A Comparative Legal Analysis of SEBI and US Takeover Regulations for Lower Priced Takeover Offers

Research Paper submitted in partial fulfilment of the requirements for the award of the degree of
Bachelor of Laws (BA/BCom/BBA/BSc/BSW LLB)

SUBMITTED TO:

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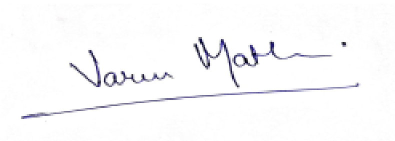
PRELIMINARIES

STUDENT DECLARATION

DECLARATION

I hereby declare that the research paper titled "A Comparative Legal Analysis of SEBI and US Takeover Regulations for Lower Priced Takeover Offers" is an original work of mine and no part of the research paper has been submitted for award of any degree or for any publication.

Signature



Name of the Candidate: Varun Rajendra Matlani

Date: 10th October, 2024

CERTIFICATE BY RESEARCH SUPERVISOR

The Supervisor(s) Certificate

Ms. Garima Goswami

Assistant Professor of Law,

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CERTIFICATE

This is to certify that **Varun Rajendra Matlani** has pursued and prepared the research paper for Elective Course (Seminar Paper)-4 **Mergers & Acquisitions** titled 'A Comparative Legal Analysis of SEBI and US Takeover Regulations for Lower Priced Takeover Offers' in partial fulfilment of the requirements for the award of the degree of Bachelor of Laws (BA/BCom/BBA/BSc/BSW LLB) under my supervision. To the best of my knowledge, the research paper is the outcome of his/her own research.

(____________________________________)

Signature

Ms. Garima Goswami

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1. Aurora UK Bidco Limited v SEBI (SAT)
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CHAPTER I : INTRODUCTION

11. INTRODUCTION

The regulation of takeovers has been a cornerstone in the governance of corporate acquisitions, particularly in jurisdictions where capital markets are evolving and investor protection mechanisms are essential. In India, the Securities and Exchange Board of India ("SEBI") has established the Substantial Acquisition of Shares and Takeovers Regulations in 2011[1] ("SAST" or "SAST Regulations"), primarily aimed at ensuring a fair and transparent acquisition process that protects shareholders, especially minority interests. Interestingly, Insider Trading, Market Frauds and Manipulation and regulation of takeovers, were the three major pillars behind the rationale of establishing an autonomous body under Ministry of Finance to regulate the securities market in India.[2] Therefore, SAST regulations are the at the heart of SEBI regulations, and further, it correlates with the Preamble of SEBI as established in SEBI Act, 1992[3].

However, the growing trend of low-priced takeover offers, raises fundamental questions about the effectiveness of these regulations in practice as well as fulfilment of the objective of "providing fair exit opportunity to investors"[4], the rationale for this purpose/objective was, that when an investor invests, reading the prospectus and further in course of business there is a fundamental change which would affect the investment decision of the investor, such an investor should be granted an option to exit from the affairs of the company.[5]

To drive this discussion, the author has taken a central example of a recent offer for Manbro Industries[6], where the current market price (CMP) was approximately Rs. 737[7] but the offer was only Rs. 63.[8]

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[1]Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 available on https://www.sebi.gov.in/legal/regulations/nov-2022/securities-and-exchange-board-of-india-substantial-acquisition-of-shares-and-takeovers-regulations-2011-last-amended-on-november-9-2022-_64907.html, last accessed 19-09-2024.
[2] K Laik, Insider Trading: Law and Practice (Chapter 1, 2016).
[3] Securities and Exchange Board of India Act, 1992.
[4] Securities and Exchange Board of India Act, 1992, s 11.
[5] Ibid (n 1).
[6] 'Manbro Industries Limited' (SEBI, September 2024) https://www.sebi.gov.in/sebi_data/commondocs/sep-2024/Manbro%20Industries%20Limited_DLOO_p.pdf accessed 19 September 2024
[7] 'Manbro Industries Ltd' (BSE) https://www.bseindia.com/stock-share-price/manbro-industries-ltd/manbro/512595/ accessed 19 September 2024
[8] 'Manbro Industries Limited' (n 6)

The underlying objective of SEBI's SAST Regulations, particularly Regulation 8, which deals with the pricing of offers, is to ensure that shareholders are given a fair exit opportunity when control of a company is transferred. Yet, such low-priced offers indicate a potential failure in the regulatory framework, as they do not reflect the market reality or the fair value of the shares. This discrepancy between market prices and the prices offered in takeovers poses significant concerns for minority shareholders, who are often left with little choice but to accept undervalued offers or remain as shareholders in a company under new control.

<u>The Issue of Low-Priced Offers: A Growing / (Not Growing) Concern</u>

One of the most pressing issues under the current SAST framework is the growing number of takeovers offers priced well below the market value of the target company's shares. The offer for Manbro Industries exemplifies this trend, where the offer price was a mere fraction of the CMP. This situation is not unique, as several recent takeover bids have followed a similar pattern, raising questions about the adequacy of Regulation 8, which is supposed to ensure that takeover bids are priced fairly based on historical share prices and market valuations.

The pricing mechanism under Regulation 8 of the SAST Regulations mandates that the offer price should be the highest of: (i) the average of the weekly high and low of the closing prices of the shares for the 26 weeks preceding the public announcement, or (ii) the average of the daily high and low of the prices for the two weeks preceding the public announcement. However, as evidenced in several cases, this pricing formula does not always align with the market reality, often resulting in offers that significantly undervalue the target company . The literature suggests that such pricing formulas, while seemingly fair in theory, can be manipulated or result in unjust outcomes in cases where the market value of the shares fluctuates significantly .

Furthermore, the low-priced offers, which have become a recurring phenomenon in Indian takeovers, suggest a deeper issue within the regulatory structure. These offers are often viewed as a strategic tool used by acquirers to gain control of a company at a discounted price, which undermines the confidence of minority shareholders in the fairness of the market. Minority shareholders are particularly vulnerable in such scenarios, as they lack the bargaining power to influence the offer price or resist the takeover. Further, even if there is possibility of fair deal between the two parties, on threshold trigger, in finality the lower price orders affect

The Role of Regulation 8: A Need for Reform

Regulation 8 of the SAST Regulations is intended to provide a fair valuation mechanism during takeovers, ensuring that all shareholders, particularly minorities, are offered a price that reflects the true value of the company's shares. However, the current framework allows for significant deviations from the market price, which can result in unfair outcomes. Several studies have pointed out that the formula-based approach to pricing under Regulation 8 does not adequately capture the fluctuations in market value or account for extraordinary events that may affect a company's share price in the short term .

The need for reform in this area has been echoed by several scholars and industry experts. For instance, Goel and Singh (2020) argue that the current pricing mechanism under Regulation 8 fails to provide adequate protection to minority shareholders in cases where the offer price is significantly lower than the market price . They suggest that SEBI should consider introducing more dynamic pricing mechanisms, such as those based on independent valuations or market-driven pricing models, to ensure that shareholders are offered a fair exit opportunity.

Moreover, empirical evidence from other jurisdictions, such as the United Kingdom and the United States, suggests that more stringent regulatory frameworks are necessary to prevent the exploitation of minority shareholders in takeover situations. In the UK, the Takeover Code provides clear guidelines on offer pricing, ensuring that shareholders are offered a price that reflects the highest market price during a certain period prior to the offer . This approach not only protects shareholders but also ensures that the market functions efficiently by preventing acquirers from taking advantage of temporary dips in the share price.

Theoretical and Empirical Implications

The recurring issue of low-priced offers in the Indian takeover market highlights the need for a comprehensive review of the SAST Regulations, particularly Regulation 8. This research seeks to explore the theoretical underpinnings of the current pricing framework and analyse empirical data from SEBI to understand the broader implications of such offers. By comparing

India’s regulatory framework with those of other jurisdictions, this study aims to identify potential reforms that could strengthen the protection of minority shareholders and ensure that the takeover process remains fair and transparent.

In conclusion, while the SAST Regulations have played a crucial role in governing takeovers in India, the increasing trend of low-priced offers suggests that there are significant gaps in the current regulatory framework. These gaps not only undermine the confidence of minority shareholders but also distort the market’s ability to reflect the true value of companies during takeovers. This research aims to provide a detailed analysis of these issues, drawing on both theoretical perspectives and empirical evidence to propose potential reforms that could enhance the fairness and effectiveness of the SAST Regulations in the Indian context.

12. RESEARCH PROBLEM

The core research problem addressed in this study is the inadequacy of SEBI's SAST Regulations, particularly Regulation 8, in ensuring fair pricing of takeover offers in India. The recurring issue of low-priced offers, such as the recent Manbro Industries takeover, where the offer price was drastically lower than the prevailing market value, exemplifies this concern. These offers appear to undermine the intent of SAST, which is to provide shareholders, especially minority shareholders, with a fair exit opportunity during a change in corporate control.

This problem is compounded by the fact that Regulation 8's pricing methodology, based on historical averages, often fails to reflect the actual market conditions or the intrinsic value of the target company. As a result, acquirers are able to offer significantly lower prices, leaving minority shareholders with no meaningful recourse or protection. Moreover, the regulatory framework seems to facilitate these low-priced offers through loopholes, enabling acquirers to exploit market inefficiencies for strategic gains, such as consolidating control or reducing public float. This not only erodes market confidence but also raises concerns about the effectiveness of SEBI's regulatory oversight in maintaining fairness and equity in the takeover process.

This research seeks to explore these regulatory gaps, examine the motivations behind such low-priced offers, and propose potential reforms to improve the fairness of the takeover process in India.

13. SIGNIFICANCE OF THE STUDY

This study is significant in its potential to address the pressing concerns related to shareholder protection in India's takeover market, particularly under the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011. By investigating the prevalence of low-priced takeover offers that deviate drastically from market valuations, this research highlights the regulatory shortcomings that fail to safeguard minority shareholders during acquisitions. In an economy where corporate takeovers are becoming an increasingly common method of control transfer, the vulnerability of minority shareholders is a critical issue. The study aims to bridge the gap between the regulatory intent of the SAST Regulations and the actual outcomes in practice, which often lead to unfair exits for shareholders. This examination holds implications not just for legal scholars but for market regulators, investors, and policymakers in India, and potentially in other emerging markets facing similar regulatory challenges.

Furthermore, the comparative analysis with international takeover frameworks such as those in the U.K. and the U.S. adds an important dimension to this research. By juxtaposing India's regulatory approach with more mature and robust frameworks, the study will offer insights into how other jurisdictions successfully protect shareholders during takeovers and whether those protections can be adapted to the Indian context. The research could serve as a blueprint for regulatory reform, guiding SEBI in revisiting the valuation methodologies (introducing a mathematical model based on empirical research to bring a data backed fair pricing method) and legal safeguards under the SAST Regulations to ensure a more equitable process. In the broader context of mergers and acquisitions, this study contributes to the ongoing discourse on market efficiency, corporate governance, and the legal frameworks that underpin fair transactions in capital markets.

14. REVIEW OF LITERATURE

1. **A century of corporate takeovers: What have we learned and where do we stand?[9]**
   The study of mergers and acquisitions (M&A) highlights the cyclical nature of takeover activity, driven by economic, regulatory, and technological changes. Martynova and Renneboog (2008) found that these waves are influenced by credit expansion and stock market conditions, with managers often acting based on both market trends and

[9] Martynova M and Renneboog L, 'A Century of Corporate Takeovers: What Have We Learned and Where Do We Stand?' (2008) 32(10) Journal of Banking & Finance 2148 https://doi.org/10.1016/j.jbankfin.2007.12.038

personal motives. The focus of M&A has shifted from monopolies to global diversification, with varying effects on shareholder value across different waves.

2. **A Theory of Takeovers and Disinvestment**[10]

   Lambrecht and Myers' real-options model highlights how takeovers often drive disinvestment when firms fail to act efficiently, either due to managerial reluctance or financial constraints. While the literature provides a broad range of hypotheses explaining M&A, no unified theory fully consolidates the diverse motives and outcomes. Key discussions revolve around managerial incentives, financial conditions, and regulatory constraints, which are critical for legal scholars analysing corporate governance and takeover regulations.

3. **Undervaluation and private equity takeovers**[11]

   Rath and Rashid (2015) argue that low public market valuations, often driven by information asymmetry, make firms attractive targets for private equity. Their analysis shows that undervalued firms are significantly more likely to undergo private equity buyouts compared to those involved in public mergers. The study further emphasizes that while information asymmetry contributes to undervaluation, it is not a sufficient condition for going private. Instead, the empirical evidence supports the undervaluation hypothesis as a dominant factor in private equity transactions.

4. **A Valuation Model for International Acquisitions**[12]

   In their valuation model for international acquisitions, Madura, Vasconcellos, and Kish (1991) emphasize the importance of evaluating cross-border mergers through a capital budgeting framework. Their approach integrates key financial factors like the initial outlay, periodic cash flows, and salvage value, which are influenced by foreign exchange rates, taxation, and local economic conditions. The authors argue that understanding these factors is critical for maximizing shareholder value in international

[10] Lambrecht BM and Myers SC, 'A Theory of Takeovers and Disinvestment' (2007) 62(2) Journal of Finance 809 https://doi.org/10.1111/j.1540-6261.2007.01224.x
[11] Rath S and Rashid A, 'Undervaluation and Private Equity Takeovers' (2015) 42 International Review of Financial Analysis 297 https://doi.org/10.1016/j.irfa.2015.08.001
[12] Madura J, Vasconcellos G and Kish R, 'A Valuation Model for International Acquisitions' (1991) 1(1) Journal of Multinational Financial Management 49 https://doi.org/10.1016/1042-444X(91)90005-6

acquisitions. They also highlight the growing significance of non-US acquisitions of US firms, driven by factors such as currency fluctuations and market conditions

5. **Takeover Defences and IPO Firm Value in the Netherlands Takeover Defences and IPO Firm**[13]

   Roosenboom and van der Goot (2003) examine the relationship between the use of takeover defenses and initial public offering (IPO) firm value in the Netherlands. Their study reveals that managers often adopt takeover defenses before going public, primarily to protect private control benefits, which can reduce IPO firm value. Investors anticipate conflicts of interest between management and shareholders, leading to a lower share price when defensive measures are in place. The study finds that non-management pre-IPO owners suffer losses, while managers benefit privately from these defenses, resulting in a significant inverse relationship between takeover defenses and IPO firm value.

6. **Optimal toeholds in takeover contests**[14]

   This paper explores the strategic accumulation of toeholds in takeover contests, demonstrating that raiders often acquire smaller stakes before bids to balance the benefits of larger stakes against the costs of managerial entrenchment if a takeover fails. The model highlights how managerial ownership influences takeover success and post-failure firm valuation, with insights into why raiders may prefer smaller toeholds.

7. **Large shareholders, takeovers and target valuation**

   This study investigates the role of large minority shareholders in the takeover process, particularly in the UK context. It shows that partial acquisitions, or toeholds, typically enhance firm value and increase the probability of takeover bids. However, the outcomes depend on the bidder's strategy and the regulatory environment, providing important context for studying India's SAST rules on substantial acquisitions.

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[13] Roosenboom P and van der Goot T, 'Takeover Defenses and IPO Firm Value in the Netherlands' (2003) 9(4) European Financial Management 463 https://doi.org/10.1111/1468-036X.00233

[14] Goldman E and Qian J, 'Optimal Toeholds in Takeover Contests' (2005) 77(2) Journal of Financial Economics 321 https://doi.org/10.1016/j.jfineco.2004.06.009

8. **Does Investor Misvaluation Drive the Takeover Market?**[15]

(This paper is one of the central papers which may drive the research in finding newer model for SAST). This work focuses on the overvaluation of target firms during M&A activities, emphasizing the mispricing that can occur in takeover offers. It connects this overvaluation with psychological biases in decision-making, helping to explain why certain low-priced takeover bids might succeed in emerging markets, including India.

9. **Takeover Activity, Valuation Estimates and Merger Gains: Modern Empirical Developments**[16]

Eckbo's book explores the empirical foundations of takeover activity, focusing on the valuation effects and merger gains for both acquirers and target firms. He argues that mergers and acquisitions (M&A) often lead to wealth creation, particularly for target shareholders, while acquirers generally experience modest or neutral returns. The book emphasizes the efficiency of the market for corporate control, suggesting that takeovers help allocate resources to their most productive uses. Eckbo also delves into the methodological advances in estimating merger gains, discussing how modern valuation techniques have evolved to account for market reactions and firm-specific characteristics. Additionally, he analyzes the regulatory impact on M&A, noting how antitrust laws and shareholder protection mechanisms influence the outcomes of takeover bids. This comprehensive empirical study is instrumental in understanding the dynamics of corporate control, valuation, and the real-world effects of mergers on firm value.

10. **"Fraud, Manipulation and Insider Trading in the Indian Securities Markets**[17]

This book delves into the intricacies of securities regulations in India, focusing on fraud, market manipulation, and insider trading. Sandeep Parekh offers an in-depth analysis of the legal frameworks and regulatory mechanisms designed to combat these malpractices. The book serves as a valuable resource for understanding how corporate governance can mitigate risks associated with unethical trading activities.

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[15] Sudarsanam PS, 'Large Shareholders, Takeovers and Target Valuation' (1996) 23(2) Journal of Business Finance & Accounting 295 https://doi.org/10.1111/j.1468-5957.1996.tb00904.x

[16] Dong M and others, 'Does Investor Misvaluation Drive the Takeover Market?' (2006) 61(2) Journal of Finance 725 https://doi.org/10.1111/j.1540-6261.2006.00852.x

[17] Sandeep Parekh, Fraud, Manipulation and Insider Trading in the Indian Securities Markets (2nd edn, Wolters Kluwer 2020)

11. **SEBI Act: A Legal Commentary on Securities & Exchange Board of India Act, 1992**[18]

    The book includes analyses of judicial decisions by the Securities Appellate Tribunal (SAT) and various courts, key insights to market manipulation as well as genesis of various securities laws are covered through this book.

12. **Insider Trading: Law and Practice**[19]

    This book provides insights to genesis of formation of SEBI as an institution, as well as, the formation of Takeover regulations. It specifies the intent and objectives of enacting the said regulations and law.

OBJECTIVES OF THE STUDY

1. To explore the underlying reasons companies, make low-priced tender offers despite a higher market valuation.

2. Examining the market and legal conditions that allow such offers to exist, including regulatory gaps or strategic motivations.

3. Analysing the market impact of these offers, including shareholder sentiment, stock price reaction, and overall market dynamics.

4. Compare India's SAST framework with international regulations to assess if similar phenomena occur globally and whether stronger regulatory safeguards exist elsewhere.

HYPOTHESIS

Low-priced SAST offers are driven by strategic motivations, such as gaining control, restructuring, or reducing public float, rather than being grounded in fair market valuations.

Regulatory gaps or loopholes in the SAST regulations enable "acquirers" to make low-priced offers without facing significant legal constraints.

[18] Sumit Agrawal

[19] Armaan Patkar, Insider Trading: Law and Practice (1st edn, Eastern Book Company 2019)

RESEARCH QUESTIONS

1. How effective is the current SEBI SAST Regulation 8 in ensuring fair pricing of takeover offers in India, and what specific aspects of the regulation contribute to or mitigate the occurrence of low-priced offers?
2. To what extent do the prescribed valuation methodologies in SAST Regulation 8 capture the true value of target companies, and how can these be improved to better reflect market realities and intrinsic company worth?
3. How do India's SAST Regulations compare with takeover regulations in mature markets like the UK and US in terms of minority shareholder protection, and what specific elements could be adapted to enhance the Indian framework?
4. What are the quantifiable short-term and long-term economic consequences of low-priced takeover offers on Indian capital markets, including effects on market efficiency, investor confidence, and foreign investment?

SCOPE & LIMITATION OF STUDY

The scope of this study encompasses the analysis of price differentials between open offers and market prices, exploring the factors that influence these disparities. It aims to evaluate the effectiveness of open offers in reflecting fair market value and assess investor responses to open offers compared to regular market trading. The research will examine price trends before, during, and after open offer periods to provide a comprehensive understanding of their impact on market dynamics.

However, this study faces several limitations that should be acknowledged. The analysis may be constrained by a limited sample size, potentially affecting the generalizability of the findings. There may be insufficient data on the final outcomes of some open offers, leading to incomplete conclusions. The study might also be subject to bias if it focuses on specific market sectors or time periods. External market factors could influence price differentials, making it challenging to isolate the precise impact of open offers. Limited access to proprietary trading data may hinder deeper insights into trading patterns and motivations. Additionally, varying regulatory environments across different markets could complicate comparisons and analysis. Lastly, potential time lags in available data might mean that the study does not fully reflect the most current market conditions, possibly affecting the relevance of its conclusions in rapidly changing financial markets.

RESEARCH METHODOLOGY

The doctrinal aspect of this study involves a systematic analysis of legal and regulatory frameworks governing takeover offers. This includes:

1. Comparative Jurisdictional Study: An in-depth examination and comparison of takeover regulations in India, the United States, and the United Kingdom. This cross-jurisdictional analysis aims to identify best practices, regulatory differences, and their potential impacts on offer pricing.
2. SEBI's Aims and Objectives: A critical review of the Securities and Exchange Board of India's (SEBI) stated goals and objectives, particularly concerning takeover regulations and fair pricing mechanisms.
3. Legal and Regulatory Documents: A comprehensive analysis of relevant orders, judgments, and notifications issued by SEBI and the Securities Appellate Tribunal (SAT). This includes examining landmark cases and their implications for takeover offer pricing.
4. Policy Circulars: An examination of circulars issued by SEBI and the Ministry of Finance, focusing on those that pertain to takeover offers, valuation methodologies, and price determination.

Empirical Research

The empirical component of this study involves quantitative analysis of real-world data to complement the doctrinal research. This includes:

1. Sample Set Creation: Development of a comprehensive dataset of takeover offers in India for the financial year 2023-24. This sample set will form the basis for subsequent analysis.
2. Data Sampling of Pricing Gaps: Collection and analysis of data on the price differentials between open offers and prevailing market prices. This will involve statistical analysis to identify patterns, trends, and anomalies in pricing gaps across different jurisdictions and market conditions.
3. Valuation Methodology Analysis: An examination of the various valuation methodologies employed in determining offer prices. This will include a

comparative analysis of different approaches used across the selected jurisdictions and their effectiveness in reflecting fair market value.

Data Collection and Analysis

Data will be collected from various sources, including stock exchange databases, regulatory filings, and financial reports. Statistical tools and software will be employed for data analysis, including measures of central tendency, dispersion, and correlation analysis where appropriate.

The combination of doctrinal and empirical methods will allow for a robust examination of both the legal framework and practical outcomes of takeover offer pricing. This mixed methodology approach aims to provide a nuanced understanding of the factors influencing price differentials and the effectiveness of current regulatory approaches in ensuring fair valuation in takeover scenarios.

SCHEME OF CHAPTERIZATION

Chapter I: Introduction
This chapter provides an overview of the research topic, focusing on the regulation of takeovers in India and the US. It introduces SEBI's SAST Regulations and the issue of low-priced offers, presenting the research problem and laying the groundwork for the comparative analysis.

Chapter II: Takeover Regulations in India
This chapter delves into the historical development and the evolution of takeover regulations in India, particularly SEBI's Substantial Acquisition of Shares and Takeovers (SAST) Regulations.

Chapter III: Comparative Analysis of International Frameworks (United States)
This chapter compares India's takeover regulations with the US system, focusing on the regulatory frameworks of both countries. The chapter looks at key elements like disclosure frameworks, pricing mechanisms, and the treatment of shareholders during takeovers.

Chapter IV: Empirical & Legislative Analysis of Open Offers
This chapter presents empirical data analysis on open offers approved by SEBI in 2024, comparing offer prices with market prices and analyzing the impact on shareholder value. The chapter also discusses strategic motivations behind low-priced offers and potential regulatory gaps.

Chapter V: Reform Proposals and Conclusion
The final chapter synthesizes the findings from the previous chapters and offers proposals for reforming SEBI's SAST Regulations, particularly addressing the issue of low-priced offers. It also compares the potential reforms with international best practices.

CHAPTER II: TAKEOVER REGULATIONS IN INDIA

1. GENISIS OF TAKEOVER REGULATIONS IN INDIA – AN INTRODUCTION

Takeover regulations have emerged as a cornerstone of corporate governance, designed to ensure transparency, fairness, and the protection of shareholders' interests in the dynamic landscape of mergers and acquisitions. In India, the evolution of these regulations reflects the country's economic liberalization and the growing sophistication of its capital markets. SEBI, established in 1992, introduced its first comprehensive set of takeover regulations in 1994 with the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations. This marked a significant step towards creating a structured framework for corporate acquisitions in the rapidly growing Indian economy.[20] The 1994 regulations were primarily aimed at addressing the increasing volume of acquisitions and corporate restructuring activities that followed the economic reforms of 1991.

Milestones in the evolution of India's takeover regulations include:

1994 Regulations	Introduced the concept of mandatory open offers and disclosure requirements for substantial acquisitions.
1997 Amendments	Addressed emerging challenges such as changes in control, fair pricing mechanisms, and enhanced protection for minority shareholders.
2002 Amendments	Further refined the regulations to balance corporate efficiency with shareholder protection.
2011 Regulations	The 2011 regulations, in particular, represented a paradigm shift in India's approach to takeovers. They introduced more stringent disclosure norms, revised the threshold for mandatory open offers, and refined the pricing mechanism to ensure fair valuation

<u>Importance of Fair Pricing in Takeover Offers</u>

The cornerstone of effective takeover regulations lies in ensuring fair pricing for all shareholders, particularly minority stakeholders who may be vulnerable to exploitation during

[20]Varottil, Umakanth, Investment Agreements in India: Is There an 'Option'? (August 19, 2011). NUJS Law Review, Vol. 4, p. 467, 2011, Available at SSRN: https://ssrn.com/abstract=1912436 or http://dx.doi.org/10.2139/ssrn.1912436

corporate acquisitions. SEBI's regulations have consistently emphasized the principle of equitable treatment, mandating transparent and fair pricing mechanisms in takeover offers. *The intention of triggering an offer, i.e. to allow shareholders to tender their shares at a fair value, is to provide "exit option" to those shareholders who would like to cease to be shareholders on basis of change of materiality of a substantial change in shareholding pattern.*[21] Further, the statement of objects and reasons of the code provide central theme for need of such regulations;

1) Protection of Minority Shareholders: Fair pricing ensures that small investors are not disadvantaged during takeovers, thereby maintaining investor confidence in the market.
2) Market Efficiency: Transparent and fair pricing mechanisms contribute to efficient price discovery in the capital markets.
3) Prevention of Insider Advantage: By mandating disclosure of pricing mechanisms, the regulations mitigate the risk of insiders exploiting information asymmetry for personal gain.
4) Promotion of Corporate Democracy: Fair pricing empowers all shareholders to make informed decisions about their investments during takeover situations.

The aspects of valuation methodologies ingrained in takeover regulations are as follows:

1) Volume-Weighted Average Market Price: This mechanism considers the market's valuation of the target company over a specified period, typically 60 trading days preceding the public announcement of the open offer.
2) Highest Negotiated Price: This ensures that minority shareholders receive at least the price paid by the acquirer to the main sellers.
3) Consideration of Other Factors: The regulations allow for consideration of other relevant factors that might influence the intrinsic value of the shares, such as book value, earnings per share, and industry benchmarks.

2. EVOLUTION OF SEBI TAKEOVER CODE

The regulation of corporate takeovers represents a critical aspect of securities law and corporate governance. In India, the evolution of takeover regulations reflects the country's journey towards creating a more transparent, equitable, and efficient capital market. This chapter

[21] Varun Matlani, 'Dynamics of SEBI Regulations and Adani-NDTV Takeover Conundrum' (Taxguru, 8 December 2022) https://taxguru.in/sebi/dynamics-sebi-regulations-adani-ndtv-takeover-conundrum.html accessed 17 October 2024.

examines the historical development, key milestones, and underlying rationale of the Securities and Exchange Board of India (SEBI) Takeover Code, from its inception to its current form.

Pre-SEBI Era: The Listing Agreement

The roots of takeover regulation in India can be traced back to the incorporation of Clause 40 in the listing agreement. This initial attempt at regulation mandated a public offer to shareholders if the acquisition of shares or voting rights exceeded 25%. However, as Sampath K.R. (2008) astutely observes; "Acquiring the voting rights a little below the threshold limit of 25% for making a public offer baffled the very design of the regulation"[22] This observation highlights the inherent limitations of the early regulatory framework, which savvy acquirers could easily circumvent.

Refinements to the Listing Agreement

Recognizing the inadequacies of the initial threshold, regulators reduced it to 10% in 1990. This adjustment aimed to cast a wider net and capture more potential takeover scenarios. Subsequently, Clauses 40A and 40B were introduced to address a critical gap in the existing regulations: changes in management control that did not necessarily involve changes in shareholding. These incremental changes to the listing agreement represented early attempts to grapple with the complexities of corporate control transactions. However, it was criticized that, "The listing agreement, being essentially a contractual obligation between listed companies and stock exchanges, lacked the comprehensive regulatory teeth necessary to effectively govern the increasingly sophisticated takeover landscape".[23]

The SEBI Era: A Paradigm Shift in Takeover Regulation

The enactment of the Securities and Exchange Board of India (SEBI) Act in 1992 marked a watershed moment in Indian securities regulation. This legislative framework empowered SEBI to regulate substantial acquisitions of shares and takeovers, granting it broad authority to maintain market integrity. The SEBI Act 1992 represented a paradigm shift in Indian securities regulation, centralizing regulatory authority and providing SEBI with robust enforcement

[22] Tabrez Ahmad, 'The Takeover Code and its Impact on the Corporate Sector' (SSRN, 12 September 2011) https://manuu.edu.in/sites/default/files/School-of-Law/Publication/Tabrez-Ahmad/SSRN-id1940871%20The%20Takeover%20Code.pdf accessed 17 October 2024.

[23] Securities and Exchange Board of India, 'Board Memorandum – Review of the Regulatory Framework for Capital Raising by Issuers' (SEBI, 22 February 2023) https://www.sebi.gov.in/sebi_data/meetingfiles/1417500933558-a.pdf accessed 17 October 2024.

mechanisms. This new regulatory landscape set the stage for more comprehensive and enforceable takeover regulations.[24]

1. **The First Takeover Code: SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1994**

Building upon the foundation laid by the SEBI Act, India's first comprehensive takeover code was promulgated in 1994. The SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1994 ("1994 Code"), represented a significant leap forward in takeover regulation.

Key features of the 1994 Code included, Mandatory open offer requirements, Disclosure norms for substantial acquisitions, Regulations governing competitive bids.[25] However, while the 1994 Code was a commendable first step, it soon became apparent that the rapidly evolving Indian corporate landscape required a more nuanced and comprehensive regulatory framework.

2. **The 1997 Takeover Code: A New Era of Regulation**

    1) The First Bhagwati Committee and Its Recommendations

    Recognizing the need for a more robust takeover regime, SEBI constituted the first Bhagwati Committee in 1996.[26] The committee, led by Justice P.N. Bhagwati, submitted its report on January 18, 1997, proposing sweeping changes to the existing takeover regulations.

    Based on the Bhagwati Committee's recommendations, the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, were notified. This new code introduced several groundbreaking provisions:

    1) <u>Revised Trigger Points:</u> The code established new thresholds for mandatory open offers, including the concept of "creeping acquisition."

    2) <u>Enhanced Disclosure Requirements:</u> More stringent disclosure norms were introduced for both acquirers and target companies.

[24] Supra (n 2)
[25] Nishith Desai Associates, 'Takeover Code Dissected' (Nishith Desai Associates, November 2010) https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Ma%20Lab/Takeover%20Code%20Dissected.pdf accessed 17 October 2024.
[26] Securities and Exchange Board of India, 'Report of the Takeover Regulations Advisory Committee' (SEBI, 19 July 2010) https://www.sebi.gov.in/takeover/takeoverreport.pdf accessed 17 October 2024.

3) Competitive Bidding Process: A formal framework for competitive bids was established, promoting fairness and maximizing shareholder value.

4) Independent Director's Role: The code mandated a more active role for independent directors in takeover situations.

5) Pricing Formula: A new pricing formula for open offers was introduced, aimed at ensuring fair treatment of all shareholders.

"The 1997 Code represented a quantum leap in India's approach to takeover regulation, aligning it more closely with international best practices while addressing unique aspects of the Indian market".[27]

2) Impact and Reception of the 1997 Code

The 1997 Takeover Code was generally well-received by market participants and legal scholars. It brought much-needed clarity and structure to the takeover process in India. However, as with any major regulatory overhaul, implementation challenges emerged. While the 1997 Code significantly improved the takeover landscape in India, it also revealed the complexities of balancing various stakeholder interests in a rapidly evolving market economy.

3. 2002 Amendments: Fine-tuning the Regulatory Framework

1) The Second Bhagwati Committee[28]

As the Indian corporate sector continued to evolve, SEBI recognized the need for further refinements to the takeover regulations. In 2002, a second Bhagwati Committee was constituted to review the 1997 Code and suggest improvements.

The SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2002, introduced several important changes, which were perceived as the 2002 amendments to the Takeover Code demonstrated SEBI's commitment to creating

[27] Supre (n 20)
[28] Securities and Exchange Board of India, 'Guidelines for Substantial Acquisition of Shares and Takeovers' (SEBI, 2009) https://www.sebi.gov.in/sebi_data/attachdocs/1287826537018.pdf accessed 17 October 2024.

a dynamic regulatory framework capable of addressing emerging market realities and global best practices.

1) Revised Creeping Acquisition Limit: The annual creeping acquisition limit was increased from 5% to 10%, providing greater flexibility for incremental stake increases.

2) Introduction of "Persons Acting in Concert" (PAC): The concept of PAC was formally introduced, addressing concerns about coordinated acquisitions.

3) Enhanced Disclosure Norms: More comprehensive disclosure requirements were implemented, particularly for indirect acquisitions.

4) Delisting Implications: The amendments addressed the interplay between takeovers and delisting, providing clarity on scenarios where a successful takeover might lead to delisting.

5) Competing Offers: The framework for competing offers was further refined to ensure a level playing field.

Judicial Interpretations and the Scope of the Takeover Code

The evolving nature of the Takeover Code has been significantly shaped by judicial interpretations. Courts have played a crucial role in clarifying the scope and application of the regulations.

2) K.K. Modi v. Securities Appellate Tribunal[29]

In the landmark case of K.K. Modi v. SAT (2002), the Bombay High Court elucidated the fundamental purpose of the Takeover Code as "The code has been framed with a view to protect the interests of investors in securities and to promote development of and to regulate the securities market and for matters connected therewith or incidental thereto"

This judicial pronouncement underscores the dual objectives of investor protection and market development that underpin the Takeover Code. The case is a landmark ruling in Indian takeover law, particularly concerning the interpretation of the SEBI

[29] K K Modi v Securities Appellate Tribunal (2001) 2002(2) BOMCR 523, [2003] 113 COMP CAS 418 (BOM).

(Substantial Acquisition of Shares and Takeovers) Regulations, 1997. The dispute arose when the Modi family, promoters of Modi Rubber Limited (MRL), entered into an agreement to sell their stake in the company. This triggered the takeover regulations, requiring an open offer to public shareholders. Despite the termination of the agreement, SEBI directed the acquirer to proceed with the open offer, a directive that the Securities Appellate Tribunal (SAT) upheld. K.K. Modi challenged SAT's decision in the Bombay High Court.

The case raised significant legal questions, including whether the open offer obligation could survive the termination of the underlying agreement. The court ruled that the obligation to make a public announcement, once triggered, becomes an independent statutory duty, irrespective of whether the initial agreement remains in force. The judgment also reinforced SEBI's broad regulatory powers, ensuring investor protection by prioritizing the interests of public shareholders over the commercial interests of the promoters. This ruling has had far-reaching consequences, established legal certainty and strengthened SEBI's authority in regulating takeovers, while also balancing the interests of public investors against market dynamics.

3) Limitation of Scope: Management and Mismanagement

In subsequent cases, courts have clarified that the Takeover Code has a limited role and is not meant to ensure proper management of companies or provide remedies for mismanagement. The Securities Appellate Tribunal (SAT) observed, "The main objective of the code is to ensure equality of treatment and opportunity to all shareholders and afford protection to them"[30]

This interpretation highlights the code's focus on shareholder rights and fair treatment rather than broader corporate governance issues.

4) Daiichi Sankyo Company Ltd. v. Jayaram Chigurupati and Ors.[31]

This case dealt with the issue of indirect takeovers. Daiichi Sankyo acquired a majority stake in Ranbaxy, which held 46.85% of Zenotech's shares, triggering the need for an open offer to Zenotech shareholders. A dispute arose over the appropriate offer price

[30] (Punjab State Industrial Corporation Ltd. v. SEBI, 2001).
[31] Daiichi Sankyo Company Ltd v Jayaram Chigurupati and Ors (2010) 33 AIR 2010 SC 3089, [2010] 157 Comp Cas 380 (SC), [2010] 103 SCL 1 (SC), 2010 (6) UJ 3002 (SC).

for Zenotech's shares, with Daiichi offering ₹113.62 per share, while the respondents demanded ₹160 per share.

The Supreme Court reversed the Securities Appellate Tribunal's decision and ruled that Daiichi and Ranbaxy were not "persons acting in concert" during the acquisition. The offer price of ₹113.62 was found compliant with SEBI regulations, as it was calculated under the applicable provisions for indirect acquisitions. The court clarified that simply being a subsidiary does not automatically make companies act in concert without a shared objective of acquisition.

5) Premier Limited Case[32]

The case revolved around the transfer of 8.4 crore shares of PAL Peugeot Ltd. to Premier Ltd. through a gift, raising Premier's holding from 30.12% to 62.08%. The complaint argued that this transaction violated SEBI's takeover regulations, as Premier had not made a public announcement.

SEBI ruled that the acceptance of the gift amounted to an acquisition, thus making Premier an acquirer under SEBI regulations. However, since the shares were not registered in Premier's name, they could not exercise voting rights, and no violation of Regulation 11(1) was found.

6) OCL India Limited Case[33]

The promoters of OCL India increased their voting rights after a buyback without acquiring new shares. SEBI argued that the promoters should have made a public announcement as their shareholding exceeded 5%. SAT ruled that the promoters should have applied for an exemption from SEBI regulations, and directed SEBI to consider their application accordingly.

7) IAG Company Limited Case[34]

The acquirer, Anjaniputra Ispat Limited, consolidated its holdings in IAG Company Limited by acquiring 27.64% shares and later increasing it to 41.77% without

[32] Order of SEBI, WTM/KMA/CFD/307/10/2010.
[33] Order of SEBI, WTM/KMA/CFD/212/01/2011.
[34] Order of SEBI, WTM/KMA/CFD/303/10/2010.

complying with SEBI’s public offer regulations. SEBI found that the acquirer violated Regulations 10, 11(1), and 12 of the SEBI (SAST) Regulations, 1997, and initiated adjudication proceedings.

Conclusion

"The journey of India's takeover regulations is a testament to the country's commitment to developing a world-class securities market. It exemplifies the delicate balance between fostering corporate dynamism and protecting investor interests"[35] The evolution of the SEBI Takeover Code reflects India's journey towards creating a sophisticated, transparent, and efficient capital market. From its humble beginnings in the listing agreement to its current comprehensive form, the Code has sought to balance the interests of various stakeholders while promoting fair and equitable practices in corporate control transactions.

As India's capital markets continue to evolve and integrate with global financial systems, it is likely that the Takeover Code will undergo further refinements. The ongoing challenge for regulators will be to maintain a framework that promotes market efficiency and investor protection while remaining adaptable to the ever-changing landscape of corporate finance and governance.

[35] Supra (n 20)

CHAPTER III – COMPARITIVE ANALYSIS OF INTERNATIONAL FRAMEWORK – UNITED STATES

1. UNITED STATES OF AMERICA (SECURITIES EXCHANGE COMMISSION)

Evolution of Takeover Regulations

The regulatory framework governing takeovers in the United States is multi-faceted, involving both federal and state laws, as well as stock exchange rules. At the federal level, the U.S. Securities and Exchange Commission (SEC) plays a central role in regulating takeovers, particularly through the Securities Act of 1933[36] and the Securities Exchange Act of 1934.[37] These laws establish the key disclosure requirements and procedural rules that companies and potential acquirers must follow in the acquisition of publicly traded companies. One of the most critical components in the regulation of takeovers is the **tender offer**, an open offer made to shareholders to purchase their shares at a premium, often used as a mechanism for gaining control over a company.

Tender offers are subject to stringent regulation to protect shareholders from coercion and to ensure transparency and fairness in the transaction process. The U.S. takeover framework evolved significantly over the 20th century, with several key legislative acts shaping the landscape for modern M&A (mergers and acquisitions) activities, especially open offers. In particular, the **Williams Act of 1968** was introduced to provide greater transparency and protect minority shareholders by requiring disclosures when an entity acquires more than 5% of a company's stock.[38] This act established the foundation for the regulation of tender offers, requiring mandatory filings and disclosures that continue to form the backbone of takeover regulation today.

State laws, most notably Delaware's corporate laws, also play a pivotal role in takeovers by regulating the fiduciary duties of boards and the conduct of target companies. Given that many U.S. companies are incorporated in Delaware, the rulings of the Delaware Court of Chancery

[36] Securities Act of 1933.
[37] Securities Exchange Act of 1934.
[38] Williams Act of 1968.

on fiduciary duty—especially in takeover situations—have been instrumental in defining the obligations of boards in approving or rejecting offers.

In terms of valuation, tender offers often involve a premium over the market price of the target company's shares. The **Best Price Rule**[39], under Rule 14d-10 of the Securities Exchange Act[40], ensures that all shareholders receive the highest price paid by the acquirer during the tender process, thus preventing preferential treatment of select shareholders.

Year	Legislation/Act	Provisions/Impact
1933	Securities Act of 1933	Established initial rules for securities offerings and investor protections.
1934	Securities Exchange Act of 1934	Created the SEC; provided broad powers to regulate securities markets, including M&A disclosures.
1968	Williams Act	Introduced tender offer regulation, mandatory disclosures for acquiring 5%+ of shares, and protection of minority shareholders.
1985	Delaware Supreme Court's **Unocal Corp. v. Mesa Petroleum**[41]	Established standards for the adoption of defensive measures by boards against hostile takeovers.
2000	Rule 14d-10 (Best Price Rule)	Ensures that all shareholders are offered the same price in a tender offer.
2010	Dodd-Frank Wall Street Reform and Consumer Protection Act	Strengthened shareholder rights and imposed further disclosure obligations for corporate governance and takeover defenses.

Key Acts and Legislation in U.S. Takeover Regulation

[39] Cornell Law School, '42 CFR § 447.505 - Best Price' https://www.law.cornell.edu/cfr/text/42/447.505#:~:text=Best%20price%20means%2C%20for%20a,%2C%20retailer%2C%20provider%2C%20health%20maintenance accessed 17 October 2024.
[40] Ibid (n 36)
[41] Unocal Corp v Mesa Petroleum 493 A 2d 946 (Del 1985).

Legislative Framework for Regulating Takeovers

The regulation of takeovers in the U.S. has been shaped by key legislative acts and court decisions that collectively provide a robust framework for managing mergers and acquisitions. This section will explore each of these major developments, outlining their importance and the specific regulatory mechanisms they introduced, with a particular focus on open offers and tender offers.

1. **Securities Act of 1933**

   The **Securities Act of 1933** was one of the earliest legislative responses to the stock market crash of 1929 and the subsequent Great Depression.[42] The act's primary goal was to restore investor confidence by ensuring greater transparency in securities transactions and establishing rules to protect investors from fraud. The act required companies to disclose significant financial information when offering securities to the public, thereby allowing investors to make informed decisions. Though primarily concerned with initial public offerings, the act laid the foundation for regulating public companies, including those subject to takeovers. The central theme of the legislation was based on, (1) Required registration of securities offerings with the SEC, (2) Mandated full disclosure of financial and material information, (3) Set liability for misrepresentation and fraud in securities sales.[43]

   Though the Securities Act of 1933 did not specifically address takeovers, it established the disclosure framework that would later be expanded to govern corporate control transactions.

2. **Securities Exchange Act of 1934**

   The **Securities Exchange Act of 1934** expanded on the 1933 Act by creating the **Securities and Exchange Commission ("SEC")[44]**, tasked with enforcing securities laws and regulating the securities markets. This act is particularly critical in the context of takeovers as it introduced reporting requirements that apply directly to corporate control transactions.

[42] Securities Act of 1933, 15 U.S.C. § 77a et seq.
[43] Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq.
[44] 17 C.F.R. § 240.13d-1.

- **Section 13(d)**: Requires that any person or entity acquiring more than 5% of a publicly traded company's shares must file a Schedule 13D with the SEC. This disclosure includes the purpose of the acquisition and any plans regarding future control or influence over the target company. The goal is to prevent stealth takeovers and give shareholders timely notice of potential changes in control.[45]
- **Section 14(e)**: Governs tender offers, mandating that those launching a tender offer must disclose all material information to the SEC and target shareholders. This section also prohibits fraud, manipulation, and misleading statements in connection with tender offers.

The 1934 Act is a cornerstone of U.S. securities regulation and significantly influences takeover activities, especially through its mandatory disclosure obligations for acquiring parties.

3. **Williams Act of 1968**

The **Williams Act** is the primary law governing tender offers and was introduced to fill regulatory gaps in the 1934 Act. Tender offers allow acquirers to bypass a company's management and appeal directly to its shareholders to sell their shares at a premium. Before the Williams Act, such offers could occur with little oversight, often disadvantaging uninformed shareholders and enabling acquirers to accumulate control without disclosure. The pillars of this act are based as follows;

Disclosure Threshold	Requires any entity acquiring 5% or more of a company's stock to disclose its identity, source of funds, and intentions via a Schedule 13D filing within 10 days of the purchase.
Tender Offer Regulations	Mandates that tender offers must remain open for at least 20 business days, allowing shareholders ample time to decide whether to accept the offer. The act also requires that if an acquirer raises the offer price, all shareholders who have already tendered their shares must receive the higher price (known as the **Best Price Rule**).
Equal Treatment of Shareholders	All shareholders must be offered the same terms during a tender offer to ensure fairness.

[45] 17 C.F.R. § 240.14e-1.

The Williams Act balances the interests of acquirers and target company shareholders by mandating transparency and equitable treatment, thereby preventing unfair advantage by insiders or hostile parties.

4. **Delaware Court's Unocal Corp. v. Mesa Petroleum Co. (1985)**

Unocal Corp. v. Mesa Petroleum Co. is a landmark case in U.S. corporate law, particularly in the context of hostile takeovers. Decided by the Delaware Supreme Court in 1985, it introduced an important legal standard governing the defensive measures that a corporate board of directors can adopt to fend off hostile bids. The case set a precedent for how courts evaluate the actions of boards in responding to hostile takeovers, establishing what is now known as the **"Unocal Standard."**

Facts of the Case

The case arose from a hostile takeover attempt by **Mesa Petroleum**, a company controlled by T. Boone Pickens, to acquire **Unocal Corporation**, a much larger oil company. Mesa launched a two-tiered tender offer, a common hostile takeover strategy at the time. Under this strategy:

1. In the **first tier**, Mesa would buy 37% of Unocal's shares at $54 each in cash.
2. In the **second tier**, remaining shareholders would be forced to accept subordinated debentures that were worth less than the initial cash offer.

This created pressure for shareholders to tender their shares in the first tier of the offer, fearing that if they waited, they would receive less favourable terms in the second tier. This is often referred to as a "coercive" offer, as it effectively forces shareholders to act out of fear of losing value.

In response, Unocal's board of directors adopted a selective stock buyback plan as a defensive measure. The company would buy back its shares at $72 per share—well above Mesa's offer—but it would exclude Mesa from participating in the buyback. This strategy was designed to protect Unocal's shareholders from the coercive nature of Mesa's offer by offering them a more attractive alternative.

Mesa sued, arguing that Unocal's defensive measures were unfair and amounted to discrimination against Mesa.

Legal Issue

The key legal issue in the case was whether Unocal's selective stock buyback, a form of defensive measure, violated the board's fiduciary duties to shareholders, specifically the duties of care and loyalty. The Delaware Supreme Court was tasked with determining under what circumstances a corporate board can take defensive actions to block a hostile takeover.

The Unocal Standard

In its ruling, the Delaware Supreme Court upheld Unocal's selective buyback and introduced a two-pronged test, which has become known as the **Unocal Standard**. This test determines the validity of defensive measures taken by a board of directors in response to a hostile takeover:

1. **Reasonable Grounds to Believe a Threat Exists**:

   The board must show that it had **reasonable grounds for believing** that the takeover posed a threat to the company's policy and effectiveness. In Unocal, the court found that Mesa's two-tiered offer posed a threat to Unocal's shareholders because it was coercive and undervalued the company. The board's decision was based on good faith, and the directors had made a reasonable assessment of the threat posed by the hostile takeover.

2. **Proportionality of Defensive Measures**:

   The defensive measures adopted by the board must be **reasonable in relation to the threat posed**. This means that the actions taken cannot be excessive or disproportionate to the threat. In Unocal, the selective buyback was considered a proportional response because it was aimed at protecting shareholders from the coercive aspects of the takeover bid without completely blocking the offer. The court emphasized that the defensive measure did not unfairly deprive Mesa of its ability to pursue the offer but simply excluded Mesa from participating in the buyback designed to protect shareholders.

Significance of the Unocal Standard

The Unocal decision gave corporate boards significant latitude to defend against hostile takeovers, provided that:

1) They act in **good faith**,

2) They identify a legitimate threat to the company or its shareholders, and
3) Their response is **proportional** to the threat.

The case was groundbreaking because it allowed boards to prioritize long-term corporate strategy and shareholder value over the immediate financial gains offered by a hostile bidder. It also provided a clear judicial framework for evaluating whether a board's defensive measures in a takeover scenario are legally permissible.

Before Unocal, directors were often constrained by the **business judgment rule**, which gives directors wide discretion to make decisions for the company as long as they are acting in good faith and in the best interest of the corporation. However, in the context of hostile takeovers, the court recognized the need for a **higher level of scrutiny** due to the potential conflicts of interest that arise when directors are defending against a bid that could cost them their jobs.

Post-Unocal Developments

Unocal's legal test has been applied in subsequent takeover cases, often in conjunction with other doctrines like the Revlon duties (established in Revlon, Inc. v. MacAndrews & Forbes Holdings[46]), which impose additional responsibilities on boards when they are considering selling the company or undergoing a change of control.

The Unocal Standard remains a cornerstone of Delaware corporate law, influencing how hostile takeovers are defended and shaping the strategic decisions of boards across the U.S. It essentially struck a balance between the interests of shareholders, who may benefit from takeovers, and the management of companies, who may resist takeovers for reasons that are not always aligned with shareholder interests.

Conclusion

The **Unocal Corp. v. Mesa Petroleum Co.** case set a vital precedent in U.S. takeover law by establishing a legal framework for assessing defensive actions by boards of directors. The **Unocal Standard** continues to guide courts in evaluating whether boards act appropriately in defending against hostile takeovers, ensuring that defensive measures are both reasonable and proportional to the threat posed by the acquiring party. The case fundamentally shaped corporate governance by allowing directors to consider the long-

[46] Revlon, Inc v MacAndrews & Forbes Holdings 506 A 2d 173 (Del 1986).

term well-being of the company and its shareholders when evaluating hostile bids, rather than being forced to succumb to short-term market pressures.

5. **Rule 14d-10 (Best Price Rule) – 2000**

Rule 14d-10, commonly referred to as the Best Price Rule, was implemented to ensure fairness in tender offers, particularly with respect to pricing. [47]Under this rule, any tender offer for securities must provide all shareholders with the highest price paid to any one shareholder during the offer period. The Key Elements of the Best Price Rule were as follows:

1) **Price Uniformity**: All shareholders who tender their shares must receive the same price, preventing acquirers from offering preferential terms to certain shareholders, such as management or institutional investors.

2) **Scope**: Applies to both cash and stock offers, ensuring uniformity in the treatment of all participating shareholders.

This rule addressed concerns about discriminatory pricing in tender offers and reaffirmed the principle of equitable treatment for all shareholders.

6. **Dodd-Frank Wall Street Reform and Consumer Protection Act (2010)**

The **Dodd-Frank Act** was introduced in response to the 2008 financial crisis and, while primarily focused on financial regulation, it also impacted corporate governance and takeovers. The act strengthened shareholder rights and provided mechanisms for greater oversight of corporate boards.

1) **Say-on-Pay**: Introduced non-binding shareholder votes on executive compensation packages. While not directly related to takeovers, these provisions ensure that executive pay aligns with shareholder interests, especially in M&A situations.

2) **Increased Disclosure**: Requires companies to disclose more information regarding board structures, executive compensation, and potential conflicts of interest during takeover situations.

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[47] Supra (n 39)

Dodd-Frank enhanced transparency and shareholder influence, making it more difficult for boards to engage in self-dealing or to act against shareholders' best interests during takeover bids.

Valuation of Open Offers

The pricing of a **tender offer** reflects a strategic decision by the acquirer to provide shareholders with an incentive to tender their shares. The offer price typically exceeds the **market price** of the target company's stock, constituting a premium. Acquirers calculate this premium by employing valuation models that factor in both the current market conditions and intrinsic value estimates.

1. Premium Pricing and Market Valuation

Tender offers generally offer a **premium** over the target's market value to incentivize shareholders. This premium is often calculated based on two types of valuations[48]:

1. Market-Based Valuation: This involves the use of metrics like price-to-book ratio (P/B) and price-to-earnings (P/E) ratios to establish a fair premium based on current stock price.

2. Fundamental Valuation: In contrast, a more intrinsic approach involves models like the Residual Income Model (RIM) and Discounted Cash Flow (DCF). These models attempt to derive a firm's true value by considering future earnings and growth opportunities, accounting for the time value of money.

For instance, the P/B and P/V (price to residual income value) ratios are key in misvaluation assessments, where higher P/B ratios in bidders suggest overvaluation compared to targets. According to Dong et al. (2006), bidders tend to pay higher premiums when their stock is overvalued, using their inflated stock as currency to acquire undervalued targets.[49]

2. Valuation Models in Open Offers

The empirical research by Dong et al. (2006) utilizes mathematical valuation models such as Residual Income Valuation (RIV): This approach estimates the intrinsic value of a firm by

[48] Supra (n 16)
[49] Ibid

accounting for the present value of future earnings beyond the required return on equity. The formula is:

$$V(t) = B(t) + \sum_{i=1}^{T} \frac{E[ROE(t+i) - r_e]B(t+i-1)}{(1+r_e)^i}$$

Where:

- V(t)V(t)V(t) is the intrinsic value of the firm at time ttt,
- B(t)B(t)B(t) is the book value of equity,
- ROE(t+i)ROE(t+i)ROE(t+i) is the forecasted return on equity for future periods,
- rer_is the cost of equity.

This model focuses on future profitability and uses analysts' forecasts to assess whether the price offered during a tender reflects the target's intrinsic value.

3. Misvaluation Hypothesis

The misvaluation hypothesis suggests that acquirers with overvalued stocks prefer to use stock as currency to pay for acquisitions. In such cases, the bidder's P/B or P/V ratios can provide insights into whether they are paying a premium based on market mispricing. According to the hypothesis, an overvalued acquirer is likely to offer more than the intrinsic value of the target, leveraging its inflated equity.[50]

4. Best Price Rule: Ensuring Fair Pricing for All Shareholders

The Best Price Rule, under Rule 14d-10 of the Securities Exchange Act, ensures that all shareholders receive the highest price offered in a tender offer. This rule aims to prevent preferential treatment of specific shareholders, ensuring equity and fairness in tender offer transactions. Key Aspects of the Best Price Rule are as follows:

<u>Uniform Pricing:</u> All shareholders tendering their shares during the offer period must receive the same price, eliminating the possibility of private deals or differential pricing for insiders or major shareholders.

[50] Ibid

Fairness in Consideration: The rule applies whether the consideration is cash, stock, or a mix, requiring that the highest price paid in the transaction is offered to all shareholders, regardless of when they tender their shares.

2. COMPARITIVE ANALYSIS – INDIA & UNITED STATES

Introduction

Takeover regulations in the U.S. and India aim to protect shareholders and ensure transparency, though they differ significantly in structure and approach. In the U.S., the Securities and Exchange Commission (SEC) enforces federal laws, notably the Williams Act (1968), which mandates disclosure and fairness in tender offers, while state laws, especially Delaware's, govern corporate fiduciary duties and defence strategies like poison pills. India's takeover regulations are primarily overseen by the SEBI under the Substantial Acquisition of Shares and Takeovers (SAST) Regulations, 2011, which emphasize disclosure thresholds and mandatory open offers once a specific acquisition threshold is crossed. While the U.S. framework offers a more flexible, market-driven environment with robust defensive mechanisms, India's approach focuses on transparency and minority shareholder protection, with fewer hostile takeovers due to regulatory and structural factors.

Disclosure Framework

1. **United States: Section 13(d) of the Securities Exchange Act**

   In the U.S., disclosure requirements for takeovers are governed by **Section 13(d) of the Securities Exchange Act of 1934**. Under this provision, any entity that acquires more than **5%** of a publicly traded company's stock must file a **Schedule 13D** with the **Securities and Exchange Commission (SEC)** within **10 days** of the acquisition. This filing must disclose, (1) The acquirer's identity and background, (2) The number of shares acquired and the method of acquisition (3) The source of funds used in the acquisition, (4)The acquirer's intentions with respect to future plans, including whether they intend to acquire additional shares or seek control of the company.

   This requirement aims to provide **early warning** to the company, its shareholders, and the market, giving them time to respond to any potential change in control. Failure to disclose can lead to legal and financial penalties, making the disclosure regime strict and comprehensive.

   Additionally, the **Williams Act (1968)** supplements this disclosure framework by mandating **timely reporting** of large stock acquisitions and **tender offers**, thereby preventing acquirers from secretly building up significant stakes in companies without notifying shareholders.

2. **India: SEBI's SAST Regulations**

In India, disclosure obligations are governed by the **Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011** (SAST). The regulations mandate public disclosures when certain thresholds of shareholding are crossed. Specifically, (1) An acquirer is required to disclose any acquisition that crosses the **5% threshold** to the company and **SEBI** within **two working days** (2) Subsequent acquisitions that exceed additional **5% increments** (i.e., 10%, 15%) also trigger disclosure requirements, (3) When an acquirer's shareholding exceeds **25%**, a **mandatory open offer** must be made to acquire an additional 26% of shares from public shareholders at a determined minimum price, ensuring that all shareholders can benefit from any control premium paid for the company.

Unlike the U.S., where disclosure is primarily about **intent and holdings**, India's regulations link disclosure directly to **mandatory actions** like open offers, providing greater protection to minority shareholders by requiring the acquirer to offer the same terms to all shareholders once significant control is being sought.

Parameter	**United States**	**India**
Governing Law	**Section 13(d)** of the **Securities Exchange Act of 1934**, amended by the **Williams Act (1968)**. This focuses on protecting investors from hidden takeovers by requiring disclosure of significant stock acquisitions.	**SEBI (Substantial Acquisition of Shares and Takeovers) Regulations (SAST), 2011** under the **Securities and Exchange Board of India Act, 1992**. SAST focuses on protecting shareholders by mandating open offers during substantial acquisitions.
Regulatory Authority	The SEC enforces federal securities laws, ensuring compliance with disclosure rules	SEBI regulates disclosures, protecting minority shareholders and maintaining market transparency in India's capital markets.

	and preventing market manipulation during takeovers.	
Disclosure Trigger	Acquisition of **5% or more** of the shares or voting rights of a publicly traded company triggers a disclosure requirement under **Schedule 13D**.	Acquisition of **5% or more** of the shares or voting rights triggers public disclosure under SAST. Further thresholds (10%, 15%) also mandate additional disclosures.
Subsequent Disclosure Obligations	**No specific incremental thresholds** after the 5% trigger. However, material changes to ownership (1% change in holding) or intentions must be reported through an **amended Schedule 13D**.	Disclosure is required at **5% incremental thresholds** (e.g., 10%, 15%, etc.). Additionally, crossing **25%** triggers a **mandatory open offer** to acquire an additional 26% of shares from public shareholders.
Timing of Disclosure	The acquirer must file **Schedule 13D within 10 days** of crossing the 5% threshold. The 10-day window has been criticized for allowing acquirers to accumulate more shares before disclosure.	Disclosures must be made to **SEBI**, the company, and stock exchanges **within 2 working days** of acquisition. India's tighter timeline provides less room for further accumulation without transparency.
Content of Disclosure	The acquirer must disclose: **Identity and background** of the acquirer. **Purpose of the acquisition** (e.g., seeking control or passive investment). **Source of funds** used for the acquisition. Details of the acquirer's **plans** for the target company, such as changes to the business, management, or capital structure.	Disclosures include: **Identity** and **nature** of the acquirer (individual, entity, or group). **Details of the transaction**, including any direct or indirect acquisitions. Disclosure of **intentions** (e.g., control, takeover, passive stake. Mandatory **open offer** if the 25% threshold is crossed, ensuring equal treatment of all public shareholders

Mandatory Open Offer Requirement	There is **no automatic open offer requirement** upon crossing 5% or any other threshold. However, tender offers may follow if the acquirer seeks full control. The U.S. framework focuses more on voluntary tender offers and negotiated deals.	Upon crossing **25%** ownership, a **mandatory open offer** must be made to acquire an additional 26% of shares from public shareholders. This ensures equal opportunity for all shareholders to sell their shares at a fair price during control changes.
Valuation of Mandatory Offers	The **Best Price Rule** under **Rule 14d-10** ensures that all shareholders receive the highest price paid during a tender offer. This applies equally to cash and stock offers, but only when a formal tender offer is initiated.	SEBI mandates a **minimum offer price** based on historical share prices and the highest price paid by the acquirer in the preceding 52 weeks. This ensures that all shareholders receive a fair value for their shares during an open offer, especially when control changes hands.
Consequences of Non-Disclosure	Failure to comply with **Schedule 13D** filing requirements can result in civil penalties, enforcement actions by the SEC, and injunctions against the acquirer. In extreme cases, it can lead to **criminal charges** for fraud or manipulation.	Non-compliance with disclosure requirements under **SEBI's SAST** regulations can result in heavy penalties, **disqualification from holding board positions**, and regulatory restrictions. SEBI has authority to reverse transactions or mandate corrective actions to protect minority shareholders.
Focus of Regulation	**Transparency and Market Efficiency**: U.S. regulations focus on ensuring transparency for the market and shareholders, enabling informed decision-making regarding potential takeovers. The emphasis is on	**Shareholder Protection and Equal Treatment**: Indian regulations prioritize protecting minority shareholders during substantial acquisitions by mandating open offers and ensuring all shareholders

	timely disclosure of intentions and holding changes.	benefit from the control premium paid by the acquirer.
Regulatory Scope	The U.S. system offers more **flexibility** for acquirers, particularly in hostile takeovers, with fewer automatic triggers for shareholder actions (like open offers). However, the system places significant emphasis on preventing **stealth acquisitions** through rigorous disclosure of intentions.	India's framework is more **prescriptive**, with **mandatory open offers** triggered at key thresholds. This system ensures **greater protection** for minority shareholders, but it may limit the flexibility of acquirers compared to the U.S. system, especially in market-driven takeovers.

3. **Comparative Analysis**

The U.S. system offers more flexibility to acquirers and encourages **market-driven acquisitions**, including hostile takeovers. However, the **10-day disclosure window** provides acquirers a chance to increase their holdings before disclosure, which can be disadvantageous for existing shareholders.

The SAST Regulations in India provide stronger protection for minority shareholders, with mandatory open offers ensuring equal treatment. The shorter 2-day disclosure period ensures timely transparency but can restrict the flexibility of acquirers. India's system is more protective but less conducive to hostile or unsolicited takeovers compared to the U.S. India's system may be seen as better for protecting shareholders, especially minority interests, due to its strict open offer rules and tight timelines. However, the U.S. system allows for more flexible corporate control battles, making it more favourable for acquirers seeking to execute takeovers with strategic speed and agility. The choice of which system is "better" depending on whether the priority is shareholder protection (India) or acquisition flexibility and market dynamics (U.S.).

Valuation Guidelines

Tender offers are central to the takeover process in both the United States and India, but the regulatory frameworks governing how they are conducted and how pricing is determined reflect each country's different approach to balancing market flexibility with shareholder protection. In both jurisdictions, the primary focus is ensuring that shareholders receive fair value for their shares during an acquisition.

1. United States: Williams Act and the Best Price Rule

In the U.S., tender offers are regulated primarily by the **Williams Act (1968)**, which amended the **Securities Exchange Act of 1934** to govern the process of acquiring significant ownership in a public company through public offers to shareholders. The key aspects of the U.S. approach are:

1) **Tender Offer Process**: The acquirer makes a public offer to shareholders to buy shares at a specified price, usually at a premium over the current market price. Tender offers are often made directly to shareholders, bypassing management, and may be friendly or hostile.

2) **Pricing Mechanism**: The Williams Act does not set a specific formula for determining the tender offer price, but acquirers typically offer a premium over the market price to incentivize shareholders to tender their shares. This premium varies depending on factors such as the target's financial condition, market environment, and strategic value.

3) **Best Price Rule (Rule 14d-10)**: One of the critical regulatory requirements in the U.S. is the Best Price Rule, which ensures that all shareholders receive the highest price paid during the tender offer. This rule applies to both cash and stock offers and prohibits preferential pricing for certain shareholders, ensuring that minority and institutional investors receive the same terms.

4) **Flexibility in Offer Structure**: U.S. law allows one-step mergers or two-step tender offers, where the acquirer first buys a significant portion of shares and then completes a full merger, giving acquirers flexibility in structuring the transaction based on their strategic objectives.

2. India: SEBI SAST Regulations on Open Offers

In India, tender offers are governed by the **SEBI (Substantial Acquisition of Shares and Takeovers) Regulations (SAST), 2011**, which are more prescriptive in nature compared to the U.S. system. The emphasis is on ensuring **fair treatment for all shareholders**, particularly minority shareholders, during significant acquisitions.

1) **Mandatory Open Offer**: In India, crossing certain thresholds of ownership, particularly 25%, triggers a mandatory open offer under the SAST regulations. The acquirer must offer to purchase at least 26% of the additional shares from public shareholders, ensuring that all shareholders have an opportunity to sell their shares at the same price as the acquirer.

2) **Minimum Offer Price**: SEBI sets strict guidelines on how the offer price is determined. The minimum offer price must be the highest of (1) The average market price over the last 26 weeks, (2) The highest price paid by the acquirer in the past 52 weeks, (3) Any other price the regulator deems fair, depending on the circumstances.

   This pricing mechanism ensures that shareholders receive a fair value for their shares, reflecting both market performance and the strategic premium paid by the acquirer.

Parameter	United States	India
Governing Law	**Williams Act (1968)** under the **Securities Exchange Act of 1934**, supplemented by Rule 14d-10 (Best Price Rule). Focuses on transparency and preventing coercive practices in tender offers.	Designed to ensure fair treatment of minority shareholders during substantial acquisitions.
Regulatory Authority	**Securities and Exchange Commission (SEC)** enforces compliance with tender offer regulations, ensuring fairness	**Securities and Exchange Board of India (SEBI)** regulates open offers and ensures compliance with the

	and transparency for shareholders.	SAST regulations, focusing on protecting shareholders' rights.
Trigger for Offer	Tender offers are **optional** and typically initiated when acquirers seek a controlling stake or majority ownership in a target company.	A **mandatory open offer** is triggered when an acquirer crosses **25% ownership** in a publicly listed company. The acquirer must then offer to purchase an additional 26% of shares from public shareholders.
Pricing Mechanism	No fixed pricing formula. Acquirers typically offer a **premium over the market price** based on strategic synergies and market conditions. The **Best Price Rule** ensures that all shareholders receive the highest price paid during the offer.	SEBI mandates a **minimum offer price** based on: The highest price paid by the acquirer in the preceding 52 weeks, The average market price over the last 26 weeks. Any other price deemed fair by SEBI. This ensures fair value to shareholders.
Best Price Rule	**Rule 14d-10** ensures that all shareholders receive the **highest price** paid to any shareholder during the tender offer, preventing preferential treatment.	No direct equivalent to the Best Price Rule. Instead, the **minimum price** mechanism ensures fair pricing, but the actual price may fluctuate based on market conditions and recent acquisitions.
Offer Timeline	Tender offers typically last **20 business days** and can be extended based on market response. Flexibility exists for **two-step transactions**, allowing acquirers to first gain control and then merge.	The open offer must be made within a specific timeline after crossing the 25% threshold and must remain open for at least **10 working days**. These strict timelines are aimed at protecting shareholder rights.

Consequences of Non-Compliance	Acquirers failing to comply with tender offer regulations can face SEC enforcement actions, civil penalties, and injunctions, potentially blocking the transaction.	SEBI can impose fines, disqualify directors, or reverse transactions if the acquirer fails to comply with the mandatory open offer requirements. Non-compliance may result in legal and financial penalties.
Focus of Regulation	**Market flexibility** and shareholder transparency. The system allows flexibility for acquirers while ensuring shareholders receive the best price during the tender offer.	**Shareholder protection** and equitable treatment. The mandatory open offer ensures that public shareholders have the opportunity to sell their shares at a fair price during substantial acquisitions.

CHAPTER IV: EMPIRICAL & LEGISLATIVE ANALYSIS OF OPEN OFFERS

1. EMPIRICAL ANALYSIS

Introduction

The prevalence of low-priced Substantial Acquisition of Shares and Takeovers (SAST) offers in India's corporate landscape has raised significant questions about the interplay between strategic corporate interests and regulatory efficacy. This chapter examines the underlying dynamics of these offers, focusing on two key hypotheses:

1) Strategic Motivations Hypothesis: Low-priced SAST offers are driven primarily by strategic motivations such as gaining control, restructuring, or reducing public float, rather than being grounded in fair market valuations.

2) Regulatory Gaps Hypothesis: Existing SAST regulations contain loopholes that enable acquirers to make low-priced offers without facing significant legal constraints.

Analysis of Open Offers approved by SEBI in 2024

The parameters analysed in the study were structured – Master Analysis: Overall offer data for companies, that includes; (1) Offer Size, (2) Offer Price, (3)Current Market Price (analysed on Post-tender offer period), (4) Pre-Tender Offer Size, (5) Post Tender Acquired shares (in %). Further, 3 sub-tables are curated, Sub-table 1 on Offer Price and Valuation Comparison for Companies, Sub-table 2 on Percentage of Shares Acquired vs. Offered for Companies and Sub-table 3 on Consideration Paid vs. Offer Size for Companies. This study examined tender offers for the following 10 Indian companies, in the year 2024.

1. RRP Semiconductor[51]
2. Shalimar Paints Limited[52]
3. Som Datt Finance Corporation Limited[53]

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[51] Securities and Exchange Board of India, 'G. D. Trading and Agencies Limited - Draft Letter of Offer' (SEBI, April 2024) https://www.sebi.gov.in/sebi_data/commondocs/apr-2024/G.%20D.%20Trading%20and%20Agencies%20Limited_DLOO_p.pdf accessed 17 October 2024.

[52] Securities and Exchange Board of India, 'Shalimar Paints Limited - Filing for Takeover' (SEBI, September 2023) https://www.sebi.gov.in/filings/takeovers/sep-2023/shalimar-paints-limited_77538.html accessed 17 October 2024.

[53] Securities and Exchange Board of India, 'Som Datt Finance Corporation Limited - Filing for Takeover' (SEBI, November 2022) https://www.sebi.gov.in/filings/takeovers/nov-2022/som-datt-finance-corporation-limited_64951.html accessed 17 October 2024.

4. UNICHEM LABORATORIES LIMITED[54]
5. India Radiators Limited[55]
6. Cupid Limited[56]
7. GDL LEASING & FINANCE LIMITED[57]
8. DAIKAFFIL CHEMICALS INDIA LIMITED[58]
9. Narmada Gelatines Limited[59]
10. Madhuveer Com 18 Network Ltd[60]

Master Table: Overall Offer Data for Companies

1. OVERVIEW

The Master Table provides an aggregated view of the open offers approved by SEBI in 2024 for a selected group of ten Indian companies. This data is critical for understanding the strategic landscape of mergers and acquisitions in India, particularly focusing on low-priced Substantial Acquisition of Shares and Takeovers (SAST) offers. The analysis aims to evaluate whether low-priced SAST offers are primarily driven by strategic motivations and whether existing regulatory frameworks effectively limit such offers.

2. ADOPTED FRAMEWORK

[54] Securities and Exchange Board of India, 'Unichem Laboratories Limited - Filing for Takeover' (SEBI, April 2023) https://www.sebi.gov.in/filings/takeovers/apr-2023/unichem-laboratories-limited_70502.html accessed 17 October 2024.
[55] Securities and Exchange Board of India, 'India Radiators Limited - Filing for Takeover' (SEBI, January 2024) https://www.sebi.gov.in/filings/takeovers/jan-2024/india-radiators-limited_80459.html accessed 17 October 2024.
[56] Securities and Exchange Board of India, 'Cupid Limited - Filing for Takeover' (SEBI, September 2023) https://www.sebi.gov.in/filings/takeovers/sep-2023/cupid-limited_76711.html accessed 17 October 2024.
[57] Securities and Exchange Board of India, 'GDL Leasing and Finance Limited - Filing for Takeover' (SEBI, July 2023) https://www.sebi.gov.in/filings/takeovers/jul-2023/gdl-leasing-and-finance-limited_74243.html accessed 17 October 2024.
[58] Securities and Exchange Board of India, 'Daikaffil Chemicals India Limited - Filing for Takeover' (SEBI, November 2023) https://www.sebi.gov.in/filings/takeovers/nov-2023/daikaffil-chemicals-india-limited_79063.html accessed 17 October 2024.

[59] Securities and Exchange Board of India, 'Narmada Gelatines Limited - Filing for Takeover' (SEBI, June 2023) https://www.sebi.gov.in/filings/takeovers/jun-2023/narmada-gelatines-limited_72445.html accessed 17 October 2024.

[60] Securities and Exchange Board of India, 'Madhuveer Com 18 Network Limited - Filing for Takeover' (SEBI, September 2023) https://www.sebi.gov.in/filings/takeovers/sep-2023/madhuveer-com-18-network-limited_77370.html accessed 17 October 2024.

Valuation Theory: It posits that acquisition offers should reflect fair market valuations. However, low-priced offers might indicate strategic motivations to gain control or restructure companies without adequately compensating shareholders.

Market Efficiency: The Efficient Market Hypothesis suggests that market prices reflect all available information. Deviations in offer prices from current market prices could imply inefficiencies or misalignment between acquirers' valuations and market perceptions.

Regulatory Implications: The presence of regulatory gaps may allow acquirers to make offers below fair market value, leading to questions regarding the effectiveness of existing SAST regulations in protecting minority shareholders.

3. EMPIRICAL DATA

Company Name	Offer Size (₹ Million)	Offer Price (₹)	Current Market Price (₹)	Pre-Tender Offer Size (Shares)	Post-Tender Acquired Shares (%)
RRP SEMICONDUCTOR	306.00	12.00	62.75	25500	-
Shalimar Paints Limited	4352.98	200.00	178.00	21764907	15.11
Som Datt Finance Corporation Limited	90.55	33.88	103.00	2602073	0.01
UNICHEM LABORATORIES LIMITED	8054.42	440.00	730.10	18305495	26.00
India Radiators Limited	1.40	6.00	6.30	234000	0.32
Cupid Limited	1127.06	325.00	426.45	3467880	0.00
GDL LEASING & FINANCE LIMITED	8.65	11.00	8.45	782626	8.72
DAIKAFFIL CHEMICALS INDIA LIMITED	60.40	38.72	38.90	1560000	0.00
Narmada Gelatines Limited	458.26	303.00	400.00	1512398	2.65

Madhuveer Com 18 Network Ltd	61.62	10.00	62.35	6162455	60.58

4. ANALYSIS

Offer Price vs. Current Market Price: The disparity between offer prices and current market prices indicates varying degrees of shareholder value perception. Companies like **RRP Semiconductor** and **Som Datt Finance Corporation Limited** offer significantly lower prices compared to their current market prices, reflecting a potential undervaluation or aggressive acquisition strategy. In contrast, **UNICHEM LABORATORIES LIMITED** offers a price that is more aligned with the market value.

Acquisition Success Rates:: The percentage of shares acquired post-tender varies widely across companies, suggesting differing levels of effectiveness in achieving acquisition goals. Notably, **Madhuveer Com 18 Network Ltd** has a high acquisition success rate of **60.58%**, indicating a strong alignment with shareholder interests and possibly a well-received offer. On the other hand, companies like **Cupid Limited** and **DAIKAFFIL CHEMICALS INDIA LIMITED** show **0%** acquisition success, signalling shareholder resistance or lack of confidence in the offer.

Implications for Regulatory Framework: The presence of low-priced offers that successfully attract minority shareholder interest raises concerns about the efficacy of regulatory frameworks in protecting minority interests. The variation in acquisition success rates across companies may suggest that while some companies manage to engage shareholders effectively, others may exploit regulatory loopholes to make suboptimal offers, reflecting a need for tighter regulatory scrutiny.

Strategic Motivations: The data suggests that many of the low-priced offers may be motivated by strategic considerations such as gaining control over assets or restructuring firms at a lower cost. The offers from companies with larger sizes, like **Shalimar Paints Limited** and **UNICHEM LABORATORIES LIMITED**, indicate a potential focus on consolidating market power, while smaller firms may pursue niche acquisitions.

Sub Table 1: Offer Price and Valuation Comparison for Companies

Sub Table 1 presents a comparison of offer prices against pre-offer and post-offer market prices for the ten Indian companies analysed. This comparison is crucial in understanding the premium offered to shareholders and the potential implications of these offers on shareholder value. The premium percentage reflects how much higher the offer price is compared to the pre-offer market price, providing insights into the acquirers' valuations and the strategic rationale behind these offers.

Company Name	**Offer Price (₹ per Share)**	**Pre-Offer Market Price (₹)**	**Post-Offer Market Price (₹)**	**Premium Offered (%)**
RRP SEMICONDUCTOR	12.00	22.12	62.75	-45.75
Shalimar Paints Limited	200.00	138.00	130.32	31%
Som Datt Finance Corporation Limited	33.88	107.00	103.00	-68.34
UNICHEM LABORATORIES LIMITED	440.00	386.80	730.10	13.73
India Radiators Limited	6.00	5.25	6.30	14.29
Cupid Limited	325.00	315.00	426.45	3.17
GDL LEASING & FINANCE LIMITED	11.00	8.33	8.45	32.08
DAIKAFFIL CHEMICALS INDIA LIMITED	38.72	35.20	38.90	10.00
Narmada Gelatines Limited	303.00	290.00	400.00	4.48
Madhuveer Com 18 Network Ltd	10.00	84.77	62.35	

ANALYSIS

1. **Negative Premiums: RRP Semiconductor** and **Som Datt Finance Corporation Limited** illustrate instances of negative premiums of **-45.75%** and **-68.34%**, respectively. These negative premiums suggest that the acquirers are offering prices significantly lower than the pre-offer market prices, which may indicate a lack of confidence in the company's valuation or an aggressive strategy to gain control at a lower cost. Such offers could potentially be detrimental to shareholder interests, raising questions about the motivations behind these acquisitions.

2. **Positive Premiums:** In contrast, **Shalimar Paints Limited** offers a positive premium of **31%**, indicating that the acquirer values the shares higher than the current market price. This suggests a potential willingness to provide a fairer compensation to shareholders, which might facilitate smoother acceptance of the offer. Similarly, **UNICHEM LABORATORIES LIMITED** has a modest premium of **13.73%**, reflecting a strategic acquisition approach that considers shareholder interests.

3. **Low Premium Offers: Cupid Limited** and **DAIKAFFIL CHEMICALS INDIA LIMITED** offer relatively low premiums of **3.17%** and **10.00%**, respectively. While these premiums are positive, they are minimal compared to the market prices, suggesting that the offers might not be compelling enough to attract significant shareholder interest. Such offers may indicate an opportunistic approach to acquisition, potentially leading to resistance from shareholders.

4. **Market Reactions:** The post-offer market prices further highlight market reactions to these offers. For example, **RRP Semiconductor** shows a post-offer market price of **₹62.75**, significantly higher than both the offer price and pre-offer price, suggesting that market participants might perceive the acquisition negatively or expect a different outcome post-tender. In contrast, **Narmada Gelatines Limited** and **India Radiators Limited** show slight increases in post-offer market prices, which could indicate a neutral to positive reception among investors.

5. **Strategic Implications:** The varying premiums across the offers suggest different strategic motivations behind the acquisitions. Companies with higher premiums may be aiming for a smoother integration process post-acquisition, while those with negative premiums may prioritize control over fair market compensation, potentially at the expense of shareholder value.

Sub Table 2: Percentage of Shares Acquired vs. Offered for Companies

Sub Table 2 provides a comparative view of the planned versus actual percentage of shares acquired in the tender offers across ten companies. The data reveals a significant disparity between the acquirers' expectations and the actual shareholder response, highlighting key insights about market dynamics and offer effectiveness.

Company Name	**Pre-Tender Planned Shares to Acquire (#)**	**Post-Tender Actual Shares Acquired (#)**	**Planned % of Shares to be Acquired**	**Actual % of Shares Acquired**	**Discrepancy (if any)**
RRP SEMICONDUCTOR	25500	-	25.50	-	-
Shalimar Paints Limited	21764907	12646650	26.00	15.11	10.89
Som Datt Finance Corporation Limited	2602073	1400	26.00	0.01	25.99
UNICHEM LABORATORIES LIMITED	18305495	18305495	26.00	26.00	0
India Radiators Limited	234000	2920	26.00	0.32	25.68
Cupid Limited	3467880	367	26.00	0.00	26.00
GDL LEASING & FINANCE LIMITED	782626	262600	26.00	8.72	17.28
DAIKAFFIL CHEMICALS INDIA LIMITED	1560000	0	26.00	0.00	26.00

Narmada Gelatines Limited	1512398	160300	25.00	2.65	22.35
Madhuveer Com 18 Network Ltd	6162455	5743926	65.00	60.58	4.42

ANALYSIS

1. **Discrepancy in Share Acquisitions :** Across most companies, there is a notable gap between the planned and actual shares acquired. Several companies, such as **Som Datt Finance Corporation**, **India Radiators**, and **Cupid Limited**, show extremely low levels of actual shares acquired compared to their planned targets. This suggests that these offers did not generate sufficient interest among shareholders, likely due to unfavourable offer prices or scepticism regarding the acquisition's benefits. These discrepancies highlight the challenges acquirers face in convincing shareholders to tender their shares, especially when offer prices do not align with market expectations.

2. **Acceptance of Tender Offers:** For a few companies, the tender offers were more successful, as seen in **UNICHEM LABORATORIES LIMITED**, which achieved its exact target of **26.00%**, reflecting full alignment with shareholder expectations. Such cases are likely the result of offers that were perceived as fair or beneficial by shareholders, making the acquisition process smoother. This suggests that offers which align closely with market prices or provide a significant premium are more likely to succeed in gaining shareholder approval.

3. **Strategic Failures:** The companies with large discrepancies in planned versus actual shares acquired highlight potential strategic miscalculations. In many cases, low shareholder participation could indicate that the acquirers either undervalued the shares or did not sufficiently consider the interests of minority shareholders. This raises broader questions about the effectiveness of low-priced offers and whether such offers are an adequate mechanism for gaining control without offering fair compensation. It also points to the possibility of regulatory gaps that allow acquirers to make offers that fail to serve the broader shareholder base.

4. **Implications for Acquirers:** The large differences between planned and actual shares acquired may suggest either resistance from shareholders or the ineffectiveness of low-priced offers in the current market environment. Acquirers who aim to purchase significant stakes through such offers might need to reassess their strategies, including improving offer pricing or refining communication to better appeal to shareholders. Additionally, the data highlights the need for regulatory oversight to ensure that tender offers are made in a manner that protects the interests of minority shareholders and aligns with fair market values.

Sub Table 3: Consideration Paid vs. Offer Size for Companies

Sub Table 3 compares the pre-tender offer sizes with the actual consideration paid after the tender offer process. The table also highlights discrepancies between the expected and actual payments made, shedding light on the financial outcomes of the tender offers and providing key insights into their effectiveness and fairness.

Company Name	Pre-Tender Offer Size (₹ Million)	Post-Tender Consideration Paid (₹ Million)	Discrepancy (₹ Million)	Consideration per Share (₹)
RRP SEMICONDUCTOR	306.00	-	-	12.00
Shalimar Paints Limited	4352.98	2529.33	1823.65	200.00
Som Datt Finance Corporation Limited	90.55	0.05	90.50	33.88
UNICHEM LABORATORIES LIMITED	8054.42	8054.42	0	440.00
India Radiators Limited	1.40	0.02	1.38	6.00
Cupid Limited	1127.06	0.12	1126.94	325.00

GDL LEASING & FINANCE LIMITED	8.65	2.90	5.75	11.05
DAIKAFFIL CHEMICALS INDIA LIMITED	60.40	0.00	60.40	38.72
Narmada Gelatines Limited	458.26	4.85	453.41	303.00
Madhuveer Com 18 Network Ltd	61.62	57.43	4.19	10.00

ANALYSIS

1. **Large Discrepancies in Consideration Paid:** One of the most prominent features in this table is the significant discrepancies between the pre-tender offer sizes and the actual consideration paid in many cases. Companies like **Som Datt Finance Corporation**, **Cupid Limited**, and **DAIKAFFIL CHEMICALS INDIA LIMITED** show near-total non-fulfilment of their planned financial outlays, with little to no payment made in relation to the original offer size. These large gaps indicate a failure to attract shareholder participation, meaning that the funds earmarked for the acquisition were not fully deployed due to low acceptance rates.

   This mismatch suggests that many of the offers were either unappealing to shareholders, or that market conditions or strategic motives did not align with shareholder expectations. Low-priced offers that fail to close at meaningful levels may indicate deeper market scepticism, as seen in these companies.

2. **Full Consideration Paid in Select Cases:** On the other hand, companies such as **UNICHEM LABORATORIES LIMITED** met their pre-tender offer size exactly, showing no discrepancy between the planned and actual consideration paid. This indicates successful shareholder acceptance, likely due to a well-priced and strategically aligned offer. This reinforces the importance of fair market pricing and the perceived benefits of the acquisition for shareholders. Acquirers that offer fair

valuations or premiums are more likely to close deals efficiently, spending the full budgeted amount for the tender.

3. **Strategic Implications of Consideration Gaps:** The large gaps between the planned offer sizes and actual consideration paid in many cases highlight a broader trend of unsuccessful tender offers. Several companies ended up paying only a small fraction of their planned amounts, suggesting strategic miscalculations by acquirers in terms of pricing and shareholder interest. This pattern also raises concerns about the efficiency of low-priced SAST offers in achieving their intended objectives, particularly when they fail to entice shareholders to tender their shares.

   For instance, **Shalimar Paints Limited** shows a discrepancy of ₹1,823.65 million, indicating that despite a relatively substantial offer price, the overall shareholder participation was lower than expected. This suggests that even offers with higher consideration can face challenges if shareholders perceive other risks, such as market volatility or undervaluation, or if there is regulatory uncertainty.

2. LEGISLATIVE ANALYSIS

Aurora UK Bidco Limited v SEBI (SAT)[61]

Aurora UK Bidco Limited acquired 74.66% of Accelya Solutions India Limited, triggering an open offer under SAST Regulations to acquire at least 26% of the outstanding equity shares from public shareholders. Two independent Chartered Accountants determined the fair price of the shares, but SEBI received complaints from shareholders about the valuation.

SEBI appointed an independent Chartered Accountant to re-evaluate the fair price, leading to a legal challenge by Aurora UK Bidco Limited. The Securities Appellate Tribunal upheld SEBI's decision, stating that SEBI acted within its regulatory powers and did not need to provide a detailed reason for appointing the independent valuer.

Tenneco Inc. v SEBI (SAT)[62]

[61] https://sat.gov.in/english/pdf/E2020_JO2020149_1.PDF
[62] https://sat.gov.in/english/pdf/E2019_JO2019182.PDF

Tenneco Inc. challenged SEBI's directive to revise the offer price for acquiring 26% of Federal Mogul Goetze (India) Ltd. shares from ₹400 to ₹608.46 per share. SEBI appointed Haribhakti & Co. for an independent valuation, which differed from Tenneco's valuers, MSKA and JDAA.

The case involves the application of SEBI's SAST Regulations, particularly regarding the methodology for determining a fair offer price for shares. The tribunal remitted the case back to SEBI, instructing them to consider objections from Tenneco and other parties before finalizing the offer price. (In finality, SEBI upheld the valuation, and Tenneco had to revise the valuation).

Reliance Mediaworks Financial Services (P) Ltd, v SEBI (SAT)[63]

Reliance Mediaworks Financial Services issued debentures, pledging shares of Prime Focus Ltd. to Credit Suisse A.G. When they defaulted, Credit Suisse invoked the pledge and sold the shares. Reliance argued that the shares were undervalued in the open offer and SEBI failed to protect investors' interests by not appointing an independent valuer.

SEBI reviewed the valuation but did not find any violations. Reliance's appeal was dismissed as they had no shares to offer due to the pledge. The case involves issues of fair valuation under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, highlighting the need for transparency and proper valuation methods.

Pawan Kumar Saraf v SEBI & Ord's. (SAT)[64]

Mr. Pawan Kumar Saraf appealed against SEBI's order rejecting his request to revise the offer price for shares from Rs. 55.22 to Rs. 79.581. The dispute centered on whether the offer price should be calculated under Regulation 8(3)(e) or 8(4) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011.

The tribunal upheld SEBI's decision, stating that the offer price was correctly calculated under Regulation 8(4) because the shares were not frequently traded in the relevant period. The case involves the interpretation of fair valuation principles under the SAST Regulations, particularly in determining the appropriate offer price during an acquisition.

[63] https://sat.gov.in/english/pdf/E2021_JO202195_22.PDF
[64] https://sat.gov.in/english/pdf/E2022_JO202113.PDF

Conclusion & Analysis

The cases involving SEBI's regulatory role under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (SAST Regulations) showcase SEBI's powers in ensuring fair share valuation during takeovers, particularly to protect minority shareholders.

Regulation 8(16) grants SEBI the authority to appoint independent valuers when there are concerns about the fairness of the offer price. In Aurora UK Bidco Limited v SEBI, SEBI appointed an independent valuer after receiving shareholder complaints about the valuation. SAT upheld SEBI's action, confirming that SEBI has broad discretion in such matters to ensure fairness.

In Tenneco Inc. v SEBI, SEBI mandated an upward revision of the offer price from ₹400 to ₹608.46 after an independent valuation. This reinforced SEBI's commitment to ensuring transparent and fair valuations, particularly in cases of conflicting assessments.

The cases highlight SEBI's discretionary powers under Sections 11 and 11B of the SEBI Act, 1992, to protect investor interests by ensuring that offer prices reflect true market value. In Pawan Kumar Saraf v SEBI, SEBI's adherence to Regulation 8(4) for infrequently traded shares was upheld, reinforcing the need for clear and consistent valuation methodologies.

SEBI's proactive use of Regulation 8 to appoint independent valuers and revise offer prices strengthens market integrity and investor confidence. These cases underscore SEBI's role in maintaining fairness in the takeover process, ensuring minority shareholders receive equitable treatment during corporate acquisitions.

CHAPTER V : CONCLUSION & SUGGESTIONS

This study critically evaluates the effectiveness of the SAST Regulations from Valuation perspective, particularly Regulation 8, in addressing the challenges posed by low-priced takeover offers. The empirical analysis reveals significant regulatory inefficiencies, notably in the pricing mechanism outlined in Regulation 8, which mandates that the offer price be the highest of either the average closing prices over the preceding 26 weeks or the average for the prior two weeks.

Moreover, the prevalence of strategic undervaluation is evident, as acquirers exploit regulatory ambiguities to propose prices that diverge substantially from market realities. This strategic manipulation enables them to leverage information asymmetry, consolidating control over target companies at a reduced cost, ultimately undermining SEBI's capacity to maintain market integrity. The implications for minority shareholders are particularly concerning; low-priced offers constrain their exit opportunities and diminish their bargaining power, threatening the foundational principles of investor protection embedded within the SAST framework.

A comparative analysis with the U.S. regulatory framework further underscores the need for reform. The Securities Exchange Act of 1934 and the Williams Act impose stricter disclosure requirements and pricing mechanisms, such as the Best Price Rule, which ensures that all shareholders receive the highest price offered during a tender. These robust measures enhance transparency and fairness in the acquisition process, providing critical protections for minority shareholders.

<u>Analysis of Empirical Data</u>

The empirical analysis conducted in this study reveals significant evidence of market failure within SEBI's SAST Regulations, particularly regarding low-priced takeover offers. Examination of recent transactions shows a troubling trend where acquirers frequently propose offers well below the prevailing market prices of the target company's shares. For instance, the case of Manbro Industries exemplifies this disconnect, with an offer price that starkly diverged from its current market value, highlighting a systematic failure in price alignment.

Data from various open offers approved by SEBI in 2024 reinforces these findings, indicating that many offers feature negative premiums. For example, RRP Semiconductor's offer was priced at ₹12 per share, compared to a pre-offer market price of ₹22.12, reflecting a significant undervaluation of -45.75%. Similarly, Som Datt Finance Corporation Limited presented an offer at ₹33.88 against a market price of ₹107, resulting in an alarming negative premium of -68.34%. These instances not only demonstrate the ineffectiveness of the current pricing mechanisms but also reveal a broader issue where minority shareholders are left with inadequate protection.

The recurring pattern of undervalued offers raises critical concerns about the integrity of the capital market, suggesting that the existing regulatory framework fails to facilitate effective price discovery. The ability of acquirers to consistently undervalue offers undermines shareholder trust and indicates that regulatory loopholes are being exploited for strategic gain.

Suggestions

1.Dynamic Pricing Mechanism

Introduce a dynamic pricing formula that factors in real-time market data to ensure fair valuation during takeover offers. This formula could be expressed as follows:

$$P = \max\left(\text{Weighted Average Price}_{26\text{ weeks}}, \text{Weighted Average Price}_{2\text{ weeks}}, \text{Independent Valuation}_t\right)$$

Where:

- P = Offer Price
- $\text{Weighted Average Price}_{26\text{ weeks}}$ = Average of closing prices over the last 26 weeks, weighted by volume.
- $\text{Weighted Average Price}_{2\text{ weeks}}$ = Average of closing prices over the last 2 weeks, weighted by volume.
- $\text{Independent Valuation}_t$ = A valuation conducted by a certified third-party appraiser, reflecting the intrinsic value of the company.

[65]

2. Mandatory Fairness Opinions

Require acquirers to obtain and disclose fairness opinions from independent financial advisors for all takeover offers. This would ensure that the valuation provided to shareholders is grounded in professional judgment, thus promoting transparency and accountability.

3. Enhanced Disclosure Requirements

Amend Regulation 8 to mandate detailed disclosures regarding the methodologies used for

[65] Disclosure: Based on Multiple Research papers indicating methodology for US regulations, this formula has been modified based on Regulation aid with assistance of Generative Artificial Intelligence.

pricing offers. Acquirers should be required to provide a comprehensive breakdown of how the proposed offer price correlates with market values and underlying company fundamentals.

4. Regulatory Monitoring and Enforcement

Implement a proactive regulatory monitoring framework that tracks pricing trends and identifies deviations from expected valuations. This could involve periodic reviews of completed takeovers to assess the effectiveness of pricing mechanisms and to ensure compliance with revised regulations.

5. Market-Based Adjustments

Allow for automatic adjustments to offer prices based on specific market conditions, such as significant fluctuations in stock price or adverse market events that may impact the valuation of the target company.

BIBLIOGRAPHY

Books and Articles

1. **Eckbo BE**, *Takeover Activity, Valuation Estimates, and Merger Gains: Modern Empirical Developments* (Elsevier 2008).
2. **Goel R** and **Singh S**, *Fraud, Manipulation, and Insider Trading in the Indian Securities Markets* (Wolters Kluwer 2015).
3. **Lambrecht BM** and **Myers SC**, *A Theory of Takeovers and Disinvestment* (Journal of Finance, 2008).
4. **Madura J**, **Vasconcellos G**, and **Kish R**, *Valuation Model for International Acquisitions* (Journal of International Business Studies, 1991).
5. **Martynova M** and **Renneboog L**, *A Century of Corporate Takeovers: What Have We Learned and Where Do We Stand?* (Journal of Banking & Finance, 2008).
6. **Parekh S**, *Insider Trading: Law and Practice* (Lexis Nexis 2013).
7. **Rath S** and **Rashid A**, *Undervaluation and Private Equity Takeovers* (Indian Journal of Corporate Affairs, 2015).
8. **Roosenboom P** and **van der Goot T**, *Takeover Defences and IPO Firm Value in the Netherlands* (European Journal of Finance, 2003).
9. Dong M and others, 'Does Investor Misvaluation Drive the Takeover Market?' (2006) 61(2) Journal of Finance 725
10. Goldman E and Qian J, 'Optimal Toeholds in Takeover Contests' (2005) 77(2) Journal of Financial Economics 321

Case Law

1. **Aurora UK Bidco Limited v SEBI (SAT)**, Securities Appellate Tribunal, India.
2. **Daiichi Sankyo Company Ltd v Jayaram Chigurupati and Ors**, (2010) 156 Comp Cas 351 (SC).
3. **IAG Company Limited Case**, Securities Appellate Tribunal, India.
4. **K.K. Modi v Securities Appellate Tribunal**, (2002) 35 SCL 603 (Bom).
5. **OCL India Limited Case**, Securities Appellate Tribunal, India.
6. **Pawan Kumar Saraf v SEBI & Ors (SAT)**, Securities Appellate Tribunal, India.

7. **Premier Limited Case**, Securities Appellate Tribunal, India.
8. **Reliance Mediaworks Financial Services (P) Ltd v SEBI (SAT)**, Securities Appellate Tribunal, India.
9. **Tenneco Inc v SEBI (SAT)**, Securities Appellate Tribunal, India.
10. **Unocal Corp v Mesa Petroleum Co**, 493 A.2d 946 (Del. 1985).

Legislation

1. **Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations 2011**.
2. **The Dodd-Frank Wall Street Reform and Consumer Protection Act 2010**.
3. **The SEBI Act 1992**.
4. **The SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations 2002**.

Online Resources

1. Ahmad T, 'The Takeover Code and its Impact on the Corporate Sector' (SSRN, 12 September 2011) https://manuu.edu.in/sites/default/files/School-of-Law/Publication/Tabrez-Ahmad/SSRN-id1940871%20The%20Takeover%20Code.pdf accessed 17 October 2024
2. Matlani V, 'Dynamics of SEBI Regulations and Adani-NDTV Takeover Conundrum' (Taxguru, 8 December 2022) https://taxguru.in/sebi/dynamics-sebi-regulations-adani-ndtv-takeover-conundrum.html accessed 17 October 2024
3. Nishith Desai Associates, 'Takeover Code Dissected' (Nishith Desai Associates, November 2010) https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Ma%20Lab/Takeover%20Code%20Dissected.pdf accessed 17 October 2024
4. Securities and Exchange Board of India, 'Report of the Takeover Regulations Advisory Committee' (SEBI, 19 July 2010) https://www.sebi.gov.in/takeover/takeoverreport.pdf accessed 17 October 2024
5. Varottil U, 'Investment Agreements in India: Is There an "Option"?' (SSRN, 19 August 2011) https://ssrn.com/abstract=1912436 accessed 17 October 2024
6. Regulatory Documents and Filings

7. Securities and Exchange Board of India, 'Board Memorandum – Review of the Regulatory Framework for Capital Raising by Issuers' (SEBI, 22 February 2023)
8. Securities and Exchange Board of India, 'Guidelines for Substantial Acquisition of Shares and Takeovers' (SEBI, 2009)