making sufficient disclosures in the annual report. Certain topics [such as sections 81(4) and 637B[66]] that need regulatory approval can be assigned to the appropriate regional directors.

[61] *Sumant Batra,*
[62] *Ibid.*
[63] Companies Act 1956, s 259.
[64] Companies Act 1956, s 233 B.
[65] Companies Act 1956, s 259.
[66] Companies Act 1956, s 637 B.

REPORTING AND DISCLOSURE

According to Indian company law, a business's board must give its shareholders an annual report. The forms in which the company's financials are to be compiled, audited, and presented to the shareholders have all been regulated, as have the minimum contents of the report and subjects needing disclosure. The auditor's report is a very extensive document that needs to be read aloud at the annual shareholder general meetings. "*A multitude of decisions must be made by shareholders, and it is crucial that the business gives them enough information to allow them to use their voting rights.*" Once more, corporation law mandates that shareholders receive explanations on specific important issues that call for a special resolution's approval.

The current reporting standards for Indian corporations are antiquated and misaligned with the actual information requirements of stakeholders, including shareholders. "Corrective actions are a top priority, and there is a demand for far more meaningful disclosure of business performance and behavior that complies with legal and regulatory obligations. With relation to listed firms, a number of statutory regulations have been imposed regarding the periodic transmission of financial and other information to shareholders, utilizing electronic means whenever practicable.

"There are reporting procedures in place, including segment reporting, disclosure of related party transactions, consolidation of subsidiary company accounts, and deferred taxes. However, *non-listed enterprises receive less attention*."

CASE STUDIES OVER TAKEOVER TRENDS IN INDIA

CASE OF FORTIS HEALTHCARE: The aggressive takeover war broke out for Fortis Healthcare, a well-known healthcare company in India, in 2018. There were several bids in the competition, including Manipal-TPG, TPG Capital, and IHH Healthcare. In the end, IHH Healthcare prevailed and bought a majority share in Fortis

Healthcare. The firms in question encountered regulatory obstacles mostly with adherence to SEBI laws. "*For example*, IHH Healthcare was required to abide by SEBI's laws on the open offer procedure, which included criteria for timeliness, disclosure, and open offer price. The hostile takeover of Fortis Healthcare serves as an example of the legal and regulatory intricacies involved in hostile takeovers in India, specifically with regard to adhering to SEBI laws."[67]

CASE OF ADANI PORTS: A prominent port operator in India, "*Krishnapatnam Port Company"* was purchased by APSEZ in *2020*. The deal, which was the largest-ever in India's port industry, was valued at *INR 13,500 crore*.[68] In this instance, the acquirer and target encountered legal and regulatory obstacles pertaining to adhering to CCI requirements. In order to ascertain if the purchase would result in a monopoly or significantly lessen competition in the market, the CCI had to carefully examine it.

"The CCI authorized the acquisition, hence the deal had a successful ending. The transaction will have a big impact on the Indian takeover scene, especially in terms of port sector consolidation."

CASE OF TATA STEEL: Leading Indian steel producer Bhushan Steel was purchased by Tata Steel in *2018* for a sum of *INR 35,200 crore*.[69] Tata Steel was the highest bidder in the bankruptcy procedure that was used to complete the transaction. In this instance, the acquirer and target encountered legal and regulatory obstacles pertaining to adhering to the Insolvency and Bankruptcy Code, which controls the bankruptcy procedure in India. The *National Company Law Tribunal* (NCLT) and the *Competition Commission of India* have to approve the transaction. Since the acquisition was approved by the NCLT and the CCI, the transaction had a successful end. The purchase has a big impact on the Indian takeover scene, especially when it comes to the bankruptcy process and the industry's consolidation in the steel industry.[70]

"The aforementioned case studies highlight the legal and regulatory obstacles that Indian corporations engaged in hostile takeovers must overcome. It is essential for businesses to comply with SEBI and CCI rules, and they must make sure that they fulfil all of their needs. The results of these deals will have a big impact on the Indian takeover scene and the consolidation of different Indian economic sectors."

Only a few unsuccessful unsolicited takeover efforts have been made in India thus far.[71] The dominance of founding families over public companies is the main barrier to hostile bids in India.[72] The views of Indian financial institutions, which have traditionally been ardent advocates of controlling shareholders and value business and interpersonal relationships over financial returns predicated just on share ownership, serve to reinforce ownership.[73] These barriers have been strengthened by a foreign investment regulation framework that strongly shields the current management.[74]

The *Indian Takeover Code*[75] is perfectly suited to Indian ownership arrangements, which, as said, revolve on controlling shareholders, usually families (referred to as "promoters" under Indian corporate law), despite its apparent resemblance to the U.K. approach. Unlike the necessary bid regulation in the United Kingdom,

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[67] ***'Hostile Takeovers in India: Legal and Regulatory Challenges' (The Legal Affair, 09 March 2023) <Hostile Takeovers in India: Legal and Regulatory Challenges – The Legal Affair> accessed 15 February 2024.***
[68] *Ibid.*
[69] Sangita Mehta, 'Tata Steel completes Rs 35,200 crore purchase of bankrupt Bhushan Steel' (The Economic Times, 19 May 2018) <https://economictimes.indiatimes.com/industry/indl-goods/svs/steel/tata-steel-completes-5-2-billion-purchase-of-bankrupt-bhushan steel/articleshow/64224367.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst> accessed 15 February 2024.
[70] *Ibid.*
[71] Cyril Shroff, 'The history of hostile acquisitions in India has been fraught with unsuccessful bids.' (2008) 27 INT'L FIN. L. REV. 40, 40
[72] Tarun Khanna & Krishna G. Palepu, 'The Evolution of Concentrated Ownership in India, in A HISTORY OF CORPORATE GOVERNANCE AROUND THE WORLD' (2005) 283, 283–89, Randall Morck ed., 2005.
[73] Radhakrishnan Gopalan, 'Affiliated Firms and Financial Support: Evidence from Indian Business Groups', (2006) 86 J. FIN. ECON. 759.
[74] Securities and Exchange Board of India, 'Substantial Acquisition of Shares and Takeovers Regulations, 1997', Gazette of India, section II(3)(ii) <http://www.sebi.gov.in/acts/taknotifi.html> accessed on 10 February 2024.
[75] Indian Takeover Code, Rule 2 (1) (h).

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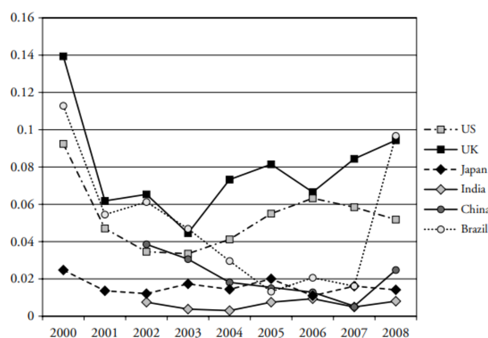
acquirers that initiate an open offer requirement under "the *Indian Takeover Code* are only required to make an offer to purchase a further twenty percent, shares, rather than all of the remaining shares." Full-blown required bid rules, which oblige bidders to provide all minority shareholders the same premium as a block-holder, might impede control transactions involving block-holders.[76] Therefore, "the Indian rule is a compromise that only calls for a partial distribution of premia with minority owners, similar to the Chinese rule."[77]

There have only ever been *10 unsolicited deals* in China, Brazil, or India, according to SDC Platinum, a well-known database of global M&A activity, and just one of those transactions was successfully completed. While specifics differ by nation, all developing markets have the same basic cause for this lack of activity, which is that publicly traded companies ownership is too evenly distributed to allow for corporate control to be transferred other than through negotiation.



[78]

This figure shows the Mergers and Acquisition Activity in the Emerging markets like, India, China, Brazil in comparison to developed countries like United States, United Kingdom and Japan. (Credit: see Citation 45).

CONCLUSION

A comprehensive grasp of the legal and regulatory environment pertaining to hostile takeovers in India is crucial for both investors and enterprises. Ensuring adherence to SEBI and CCI laws is crucial, and businesses need to make sure they fulfill all of these regulatory organizations standards. To guarantee compliance with SEBI and CCI laws, businesses and investors thinking about hostile takeovers in India should perform extensive due diligence and consult with legal and regulatory experts. When handled correctly, hostile takeovers may present investors and businesses wishing to increase their market share in India with substantial prospects. The UK's takeover regime is closer to the substance of the U.S. model than the Takeover Code. The decades-old legislation that fragmented U.S. financial institutions and vested authority over the markets in the SEC made it more difficult for institutional investors to coordinate. The US approach requires an effective governmental regulator and an efficient court system, which are missing in many emerging economies. In some, informal self-regulation might prove more effective than formal statutes and courts. The cost advantages of the UK approach are likely to attract, rather than deter, re-incorporations. Reformers and lawmakers should keep in mind that there at least two ways to not regulate takeovers, not just one. The contrast between the US and U.K. approaches has considerable relevance for emerging economies both in Europe and elsewhere in the world.

Globalization has presented corporate India with a plethora of opportunities. However, in order for the Indian corporate sector to succeed in this new endeavour, no simple solutions exist. Instead, the sector must inevitably rely on good corporate governance as it strives for competitive excellence in a demanding international business environment. India recognizes the importance of a robust

[76] Jairus Banaji, 'Thwarting the Market for Corporate Control: Takeover Regulation in India' (2005) (unpublished manuscript) <http://www.qeh.ox.ac.uk/dissemination/conference-papers/ banaji.pdf.> accessed on 09 February 2024.
[77] Erica Gorga, 'Changing the Paradigm of Stock Ownership from Concentrated Towards Dispersed Ownership? Evidence from Brazil and Consequences for Emerging Countries', (2009) 29 NW. J. INT'L L. & BUS. 439, 445.
[78] John Armour, Jack B., Jacobs Curtis, J. Milhaupt, 'The Evolution of Hostile Takeover Regimes in Developed and Emerging Markets: An Analytical Framework' (2011) Harvard International Law Journal Volume 52, Number 1, Winter 2011.

corporate sector in fostering growth and understands that good corporate governance is critical in the long run because it is necessary to establish a reliable and professionally run business system that has the potential to improve living standards for the vast majority of the population.

The work at hand requires a strategic combination of legislation, regulation, and persuasion. It ought to be feasible to progressively scale down governmental interventions and boost regulatory compliance with, as well as self-induced adherence to, industry best practices as a result of developing maturity and competitive imperatives. Legislation to guarantee at least some minimal standards, however, is unavoidable until then.

SUGGESTIONS

Companies and investors need to keep abreast of any modifications to India's legal and regulatory environment pertaining to hostile takeovers going forward. In order to guarantee compliance, this would include routinely reviewing SEBI and CCI rules and consulting with legal and regulatory specialists. In addition, businesses and investors need to interact with stakeholders such as staff members, clients, and shareholders and take a public stance against hostile takeovers. This will lessen any possible bad effects of the transaction and contribute to the development of trust.

To guarantee that India's legal and regulatory environment for hostile takeovers is successful, efficient, and conducive to economic growth, regulatory agencies and industry players must work together more. This will need constant communication, feedback channels, and consultation to guarantee that legislation are tailored to the requirements of investors and companies. By following these procedures, businesses and investors may successfully negotiate the legal and regulatory nuances of hostile takeovers in India and take advantage of the substantial opportunities present in this vibrant and quickly expanding market.

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