International Journal of Management, IT & Engineering
Vol. 7 Issue 8, August 2017,
ISSN: 2249-0558 Impact Factor: 7.119
Journal Homepage: http://www.ijmra.us, Email: editorijmie@gmail.com
Double-Blind Peer Reviewed Refereed Open Access International Journal - Included in the International Serial Directories Indexed & Listed at: Ulrich's Periodicals Directory ©, U.S.A., Open J-Gage as well as in Cabell's Directories of Publishing Opportunities, U.S.A

HOSTILE TAKEOVERS AND DEFENSIVE TACTICS: A CASE STUDY OF ARCELOR MITTAL

Dr.Rupinder Katoch*

Abstract

Hostile Take-overs become the site of battlefields as it is witnessed in Arcelor Mittal takeover case. Five month long fierce takeover battle occurred between Arcelor and Mittal Steel which brought a lot of excitement for the steel industry. The takeover was considered to be "150% hostile". Although the abuse of anti-takeover defensive tactics by management threatened to destroy the deal by depriving corporations and shareholders of the independence to make their own decisions, present case law promised to eliminate this peril in future. An account of Mittal's(Hostile Acquirer) actions to cope with defensive measures implemented by the target company(Arcelor) has been shown in the present study. From this case study it has been concluded that hostile acquirer had to raise the offer price in order to close the deal. Defensive measures played a significant influence in strengthening the target company's bargaining power and flexibility in dealing with hostile acquirers.

Keywords:
Takover;
Poison Pill;
White Knight;
Green Mail;
Proxy Fight.

* **Former Principal,Sant Baba Bhag Singh Post Graduate College,District Jalandhar,Punjab,India**

Introduction

Mergers Acquisitions (M&A) and takeovers are popular in India right from the initiation of Liberalisation, Privatisation and globalisation reforms in India in 1991. Earlier Government followed the policies of balanced economic development. In order to curb the concentration of economic power in few hands and to promote competition the Government of India enacted Industrial Development and Regulation Act-1951, MRTP Act, FERA Act etc. All these measure taken by government made hostile takeover almost impossible and only a very few M&A and Takeovers took place in India prior to 90s. However since 1991, with the introduction of the policy of liberalization, Privatisation and globalization of the economy which exposed the Indian corporate sector to severe domestic and global competition, the companies in India in order to face competition are consolidating themselves in areas of their core competence and divesting those businesses where they do not have any competitive advantage. Takeovers can be friendly or hostile. In India, hostile takeover is a dreaded word and not welcomed as it is not democratic in nature also resisted by the management of a target company because it is believed to be unpleasant for them. But the question is whether the hostile takeovers are feasible in India's regulatory, cultural, institutional and political environment? If we see past track record of takeovers in India, a number of takeovers are taking place, nearly all of these have been friendly. There are only a handful of hostile takeover attempts in India since its economic liberalization in 1991. Among the prevalent modes of corporate acquisitions, hostile takeovers are quite less common. Takeovers in India need to comply with the provisions of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 ("Takeover Code").

Objectives of the study

1. To deal with the concept, types and reasons of takeovers.
2. To study various defensive mechanism available to avoid hostile takeovers
3. To cover the case study of Arcelor Miital and study various defensive strategies applied in the case in order to prevent the takeover.

Research Method

Secondary data in the form of published reports,articlesa and research papers has been used for the conduct of this study.

Literature Survey

Table1. The Summary of the Research findings on Hostile takeovers and Defensive Strategies

Researcher	**Findings**
Chirag Shah(1996)	Research work titled "A Review of Defensive Strategies Used in Hostile Takeovers" carried out in 1996 showed White knights when used in a combination with poison pills and selftenders, proved to be highly effective.
Serdar Dinç Isil Erel(2010)	This paper studies the government reaction to large corporate merger attempts in the European Union during 1997-2006 using hand-collected data. It documents widespread economic nationalism in which the government prefers the target companies remain domestically owned rather than foreign-owned. This preference for natives against foreigners takes place both as resistance to foreign acquirers and as support for domestic ones.
Apurva Taran(2015)	After analysis of strategies for defensive measures against hostile takeovers, we can come to a conclusion that there are various strategies which help the target company to escape from the grasp of the raider company. These strategies are having effective implication in current scenario. But still they have some lacunas. Also the target company must not make so much loses to prevent the raider company taking

	over it. Because if the target company makes such moves which are contradictory to its own business functioning, then at the later stage it cannot operate anymore because of the deficit.

What are Takeovers?

The term 'Takeover' has not been defined under SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 ("Takeover Code"). A takeover occurs when an acquiring company acquires majority stake in another company and assumes control over the target company's target company's operations and holdings. When an acquirer acquires strategic control in the target company through substantial acquisition of shares or voting rights, it results in takeover.
Takeover can be friendly or hostile:

'**Friendly takeover':** An acquisition is considered to be friendly when the management of the target company sell the controlling shares to the acquiring company at its own accord. The acquiring company approaches the directors of the target company and expresses its willingness to take over and discusses and agrees on the terms and conditions of the offer before proposing it to the shareholders of that company. The acquiring company also undergoes due diligence process to look at the accounts of the business they want to buy so as to confirm whether the deal is viable or not. Market route can also be followed in this type of takeover.

'Hostile takeover' :Instead of negotiating with the management of the target company the prospective acquirer, directly approaches the shareholders of the target company and make an open offer. This process is followed when the management is not ready to negotiate or the prospective acquiring company does not want to approach the management. This is known as Hostile takeover. The company bidding has their offer rejected or does not approach the board of the company they wish to buy before making an offer to shareholders. No due diligence process with the management of the company is carried out and it means they do not have access to private information about the company. This increases the risk of the takeover. Banks are generally hesitant to lend money for hostile takeovers. This route can upset the normal

functioning of the target company any time as it by-passes the friendly route of takeover and no negotiations are carried out with the management of the company.Due to this fact that hostile bidders pose a threat not only to the shareholders of the target, but also the management, and thus her arises the need to regulate market control in the field of takeover.

Reasons for Hostile Takeovers

There are several reasons for a company to go for hostile takeover. The major reason is that the target company is not interested in the deal of acquisition due to following factors:

1. The target company wants to remain independent and does not want any interference in its management.
2. Already existing management resists due to fear of loss of their positions as in takeover they will be replaced by new management members.
3. Fear of loss of value of the company.

However, despite resistance from the target company, the acquiring company want to acquire it due to following reasons:

1. Financial Gain: The acquiring company and target company do not have anything in common; still hostile takeover is made in order to have financial gain. Because sometimes it is seen that the target company is able to generate more profits than the consideration paid for it. For e.g. the deal is profitable financially if the consideration to be paid is ₹ 500 crores against expected annual profits of ₹ 250 crores. This might be because of the cheap valuation of target company in the market due to certain adverse current market factors.
2. Strategic Gain: Sometime the acquiring company acquires the target company so as to have access to its wider distribution channels, large customer base, established brand name, or modern technology.
3. Other reasons can be low promoter stake, EPS accretive, majority market share and so on.
4. Sometimes time is also the consideration as the purchasers can take over the company in hostile manner quickly and on better terms than they can do it in friendly manner as they have to negotiate the deal with the target's shareholders and board of directors which can be time consuming process and also their terms might not be favourable.

Methods of Hostile Takeover

The two primary methods of conducting a hostile takeover are the **tender offer** and the **proxy fight.**

Method	**Features**
1. Tender offer	**Public Tender Offer:** ➢ The offer is made to acquire a large chunck of shares from the target company by offering premium price (usually higher than the current market value of the stock) to the shareholders so as to encourage them to sell their shares. ➢ The offer has a fixed time limit to sell the shares. ➢ Certain other conditions may be attached to the offer that the target company must abide by if shareholders accept the offer. ➢ The bidding company should disclose their plans for the target company and also file the proper documents with the **regulatory body.** **Creeping Tender Offer:** ➢ No Public Tender Offer is made ➢ The purchaser gradually buys up enough stock so as to gain a strategic stake/controlling interest. ➢ This is risky because the target company's normal functioning is disturbed the moment this takeover is disclosed. E.g.: **Sun Pharma attempt to acquire Israel Company Taro** falls under the

	tender offer method. US court dismissed a litigation filed by Israeli drug firm Taro to block an open offer launched by the domestic pharma major Sun pharma to acquire shares of the Tel Aviv-based company. In 2007, as part of the Sun-Taro agreement, Taro received an equity infusion of about $60 million from Sun, that bailed the ailing Israeli company out of a tight financial situation and sent its stock above the offer price. Taro then terminated the merger agreement in May 2008, saying that Sun's original offer was too low. This situation led to a hostile takeover bid from Sun. In June 2008, Sun—which currently holds a 36% stake in Taro—launched a share tender offer in the U.S. to acquire a controlling stake in its Israeli parent. Taro filed a U.S. lawsuit against Sun in September 2009 to block the open offer, on grounds that the Indian pharma major and its unit Alkaloida failed to make adequate disclosures. (US court quashes Taro's attempt to block Sun's offer, 2010)
2. Proxy Fight	➢ The prospective buyer does not make an attempt to buy the shares from the shareholders of the target company. Shareholders are convinced about the better management of company by the prospective buyer by voting out current management or

	the current board of directors. So the shareholders of the target company are used as proxy on behalf of the prospective buyers. The shareholders who are used as a proxy are generally a group of disgruntled shareholders or even managers from within the target company who want to have change in ownership. ➢ It is safe and less risky from the point of view of prospective buyer as it bypasses many of the defensives that companies put into place to prevent takeovers. ➢ The example of proxy fights that can be cited here is of acquisition of **Ultratech's stake by Grasim who convinced A. M. Naik of L&T for the stake sale**.

Various Defensive Strategies to prevent Hostile Takeovers:

Defensive Strategy	**Features**
Poison Pills	➢ Poisson pills or creation of securities with special rights which are exercisable only on the occurrence of triggering event.
Green Mail	➢ The company repurchases its stock at a higher premium in order to avoid hostile takeover.
Pac-Man Defensive	➢ The target company if has substantial cash flows attempt to purchase the shares of acquiring company.
White Knight	➢ The target company seeks another company for merger in order to make hostile

	takeover difficult for the acquiring company.
Refusal by Board	➢ Refusal by the board to register a transfer is also one of the defensive strategies.
Shark repellents	➢ Amending the corporate charter or by-laws to reinforce the ability of a firm's Board of directors to remain in control. ➢ Mechanisms such as staggered or classified Board structure may be adopted whereby only a specified number of directors are re-elected to the Board while others have a fixed tenure, thereby forcing a hostile bidder to wait for the entire circle until he gets full control of the Board.
Taking the plea of Cultural differences	➢ Organisations have differen t work cultures and hence differ in traditions
Litigation	➢ One of the defensive strategies is to go for litigation i.e. involving court proceedings into the takeover matter. It will hinder and delay takeover proceedings. The target company should involve regulatory, securities law or other laws like takeover codes etc in the closet of the attacker.with the intervention of courts, the time period taken to complete takeover proceedings would lengthen and also the chances of success would minimise. The cost of takeover will increase and time will be available to the target company to put up defensives.
Economic Nationalism	➢ In cross border takeovers nationalism is becoming an increasingly used defensive

	strategy. Economic nationalism in which the government prefers the target companies remain domestically owned rather than foreign-owned. This preference for natives against foreigners takes place both as resistance to foreign acquirers and as support for domestic ones.This nationalism has both direct and indirect economic impact: Government interventions are very effective in preventing foreign bidders from completing the merger and in helping domestic bidders succeed. Indirectly, nationalistic government reactions deter foreign companies from bidding for other companies in that country in the future.(Erel, 2010)

Defensive strategies adopted in Arcelor Mittal takeover case:

Mittal's initial approach to Arcelor sparked a war of words and deeds. Five month long fierce takeover battle occured between Arcelor and Mittal Steel which brought a lot of excitement for the steel industry. Guy Dollé, Arcelor's chief executive, used every tactic to frustrate Mittal's bid, which he called “150% hostile”. He was also helped by the attitude of Europe's politicians.

1. January 2006 - Lakshmi Niwas Mittal's Mittal Steel announces $23 billion bid for Arcelor. The aim behind this bid was Mittal Steel hoped that its low-cost production and Arcelor's high-margin markets combined with the new firm's greater power to set prices and negotiate for cheaper raw-material will maintain a boom set off by China's huge appetite for the metal.

2. Economic Nationalism Strategy: Arcelor, buoyed by the antipathy of the governments of France and Luxembourg, used many means to deter Mittal. The governments of France and

Luxembourg in particular were aghast that a "foreign" firm was intent on snaffling a European champion, though Mittal itself is registered in the Netherlands and run from London. Resistance to the deal coincided with a wave of economic nationalism across Europe as governments tried to engineer deals between domestic firms to ward off cross-border rivals.

3. Poison Pill: Arcelor tried to create a "poison pill" using Dofasco, a Canadian steel firm that it had recently bought. ARCELOR shored up its defensive against Mittal's hostile $23 billion takeover by putting its newly acquired Canadian business beyond its control, in a move that was widely regarded as a poison pill strategy. Arcelor said that it was ring-fencing the assets of Dofasco, which it bought for $4.9 billion last month, as a way of preventing the sale of the company for at least five years. It also announced a substantial increase to its dividend and said it would return €5 billion to investors. Luxembourg-based Arcelor, which is braced for a formal offer from Mittal in the next ten days, said that its board of directors had unanimously agreed to transfer shares in Dofasco to a newly formed Dutch foundation, without consulting shareholders.(Arcelor poison pill strategy under fire, 2006)

4. Green Mail:Later the firm proposed a share buyback, but denied the use was intended to hamper Mittal's bid.

5. Taking the plea of Cultural differences:More unpleasant was Mr Dollé's attempt to paint Mittal as a firm that did not share European "cultural values". Saying Mittal suffered from "mono-cultural management" was a minor jibe; describing the offer as "monkey money" was far worse.

6. Arcelor rubbished the quality of Mittal's steel and criticised its corporate governance.

7. White Knight Strategy:In May it orchestrated a white-knight deal of sorts. Severstal, a steelmaker from Russia, a country hardly known for high standards of corporate governance, stood ready to pay €13 billion to become a leading shareholder in Arcelor. And Arcelor used some suspect tricks. It asked that half of all registered shareholders vote against Severstal's approach rather than the—more usual—simple majority of those who actually voted. Arcelor

brushed aside criticism by insisting that its articles of association and Luxembourg's statute book did not require any consultation at all.Shareholders became increasingly uneasy at Mr Dollé's attempts to save his job rather than strike the best deal.

8. Shareholders'Activism against Arcelor:

Talk of legal action, opposition to a share buyback designed to thwart Mittal's bid, threats to oppose the re-election of board members and investors' calls for Mr Dollé to resign all eventually pushed Arcelor to the negotiating table. The ire of shareholders also quietened political opposition. Luxembourg showed less inclination to help Arcelor; France accepted that it was largely powerless to intervene. Shareholders still endorsed the deal due to Mittal's high offer.

9. May 2006 - Sweetens bid by increasing the offer by 38 per cent to $32 billion

10. June 25th, 2006 Arcelor's board accepted an offer of €25.6 billion ($32.2 billion), some 40% higher than the first bid in January.

11. It was a notable victory both for Lakshmi Mittal, the Indian steel tycoon behind the offer, and for Arcelor's shareholders.

12. Other European investors are sure to note this rare example of shareholder triumph.(Mittal's victory, 2006)

Conclusion

This paper focussed on target company's defensive mechanisms to withstand unfriendly takeovers. However present study also investigated hostile situations from the point of view of hostile acquirer and covered strategies available to hostile acquirer to complete hostile transactions.An account of Mittal's actions to cope with defensive measures implemented by the target company has also been shown in the present study.From this case study we can conclude:

- Hostile acquirer had to raise the offer price in order to close the deal. Here we saw how the hostile acquirer increased its unsolicited bid or sweetened the takeover conditions.

➢ Defensive measures have a significant influence in strengthening the target company's bargaining power and flexibility in dealing with hostile acquirers.

References

- *Arcelor poison pill strategy under fire*. (2006, April). Retrieved from www.thetimes.co.uk: https://www.thetimes.co.uk/
- Erel, I. S. (2010). *Economic Nationalism in Mergers & Acquisitions.* Fisher College of Business,Ohio State University, Department of Finance, Columbus.
- Jayakumar, P. B. (2009, Dec). *Sun Pharma gets boost in Taro battle*. Retrieved from Business Standard: https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwi-59GX7LzUAhULt48KHT-HC7EQFggtMAA&url=http%3A%2F%2Fwww.business-standard.com%2Farticle%2Fcompanies%2Fsun-pharma-gets-boost-in-taro-battle-109121600089_1.html&usg=A
- *Mittal's victory*. (2006, June). Retrieved from www.economist.com.
- Shah, C. (1996). *A Review of Defensive Strategies Used in Hostile Takeovers.* Western Michigan University.
- Taran, A. (2015). "Corporate Strategies in Mergers and Acquisition". *"Udgam Vigyati" – The Origin of Knowledge* .
- *US court quashes Taro's attempt to block Sun's offer*. (2010, July). Retrieved from https://www.google.co.in/url?sa=t&rct=j&q=&esrc=s&source=web&cd=4&cad=rja&uact=8&ved=0ahUKEwi-59GX7LzUAhULt48KHT-HC7EQFgg7MAM&url=http%3A%2F%2Fepaper.timesofindia.com%2FRepository%2FgetFiles.asp%3FStyle%3DOliveXLib%3ALowLevelEntityToPrint_ETNEW%26Type%3Dt