"TAKEOVER CODE VIS A VIS CORPORATE RESTRUCTURING – A COMPARATIVE STUDY OF INDIA, USA, UK AND SINGAPORE"

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Abstract
The title of the research paper "takeover code vis a vis corporate restructuring" brings the idea of the researcher to lay down different dimensions of the takeover code across the globe. The research paper aims to examine and compare take over codes of different countries. The countries, which are aimed by the researcher for the comparative study, are India, USA, UK and Singapore. The paper expresses different challenges in takeover codes of different countries. Conclusively, the paper enlightens the readers about the differences, similarities, gaps, challenges of takeover code among the targeted countries.

Keywords: *Takeover Code, Comparative study, Gaps, Challenges.*

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INTRODUCTION

A successful corporate entity in today's market must be able to efficiently undertake competitive business tasks and be equipped with a variety of business strategies in order to gain the trust and enhance their business further. In other simpler terms it can be understood that when one company is taking over the other company it does not imply in any way that there is any negative impact rather there are numerous reasons due to which such takeovers take place in the market such as to gain the trust of shareholders and investors; attract foreign investors and to reach the goals of the company by expanding their business as well as outreach. The takeovers are not negative it has a lot positive impacts and through these the companies tend to move forward even more rapidly as their resources will increase, their reach will increase, there will be more people at different levels dealing with day to day and managerial activities which will help the company to be a bigger success than it ever was. The people in the market are thus now with developing changes globally required to understand the need for takeover and its acceptance. It can also be said that with significant investment and a higher market share a company will be able to reach its goal and thus make a company successful.

Furthermore, in today's market the companies are using a variety of tactics apart from takeover as well to adapt to the rapidly changing circumstances:

a) Marketing strategies.
b) Manufacturing efficiency
c) Acquisition.

These are fewsteps, which are taken by the corporates to shatter their competition as well in the market and thus further grow. These are the most common and convenient methods of "market capitalization".

1. RESEARCH QUESTIONS

- What are the similar and contrasting features in the takeover of codes of India compared to takeover codes of UK, USA and Singapore?
- Whether or not the Takeover Defenses help resist Hostile Takeovers?

2. RESEARCH METHODOLOGY

The research methodology will be a doctrinal method, which will focus solely on legal sources, therefore establishing what the law is. Establishing what the law is frequently a crucial prerequisite to investigating additional legal problems, particularly in situations where the law is ambiguous or developing. It must include any strictly legal analysis, such as the history of law, what the law was previously, what the law is today, and whether there are any indicators of how the law could evolve or develop. Apart from legal sources, it will concentrate on numerous case laws and legislation.

Data Collection - The researcher studied various authorities on Corporate and Securities laws, which were then analysed in light of various primary and secondary sources, including statutes,journal articles, e-library resourcesand judicial pronouncements by SEBIand the Hon'ble Supreme Court of India.

3. TAKEOVER DEFENCES: A comparative study

Globally we have seen a significant boom when it comes to Mergers and Acquisitions. Antitakeover techniques are used by target organisations to guard against aggressive tender approaches from potential buyers. While some of these defences are utilised in advance of potential bids, a wide range of receptive defences are also accessible to enterprises who discover themselves as prospective targets after the offer has been filed. All measures taken by management to prevent their companies from being purchased are considered as takeover defences. Types of takeover defences are attempts by aim management to defeat outstanding takeover plans i.e., resist from their firms being so acquired. Resistance also refers to measures taken prior to an acquisition bid which enables the corporateproblematic to acquire. Strong resistance will stymie takeover bids, giving the target firm's present executives veto power over merger proposals. At first glance, the significant gains for target investors in takeovers strongly indicate that all takeover resistance is weak. The company becomes more expensive to procure because of the resistance. While takeover defences may lessen the probability of being bought, they may also increase the price of the deal. Furthermore, even though the company is not purchased, acquisition defences will influence the firm's valuation with its current management team. Find a shield that encourages existing bosses to absolutely stop any takeover attempts. The chance of a control transition would be reduced to zero, and the anticipated acquisition premium would be eliminated. The firm's share price will then be solely based on the valuation of its current management. The takeover protection has the potential to impact this benefit in two ways. First, the valuation could depreciate as managers appreciate the relief from the threat of being fired. Second, when managers avoid spending time and business capital thinking about a hostile takeover, the valuation of the company could rise. Furthermore, the forms of defence techniques and how they are used differ considerably will be analysed in the research between India, the US, the UK, and Singapore.

4. TAKEOVER DEFENCES IN INDIA

1. Poison Pill –When there is a calculated increase in a company's worth because of the changes in the corporate structure, equals the opportunity of an acquisition grown by the changes in the

value because of the takeover. Shareholders are concerned about the effects of takeover safeguards on the firm's value under current management, the possibility of an acquisition, and the purchase price if a takeover offer is made. While takeover defences may lessen the probability of being bought, they may also increase the price view that it creates inequality among shareholders.The poison pill is a notable strategy as some experts are of the view that it creates inequality among shareholders.

2. Shark Repellent - Anti-takeover amendments are what they are called. The company's constitution, or Articles of Association (AoA), is amended in this method to make a takeover almost hard for the buyer. To avoid a takeover, several conditions have been inserted to the company's AoA. Under the Companies Act of 2013, shareholders have absolute ability to change the AoA by enacting a special resolution.
3. Crown Jewel - The company's primary assets are referred to as the Crown Jewel in this approach. To make the target undesirable to a buyer, the corporation sells up its main assets. However, a business cannot sell its enterprise without the previous consent of shareholders at a general meeting with a special majority. Furthermore, during the offer time, the board of directors is prohibited from alienating any major possessions, unless the prior consent of the shareholders by a special resolution is obtained.[1]Crown Jewel is not the ideal way to get rid of the acquirer because the business's market value fluctuates. In addition, the asset buyer is in a stronger position to negotiate the price and may simply keep it to a minimum. Typically, the funds are used to repurchase shares in order to expand public shareholding, but when a firm decides to sell its key assets, the price increases slightly. Another factor to consider is that although the acquisition fails, the corporation would suffer a significant loss. The asset is transferred to a white king to deal with this.
4. “White King” - The corporation is purchased by another friendly corporation in the white king defence. The ultimate and final defence system is the white king. It is done in the hopes that the board of directors or the promoters would subsequently be able to buy the firm back from the friendly acquirer. East India Hotels ("EIH") is a perfect illustration of this.
5. “Refusal to register the shares” — One of the easiest methods to prevent a takeover is to refuse to register the shares. However, this is not the ideal option because the act's validity might be contested in court. According to the Companies Act of 2013, a corporation may refuse to record a share transfer if there is valid reason. The validity of a business's refusal to register a share transfer has already been questioned in numerous courts, and it is now decided that a corporation may refuse to record a share transfer if there is legitimate grounds and no malafide intention. In “Mackintosh Burn Limited v. Sarkar and Chowdhury Enterprises Private Limited[2](the Mackintosh Case), the apex court observed that sufficient cause for refusing to register the transfer of shares can be on other than the ground of violation of the law. Conflict of interest in a given situation can also be a cause”.

As earlier mentioned, the Indian legislative system effectively prohibits the application of a poison pill to fend off aggressive acquirers. Despite the barriers erected by the Takeover Code, some Indian developers have managed to devise new methods and discover a version of the poison pill. For decades, the Tata Group has effectively used the "brand pill" to prevent hostile takeovers. The brand pill, like the conventional poison pill, aims to make the purchase less appealing to the acquirer. However, unlike the poison pill, the brand pill's mode of operation is distinct in that it is analogous to an intellectual property right rather than a shareholder rights scheme. And for a hostile takeover, the company's corporate name and related trademarks are protected by a clause of the Articles of Association. The success of this approach can be attributed to the fact that the central value of well-known companies like Tata is focused on the brand name and image. As a result, leaving the company out of the transaction would greatly reduce its appeal and eliminate several post-merger synergies. As a result, an aggressive acquirer will be compelled to reconsider his decision to buy the target's stock in view of the current unfavourable climate, performing the position of the brand pill.

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[1] Regulation 26(2)(a) of Takeover Code

[2] (2018) 5 SCC 575

5. Hostile Takeovers in India

India's initial Takeover Code was published in 1994, followed by a revised version in 1997 and inew edition in 2011, both of which included several advanced elements.Despite the lack of legislation prohibiting hostile takeovers, India has only had one successful hostile takeover, the purchase of Raasi Cements by India Cements Limited in 1998.Uday Kotak, the is completelyright in openly declaring that “the moment had arisen for accepting hostile takeovers in India”.

6. TAKEOVER DEFENCES IN USA

Here is a list of mostly used takeover defences applicable in USA:

1. Poison Pill: One of the most commonly used defences in the United States is the poison pill, which is also known as the Shareholder Rights Plans. It offers a variety of safeguards against uninvited tender bids and has been shown to be the most potent and effective of all defensive measures. Its purpose is to protect the Target from the most aggressive partial or two-tier tender bids. It consists of a new class of securities that a business issues as dividends to its shareholders and that can be introduced without shareholder approval since the board retains sole dividend-issuing authority. Furthermore, poison pill's character as an exclusive power allows it to be used even after a hostile takeover attempt has been made.
2. Shark Repellents –the various types of anticipatory defences which may be adopted by changing the basic document of the company governance, the charter, or the byelaws, it is used to empower the board of directors to gain back the control of the company.[3]Specifically, by making it extraproblematicin obtaining control of directors through “a proxy struggle”. Its provisions are usually included in the charters of Delaware corporations.[4]
3. Greenmail - This includes paying a possible acquirer to stay away from the Target by purchasing back shares at a higher price in exchange for the buyer agreeing not to pursue a hostile acquisition. A standstill agreement, signed by the acquirer and outlining the conditions of the agreement, is frequently used to document the agreement. Despite the fact that it is alleged to discriminate against non-participating shareholders, the reactions of different states vary, while Delaware considers Greenmail to be an acceptable defence if it is made for legitimate business reasons, California law finds it to be a breach of fiduciary responsibility.
4. White Knights - Using the White Knight defence often enables the target company wanting to be bought by another company rather than the bidder, based on the belief that the alternative firm is a better bidder. However, a basic criterion for completing the deal is that the white knight be prepared to purchase the Target on more favourable terms than the current bidder's offer. It is not necessary for more favourable terms to include a larger offer price; simply agreeing to keep the Target's present management in place is sufficient.

Apart from the aforementioned defences we have defences like Share Repurchase; Leveraged Recapitalisation; and Pac-man in the country.

7. TAKEOVER DEFENCES IN UK

Some of the defences under the UK laws are as follows:

1. Defensive Recapitalisation - In the United Kingdom, defensive recapitalisation aims to achieve a similar result as in the United States, namely, to present an economically viable alternative to a hostile offer by providing immediate short-term economic value to shareholders while also maintaining equity stake in a more highly geared company. Because shareholder approval is required before this alternative transaction may be approved, one of the most essential features of this defence is its limitation in terms of being imposed onto shareholders. Activating this defence in the UK will provide the Target business with a comparable set of options as in the US, that might pose governing challenges.
2. Shares or Convertible Instruments with Limited or Super-voting Rights - In addition to non-voting shares, the UK's common and statutory law allows a firm to issue shares, loan notes, and convertible securities with amplified or restricted voting capabilities. Corporate control may

[3]Pamphilids (note 6 supra)

[4] Kenyon-Slade (note 3 supra).

be constrained to particular shareholders inside the corporation by the issuing of these super-voting or non-voting shares. In terms of the United States, the present relevant UK law is identical to the usage of dual class blank cheque preferred shares in US Target firms.

3. Defensive Share Issuance to Friendly Third Party - Unlike in the United States, where a Target company's directors retain the power to make a defensive issuance of shares before or after the emergence of an offer to a friendly third party, Rule 21.1 of the Code prohibits the use of this defence once a bona fide offer is imminent in the United Kingdom. However, prior to the appearance of an offer, this defence may be invoked, pursuant to Section 549 of the Companies Act of 2006.
4. Repurchase - In addition to Rule 21 of the Code, this defence is constrained by Rule 37.3, which specifically prevents a Target firm from redeeming or purchasing its own shares after a bona fide offer is forthcoming, with two exceptions. The common law and the Companies Act of 2006 augment and control this ban.

There are some defences that are similar to the US defences and the Indian defences like Crown Jewel and white knight in UK.

8. TAKEOVER DEFENCES IN SINGAPORE

Singapore mostly has friendly takeovers or bids. In case of a hostile bid in Singapore the Board of Directors of the company proposed for takeover are barred from using any action without the prior consent of the shareholders including for actions like issue of share, selling or acquiring any assets. The SIC will not consider any action of the target board whatsoever in soliciting a competing offer as such actions which might frustrate the offer.

To curtail down the actions of the Board of Directors of the target company grounded on the UK model India and Singapore also have the Board Neutrality Rule which is crucial to the Hostile Takeover Regulations. By enacting this rule, the power withBOD of the target is curtailed down to not take any action which may in any way impact the takeover offer. For any action taken other than the ordinary course of business shall require the prior approval of the shareholders. The scholars of most Jurisdictions believe this rule to be a mere illusion in the corporate law arena which requires the shareholders' approval to employ any takeover defence. This rule has been criticised wildly for his dispersed shareholding context where the ability to determine the future of the takeover is left in the options of the shareholders leaving little or no scope for the board to play a role.

9. COMPARATIVE ANALYSIS OF TAKEOVER DEFENCES

In comparison to Western jurisdictions, hostile takeovers are comparatively rare in India. Nonetheless, recently it was observed that pattern is gradually but steadily knocking up in India. Although the legislations like Takeover Code and the Companies Act impose a number of transparency provisions that make it much more difficult for hostile raiders to purchase target companies, Indian target companies are also susceptible to well-executed hostile takeover efforts due to the present legal framework. Promoter shares might be less than 25% in 584 of the 4,054 publicly listed companies. In addition, promoter holdings in 340 of the 584 companies accounts for less than 15% of the overall shares. Likewise, research analysts contend that in a volatile economy, certain firms' trading rates will not be extremely high when it comes to mergers and acquisitions.

Raiders would be able to acquire defenceless targets more easily as a result of this. Companies in mature countries, such as the United States, have robust structures in place to protect themselves from "hostile takeovers" in a variety of conducts. It is argued that India is an "acquirer's market" or a "pro-acquirer market" because of the absence of constitutionally enforceable security structures, as opposed to other countries that have a higher level of enforcement and take a more balanced approach.

As a result, it is claimed that India's pro-acquirer regulatory system has led to in the rise of creative "home-grown defence strategies". However, as commendable as these developments are, these are also insufficient in most cases to provide meaningful defence

Even after 25 years of opening up our economy, there have been no big hostile takeovers in the Indian corporate world. The current Takeover Code, the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, as amended in 2013, is based on the progressive U.K. City Code on

Takeovers, which encourages hostile takeovers through a no-frustration doctrine, rather than the US code, which is more aligned to protect entrenched managements.
Certain defences used in the US and India, such as the poison pill, are not applicable in the UK because of a variety of legal and practical differences between the two jurisdictions. Because the Code prohibits coercive partial and two-tier tender offers, “an offeror must make a single-price offer for all of the Target's shares”. This removes the requirement for specific “shark-repellents”, typically used in “two-tier tender offers”. Furthermore, because the Code provides a large level of shareholder protection, the US defences of "staggered board" and "cumulative voting" are often not relevant in the UK. Although there are certain defences that are comparable to those used in the United States and India, such as Crown Jewel and White Knight.

SUGGESTION AND CONCLUSION

When one firm (Acquirer) buys a controlling position in another (Target Company), it is known as a takeover This can be a friendly or hostile procedure. Friendly takeovers occur when the Target Company's management is on board with the transaction and both the Acquirer and the Target Company see it as a win-win situation. Hostile takeovers, on the other hand, occur when the Target Company is a reluctant participant.
In light of the research and findings, it is clear that the Takeover Code has successfully managed to regulate public company takeovers through adequate disclosure norms and statutory compliances, ensuring that investors are protected from being adversely affected by takeover activities, which have become the norm of the era or the most common business strategy for gaining larger market share and being a prominent market player. The Securities and Exchange Board of India's frequent modifications to the Takeover Regulations attempted to resolve the many discrepancies and incapacity to cope with the current economic situations prevalent internationally.
The SEBI takeover code, in my opinion, did not fully address these issues. There were some gaps in it, and everything was a little hazy. It has been progressively developing and learning from its mistakes. The 1994 paper was a two-to-three-page guideline that was rushed together. There were also several gaps in the code that corporations exploited for their own gain. However, SEBI has done an excellent job of establishing a clear framework. All relevant parties, including as regulators, corporations, bidders, and the management of the Target Company, must work together to make our code fool proof. Takeovers in India, particularly aggressive ones, were seen negatively. The importance of the takeover should not be overlooked. It aids in the discovery of the stock's hidden worth, as well as placing pressure on management to perform effectively and therefore contribute to Corporate Governance. Regulators are supposed to safeguard shareholders' interests and rights, prevent fraud, and provide a free, fair, transparent, and equal environment for takeovers. Such behaviour is not only anti-investor, but it also goes against the takeover code's core objective. There were still certain aspects of the 1997 code that were unclear. One such point of contention was what it meant to shift managerial control. Provisions pertaining to the indirect purchase were likewise ambiguous.
Due to the fact that the law provided unfair advantages to the promoter at the expense of small investors, SEBI was forced to endeavour to put promoters on par with small investors in the future. Provisions relating to the government's acquisition of stock. A change was also required within the firm. According to the previous 1997 rule, a government can buy a firm's shares from another government without making an open offer, however in the case of a private corporation, an open offer is required. This does not give private businesses with an equal playing field. It gives the government an easy way out, but not to small investors. FIs play a crucial part in this process as well. When deciding on an open offer, they should consider the long-term rather than the short-term profit motivation. Acquirers should provide complete information to the public and make reasonable price judgments. Hostile takeovers aren't outlawed under the code, and they aren't discouraged either. The Indian legislators' whole goal was to protect the interests of shareholders and investors during such actions. However, politicians established a very protective strategy in the process, making aggressive takeovers appear to be a dreaded ghost. Due to recent tendencies of globalisation and the opening up of local markets for international competitors, key economic actors throughout the world were not in favour of overprotection. To respond to the evolving requirements of society, authorities devised a new Takeover Code, which was enacted in 2011.

Despite substantial advancements in the legislative environment, minority shareholders in listed businesses remained to be subject to the whims and fancies of the dominating shareholder group as hostile takeovers progressed. As a result, there was a need for more progressive policies that would reward honest risk-takers while yet safeguarding shareholders' interests. Uday Kotak, a seasoned Indian banker, was completely accurate in publicly stating that hostile takeovers in the nation have arrived. In many cases, corporations were left to their own devices to select and devise a strategy to fight or prevent a hostile takeover. In a mature market, such as the United States, however, there are well-established anti-hostile takeover defences/devices to battle the target firms' disadvantageous positions. The Indian firms were allowed to ponder and devise their own strategies for dealing with difficult conditions. As a result, India, like the United States, needed a defence mechanism to prevent hostile takeovers.

However, when it comes to other elements, the legal norms in the United States are quiet on many issues, for example, it does not recognise the mandatory bid rule and instead encourages or accepts voluntary offers. The Indian enterprises, on the other hand, were allowed to ponder and devise their own strategies for dealing with difficult conditions. As a result, in India, as in the United States, legal acknowledgment of sharp defence measures to oppose hostile takeovers was required. Despite the fact that the Takeover Regulations of 2011 and the Firms Act of 2013 impose a number of transparency obligations in order to prevent hostile takeovers of target corporations, the current legal framework leaves public companies defenceless in hostile scenarios.

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