

ISSN: 2582-6433



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

[www.ijlra.com](http://www.ijlra.com)

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# **HOSTILE TAKEOVERS IN INDIA**

AUTHORED BY - DIPANSHI GOEL

## **Introduction**

The term "takeover" refers to the acquisition of control over an existing company through the sale or exchange of shares. To seize control of a corporation, a takeover often entails purchasing shares of that company from its owners at a certain price in order to obtain at least a controlling interest. A larger corporation may attempt to buy a smaller company through a hostile takeover, which entails buying the company despite opposition from the smaller company's management. In contrast to a merger, an acquisition typically involves the acquiring firm offering the target firm's shareholders a cash price per share, or the acquiring firm's shares, in accordance with a predetermined conversion ratio. In either case, the purchasing corporation buys the target company outright for its shareholders, thereby financing the transaction.

## **Hostile Takeover: What Is It?**

Hostile takeovers are when one company is acquired by another against the former's will. In a hostile takeover, the firm being acquired is referred to as the target company, and the party carrying out the takeover is known as the acquirer. In a hostile takeover, the assailant goes straight to the company's shareholders or fights to oust the management to get the acquisition approved. A tender offer or a proxy fight are typically used to approve a hostile takeover.

In a hostile takeover, the target company's management disapproves of the agreement. When a party tries to take over a company without the support or cooperation of the target company's board of directors, it makes this kind of bid. Instead of receiving board permission from the target company, the potential buyer could instead:

- Make a bid offer.
- Use a proxy battle
- Try to purchase the required company stock on the open market.

The board of directors has the right to reject a tender offer made by a corporation, investor, or group of investors to buy shares of another company at a price over the CMV. If the offer is made to the shareholders at a sufficient premium to market value or if they are dissatisfied with the

current management, they may accept it. Tender offers are governed by the Williams Act of 1968, which also mandates the disclosure of all-cash tender offers.

In a proxy dispute, competing stockholder organisations convince other stockholders to use their shares' proxy votes in their favour. A firm that makes a hostile takeover proposal may use the proxies it has obtained to vote in favour of the offer if it obtains a sufficient number.

## Causes Of Hostile Takeovers

- I. **Management Motives:** Due to the administration of one of the organisations' thought processes, either the ardent want to expand a commercial sphere or individual compensation or, on the other hand, the yearning to make the organisation bid-proof.
- II. **Increasing the Capital of the Offeror:** The offeror provides precise justifications for increasing its capital base. These include buying a company with a high resource backing from a company whose market capitalization includes a lot of goodwill and securing a company with a large portion of assets that are liquid or practically feasible as opposed to issuing rights.
- III. **Technique for Market Entry:** It is a seductive strategy for the offeror to enter a new market on a sizable scale.
- IV. **Trade Advantage or Synergy:** It is generally agreed that bringing the two organisations under a single control will result in the consolidated venture producing more profit per share. This trade advantage or synergy (for example, a good impact on total profit by reducing expenses and expansion in income) exists.

## A Hostile Takeover's Defences

**Poison Pill Defence:** In the 1980s, New York was where the poison pill tactic first appeared. The New York-based law firm Wachtell, Lipton, Rosen and Katz created it. It alludes to the poison pills that spies once carried around in case they were discovered by their enemy. They would take the poison pill if they were discovered so that their attackers wouldn't question and torture them. This defending tactic significantly reduces the acquirer's ownership stake in the company. As a result, the acquisition is not advantageous for the acquirer. Additionally, this strategy makes sure that the management is in charge and that the company is protecting the minority shareholders.

**Crown Jewel Defence:** By requiring the sale of the company's most valuable assets in the event

of a hostile takeover, a clause in the bylaws is used as the company's "crown jewel defence," making it less appealing as a target for takeover attempts. The last line of defence is frequently regarded as being this.

### **Programme for Employee Stock Ownership (ESOP):**

A tax-qualified plan is used to create an employee stock ownership programme (ESOP), in which employees hold a sizable stake in the business. Employees might vote more frequently in favour of management. As a result, this is a viable defence.

Such scams have, however, come under investigation in the past. Defensive ESOPs have occasionally been declared illegal by courts on the basis that management rather than shareholders were the intended beneficiaries of the plan.

## **Cases In India**

### **1. The unsuccessful bids for Escorts and DCM by Swaraj Paul**

Before the Indian economy had advanced or the Takeover Code had been established in 1984, British businessman Swaraj Paul tried to gain exclusive control of Escorts Limited and DCM, two Indian corporations. The two organisations rejected Paul's takeover attempts and each hampered the exchanges by refusing to register his recently acquired shares, despite the fact that he had acquired more than the advertisers of each firm (typically 7.5% and 13% stakes in Escorts and DCM, respectively).

Though Paul had ties to Prime Minister Indira Gandhi, the sponsors used their political influence against him. The Life Insurance Corporation of India, a government-controlled financial institution that owned a small investment in the organisations, did not back Paul either. Finally, Paul withdrew his offer. Paul's menacing threat was ineffective, but it nonetheless shocked the Indian business community.

Current Indian law unusually requires a target organization's ability to decline to enlist shares. Organisations may not refuse to enrol shares unless the Indian Company Law Board deems the action to be in violation of the law, according to an amendment to the Companies Act that allows for free adaptation of offers.

## 2. Raasi Cements and India Cements

In 1998, when BV Raju sold his 32% ownership in Raasi Concretes to India Cements, a hostile bidder successfully completed the most extreme takeover in Indian history. India Cements launched an open offer for Raasi bids, and it received almost 20% on the open market, but it ran into opposition from the company's founders and from Indian financial institutions who also had sizable holdings in the company.

Raju eventually agreed to a private sale to India Cements after a protracted battle that featured question-and-answer sessions showcasing the children and grandchildren of the founding family who were opposing the hostile bid.

### Conclusion

A hostile takeover has both advantages and disadvantages, thus it may be difficult to categorise it in such a way that it should be encouraged or opposed. It is a widely held idea that hostile takeovers enable target company investors to determine the optimum price for their investment or, in the end, they increase financial efficiency by shifting ownership of corporate assets from an ineffective administration to an effective one.

While it is true that hostile takeovers increase the value of the target shareholders, some hostile takeovers may also advance expertise, result in a poor distribution of financial resources, or be neutral in terms of financial productivity. Also, not only poorly managed companies can be targets of hostile takeovers; very well managed companies can also do so. This is especially true when the primary goals of the takeover are to achieve union, business synergy, and growth in size and volume. When a well-managed company is acquired by another similarly well-managed company, the takeover may be neutral in terms of economic efficiency.

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