International Journal of Research in Commerce and Management Studies

ISSN 2582-2292

Vol. 8, No. 04 July-August; 2026 Page. No. 269-277

To cite this article: Rohit Boora (2026). TAKEOVER- FAST MODE OF ACQUISITION, International Journal of Research in Commerce and Management Studies (IJRCMS) 8 (4): 269-277 Article No. 819 Sub Id 1371

TAKEOVER- FAST MODE OF ACQUISITION

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DOI: https://doi.org/10.38193/IJRCMS.2026.8422

ABSTRACT
Takeover of companies is a burning issue nowadays in the financial market of the countries around the world. Big corporate houses in order to avoid competition and boost up their market share engage in such type of activities. Takeovers are daily activities in foreign markets like United States of America (USA), United Kingdom (UK), European Union (EU) and other big markets as described in the study. In India also, the takeover activities have taken a pace with the passage of time.

KEYWORDS: Target Company, Trigger Point, Hostile Takeover, Acquirer, Person Acting in Concern.

INTRODUCTION
Takeover is acquisition of substantial shares and control over the Target Company to expand or to diversify the business in an inorganic manner i.e. without engaging in sale/purchase of shares. Takeover shall be in compliance to the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (hereinafter referred to as "Takeover Code"). The regulator of all takeovers in India is Securities and Exchange Board of India (SEBI) established in year 1992 under SEBI Act, 1992. Trigger Point in the Takeover Code is a point at which the acquirer along with the person acting in concern need to make an open offer for the shareholders of the target company for such minimum size as laid under the takeover code. Target Company is the company whose shares/control is acquired by the Acquirer alone or Acquirer along with Person acting in Concert.

KINDS OF TAKEOVER

1. **Legal Context:** From legal perspective, takeover is of two types:
   a. **Friendly or Negotiated Takeover**: Friendly takeover means takeover of one company by change in its management & control through negotiations between the existing promoters and prospective investor in a friendly manner. Thus, it is also called Negotiated Takeover. This kind of takeover is resorted to further some common objectives of both the parties. Generally, friendly takeover takes place as per the provisions of the Companies Act.

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b. **Hostile Takeover**: Hostile takeover is a takeover where one company unilaterally pursues the acquisition of shares of another company without being into the knowledge of that other company, or if the target company's board rejects the offer or the bidder makes the offer directly after having announced its firm intention to make an offer. The most dominant purpose which has forced most of the companies to resort to this kind of takeover is increase in market share.

2. **Business Context:** In the context of business, takeover is of three types:
   a. **Horizontal Takeover:** Takeover of one company by another company in the same industry. The main purpose behind this kind of takeover is achieving the economies of scale or increasing the market share. E.g. Takeover of Henkel by Jyothy Laboratories, Patni Computers by iGATE.
   b. **Vertical Takeover:** Takeover by one company of its suppliers or customers. The former is known as backward integration and latter is known as Forward integration. E.g. Takeover of Sona Steerings Ltd. by Maruti Udyog Ltd.
   c. **Conglomerate Takeover:** Takeover of one company by another company operating in totally different industries. The main purpose of this kind of takeover is diversification.

OBJECTIVES OF TAKEOVER CODE ARE:

a. To provide a transparent legal framework for facilitating takeover activities;
b. To protect the interests of investors in securities and the securities market, taking into account that both the acquirer and the other shareholders or investors and need a fair, equitable and transparent framework to protect their interests;
c. To balance the conflicting objectives and interests of various stakeholders in the context of substantial acquisition of shares in, and takeovers of, listed companies.
d. To provide each shareholder an opportunity to exit his investment in the target company when a substantial acquisition of shares in or takeover of a target company takes place.
e. To provide acquirers with a transparent legal framework to acquire shares in or control of the target company and to make an open offer;
f. To ensure that the affairs of the target company are conducted in the ordinary course when a target company is subject matter of an open offer;
g. To ensure that fair and accurate disclosure of all material information is made by persons responsible for making them to various stakeholders to enable them to take informed decisions;
h. To regulate and provide for fair and effective competition among acquirers desirous of taking over the same target company; and
i. To ensure that only those acquirers who are capable of actually fulfilling their obligations under the Takeover Regulations make open offers.

TYPES OF DISCLOSURES

1) Disclosure of Acquisition and Disposal – **Regulation 29**

2) Continual Disclosures – **Regulation 30**
3) Disclosure of Encumbered Shares – **Regulation 31**

Regulation-29 of SEBI (SAST) event-based disclosure of acquisition and disposal:

S. No	Particulars	Person	Intimate to	Time Limit
1	Reg. 29(1) Acquirer together with Persons Acting in Concert (PAC) acquires 5% or more in aggregate of the shares or voting rights of the target company (together with the existing shares or voting rights held by them)	Acquirer	Stock Exchange(s) wherever shares are listed & Target Company at its registered office	Within 2 working days of the receipt of intimation of allotment of shares or disposal or acquisition of shares or voting rights.
2	Reg.29 (2) Any acquirer, who together with Persons Acting In Concert (PAC) with him, holds shares or voting rights entitling them to 5% or more of the shares or voting rights in a target company, shall disclose every acquisition or disposal of shares of such target company representing 2% or more of the shares or voting rights in such target company in such format as may be specified.	Acquirer	Stock Exchange(s) wherever shares are listed & Target Company at its registered office	Within 2 working days of the receipt of intimation of allotment of shares or disposal or acquisition of shares or voting rights.

Notes: -

1. Shares taken by way of encumbrance (pledge) shall be treated as an acquisition and shares given upon release of encumbrance (pledge) shall be treated as a disposal, and disclosures shall be made by such person accordingly in such form as may be specified
2. This regulation shall not apply to a scheduled commercial bank or public financial institution as pledgee in connection with a pledge of shares for securing indebtedness in the ordinary course of business.

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Regulation-30 of SEBI (SAST) Continual Disclosures of Aggregate Shareholding:

S. No	Particulars	Person	Intimate to	Time Limit
1	Reg. 30(1) Every Person together with PAC holding shares or voting rights aggregating to 25% or more of the voting rights in a target company	Every Person together with PAC as on March 31st of every year	Stock Exchange(s) wherever shares are listed & Target Company at its registered office.	Within 7 working days from the end of each financial year.
2	Reg. 30 (2) The Promoter together with PAC holding shares or voting rights in a target company shall disclose their aggregate shareholding.	Promoter together with PAC	Stock Exchange(s) wherever shares are listed & Target Company at its registered office.	Within 7 working days from the end of each financial year.

Regulation 31(1) of SEBI (SAST) Disclosures of Encumbered Shares (Pledge of Shares):

S. No	Particulars	Person	Intimate to	Time Limit
1	A Promoter shall disclose details of shares in such target company encumbered by him or by PACs with him in such form as may be specified.	Promoter and PAC	Stock Exchange(s) wherever shares are listed & Target Company at its registered office.	Within 7 working days from the creation or invocation or release of encumbrance as the case may be.

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2	A Promoter shall disclose details of invocation of such encumbrance or release of such encumbrance of shares in such form as may be specified.	Promoter	Stock Exchange(s) wherever shares are listed & Target Company at its registered office.	Within 7 working days from the creation or invocation or release of encumbrance as the case may be.

* For computing the trigger limits for disclosure purpose, the word "shares" includes convertible securities also.

CHALLENGES

The major challenges are:

1. Takeover has led to wipe out of small business units as they are acquired by big corporate.
2. Takeovers are difficult to track as shares can be acquired through number of channels by the acquirer.
3. Another challenge arises when Indian company acquires foreign entity as there is huge foreign currency payment thus reducing the Foreign Reserves of the country.
4. Takeover Code is a long code that is very difficult to comply by the acquirer along with the person acting in concert.

TABLE-I: LATEST TAKEOVERS AS PER SEBI IN INDIA:

Date	Type	Title
Dec 31, 2018	Takeovers	Dalal Street Investments Limited
Dec 24, 2018	Takeovers	Adi Rasayan Limited
Dec 24, 2018	Takeovers	Apunka Invest Commercial Limited
Dec 24, 2018	Takeovers	Trans Financial Resources Limited
Dec 03, 2018	Takeovers	Gaurav Mercantiles Limited
Oct 26, 2018	Takeovers	Linde India Limited

Oct 26, 2018	Takeovers	Halder Venture Limited
Oct 23, 2018	Takeovers	Den Networks Limited
Oct 23, 2018	Takeovers	Hathway Bhawani Cabletel and Datacom Limited
Oct 23, 2018	Takeovers	Apollo Tricoat Tubes Limited
Oct 23, 2018	Takeovers	GTPL Hathway Limited
Oct 08, 2018	Takeovers	IDBI Bank Ltd.
Sep 28, 2018	Takeovers	Trescon Limited (Formely Known as Pushpanjali Floriculture Limited)
Sep 26, 2018	Takeovers	Kayel Securities Limited
Sep 12, 2018	Takeovers	SPBP Tea (India) Limited
Sep 05, 2018	Takeovers	Regaliaa Realty Limited
Aug 30, 2018	Takeovers	Shalimar Agencies Limited
Aug 16, 2018	Takeovers	Roxy Exports Limited
Jun 06, 2018	Takeovers	Apoorva Leasing Finance and Investment Company Limited
May 29, 2018	Takeovers	Vishvprabha Trading Limited
May 28, 2018	Takeovers	LKP Finance Limited
May 24, 2018	Takeovers	Tourism Finance Corporation of India Limited
May 24, 2018	Takeovers	Swagruha Infrastructure Limited
Apr 20, 2018	Takeovers	Darjeeling Ropeway Company Limited

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Apr 19, 2018	Takeovers	Asia Capital Limited

Source: https://www.sebi.gov.in/sebiweb/home/HomeAction.do?doListingAll=yes&cid=6

TABLE-II: TOP TAKEOVERS DEALS IN INDIA:

S.No	DEAL NAME
1.	**FLIPKART- WALMART:** Walmart acquired 77% Flipkart for $16 billion, making it the largest acquisition involving an Indian company, in 2018.
2.	**TATA STEEL-CORUS**: In 2007, Tata Steel took over European steel major Corus for the price of $12.02 billion, making the Indian company, the world's fifth-largest steel producer.
3.	**VODAFONE-HUTCHISON ESSAR**: In 2007, the world's largest telecom company (at the time) in terms of revenue, Vodafone, made an entered the Indian telecom market by acquiring a 52% stake in Hutchison Essar Ltd. Vodafone purchased 52% stake in Hutchisson Essar for about $10 billion.
4.	**HINDALCO-NOVELIS:** Hindalco Industries Ltd. is a subsidiary of the Aditya Birla Group and Novelis is a world leader in the production of flat-rolled aluminum products. The Hindalco Company acquired the Canadian company Novelis for $6 billion, making the combined entity the world's largest producer in rolled-aluminum.
5.	**RANBAXY-DAIICHI SANKYO**: In 2008, Daiichi Sankyo Co. Ltd., signed an agreement to acquire the entire shareholders of Ranbaxy Laboratories Ltd, India. Ranbaxy's sale to Japan's Daiichi was priced at $4.5 billion.
6.	**ONGC-IMPERIAL ENERGY**: In early 2009, Oil and Natural Gas Corp. Ltd (ONGC) took control of Imperial Energy, a UK Based firm operating in Russia for the price of $1.9 billion.
7.	**MAHINDRA & MAHINDRA-SCHONEWEISS**: In 2007, Mahindra & Mahindra acquired 90 percent of Schoneweiss, a leading company in the forging sector in Germany. This consolidated Mahindra's position in the global market.
8.	**STERLITE-ASARCO**: In the year 2009, Sterlite Industries, a part of the Vedanta Group, signed an agreement to acquire the copper mining company Asarco for the price of $2.6 billion.
9.	**TATA MOTORS-JAGUAR LAND ROVER**: Tata Motors' acquisition of luxury car maker Jaguar Land Rover was for the price of $2.3 billion, in 2008.

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10.	**SUZLON-REPOWER**: Wind Energy premier Suzlon Energy acquired RePower for $1.7 billion. Suzlon Energy Limited is a wind turbine supplier based in Pune, India and RePower systems SE (now Senvion SE) is a German wind turbine company founded in 2001, owned by Centerbridge Partners.

Source:https://www.businessinsider.in/here-are-the-top-10-acquisitions-to-have-happened-in-india/articleshow/64112322.cms

TABLE-III: TOP TAKEOVERS DEALS IN THE WORLD:

Date Announced	Acquiror Name	Acquiror Mid Industry	Acquiror Nation	Target Name	Target Mid Industry	Target Nation	Value of Transaction ($mil)
11/14/1999	Vodafone AirTouch PLC	Wireless	United Kingdom	Mannesmann AG	Wireless	Germany	202,785.13
01/10/2000	America Online Inc	Internet Software & Services	United States	Time Warner	Motion Pictures / Audio Visual	United States	164,746.86
06/26/2015	Altice Sa	Cable	Luxembourg	Altice Sa	Cable	Luxembourg	145,709.25
09/02/2013	Verizon Communications Inc	Telecommunications Services	United States	Verizon Wireless Inc	Wireless	United States	130,298.32
08/29/2007	Shareholders	Other Financials	Switzerland	Philip Morris Intl Inc	Tobacco	Switzerland	107,649.95
09/16/2015	Anheuser-Busch Inbev SA/NV	Food and Beverage	Belgium	SABMiller PLC	Food and Beverage	United Kingdom	101,475.79
04/25/2007	RFS Holdings BV	Other Financials	Netherlands	ABN-AMRO Holding NV	Banks	Netherlands	98,189.19

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11/04/1999	Pfizer Inc	Pharma	United States	Warner-Lambert Co	Pharma	United States	89,167.72
12/01/1998	Exxon Corp	Oil & Gas	United States	Mobil Corp	Oil & Gas	United States	78,945.79
01/17/2000	Glaxo Wellcome PLC	Pharma	United Kingdom	SmithKline Beecham PLC	Pharma	United Kingdom	75,960.85

Source: https://en.wikipedia.org/wiki/Mergers_and_acquisitions

CONCLUSION

Takeover is a major event in the financial market of a country as it leads to economies of scale among the corporate, reduced competition among them, more market share, huge asset base and many other privileges. Takeover in some cases can become harmful but they are guided by the Takeover Code which ultimately keeps it on track. From the study it can be derived that the number of takeover deals in the world as well as in India has increased with the passage of time as it is a good mode of diversification of business.

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