

PROCEDURE FOR TAKE OVER BY SEBI

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ABSTARCT:

Mergers and acquisitions are a means of corporate expansion and growth. They are not the only means of corporate growth, but are an alternative to growth by internal or organic capital investment. The terms 'merger', 'acquisition' and 'takeover' are all part of the mergers and acquisitions parlance. A 'TAKEOVER' is similar to an acquisition and also implies that the acquirer is much larger than the acquired. Where the acquired firm is larger than the acquirer, the acquisition is referred to as a 'reverse takeover'. Although the terms merger and acquisition are often used interchangeably, they have precise connotations in certain contexts, such as when acquirers choose which accounting rules to apply in consolidating the accounts of the two firms involved.

KEYWORDS:

MERGER, ACQUISITION, TAKEOVER, OFFER, INVESTOR

AIM:

To determine if the procedure of Takeover by SEBI is sufficient enough to avoid the fraud by the companies and to find out what are the difficulties faced by the investors and shareholders of the company during this process of takeover.

OBJECTIVES:

1. To examine the effect of takeover by SEBI on companies.
2. To study the advantages of takeover by SEBI.
3. To find out the alternative methods available for takeover.
4. To study how takeover helps the investors

RESEARCH METHODOLOGY

This research project is qualitative doctrinal in nature. It is largely based on secondary & electronic sources of data. Books & few other reference as guided by faculty are primarily helpful for the completion of this project

HYPOTHESIS:

Is takeover which is governed by SEBI a right step to avoid fraudulent activities committed by Investors and the owners of the company to avoid payment of tax to the government.

RESEARCH QUESTION:

What type of procedure is allowed by the SEBI for the takeover and what are the minimum requirements for the Takeover.

INTRODUCTION:

In this very aggressive business world, it is basic for every one of the partners in an organization to monitor their interests in the organization from all types of outsider impedances. Shareholding in organizations and responsibility for are among the most prized resources today and around the world. States have established different securities laws to ensure the interests of the partners in an organization. One of the key components of a strong corporate administration in any nation is the presence of a productive and all around controlled arrangement of takeover directions.

In accordance with universal statute, Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter alluded to as the "Takeover Code"), the surviving Indian takeover directions additionally manage the obtaining of stake in Indian recorded organizations and guarantee straightforwardness in the undertakings of the organization.[2]

SEBI, vide its request dated September 4, 2009, constituted the Takeover Regulations Advisory Committee ("TRAC") under the chairmanship of Mr. C. Achuthan with the command to analyze and survey the 1997 Code and to recommend appropriate changes, as considered fit. In light of the proposals made by the Takeover Regulations Advisory Committee, SEBI conveyed to impact the Takeover Code, revoking the 1997 Code with impact from October 23, 2011. With the presentation of the Takeover Code, SEBI([Thunuguntla 2010](#)) has totally redesigned the takeover

administration in India and has re-composed the tenets of general society M&A. In contrast with the 1997 Code, the Takeover Code offers a significantly less difficult, exact, and unambiguous administrative administration. While the essential premises of the 1997 Code have been held under the Takeover Code, TRAC has additionally broke down the global prescribed procedures, statute set around the courts and councils throughout the years and the changing needs of the market to propose another arrangement of takeover controls. SEBI included the vast majority of the proposals made by the TRAC in the Takeover Code and has endeavored to strike a harmony between the interests of different partners including the acquirers, investors, and the objective organization. The larger rationality of securing the interests of open investors in takeover circumstances stays flawless even under the Takeover Code yet other basic changes have been presented.[\(Jayakar 2015\)](#)

THE CONCEPT OF TAKEOVER

In spite of the fact that, the term 'Takeover' has not been characterized under the (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 as changed in 2002, the term essentially imagines the idea of an acquirer assuming control over the control or administration of the objective organization . At the point when an acquirer, gains generous amount of offers or voting privileges of the objective organization, it brings about the considerable procurement of Shares.

For the reasons for understanding the suggestions emerging from the previously mentioned passage, it is fundamental for us to stay into what is the genuine importance of generous amount of offers or voting rights and significance of considerable amount of offers or voting rights

THE TAKEOVER CODE-Summarized AND Analyzed

The SEBI Takeover Code alongside the (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 as altered in 2002 have been dissected and outlined alongside their methodology under the accompanying headings-

ACQUISITION OF SHARES OR VOTING RIGHTS[\(Rydqvist 1996\)](#)

The essential commitment under the takeover controls is the prerequisite to make an 'open offer' to people in general investors of the objective organization upon a generous securing of offers or voting rights or obtaining of control of the objective organization, specifically or in a roundabout way. The edges for procurement of offers have been re-imagined by the Takeover Code from those under the 1997Code.

VOLUNTARY OPEN OFFER[4]

The Takeover Code accommodates an acquirer holding at least 25% of the shareholding of the objective organization to make an intentional open offer. Acquisitions compliant with the intentional open offer won't trigger the compulsory open offer commitments. Deliberate open offer = At minimum 10% of the shareholding of the objective organization SEBI has elucidated in the FAQs dated December 12, 2011 that a man holding less than 25% might likewise be qualified for make an intentional offer subject to the satisfaction of the endorsed conditions.

COMPETING OFFERS

Like the 1997 Code, the Takeover Code accommodates contending offers to be made inside 15 working days of the point by point open declaration being distributed for the securing of offers in the objective organization.

Contending offer = At slightest such number of offers equivalent to shares held by acquirer in target organization + offers to be procured as a component of open offer + offers to be gained vide the essential exchange

DISCLOSURE OBLIGATIONS([Devgan 2012](#))

As under the 1997 Code, the acquirer is required to influence important exposures to the objective to organization and to every one of the stock trades on which focus on organization's offers are recorded inside 2 working days of:(a) receipt of distribution implication; or (b) obtaining of offers/voting rights, when such procurement surpasses the accompanying edges:

a. 5% or more offers or voting rights:

A man who, alongside 'people acting in concert'("PAC"), assuming any, secures offers or voting rights (which when taken together with his current holding) would qualifies him for over 5% or 10% or 14% offers or voting privileges of target organization, is required to unveil the total of his shareholding or voting rights to the objective organization and the Stock Exchanges where the offers of the objective organization are exchanged inside 2 days of receipt of hint of distribution of offers or procurement of offers.

b. More than 15% offers or voting rights:

An acquirer who holds over 15% offers or voting privileges of the objective organization, should inside 21 days from the money related year finishing March 31 make yearly revelations to the organization in regard of his property as on the said date.

OPEN OFFER OBLIGATIONS

Making of an 'open offer' essentially implies influencing an offer to purchase shares from people in general investors of the objective to organization. One of the destinations of the Takeover Code is to give the general population investors a chance to leave their interest in the objective organization when a generous procurement of offers in, or takeover of the objective organization happens, on terms that are not sub-par compared to the terms on which considerable investors make their investments.² The Takeover Code sets out in more detail the way in which the open offer is required to be completed.

Enter changes in the Takeover Code include:

- (i) Pricing of the offer,
- (ii) Timing of the offer particularly where roundabout acquisitions are concerned
- (iii) The way in which the open offer is led and pulled back, and
- (iv) Role and obligations of the mediators in the open offer process

To make an open offer by the acquirer, the accompanying revelations ought to be made:-

(A) 15% offers or voting rights:

An acquirer who expects to get shares which alongside his current shareholding would qualifies him for over 15% voting rights, can obtain such extra offers simply in the wake of making an open declaration ("PA") to gain at any rate extra 20% of the voting capital of the objective organization from the investors through an open offer

(B) Creeping cutoff of 5%:

An acquirer who is having at least 15% however under 75% of offers or voting privileges of an objective organization, can merge his holding up to 5% of the voting rights in any monetary year finishing 31st March. Nonetheless, any extra securing far beyond 5% can be made simply subsequent to making an open declaration. Anyway in compatibility of Reg. 7(1A) any buy or deal collecting to at least 2% of the offer capital of the objective organization are to be unveiled to the Target Company and the Stock Exchange where the offers of the Target organization are recorded inside 2 days of such buy or deal alongside the total shareholding after such securing/deal. An acquirer who has made an open offer and tries to procure additionally shares under Reg. 11(1) should not procure such offers amid the time of a half year from the date of conclusion of people in general offer at a cost higher than the offer cost.

(C) Consolidation of holding:

An acquirer who is having 75% offers or voting privileges of target organization, can secure further offers or voting rights simply subsequent to making an open declaration indicating the quantity of offers to be procured through open offer from the investors of an objective organization.

Keeping in mind the end goal to value the suggestions emerging here from, it is relevant for us to consider the importance of the term 'open declaration'.

PUBLIC ANNOUNCEMENT ([Gupta and Misra 1989](#))

A Public declaration is for the most part a declaration given in the daily papers by the acquirer, fundamentally to reveal his goal to obtain at least 20% of the voting capital of the objective organization from the current investors by methods for an open offer. Be that as it may, an Acquirer may likewise influence an offer for under 20% of offers of focus to organization on the off chance that the acquirer is as of now holding at least 75% of voting rights/shareholding in the objective organization and has kept in the escrow account in real money a total of half of the thought payable under people in general offer.

The Acquirer is required to select a Merchant Banker enlisted with SEBI before making a PA and is additionally required to make the PA inside four working days of the going into a consent to gain shares, which has prompted the activating of the takeover, through such Merchant Banker.

Alternate revelations in this declaration would entomb alia include:

- the offer cost,
- the number of offers to be procured from general society,
- the personality of the acquirer,
- the motivations behind securing,
- the tentative arrangements of the acquirer, assuming any, in regards to the objective organization,
- the change responsible for the objective organization, assuming any
- the strategy to be trailed by acquirer in tolerating the offers offered by the investors and the period inside which every one of the customs relating to the offer would be finished.

The essential goal behind the PA being made is to guarantee that the investors of the objective organization know about the leave opportunity accessible to them in the event of a takeover/generous obtaining of offers of the objective organization. They may, based on the

divulgences contained in that and in the letter of offer, either proceed with the objective organization or choose to exit from it.

1. PROCEDURE TO BE FOLLOWED AFTER THE PUBLIC ANNOUNCEMENT

In compatibility of the arrangements of Reg. 18 of the said Regulations, the Acquirer is required to record a draft Offer Document with SEBI inside 14 days of the PA through its Merchant Banker, alongside documenting charges of Rs.50,000/- per offer Document (payable by Banker's Check/Demand Draft). Alongside the draft offer archive, the Merchant Banker additionally needs to present a due ingenuity testament and certain enlistment points of interest.

- The recording of the draft offer report is a joint obligation of both the Acquirer and also the Merchant Banker.

- Thereafter, the acquirer through its Merchant Banker sends the offer archive and also the clear acknowledgment frame inside 45 days from the date of PA, to every one of the investors whose names show up in the enroll of the organization on a specific date

- The offer stays open for 30 days. The investors are required to send their Share certificate(s)/related records to the Registrar or Merchant Banker as determined in the PA and offer archive.

- The acquirer is committed to offer a base offer cost as is required to be paid by him to every one of those investors whose offers are acknowledged under the offer, inside 30 days from the conclusion of offer.

2. MINIMUM OFFER PRICE OF PAYMENTS MADE

It isn't the obligation of SEBI to affirm the offer cost, anyway it guarantees that all the important parameters are taken in to thought for settling the offer cost and that the avocation for the same is revealed in the offer record. The offer cost might be the most astounding of:

- Negotiated cost under the understanding, which set off the open offer.
- Price paid by the acquirer or PAC with him for securing assuming any, including by method for open rights/particular issue amid the 26-week time span preceding the date of the PA.
- Average of week by week high and low of the end costs of offers as cited on the Stock trades, where offers of Target organization are most every now and again exchanged amid 26 weeks before the date of the Public Announcement

3. SAFEGUARDS

Before making the Public Announcement the acquirer needs to make an escrow account having 25% of aggregate thought payable under the offer of size Rs. 100 crores (Additional 10% if offer size in excess of 100 crores). The Escrow could be as money saved with a booked business bank, bank ensure for the Merchant Banker or store of adequate securities with proper edge with the Merchant Banker. The Merchant Banker is additionally required to affirm that firm money related game plans are set up for satisfying the offer commitments. On the off chance that, the acquirer neglects to make installment, Merchant Banker has a privilege to relinquish the escrow account and convey the returns in the accompanying way.

1/3 of sum to target organization

1/3 to provincial Stock Exchanges, for credit to speculator security finance and so on.

1/3 to be dispersed on star rata premise among the investors who have acknowledged the offer.

The Merchant Banker prompted by SEBI is required to guarantee that the rejected reports which are kept in the authority of the Registrar/Merchant Banker are sent back to the investor through Registered Post.

Other than relinquishment of escrow account, SEBI can make isolate move against the acquirer which may incorporate indictment/banning the acquirer from entering the capital market for a period and so on.

4. PENALTIES

The Regulations have set out the general commitments of the acquirer, target organization and the Merchant Banker. For inability to do these commitments and in addition for disappointment/resistance of different arrangements of the Regulations, Reg. 45 accommodates punishments. Any individual damaging any arrangements of the Regulations might be at risk for activity regarding the Regulations and the SEBI Act. ([Smitha and Chendroyaperumal 2011](#))

On the off chance that the acquirer or any individual acting working together with him, neglects to complete the commitments under the Regulations, the whole or part of the aggregate in the escrow sum should be obligated to be relinquished and the acquirer or such a man might likewise be at risk for activity regarding the Regulations and the Act.

For any mis-proclamation to the investors or for disguise of material data required to be unveiled to the investors, the acquirers or the chiefs where he acquirer is a body corporate, the executives of the objective organization, the vendor broker to general society offer and the shipper financier

connected by the objective organization for free counsel would be obligated for activity as far as the Regulations and the SEBI Act.

The punishments alluded to in sub-direction (1) to (5) may incorporate

- a) criminal indictment under area 24 of the SEBI Act;
- b) money related punishments under area 15 H of the SEBI Act;
- c) headings under the arrangements of Section 11B of the SEBI Act.

CONCLUSION:

Since its presentation, the Takeover Code has weathered numerous a test and SEBI's endeavors to keep the Takeover Code side by side of the most recent worldwide advancements in general society M&A situation appear to hold up under profits. The 2013 change has settled various ambiguities which existed in connection to specific arrangements of the Takeover Code and will set up the Takeover Code for a third year. While the quickly advancing open M&A scene will, most likely, hurl new difficulties and inquiries for SEBI to address, it can be securely said that the Takeover Code in its present frame is at standard with any remote code administering open mergers and acquisitions.

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