The Aspirations of a Takeover and Its Resistance- A Brief Study

Priyatosh Sarkar
Assistant professor of Commerc
Raiganj University
Raiganj , Uttar Dinajpur, West Bengal, India

ABSTRACT: Corporate takeovers play an important role in the economy. However, unlike standard market transaction, they could lead to hostility as the target company often resist the attempt of takeover by the acquirer. While the target company often adopt strategies to resist the attempt of takeover by the acquirer, the acquirer does everything possible to counter the prevention strategies of the target. The target adopts strategies that potentially increases cost of acquisition far above the prevailing market price of the firm and sometimes deter efficient transfer of control.
It is often proclaimed that the intention of antitakeover tactics is to benefit the shareholder, but the regulators and practitioners believes that the antitakeover act benefit the inside at the cost of shareholder. The shareholders generally go by the opinion of the manager as they believe that managers are in a better position to evaluate the takeover offer.

Keywords: Acquirer: Economy: Shareholders: Strategies: Target: etc.

OBJECTIVE OF THE STUDY
- The first objective of the study is to understand the motives and intension behind corporate takeovers
- The second objective is to understand the weapons that the managers have to thwart the hostile takeover bid to safeguard the interest of the shareholders and their interest if any.

CONCEPT OF TAKEOVER
A takeover is a process wherein an acquirer takes over the control of the target company. The acquirer may do so with or without the consent of the shareholders. The acquirer generally acquires shares through a public announcement known as open offer. An open offer is generally made to ensure that shareholder of the target company becomes aware of an exit opportunity available to them.

FORMS OF TAKEOVER
LEGAL PERSPECTIVE
Corporate takeovers are governed by specific laws, which protect the target company and shareholders. From the legal perspective, takeover fall into three categories.
(a) Friendly Takeovers

In a friendly takeover the acquirer acquires the shares of the target by informing his intention to purchase the shares of the target company. When the board think that the offer is worth accepting, it recommends to the shareholders that the offer is accepted. The acquirer may either acquire the assets or purchase the shares of the target.
(b) Hostile Takeover

A hostile takeover is one where board of directors of the target refuses the offer of the acquirer to purchases the shares, but the acquirer continues to pursue the target or make an alternative arrangement to bypass the management of Target Company. The acquirer has the following three options if they want to proceed with hostile takeover.
- Tender offer;A tender offer is one made by the acquirer to purchase the share directly from the target shareholder or from a secondary market. First the acquirer makes an offer to board of directors of Target Company to by its share. The offer bears a clear indication that if the offer is turned down, the acquirer will resort to tender offer. This strategy is expensive as the acquirer may have to pay higher price than prevailing market price. In addition the stock price may hike with anticipation of a takeover.

- Proxy Fight; In a proxy fight the acquirer, the acquirer approaches the shareholder of target with an objective to obtain the right to vote for their shares. The acquirer hopes to gain enough proxies that would help them control over the board of directors and replace the incumbent management. It is very difficult mode of takeover and also very expensive too.
- Creeping Tender Offer; This method involves in purchasing enough share from the open market to bring a change in management.

BUSINESS PERSPECTIVE
Takeover under this category include the following type: horizontal takeover, vertical takeover, conglomerate takeover and reverse takeover.
- Horizontal Takeover; Takeover of from within the same line of business is called horizontal takeover.
- Vertical Takeover; When the takeover is occurred within the firms operating in different stages of business.
- Conglomerate Takeover; When the takeover is occurred within the firms engage in totally unrelated activity.

REVERSE TAKEOVER
This is the Takeover Strategy where a private company acquires a public company. This takeover enables the private company to effectively float itself and at the same time bypass the lengthy and complex process of going public by coming out with an initial public offering(IPO). This makes the company less susceptible to market condition.

TAKEOVER DEFENCES

A target company may take any one of the following takeover defences.
- *Bank Mail;* it is one where bank of the target firm refuses to provide finance to the company wishes to take over it.
- *Greenmail;* It is a practice where a target company purchases large number of shares of a public company that poses a threat of takeover. That threat forces the target company to buy those shares at a premium to suspend takeover.
- *Crown Jewel Defence;* Crown jewel represents the most valuable unit or department of a company. This unit are categorised as crown jewel based on their profitability, future prospect, value of asset owned etc. As they are most valuable parts of the company, they are used as a takeover defence. The company creates an anti takeover clause where it gets the right to sell off the crown jewels at the time of hostile takeover threat.
- *Poison Pill;* This term has been derived from the warfare terminology. A pills laced with poison were used to carry by the spy and would consumed when captured. In a takeover bid, it represents as a antitakeover defence wherein the current management team threetns to quit en mass at the time of a successful takeover. If the management team are efficient and quit en mass, the bidder company would be left without experienced leadership after the takeover.
- *Suicide pill;* It is an extreme form of poison pill where the target firms may employ tactics that threatens its own existence, so as to thwart an imposing acquirer's bid. Since the strategy threatens the very existence of the target, it is known as 'suicide pill'.
- *Killer bees;* Under this method this method, the target company employ firms or individual to fend off a takeover bid. The target company wants to avert the takeover bid and either is unable to do at its own or does not want to be seen doing so. Hence it employs other firms or individual to do the job for it.
- *Non voting Stock;* this type of share has a very little or no-voting rights. Such shares are issued to those who want to invest in company's profitability but are non- interested to companies voting rights. Preference shares are typically non-voting shares. Such type of share helps to make a company closely held company and and act as a takeover defence.
- *packman Defence;* This strategy is very much used to prevent takeover. Here the target company counter the takeover bid by trying to acquirer bidder's company. This divert the attention of the acquirer, who becomes busy in preventing the takeover of his own company.
- *Pension Parachute;* Companies often carry surplus amount in their pension fund, this is put to use as and when companies require resources. A pension parachute is a type of pension pill strategy that prevents the acquirer from going ahead with a hostile takeover by utilizing the surplus cash in the pension fund for financing the acquisition. Pension parachute, through corporate governance practice, ensures that resources in pension fund account are not put to use for financing the hostile takeover.
- *Macaroni Defence;* This is another takeover defence strategy wherein the company issues a large number of bond in the market. This bond carry a peculiar condition- if the company is taken over the bond will have to be redeemed at a very high price. The high redemption price of the bond act as a deterrent and acquirer may be forced to give up its takeover bid. This strategy is is called macaroni as the redemption price of the bonds starts increasing if the target is facing any danger of takeover, the same way macaroni is being cooked in a pot does.
- *Shark Repellent;* in this case the company makes special amendments to its bylaws taht become active only when a takeover attempt is announced. It is important to remember such measures are not always in the best interest of the shareholder.
- *Poison Put;* Here bondholder and stock holder are assigned a right whereby they can demand redemption of stock before maturity in excess of purchase value in case of restructuring of the company, leveraged buyout, or a hostile takeover. Such a condition help the management of a company to deter the takeover attempt by making the target very costly for the acquirer.
- *Scorched –Earth Defence;* This concept is originated from military strategy, wherein a retreating would burn crops and trees, so that the advancing enemy would be starved of fresh supply. . as an anti defence strategy, this policy involves liquidating valuable and desired assets and assuming fresh liabilities, so the proposed takeover become un attractive.
- *Treasury Stock;* These are stocks that are bought back by the issuing company with the intension of reducing the amount of outstanding shares in the open market. This strategy is a tax efficient tool of giving cash to shareholders instead of dividends. This strategy is adopted by the company to protect them against takeover threat.
- *White Knight;* This is a situation where a target faces a hostile takeover attempt from a company and struggling to avoid the same. At this time another company makes a friendly takeover proposal to the target company to help the target successfully avoid takeover bid. Since the friendly takeover offer is to save the target from hostile attempt, the company making the friendly offer is called a white knight.
- *Voting Right plan;* this plan is implemented when the company's constitution provides for shares that carry superior voting rights compared to ordinary shares. When an unfriendly acquirer acquires a substantial voting stock, it may still not be able to exercise control because the shares carrying superior voting rights will help the company to fight against hostile takeover bid.
- *Whitemail;* Whitmail is another takeover strategy wherein the target company issues a large number of shares at a price quite below the, market price to a friendly company. This forces the acquiring company to purchase these shares from the third party to complete the takeover. This strategy discourages the takeover as it becomes more difficult and expensive.

BENEFITS OF TAKEOVER

A takeover is expected to generate the following benefits:
- It helps the acquirer to increase revenue.
- The acquirer is able to venture into new business segment and market with ease.
- The overall profitability of the enterprise improves.
- It helps the acquirer in increasing market share.
- It helps the acquirer to expand its brand portfolio.
- The industry can reduce over-capacity by cutting down the scale of operations in the new entity.
- It helps the acquirer to gain economies of scale.

DISADVANTAGES OF TAKEOVER
- It results in reducing competition and thus reduces the choice of consumers.
- It results in job cuts, as the acquirer tries to reduce operating cost.
- The firm that merge may suffer from cultural difference that may lead to conflict with new management.
- The employee of a target company work in an environment of fear and uncertainty which affect their motivational levels.

CONCLUSION

Takeovers are direct outcome of corporate desire to grow big and become more powerful. Given the fact that even the closed economies are opening their boundaries to companies from across the globe, expansion beyond national boundaries is becoming a reality. As a result companies today have greater opportunities to spread their business across the globe. As it may not be possible for all companies to enter into new companies on their own, takeover appears to be a simple option. In spite of numerous takeover defences and legal provisions, takeover may be difficult to eradicate from the corporate world. One needs to learn to live with this necessary evil.

References:

1. Ali, R. and Gupta, G. S., (1999), "Motivation and Outcome of Malaysian Takeovers: An International Perspective," Vikalpa, 24(3), pp. 41-49.

2. Asquith, P., (1983), "Merger bids, Uncertainty, and stockholder returns", Journal of Financial Economics, Vol. 11(1, April): pp. 51-83.

3. Damodaran, A., (1999), Unpublished working paper, "Equity risk premium", New York University, New York, NY, 1999 - stern.nyu.edu

4. Beitel P., Schiereck, D. and Wahrenburg, M., (2002), "Explaining the M & A- success in European bank merger and acquisitions". Working paper, University of Written/Herdecke, Germany (January).

5. Berkovitch, E., and Narayanan, M., (1993)., "Motives for takeovers: An empirical investigation", Journal of Financial and Quantitative Analysis 28(3): 347 – 362

6. Bruner (2004). Applied Mergers and Acquisitions, John Wiley & Sons, Inc., Hoboken, New Jersey pp. 45-50.

7. Chatterjee, R., and Meeks, G., (1996), "The Financial effects of takeover: Accounting rates of return and accounting regulation", Journal of Business Finance & Accounting. 23(5/6, July):851-868.

8. Damodaran, A., (2001) Corporate Finance: Theory and Practice, Second Edition, published by John Wiley & Sons, Inc.

9. Damodaran, A., (2002) Investment Valuation, Tools and Techniques for determining the Value of Any Asset, John Wiley & Sons, Inc, 2 ed,.

10. Healy, P., Palepu, K., and Ruback, R., (1997), "Which takeovers are profitable: Strategic of financial?"Sloan Management Review 38(4, summer): pp.45-57.

11. Houstan J., James, C., and Ryngaert, M., (2001), "Where do merger gains come from? Bank mergers from the perspective of insiders and outsiders",