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A Critical Analysis of SEBI's Regulatory Framework for Investor Protection in Mergers and Acquisitions

ABSTRACT

In the Indian business landscape, mergers and acquisitions (M&A) have become powerful tools for corporate restructuring and economic development, enabling businesses to expand, diversify, consolidate markets, and boost their competitive edge. Given the interest that M&A transactions have on the shareholders and investors, the involvement of Securities and Exchange Board of India (SEBI) in ensuring transparency, fairness, and protection to investors has become extremely significant. To protect investor's interests during acquisitions by corporations and restructuring, SEBI has put in place a detailed regulatory regime in various regulations, among those, the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, and the disclosure requirements under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. The paper critically assesses the regulatory regime of SEBI as a protective mantle to the investors in M&A transactions keeping in view the salient features of the regulation, enforcement tools and its practical application. It considers how well the current regulations foster transparency, adequate disclosures and protect minority shareholders, as well as exit opportunities for impacted investors. This research also delves into other issues like regulatory loopholes, information asymmetries, compliance risks, and the intricate nature of contemporary corporate dealings. This paper examines whether the objectives of protecting investor rights and enhancing corporate growth can be considered as enacted by SEBI through relevant legal provisions and regulatory developments and a consideration of notable case studies. The paper also identifies the missing elements in the existing framework and recommends changes to overcome these issues and build investor confidence, market integrity and a better working mechanism of M&A Regulations in India.

KEYWORDS

Mergers and Acquisitions (M&A), SEBI, Investor Protection, Takeover Regulations, Minority Shareholders, Corporate Governance, Disclosure Requirements, Securities Regulation.

INTRODUCTION

In today's business environment, mergers and acquisitions (M&A) are proving to be crucial strategies for restructuring and growth. Companies can gain in growth, market share, technology and competitive position through mergers and acquisitions. Mergers and acquisitions are a common phenomenon in capital markets in India, especially since the liberalisation of the economy, and for a wide range of industries. These deals not only affect the economy and the company's productivity, but they can directly impact shareholders and investors, so the issue of investor protection is imperative. Securities and Exchange Board of India (SEBI), the main regulator of the Indian securities market, is a major figure ensuring that the M&A transactions are transparent and fair. To protect the interests of investors, several rules have been framed by SEBI such as SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.¹ These rules demand disclosure, outline possible opportunities to leave the company, and aim to shield minority shareholders from unfair treatment in takeover and acquisition scenarios. SEBI's goal of transparency and accountability is to keep investors confident and ensure market integrity.²

In spite of the extensive regulatory framework and the issues have remained concerning the effectiveness of investor protection in relation to an M&A transaction. As company organizations change rapidly, acquisition plans are getting increasingly complicated, disclosure is late and regulatory compliance is lacking in certain situations, regulators and investors are still having difficulties dealing with the growing issues.³ It also has raised concerns about securing the protection of the minority investors and about equal treatment for all investors under the existing system. In this light, this paper critically discusses the Seychelle's regulations governing investor protection during mergers and acquisitions (M&A), focusing on the key provisions, their effectiveness in practice, regulatory challenges, and opportunities for further strengthening the investor's confidence in the securities markets of Seychelles.⁴

LITERATURE REVIEW

1. The author here covers the understanding of the development of the takeover regulations in India and the importance of the SEBI (Substantial

¹ Securities and Exchange Board of India Act, No. 15 of 1992, India Code (1992).

² Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, Gazette of India, Extraordinary, Part III, Section 4 (Sept. 23, 2011).

³ Companies Act, No. 18 of 2013, sec 230-240, India Code (2013).

⁴ Competition Act, No. 12 of 2003, sec 5-6, India Code (2003).

Acquisition of Shares and Takeovers) Regulations, 2011. This study finds that the enhanced disclosure requirements and open offer obligations offered by the new regulations lead to a greater degree of transparency and better protection for investors. It does point out, however, the challenges of balancing shareholder and corporate interests with flex.⁵

2. The Committee highlighted greater corporate governance during the restructuring and acquisition process. It called for better disclosure rules and enhanced minority protection. The report led to several legislations and regulations in India which were related to mergers and acquisitions.⁶

3. The author discusses the role of the Securities and Exchange Board of India (SEBI) in regulating takeovers and acquisitions, in the context of investor rights and transparency in the markets. He states that the regulatory framework offers significant protection but that problems with its enforcement and the late disclosure of information may lead to lack of investor's confidence.⁷

4. The author works on corporate governance and shareholder protection in developing countries/growing markets in general, and in India in particular. The author notes that proper regulatory supervision is essential to keep minorities interested parties from being exploited in a takeover transaction. The study emphasizes the need for effective enforcement measures and law enforcement alongside legal protections.⁸

5. The authors analyse the corporate governance in India and, one of the major issues before the investors, is that of information asymmetry. Their research indicates that there is a need for strong disclosure standards to help with informed investment decisions during mergers and acquisitions.⁹

6. The author assesses the success of corporate governance and Shareholder rights reforms in India and their effects. The research reveals that despite the efforts of the SEBI for transparency and other measures for making the regulation effective, there are persistent compliance problems, especially on complex corporate transactions.¹⁰

⁵ Umakanth Varottil, *The Evolution of Takeover Regulation in India*, 1 NALSAR L. REV. 1, 5-12 (2012).

⁶ J.J. Irani Comm., Ministry of Corp. Affs., Report on Company Law 78-85 (2005).

⁷ Sandeep Parekh, *Takeover Regulations and Investor Protection in India*, 24 NAT'L L. SCH. INDIA REV. 87, 94-98 (2014).

⁸ Afra Afsharipour, *Corporate Governance Convergence: Lessons from India*, 29 NW. J. INT'L L. & BUS. 335, 352-57 (2010).

⁹ Tarun Khanna & Krishna Palepu, *Globalization and Convergence in Corporate Governance: Evidence from India*, 47 J. INT'L BUS. STUD. 484, 489-94 (2004).

¹⁰ N. Balasubramanian, *CORPORATE GOVERNANCE AND STEWARDSHIP IN INDIA* 143-57 (2018).

7. The OECD rules highlight that shareholder's interests should be treated fairly, that all information regarding every aspect of corporate transaction must be made transparent, and that there must be accountability within those transactions. These principles set an international standard for screening the compatibility of the mechanisms that SEBI uses to protect investors during mergers and acquisitions.¹¹

8. The report underlines the getting increasingly complex and denser volumes of dealmaking activities in India. It states that aspects of regulatory compliance and investor confidence are important factors in successful acquisitions. The report highlights the need for ongoing adaptation by the regulator to the new realities of markets.¹²

9. The study investigates various trends in Indian M&A and highlights that investors are getting more demanding in terms of transparency and governance. It finalizes that the regulatory agencies including SEBI have a crucial part to play in ensuring integrity in the market in the context of corporate restructuring.¹³

10. In this critical account of minority shareholder protection in India, Subramanian highlights the extent of the vulnerability of minority shareholders in some cases of takeover and merger proceedings and recommends how the law should be improved to increase protection. The study presents the recommendation for better enforcement action and disclosure requirements to help tackle the gaps.¹⁴

ANALYSIS

M&A transactions need to be conducted as transparently as possible. Transparency is a cornerstone of Securities Law and in the context of acquisitions and mergers, investors need access to relevant and timely disclosures. SEBI has come out with various regulations to promote transparency such as, SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (SAST Regulations) and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. The purpose of these regulations is to mitigate information asymmetry and provide equal access to information which may affect all shareholders decisions to invest in a company, as the result of an acquisition, changes in ownership, an open offer or a change in corporate control.

¹¹ Org. for Econ. Co-operation & Dev. (OECD), G20/OECD PRINCIPLES OF CORPORATE GOVERNANCE 9-15 (2015).

¹² Global Competition Review, Global Competition Monitor Trends - Q3 2021, at 12-18 (2021).

¹³ Ernst & Young, India M&A Trends and Outlook Report 15-22 (2023).

¹⁴ Shriram Subramanian, Minority Shareholder Protection in India: Challenges and Reforms, 12 INDIAN J. CORP. L. 45, 52-58 (2019).

The disclosure system has definitely boosted the investor's confidence in the Indian securities market. When important information about a merger or acquisition is available to investors, they'll be ready to decide what its impact might be. This highlights SEBI's overall goal of promoting fairness and efficiency of the capital markets by ensuring the availability of material information in a structured and regulated way.¹⁵

But disclosure-type regulation has some drawbacks. Although information may be made available when required by regulation, large-scale acquisition documents are hard to understand by normal investors. Individual consumers might not be as knowledgeable about financial aspects, making it hard for them to determine what is meant by the value report, share-swap deal, or roundabout ownership arrangement.¹⁶ Thus, it is not a simple matter of law to achieve meaningful investor awareness. This implies that SEBI would have to pay more attention to the timeliness, clarity and ease of access of the information and its usefulness to investors, besides emphasising on the quantity of information provided.

I. Minority Shareholder Protection and Open Offer Framework.

One of the most important purposes of the SEBI takeovers regulations is to protect minority shareholders. It facilitates the exit of any involved public shareholders and prevents them from being unwittingly exposed to a change of management or corporate strategy by the acquirer that could wreak havoc on their interests, under the SAST Regulations open offer requirement for the acquirer to make an offer to the public shareholders if it meets certain thresholds and/or conditions.

The open offer framework itself is an important improvement in concept of investor protection as it acknowledges the vulnerable position of the minority shareholders in a corporate takeover. SEBI tries to maintain fairness in the process, preventing unfair treatment of shareholders, by providing them with an opportunity to sell their shares at a prescribed price. From many perspectives, the open offer provision acts as a protection shield for customers of the corporate control regime, and builds trust for the take-over market.¹⁷

Even with these benefits, there are some concerns about the level of protection that is afforded to minority investors. Setting an offer price may become bickered in cases where there are complex valuations

¹⁵ Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, regs. 3-5.

¹⁶ Umakanth Varottil, Takeovers, Mergers and Corporate Control in India, 6 NUJS L. REV. 197, 203-08 (2013).

¹⁷ Shriram Subramanian, Minority Shareholder Protection in India: Challenges and Reforms, 12 INDIAN J. CORP. L. 45, 52-58 (2019).

methodologies or acquisitions using an indirect method. Minority shareholders on the other hand have comparatively little power to bargain and are heavily reliant on the valuation by experts involved in the transaction. In addition, although shareholders can vote on the decision, they rarely do have any meaningful input into the decision-making process itself. The open offer system, therefore, can offer an additional layer of protection, but further investor protection mechanisms that are intended to increase minority investor participation and oversight could give an extra boost to investor's confidence.¹⁸

II. New Regulations and Challenges in Enforcement

The efficiency or absence of efficiency of the machine for implementation is a decisive parameter to achieve any regulatory system efficiency. SEBI has a broad spectrum of powers including investigation of violations, imposing penalties and directions against the non-compliant entities. A robust enforcement mechanism is important for investor confidence and market discipline and has helped SEBI take a proactive role in its duties for the supervision of mergers and acquisitions activities and for combating cases of malfeasance in the market.¹⁹

However, the practical considerations remain as an obstacle to regulatory enforcement. Acquisitions can be quite complex, there can be multiple layers to an ownership structure, and there may be cross-border involvement, all of which can make it challenging to catch and act on regulatory breaches in a timely fashion. When cases of delayed disclosure, concealing beneficial ownership and exploiting subsidiary structures deceive regulators, disavailing investors rights, and ultimately benefit those who managed the transactions, then investors rights are subsequently infringed with the regulatory action only happening once they have suffered a negative outcome.

Further complexity was added to the regulatory product by the speed-up of business model and technology developments. Modern companies are called on to do mergers which are tied to digital systems, data cognitive companies and multinational companies which don't always in the very best world suit without a doubt into the sensible window of regulation.²⁰ Thus, SEBI continues to struggle with the challenge of keeping the regulation up to date as to tackle newer threats while keeping markets efficient. A tech-driven approach in supervision, combined with enhanced cooperation between the regulators, might be required to further protect investors from the changing corporate

¹⁸ World Bank, Protecting Minority Investors Indicator Report (2023).

¹⁹ Securities and Exchange Board of India Act, No. 15 of 1992, sec 11, 11B & 15-I.

²⁰ International Organization of Securities Commissions (IOSCO), Objectives and Principles of Securities Regulation (2023).

practices.

III. Evaluation of the Overall Effectiveness of the Investor Protection Policy of the SEBI

An evaluation of the regulatory framework put in place by SEBI reveals that India has one of the more extensive investor protection regimes relating to merger and acquisition. The framework SEBI has set up, through mandatory disclosures, the open offer requirements, corporate governance, and the enforcement measures, has helped a lot in enhancing transparency and encouraging trust in the Indian capital markets.²¹

Meanwhile, the complexity of today's mergers and acquisitions transactions highlights the fact that, at present, the system will have to be effective. It is not enough to meet regulatory requirements to fully protect investors. However, regulation will not be effective unless investors can access the information, make informed decisions and receive remedies if a risk flows.²² In this respect, there is still a significant room for consolidating efforts in investor education, enhancing the quality of disclosures and increasing the responsiveness of the regulatory framework.

As observed from the critical perspective, the overall effort of SEBI has been quite effective in safeguarding the interests of investors and maintaining the integrity of the market. But however more complicated the trade is becoming, it demands the ongoing innovative work on the regulatory front.²³ The measures, such as the importance of real-time disclosures regarding acquisition and enhanced scrutiny of indirect acquisitions, greater protection of minority shareholders, and regulating with technological tools such as monitoring, could improve the effectiveness of investor protection measures in a meaningful way. Finally, the success of SEBI will hinge not only on the existence of thorough regulations, although equally on SEBI's knack of adapting the regulations to fit the evolving reality of India's corporate and financial market.²⁴

CONCLUSION

M&A is a major driver of achieving corporate growth, business expansion, and economic development. The transactions, however, can have significant impact on the interests of investors, especially minority

²¹ Org. for Econ. Co-operation & Dev. (OECD), G20/OECD PRINCIPLES OF CORPORATE GOVERNANCE 9-15 (2015).

²² KPMG, Mergers & Acquisitions in India: Trends and Developments 12-18 (2023).

²³ Ernst & Young, Global M&A Trends Report 20-27 (2023).

²⁴ SEBI, Handbook of Statistics on Indian Securities Market 2023-24.

shareholders, and therefore adequate regulatory supervision is important. In order to govern M&A transactions in a transparent, fair and investor protection manner, SEBI has laid down a comprehensive framework in SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, disclosure norms and corporate governance principles. Such measures have helped increase investors trust during transactions, gained the trust of investors with the open offer system, etc.²⁵

Based on the analysis, the overall result is that the regulatory regime initiated by the Securities and Exchange Board of India have proved successful to a great extent in providing transparency and safeguarding investor interests. But it has not proven as effective as the system is hampered by late disclosures, complicated transaction structures, value issues, and enforcement restrictions. The nature of both mergers and acquisitions is becoming increasingly sophisticated and there is a need for regulatory measures to keep up with the changing dynamics of risk profile and meaningful investor protection.²⁶

To wrap up, SEBI has established a robust framework for safeguarding investors during M&A, but there is still room for continuous enhancement. The current framework can be further amended with improved enforcement, increased transparency, better minority shareholder protections, and increased investor awareness. A carefully-balanced and adaptive regulatory regime will play an important role in keeping the markets intact and promoting the development and productivity of the corporate sector in India.

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²⁵ Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, Gazette of India, Extraordinary, Part III, Section 4 (Sept. 23, 2011).

²⁶ World Bank, Protecting Minority Investors Indicator Report (2023).

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