

Indian Approach To Hostile Takeovers

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ABSTRACT

The L&T-Mindtree (Larsen & Toubro Infotech Limited) hostile takeover battle in 2019 re-energized the discourse on India's market for corporate control, which had recently seen only a few hostile takeovers. A takeover effort stimulates standards of the SEBI (Substantial Acquisition of Shares and Takeovers Regulation, 2011)¹ in addition to the Competition Act of 2002 which governs combinations. Although the Regulations of Combination take into account the peculiarities of a potential hostile takeover, they are insufficient to create a suitable competition law framework for them.

Within the Indian legal system, safeguarding the interests of minority shareholders during hostile takeovers is a crucial and complicated subject. Assaultive actions by acquiring parties to seize control over a target company, frequently against the will of its management and majority shareholders, present special obstacles. Minority shareholders, who often have a smaller interest and less sway in such situations, are more vulnerable to possible abuses and unfavorable outcomes that could materially harm their investments and rights.

Keywords: Indian, Hostile Takeovers, Company, Shareholders, Minority, SEBI, Regulations.

INTRODUCTION

Hostile takeovers are a prominent phenomenon in the corporate world, representing a significant shift in ownership and control of companies.² A hostile takeover occurs when a business purchases another business entity against their management's will. The company that is acquired is known as the acquiring company or acquirer, while the company that is acquired is known as the target company. It differs from amicable takeovers in which the target company agrees to sell itself. A hostile takeover occurs when the acquirer believes the targeted company is underperforming or undervalued for one reason or another. The acquirer either buys the company as a whole or buys key stocks to achieve ownership.³

On a global scale hostile takeovers have become a common occurrence in the business world. Some of the most significant acquisitions have been made through aggressive bids for ownership. India has been adamantly opposed to hostile takeovers. Restrictive government policies prior to the liberalization era, that is before 1991, made hostile takeovers difficult to achieve.⁴

India has been among the most rapidly developing countries in the world during the past thirty years and has witnessed a spike in corporate activity and market dynamics. This expansion is not immune to hostile takeover attempt that is changing the ownership and control structures of many Indian firms.⁵ With its

¹ Substantial Acquisition of Shares and Takeovers Regulation. (2011). New Delhi: The Gazette of India.

² Varottil, Umakanth and Wan, Wai Yee, "Hostile Takeover Regimes in Asia: A Comparative Approach" Research Paper No. 01/2018 *Singapore Management University School of Law*, (April 24), 2018

³ Mayank Kataria and Eshvar Girish, "Hostile Takeover: A Comparative Analysis of India and the United States" 56 *Journal Economic and Political Weekly* (2021).

⁴ Chakrabarti, Rajesh, *Corporate Governance in India - Evolution and Challenges* (January 17, 2005). Available at SSRN: <https://ssrn.com/abstract=649857> or <http://dx.doi.org/10.2139/ssrn.649857>

⁵ Bhanu Singh Rohilla and Deb Zyoti Das, "Defensive Tactics Vis-À-Vis Hostile Takeovers: An Indian Perspective", 4 (6) *IJLMH* Page 490 - 501 (2021)

diversified ownership patterns, family-owned enterprises, and complicated legal frameworks, the Indian corporate sector poses unique challenges and opportunities for analyzing hostile takeovers.⁶

A minority shareholder is not specifically defined by the Companies Act of 2013, but in everyday speech, it usually refers to a shareholder who does not directly or indirectly influence a company's management but who owns less than fifty percent of the voting power in the company.

According to Black's Law Dictionary (2019), a minority shareholder is an "equity holder with less than 50% ownership of the firm's equity capital and having no vote in the control of the firm" (p. 1234).⁷

Minority shareholders lack direct influence in corporation decisions owing to relatively low significance in corporate governance as a result; the majority shareholder will be in charge of making any decisions. In order to uphold the best interests of minority shareholders, a combination of statutory measures, regulatory principles, and court rulings is used. The (Substantial Acquisition of Shares and Takeovers Regulation, 2011), Companies Act (Act of 2013) and the SEBI's Act {Securities & Exchange Board of India Act of 1992} are important pieces of legislation that govern corporate takeovers and minority shareholders' rights in India.

Rights include the right to detailed disclosures, sufficient information, and fair treatment during the takeover process. The Companies Act of 2013 requires that relevant information, such as the offer price, the acquirer's objectives, and the impact of the acquisition on the company and its minority shareholders, be disclosed. The SEBI Act of 2011 (Substantial Acquisition of Shares and Takeovers Regulation, 2011), regulate open offer protocols and ensure that the acquirer makes a fair and reasonable offer to minority owners.⁸

The Indian legal structure also provides for independent committees, such as the Takeover Panel and the Securities Appellate Tribunal, to oversee and examine the conduct of takeover activities in order to promote fairness and transparency. These bodies serve as watchdogs, monitoring acquirer compliance and offering a channel for minority shareholders to express their concerns and seek remedies in the event of improper conduct.

Despite of above legislative safeguards, obstacles, gaps, remain for properly protecting the interest of minority shareholders during hostile takeovers. Some of these difficulties include legal delays, insufficient remedies for unhappy minority shareholders, and the likelihood of acquirers exploiting regulatory loopholes. Furthermore, the power dynamics between majority and minority owners frequently create an imbalance, rendering minority shareholders unable to influence the result of a aggressive takeover.⁹

THE PLOT

A particular illustration of the attempt of Hostile Takeover by Larsen & Toubro Infotech Limited in 2019 for acquiring Mindtree Limited was a trigger point for future acquisitions attempt that could take place in coming years.

L&T, established in 1938, is a significant Indian multinational company that operates in technology, engineering, construction, manufacturing, and financial services. The corporation operates in over 30 countries and is well-known for huge-scale initiatives in construction projects, power, and heavy engineering. In recent times, L&T has focused on growing its IT services business, L&T Infotech, in order to stay up with the rapidly evolving world of technology.

Mindtree, incorporated in 1999, is a multinational IT and outsourcing firm that specialises in digital advancement and technological solutions. Mindtree has developed an established reputation in the United States and Europe, carving a position for itself in the IT business by providing creative solutions to clients in a variety of industries, including retail, finance, and healthcare.

L&T filed a letter of offer with SEBI, stating that the acquisition would enhance their software services operations under L&T Infotech. The goal represents to provide top-tier IT services to customers around the globe and elevate the company's technology portfolio. In addition, the acquiring corporation had large cash reserves that it believed were sufficient to fund the transaction. Larsen and Turbo identified some synergies with Larsen and Turbo Infotech, a public IT group company, when it acquired Mindtree. The shareholders of Larsen & Turbo Infotech are anticipated to benefit from this acquisition as it expands its IT services business. The reason behind this attempt was that Mindtree's portfolio includes exceptional skills and customers that complement L&T Infotech. The significant position of Mindtree in the media and technology sectors was the major draw for Larsen & Turbo, which had not yet impacted anything in particular. A mutually beneficial link between Mindtree and the LTI inventory may result from its presence in industries including consumer

⁶ Armour, John, Jack B Jacobs and Curtis Milhaupt, "The Evolution of Hostile Takeover Regimes in Developed and Emerging Markets: An Analytical Framework," Vol. 52, No 1 *Harvard International Law Journal*, (2011)

⁷ The Law Dictionary, 2nd edition, available at: <https://thelawdictionary.org/minority-shareholder/> (Last visited 5th July, 2023)

⁸ Arohi Badsh, "Legal and Regulatory framework for protection of minority shareholders in India" volume 4 issue 3 *Journal of Legal studies and Research*, (June 2018)

⁹ Amar Ramchandra Rite and Anu Solanki, "Protection of Rights of Minority Shareholders" Volume 9, Issue 7 *International Journal of Creative Research Thoughts (IJCRT)*, (July 2021)

packaged products, the retail industry, hospitality and embarkation.¹⁰ Larsen Infotech had a strong existence in the United States, but not around Europe. The taking over of entity of Mindtree may make it possible for them to connect with the European markets. The both two companies had a corporate centre in India, thus integrating in relation to cultural differences would be easier.

However, the Mindtree promoters rejected the takeover proposal, and the notion that L&T pursued the purchase despite objections from the target company's promoters made the offer hostile. However after a long battle by the promoters of the Mindtree, they gave up their stakes and took exit from the company in July, 2019. After twenty years of fostering and expanding Mindtree, the initial promoters completely left the company at this moment in time¹¹.

THE REGULATORY FRAMEWORK DURING SUCH TAKEOVERS

The Competition Act of 2002 and 2011 act of SEBI (Substantial Acquisition of Shares and Takeovers Regulation, 2011) comes into effect when a takeover attempt happens within India. The regulatory body of Competition Commission of India [CCI] must be notified if asset or turnover thresholds are exceeded, and the Competition Act's Sections 5 and 6, in particular, control combinations to prevent negative impacts on market competition. In order to guarantee equitable and transparent acquisitions procedures, SEBI regulations require obligatory open offers upon crossing certain shareholding limits. Nevertheless, given that hostile takeovers frequently require quick decisions and constitute an imbalance of knowledge, which makes meaningful competition analysis challenging. The present Combination Regulations under Competition Act may not adequately handle the complexities of these transactions. Additionally, delays in the procedure may result from regulatory overlap between SEBI and CCI. Thus to make it simple, the review procedures, improving the cooperation between SEBI and CCI, and modifying the provisions for hostile takeovers might all contribute to the improvement of the system by guaranteeing quick and transparent treatment that protects shareholder interests and competitions in the market.¹²

DEFENSIVE TACTICS THAT COULD BE APPLIED DURING HOSTILE TAKEOVERS

Companies utilize defensive methods against hostile takeovers to shield themselves from unwanted purchase efforts. In the Indian context, these strategies are intended to be faithful to the national standards while efficiently addressing dangers.

- **Poison Pills:** This method entails issuing fresh shares or options to current shareholders, ensuring the acquisition more costly or less appealing. In India, firms may employ rights offerings or preferential allotments to reduce the bidder's interest, raising the cost of the acquisition.
- **White Knights:** Alternative to a hostile bidder, a company could try to secure the acquisition from a friendly third party. This "white knight" is typically a more welcoming investor or another company who can offer more advantageous terms or strategic advantages. In India, obtaining a white knight involves dealing with prospective financiers with a strategic ownership in the company.
- **Crown Jewels:** The targeted company may sell out its most valuable holdings to lower its worth to the unfriendly bidder. By quitting essential assets, the company reduces its attraction to bidders, who would be getting a less valued entity.
- **Golden Parachutes:** In the event of a takeover, top executives receive these significant parting settlements. Potential buyers may be discouraged by this group excessive price since it adds to the takeover's financial weight. Indian businesses have to thoughtfully create such deals to make sure they abide by regional laws and are accepted as equitable by all parties involved.
- **Staggered Board:** Companies may choose to adopt a staggered board structure, in which the election of a section of the board members occurs only once a year. This may complicate or delay an attempt at a takeover by making it more challenging for a hostile bidder to rapidly grab control of the board.
- **Shareholder Rights Plans:** Sometimes referred to as "poison pills" these plans let current owners buy more shares at a lower price in the event that a hostile bidder purchases a specific proportion of the business's shares. This reduces the bidder's share value and may discourage the purchase.
- **Anti-Takeover Amendments:** Companies may add clauses that make hostile takeovers more challenging to their organizational policy or bylaws. One of these measures could be raising the threshold for shareholder votes needed to authorize mergers or takeovers.

¹⁰ Janki Mistry, "Larsen & Toubro Infotech's Hostile Bid for Mindtree Ltd.: Much Ado About Nothing! A Teaching Case", *Emerging Economies Cases Journal*

¹¹ Suresh Kerani and K Narendranath Menon L&T's Hostile Takeover of Mindtree: A Value Destructive Transplant, *Journal of Management & Public Policy*, Vol. 11, No. 1, December 2019

¹² *Ibid* see footnotes 7

There are practical and legal problems for each of these strategies, particularly in India where shareholder interests and compliance with regulations are crucial. Companies have to strike a balance between playing active defensive operations, upholding shareholder value, and abiding by the legal guidelines set forth by the Companies Act, SEBI regulations, and other relevant legislations.¹³

SAFEGUARDING MINORITY SHAREHOLDERS DURING HOSTILE TAKEOVERS

In India, minority shareholders control less than 51 percent of the shares in an enterprise and are entitled to certain protections against hostile takeovers. Minority shareholders can file complaints against majority shareholders for oppressive activities and seek justice through the National Company Law Tribunal (NCLT) by virtue of a number of legal protections provided under the Companies Act of 2013. These rights are necessary in order to safeguard minority shareholders' investments and adhere to legitimate corporate governance.

❖ Minority shareholders may file an application with the NCLT under the Companies Act if they believe the firm is being improperly handled or if the majority shareholders' conduct is discriminatory. This legal structure ensures that majority owners cannot act only in their own interests, disregarding the interests of minority shareholders, by giving minority shareholders a redress wherever their rights are violated throughout hostile takeovers.¹⁴

❖ Requisitioning general meetings gives minority owners, who own at least 10% of the company's shares, an active role in substantial decisions, particularly in hostile takeovers. Furthermore, minority shareholders can collectively oppose activities that would threaten their interests by bringing lawsuits against each other, which strengthens their authority inside the corporate leadership.

❖ Protective provisions, such as limitations on transfers and adjustments to share capital, can be included by minority shareholders according to their agreements with fellow shareholders. In addition, Section 235 of the Companies Act guarantees minority shareholders reasonable reimbursement for their holdings by empowering majority owners to purchase minority shares under specific circumstances. This includes their right to fair pay during squeeze-outs.¹⁵

❖ The SEBI or the Board of Securities and Exchange, among auxiliary bureaucratic authorities, are necessary for monitoring hostile takeovers and making sure that transparent and accountable standards are followed. By ensuring complete disclosures throughout the acquisition process, The Securities and Exchange Board regulations protect the interests of minority shareholders by equipping them with the knowledge they need to make responsible choices. There are still issues, though, since majority shareholders can still get around this system if they own a substantial portion of the company and behave in a way that prejudices minority interests.¹⁶

❖ The legal structure which regulates minority shareholder rights is being talked about especially with regard to hostile takeovers. A majority of minority vote requirement for squeeze-outs is one of the proposals and this would guarantee minority shareholders' approval for any measure that impacts them. By bringing minority shareholders better assurance and influence over important corporate decisions, these changes seek to establish a more equitable power dynamic within corporations.

CONCLUSION

The hostile takeover scenario in India is complicating and multidimensional, influenced by regional commercial and regulatory conditions as well as larger trends in global corporate governance. Within the restrictions of a strict legal environment, Indian companies need to balance protecting themselves from hostile bids with efficient shareholder value.

The likelihood of hostile takeover bids is expected to rise along with the country's economy, as it continues to expand and draw in foreign investment. As a result, enterprises need to continue being watchful, aggressive, and creative when applying defensive tactics to make sure they are ready to face the opportunities and difficulties brought forth by hostile takeovers.

Eventually, an organization's achievement and adaptability in the changing Indian market is going to be largely determined by its capacity to handle hostile takeover challenges. Developing confidence and support among shareholders can also be achieved by promoting an atmosphere of excellent corporate governance and open interactions with shareholders. The adaptability and strategic outlook of Indian businesses will be

¹³ *Ibid* see footnotes 4

¹⁴ Ami Galani and Nathan Rehn, Related Party Transactions: Empowering Boards and Minority Shareholders to Prevent Abuses, National Law School of India Review, (2010)

¹⁵ Vikramaditya Khanna and Umakanth Varottil, *American Journal of Comparative Law*, 2015.

¹⁶ S. Mathew, Hostile Takeovers in India: New Prospects, Challenges and Regulatory Opportunities, Legal System & Agency Conflicts (2007)

critical to their capacity to endure and prosper despite the odds of attempts to seize control in this rapidly changing setting, guaranteeing long-term prosperity and growth in a harsh international marketplace.

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