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TAKEOVER OF PUBLIC LISTED COMPANIES 2020: THE FUTURE AHEAD

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ABSTRACT

The financial year 2020 has laid down an unprecedented impact on the financial health of India. The country has remained primarily disoriented in terms of its financial stability. Majority of the assessment impact has been observed due to the turmoil in the business sector of the country. Companies were compelled to either innovate their business functions as per the standards to deal with the pandemic, or terminate their operations as a result of the destined incompetency. The revaluation of several companies paved way for finalizing noticeable Mergers and Acquisitions among the corporate giants. These Mergers occurred as a result of the enhanced purchasing capacities of some specific class of organizations who could monetize the pandemic to their benefit and reap extravagant profits. Where most of the leading industries and businesses suffered tremendously and witnessed a striking plunge in their market values, these multi-bagger companies utilized the simultaneous opportunity of enhanced purchasing capacity and reduced market prices to their benefit and emerged as the conquerors. The rules and regulations concerning Mergers and Takeovers provided the leverage of concluding these deals at a lesser cost and in a lesser time, owing to the pandemic. Requirements of releasing a tender offer has also been changed substantially. We shall lay our focus throughout this paper on several categories of Mergers and Acquisitions that have taken place throughout the year and thereby attempt to observe the remarkable futuristic changes that the financial year has brought to the corporate world, the class of corporate giants that displayed their strength and crucially impacted the corporate transactional loop, and the industries that indicate a promise of profitability in the changed circumstances.

Key Words: *Corporate world, Control Deals, Mergers & Acquisitions, Tender Offer, SEBI Regulations*.

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Introduction

Surviving in the business world has become essentially difficult with passing ages. The market competition has increased remarkably and so does the struggle to survive has. Keeping one's business functions updated as per the changing environment has become a tough nut to crack. A corporate entity aims to ensure that its market operations are carried out in the best possible manner to enable it to maximize profitability for all the stakeholders. The path towards attaining that goal is different for all the entities as their requirements go hand in hand with the conditions that their area of market in general or their entity specifically is facing. Entities choose to diversify or limit their business functions and this choice can be executed via several means of acquiring control, some of them being mergers, acquisitions, and takeovers. The SEBI SASTR, 2011 lays down several rules that are to be complied with while making any control deal. Substantial changes were made in the rules owing to the uncertainties that the year 2020 brought with itself to the financial market.[1]

The market suffered tremendously as the Pandemic stroke and such a situation was never faced before. As numerous companies struggled to re-structuralize their businesses as per the revisited requirements that the year posted, the authorities assisted the corporate entities by tentatively amending some regulations in order to facilitate and make the survival of the market players less cumbersome.[2] The regulations framed for managing the corporate world are often prone to getting misused and therefore have to be structuralized strategically and precisely. It is not uncommon to have inconvenience reported in the market due to the strict application of the regulations. Even 2020 came up as a year which expected more from the authorities in terms of extending their assistance by providing more liberal provisions for facilitating survival of the companies during the overall bearish performance. Nevertheless, companies had to settle with the provisions and they framed their strategies as per their convenience and in accordance with the prevalent rules.

Companies have prevalently relied upon restricted control deals this year for converting the market situations to their individual benefits. Though data suggest a sharp plunge in the figures of control deals executed in the year 2020 as compared to that of the year 2019, several industries have experienced unprecedented growth and development in their sector. This growth and the nature of control deal execution has re-shaped the functioning of the whole

[1] 'Relaxation of certain provisions of Takeover Regulations due to COVID-19' https://www.sebi.gov.in/sebi_data/meetingfiles/jul-2020/1594015064445_1.pdf accessed on 31 May, 2021.
[2] ibid.

corporate world as a new standard working structure now seems to have been framed passively. The shivers that the corporate world has faced would have a long-lasting impact and so should the solutions should have. The business world undeniably needs a different working model amid the existing circumstances which seem to have an everlasting impact. A deeper dive into the working model adopted by the market giants in order to cope up with the situation shall enable a better understanding of the how exactly the corporate world has been getting structuralize and what strategies may work ahead in future. This paper shall present an in-depth analysis of the major deals cracked in 2020.

Key Highlights of The Notable Takeovers

Below listed are the common factors that could be assessed from the major takeovers that took place in 2020. These highlighted indicators depict the common characteristics that almost all the takeover deals had in 2020. Observably, the takeovers in 2020 portrayed certain similar trends that could be analyzed from the details of the deals. Apart from that, the overall impact that these deals had on the business world has also been analyzed and included in the list presented below. These understated characteristics of the year 2020 may be used for predicting futuristic trends the corporate world may witness as these observations have been made as a result of the long-lasting impact of the year 2020 has brought for the financial world.

Declined Value of Control Premium

Control Premium is mandatorily triggered when Tender offer is made to the shareholders of a public listed company. It in fact substantially increases the purchase price in case of a tender offer because tender offer is made for acquiring minimum 26% of the stakes and the premium amount will increase proportionately. In other deals, control premium may or may not be offered as observable from the general practice. Under SEBI SAST Regulations, base price in case of any tender offer is generally accepted as either the market price or the mutually negotiated price among the key participants of the deal, whichever is higher. As against the passive mandate of control premium in certain takeovers, the basis of base price at which the share is otherwise offered is not much talked about in the regulations. This issue came up as a hurdle in some of the takeovers and existed earlier in the year. The comparative data of 2019 and 2020 suggest that the takeover deals in 2020 were executed with either lesser or no premiums.[3]

TENDER OFFERS 2019 v. 2020

As many as 46 Tender offers via letter of offer has been reported by SEBI in takeovers during the year 2020.[4] A detailed observation of the data suggests that the pharmaceutical sector has had the maximum benefit among all the other sectors that were involved.[5] Even the Non-Banking financial sector outperformed several other sectors. The performance of sectors that emerged as conquerors in 2020 had two new features, the first one being that most of them never topped the performance lists earlier; and the second one being that the result was not surprising as their outlandish performance had been pre-estimated by other market stakeholders owing to the changing requirements in the ongoing situation. The other easily traceable best performers were the sectors inclusive of, but not limited to, Food, Technology and Textile sector. The following tender offers comprised of nearly 80% of the aggregate value of the tender offers in 2020: Prime Focus Limited, Snowman Logistics, Healthcare Global Enterprises, NIIT Technologies Limited, MindTree Limited and J.B. Chemicals and Pharmaceuticals Limited.[6] (*Note: Values have been calculated as an aggregated of the offered shares and allotment prices*)

The number of tender offers has declined substantially as compared to the offers extended in the year 2019. During the year 2019, the number of tender offers was reported by SEBI to be 61.[7] The decline when seen from the lens of monetary value seems even sharper and the gap between the two years seems wider. There are numerous reasons that could be attributed as valid reasons behind this huge gap. The first and foremost being the non-performance or poor performance of the major companies that held the back of India's corporate world. The biggest market players failed to contribute their bit in the market affecting two factors at once, the purchasing capacities as well as the overall market profitability. The other reason being that

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[3] Punit Khandelwal & Sunit Khandelwal, 'An Insight into India Control Premium' *Incwert Valuation Chronicles Series* 2020 https://incwert.com/india-control-premium-study-2020/ accessed 01 June, 2021.

[4] Securities and Exchange Board of India, 'Filing' https://www.sebi.gov.in/sebiweb/home/HomeAction.do?doListing=yes&sid=3&ssid=20&smid=15 accessed 01 June, 2021.

[5] ibid.

[6] Nifty50 https://www1.nseindia.com/live_market/content/live_watch/tender_offer/tender_offer.htm accessed on 01 June, 2021.

[7] Securities and Exchange Board of India, 'Filing' https://www.sebi.gov.in/sebiweb/home/HomeAction.do?doListing=yes&sid=3&ssid=22&smid=17 accessed 01 June, 2021.

along with the giant market participants, many micro and small business failed all at once and it caused a huge negative impact over the corporate world as a whole. All these instances had a direct and relative impact over the control deals, specifically in the form of Mergers and Acquisitions and Takeovers taking place in the market.

The Voluntary Retention of Tender Offer: Understanding the Loophole

The year 2020 saw another remarkable case of bailout where requirement of tender offer was voluntarily done away with. Two publicly traded banks namely, Yes Bank Limited and Laxmi Vilas Bank were bailed out. Both banks were initially put under moratorium by the Reserve Bank of India and then bailed out pursuant to government notified schemes under Section 45 of the Banking Regulation Act, 1949. A scheme notified under Section 45 has an overriding effect and therefore, the obligations to make a tender offer and follow SEBI pricing regime are not applicable. This was in fact the subtle incident wherein the authorities understood the flaw in the current regime of law and therefore rescued Yes Bank smartly. The most awaited amendment to the SEBI Regulations was brought after the bailout of Yes Bank. The bank was bailed out via a scheme issued under Section 45[8] of the Banking Regulations Act. This scheme enabled the purchasers to crack the deal at a whooping lesser price than what they would have had to pay had the deal been structuralized under the general market regime which demands control premium.

The Liberty to do Away with Tender Offers: SEBI Amendment

Earlier in the year when the companies were nascently coping up with the effects of the pandemic, a lot of issues were faced with respect to the mandatory rule of extending tender offers under the SEBI Guidelines. These guidelines were later amended by the officials to the extent of making things somewhat feasible for the companies. The now attributed 'Deal Freedom' primarily encompasses two concepts, the first being 'freedom from pricing regime'; and the other being 'freedom from tender offer requirement', for encouraging deals in distressed companies. SEBI introduced amendments to the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR Regulations) and the Takeover Regulations to introduce greater freedom of contracting as a booster shot towards stressed company acquisitions and to ease further capital raising by companies.

[8] Banking Regulations Act 1949, s 45.

SEBI introduced Regulation 164A[9] in the ICDR Regulations which exempts stressed listed companies from the 26-week pricing regime applicable to preferential allotments and allows such companies to issue shares through preferential allotment to new/incoming promoters at a price linked to 2-week VWAP. Acquisitions which meet the conditions of Regulation 164A are also exempt from the tender offer obligations under the Takeover Regulations. These amendments are beneficial to all stakeholders of companies under extreme financial stress. This amendment has been eagerly awaited by the distressed companies as this amendment brings with itself the compacity for multiple commercial entities, concerned with the amendment, to regain their worth in the corporate world. The takeover of CG Power and Industrial Solutions Limited by the Murugappa Group (through Tube Investments of India Limited) was the first deal completed under these new regulations.[10] This deal took approximately eight (8) months to complete.[11]

A General Overall Analysis of 2020

The general activities in the year 2020 have been highlighted in this chapter. Though the observations are crucial for analyzing the performances in 2020, these indicators may not be sed for predicting any future trends. But these observations, when read together with the aforementioned ones, would provide a clearer insight into the exact state of affairs that Takeovers led to in the year 2020. These indicators do not possess a long-lasting nature and is highly subjected to variation in the upcoming quarters.

The Quarterly Performances

Apart from the overall performance of companies in the year 2020, the year had varying performances throughout its different quarters. The remarkable quarters among the four were quarter 2 and 4 as one of them was the slowest and the other one was the busiest. The announcement of fifteen (15) tender offers aggregating to INR 670 crore in Quarter 4 of 2020 made it the busiest quarter garnering the least aggregate value of tender offers of the calendar year. Quarter 2 of 2020 was the quietest with nine (9) tender offers.[12] While Quarter 4 witnessed the greatest number of tender offers, Quarter 1 of 2020 saw the highest aggregate value of

[9] SEBI ICDR Regulations 2018, s 164 A.
[10] 'Murugappa Group takes over CG Power, appoints directors' *India TV* https://www.indiatvnews.com/business/news-murugappa-group-takes-over-cg-power-and-industrial-solutions-appoints-directors-667586 accessed on 30 May, 2021.
[11] ibid.
[12] Securities and Exchange Board of India, n 09.

tender offers at INR 2,021 crore. Notably, Non-resident acquirers made eleven (11) tender offers in 2020 at an aggregate value of INR 5,190 crore.[13]

Landmark Control Deals by Financial Investors

Certain financial investors remained active in 2020 making tender offers to acquire control. These were Brookfield's tender offer for IndoStar Capital Finance Limited (NBFC sector), The Carlyle Group's tender offer for SeQuent Scientific Limited (pharmaceuticals sector), CVC Capital Partners' tender offer for HealthCare Global Enterprises Limited (healthcare sector), KKR's tender offer for J.B. Chemicals & Pharmaceuticals Limited (pharmaceuticals sector), Baupost Group's tender offer for Timex Group India Limited (luxury consumer goods sector) and Fairfax Group's tender offer for Fairchem Organics Limited (chemical sector).

Tender Offer Under Regulation 6 (1) and Independent Valuations

IGE (India) Private Limited, one of the promoters of International Conveyors Limited, made a voluntary open offer to the public shareholders under Regulation 6(1)[14] of the Takeover Regulations to consolidate its shareholding. In two tender offers which were completed in 2020, namely, Tenneco Inc's offer for Federal-Mogul Goetze (India) Limitedand Aurora UK Bidco Ltd.'s offer for Accelya Solutions India Limited, SEBI exercised its power to appoint independent valuers to value the shares of the target companies. SEBI's decision for an independent valuation was challenged and upheld in both cases. The acquirers eventually accepted higher valuations and completed the tender offers.

The Excessive Time Requirements of SEBI

As the operating model of the companies have been struck hard by the pandemic, so has the functioning regime of SEBI been. SEBI being the regulating authority is rightfully expected to take prompt actions. But the adverse and tangled situation created by the pandemic has made things clumsier for the regulator. The situation being much difficult for the companies themselves, would certainly hit the managing authority even harder. The average time taken by SEBI to issue its final observations on the draft letter of offer (DLOF) was approximately 60 days.[15] To issue its final observations, SEBI took anywhere between 20 days (in the case of Aditya Vision Limited) and 181 days (in the case of Beryl Securities Limited), which when

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[13] Nifty50, n 08.
[14] SEBI SAST Regulation 2011, s 6(1) (amended 2019).
[15] 'Draft Letter Offer' https://www.sebi.gov.in/sebi_data/commondocs/oct-2020/Resonance%20DLOF_p.PDF accessed on 31 May, 2021.

compared to 2019 is significantly longer but not surprising in current times. But as the whole financial world is reviving, so is SEBI expected to by taking somewhat quicker steps ahead in time.

The Future Ahead

The fundamentals of the year 2020 show a sudden drift in the functional structure of the corporate world. While SEBI introduced positive measures to revive stressed companies, there is a need for the government/ regulators to introduce measures to ring fence the incoming promoters from actions of pervious management. The recently introduced amendments were somewhat behind the time and were expected to have been introduced earlier. Their early enactment would have helped the companies revive in a better and more comprehensible manner. For the ease of business, it is proposed that whosoever is aiming to acquire or acquiring any amount of controlling stakes in stressed companies under Regulation 164A of the ICDR Regulations should get the benefit of should be offered immunity from liabilities arising out of actions of the previous management. This will facilitate the companies from getting relieved from the excess liabilities, and would improve their financial built. Moreover, the 2-week pricing regime does not particularly seem helpful as any rumor of potential control transaction may also make the 2-week VWAP a thoroughly unacceptable proposition. Since such deals will be hard fought battles with the lenders who will not agree to any random pricing for change in control, fixing the price for the deal should be purely a matter of negotiation and contract and not part of a pricing regime. This demanded enactment would in fact be in furtherance to the already extended aid by SEBI via its recent amendments. In the year 2021, it seems that we are likely to see an uptick in the takeover of stressed assets. Therefore, ring-fencing measures and freedom of contracting will encourage more acquirers (especially, the PE funds) to do such deals.