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INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 3 | Issue 3

2020

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Anti-Takeover Provisions and Failed Acquisitions

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ABSTRACT

This study provides large sample evidence on the effects of anti-takeover provisions (ATPs) on the firms', takeover probability and premium in various takeover contests. No company wants to be taken over without proper and adequate warning that too before hand. Anti takeover provisions are adopted to prevent a hostile takeover and is a serious problem that needs to be addressed. From the perspective of a financial theory, the main issue is to see whether the benefits from acquisitions are greater than the costs including the initial investment. And also whether the marginal returns on investment post acquisition is greater than the marginal cost. We also showcase various ATPs that managers choose to strengthen their firm when faced with an increased threat of takeovers, and the effectiveness of these ATPs in deterring and reducing takeover attempts. Finally, we add to the growing context on the changes in various governing policies and outcomes in states or organizations that adopt such anti takeover provisions. Therefore its important to have a legislation like IDD in the Indian jurisprudence to help companies from being taken over.

I. INTRODUCTION

Anti takeover provisions are techniques or rather strategies wherein a firm acts effectively in order to prevent the acquirer from acquiring its firm. As the prefix itself suggests *"anti"* means to suggest, these strategies are incorporated into a company's governing structure or laws with the sole purpose of discouraging takeovers. No company wants to be taken over without proper and adequate warning that too beforehand. Anti takeover provisions are adopted to prevent a hostile takeover and is a serious problem that needs to be addressed. A hostile takeover in Mergers & Acquisitions is the acquisition of a target company by another company by directly getting the approval of target company's think tank. If the target company refuses to accept this acquisition then the acquiring company pressurizes it to reconsider its decision or directly approaches its shareholders either by making a tender offer or through a proxy vote. The main difference between a friendly takeover and a hostile

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takeover is with regards to the approval of the board of directors."

Takeovers are crucial events. In 1999, global mergers and acquisitions accounted for nearly 2 percent of the entire world's GDP *(UNCTAD 2000)*[2]. Financial performance and stability of corporate takeover is one of the most researched topics all over and accounting studies at the same time throw light on whether performance improves or diminishes after acquisition and whether or not antitakeover provisions are good with respect to increasing the value within the firm. There are numerous studies which show rise in profitability and share holding but the majority of them hint towards diminishing the share value. According to the event studies of *(Andrade, Mitchell and Stafford 2001)*[3], there are no gains for the acquiring shareholders but subsequent gains for the target company's shareholders thus examining long run share returns following acquisition find evidence of negative returns or losses. Some authors or accountants state that takeovers create both value and profitability thereby hinting towards overall gains."

Every report that hints towards share value comes with a contrasting view where its stated that long run negative share returns deeply affect the profitability and lead to overvaluation of takeovers at a time when the acquirer is about to acquire the target company thereby destroying shareholder values. long run negative share returns reflect overvaluation of takeovers at the time of announcement, which ultimately do not improve profits and destroy shareholder value *(Tichy 2002).*[4]

From the perspective of a financial theory, the main issue is to see whether the benefits from acquisitions are greater than the costs including the initial investment. And also whether the marginal returns on investment post acquisition is greater than the marginal cost. The important factor that is to be considered is the very fact that antitakeover provisions are designed to increase shareholder value within the company and at the same time helps an organization understand its potential with respect to shareholding and its profits thereby not willing to be takeover by a acquirer.

As per the reports[5], there are reasons to believe that strong antitakeover provisions may decrease share value. To begin, when a bid is on the table, incumbents can use their veto to block such a bid if its unfavorable to them or the company in general but is beneficial to the

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[2]Karl P. Sauvant& Anne Miroux, World investment report: Cross border mergers & acquisitions & development, 10 UNTAD (2000).

[3]ANDRADE, "ET AL", THE LONG-RUN PERFORMANCE OF MERGERS AND ACQUISITIONS, 1 M&A (2001).

[4]Gregg A. Jarrell, "et al", The Market for Corporate Control: The Empirical Evidence,2 (1980).

[5] Lucian AryeBebchuk, The Case Against Board Veto in Corporate Takeovers, 69 U. CHI. L. REV. 973 (2002). veto

shareholders. The evidence, reports and managerial strategies state that the managerial board when staggered is in a better position to retain independence in the face of a hostile takeover and the decision to remain independent places shareholders in a worse position[6]which is not true. Therefore when managers have to fear from takeovers, they increase the capital base of their shareholders by offering certain mechanisms like reducing the cost of preference equity shares which gives a great sense of trust and stability to the shareholders within a company both profitability and satisfaction wise. This clearly suggest that anti takeover provisions create share value and is in nutshell profitable to its shareholders and the company in general as well."

As the Indian economy moves towards greater heights and flight towards corporate stardom both in domestic and foreign markets, the internal structuring and the setup of the Indian companies are also undergoing some serous change. Such changes are usually brought about by corporate maneuvers like merger, demerger, takeover, privatization of public sector undertakings etc. Takeover can be formally defined as *'acquisition of a certain amount of equity capital or controlling interest in a company which enables the acquirer to exercise control over the affairs of the company'* and can be categorized broadly into two types a hostile takeover in the former case and a friendly takeover in the latter. When a company becomes a target of hostile takeover raids, the managers of the targets start to devise strategies, plans in order to defeat the acquirer intention or purpose. Sometimes the defense used may seem questionable and the strategy behind the same may seem unethical however nonetheless any such measure unethical or questionable may seem as a victory for the defense as the acquirer is always in a position of advantage than the target as they can effectively plan and choose the time of target when the target company's defenses are at the ebb.

An acquisition bid can be friendly which means that a target company is happy to get it and can be termed a "Teddy bear hug" and in some cases a target may decide to resist a bid of takeover. Hostile takeover is a situation that arises when a target does not want to be acquired and rejects such an offer of acquisition[7]. In order to overcome such a takeover, defenses can be categorized into four broad types or segments:

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[6] Lucian AryeBebchuk, "et al", The Powerful Antitakeover Force of Staggered Boards: Theory, Evidence, and Policy, 54 STAN. L. REV. 887,30-39, 950 (2002).

[7]H. J Glasbeek, Wealth by Stealth: Corporate Crime, Corporate Law, and the Perversion of Democracy, pg. 185, (Chris Schluep) (2002).

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- **To make a target look unattractive:** which can be achieved by undertaking certain strategies such as Poison Pill, Crown jewel defense, Scorched earth defense, leveraged recapitalization, poison put, shark repellant.
- **To counterattack the raider by bidding to take over the raider:** it includes strategies like Pac man defense, killer bees etc.
- To negotiate with the raider to call off the raid usually at a premium it asks for and may include Greenmail, targeted repurchase.
- To ask for third party help like in white knight, black knight, white squire, bankmail, whitemail etc.

II. STRATEGIES USED TO OVERCOME THE THREAT OF TAKEOVER'S:

In Indian scenario, the companies are family owned business entities where they are themselves the promoters and hold more than 50% of the shares[8] thereby making hostile takeover impossible. Acquisition of shares by acquiring route has also been blocked by SEBI through its mandatory disclosure by acquirer and other policies.

(A) POISON PILL[9]

The poison pill was invented by Marty lipton.[10] This strategy involves issue of low price preferential shares to the existing shareholders to enlarge their capital base thereby making it difficult for them to drift from their own stance. This will make hostile takeover too expensive. This also includes another strategy whereby the shareholders are given an option of buying two shares at the price of one which again increases their capital base and price cost of acquisition within the company. Another innovative strategy devised by target firms is that of a lobster trap. In a lobster trap, the target firm issues a charter that prevents individuals with more than 10% ownership of convertible securities *(includes convertible bonds, convertible preferred stock, and warrants)* from transferring these securities to voting stock and thereby helps to prevent from being taken over. Other variations include flip in, flip out etc. The Delaware Supreme Court upheld a shareholder rights plan *(also known as a "poison pill")* as a legitimate exercise of business judgment by Household International's board of directors. Moran is significant as the first case in which a U.S. state court upheld a

[8]Credit Suisse report on Indian Family business, The CS Family 1000, CSRI, (2018).
[9]In July 2018, the board of restaurant chain Papa John's (PZZA) voted to adopt the poison pill to prevent ousted founder John Schnatter from gaining control of the company. Schnatter, who owned 30% of the company's stock, was the largest shareholder of the company.
[10]JEFF MADRICK, TAKING AMERICA: HOW WE GOT FROM THE FIRST HOSTILE TAKEOVER TO MEGAMERGERS, CORPORATE RAIDING, AND SCANDAL, (GOOGLE BOOKS), (1987).

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shareholder rights plan.[11]

(B) STOCK REPURCHASE

"It is a strategy *(aka self-tender offer)* wherein the target company purchases its own- issued shares from its shareholders so that the shareholders cannot exercise their voting stock and at the same time can save the company from being taken over. This technique was successful in many cases and was rendered as an effective defense strategy".[12]

(C) CROWN JEWEL DEFENSE[13]

"It is an antitakeover strategy wherein the target company sells off its most attractive assets to a third party or spin off the valuable assets in a separate entity. By doing so the acquirer looses interest in the target company and decides to not takeover the company as the unfriendly bidder is less attracted to the company assets. Other effects include dilution of holdings of the acquirer, making the takeover uneconomical and less attractive to third parties, and has an adverse influence of current share prices. Thereby the profitability aspect is not seen by an acquirer in such a target firm and refrains from indulging in Acquisition of any kind".

(D) LEVERAGED BUY OUTS[14]

"In corporate terminology, it's a recapitalization strategy undertaken to ward off the threat of a hostile takeover. Under this strategy, a company incurs a lot of additional debt by repurchasing stocks through an appropriate buy back program and distributes large dividend among the shareholders at the same time. By doing so the share price increases tremendously thereby making the company a less attractive target because an acquirer has to pay more and more to acquire the company thereby minimizing all the gains and acting as a deterrent".

(E) SHARK REPELLENT

"It's an antitakeover strategy of making certain changes in the terminologies of a contract by amending the memorandum or articles of association of the company to make the takeover strategy more complex and costly and thereby making the target firm look unattractive. This helps in acting as a deterrent and the acquirer looses interest in such an acquisition. This strategy was used by The Finish Line, Inc. wherein its Board of Directors adopted a certain

[11]Moran v. Household International, Inc., 500 A.2d 1346, (1985).
[12]*Unitrin and Unocal v. Mesa Petroleum Co* 493 A.2d 946 (Del. 1985).
[13] *Auerbach, Alan J. & Richard S. Ruback, An Overview of Takeover Defenses".* Mergers and acquisitions. *Chicago: University of Chicago Press.3, ISBN, pp. 49–68,(1988).*
[14]Gregg A. Jarrell, "et al", Takeovers and Leveraged Buyouts "The Takeover Wave of the 1980s.", (1980).

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shareholders rights plan to protect the interest of the shareholders of its company".[15]

(F) THE SCORCHED-EARTH DEFENSE[16]

"It is a form of risk reduction and anti-takeover strategy wherein a target firm tries its best *(even if it's unfavorable in the short run)* and makes an effort to make it unattractive to the hostile bidder. For example, a company may agree to liquidate or destroy all valuable assets, also called *"crown jewels",* or insist on scheduling the repayment of debt right after the following a hostile takeover. In some cases, this scorched-earth defense may develop into an extreme anti-takeover defense called a *"suicide pill"*. In nutshell it's a strategy to make a firm look less attractive to the potential acquirers".

In 1937, it was used as a military strategy of burning or destroying crops or other resources that might be of use to an invading enemy force *(a report of the Sino-Japanese conflict)*[17].

(G) THE PAC-MAN DEFENSE

"It is an antitakeover strategy to counterattack the acquirer by bidding to takeover the acquirer. Its mainly implemented when a company is under a hostile takeover attempt to acquire its would-be buyer. A classic example of the same is to be found in U.S. corporate history where an attempted hostile takeover of Martin Marietta was done by Bendix Corporation in 1982. In response, Martin Marietta started buying the entire stock of Bendix with the aim of assuming control over the company and in a bid to takeover the acquirere and leave him off guard thereby by preventing an attempted takeover.[18] The incident was labeled a *"Pac-Man defense" in retrospect".*

(H) KILLER BEES

"This defense uses firms and talented individuals that are employed by a target company to ward off the threat off a takeover bid by fending off such a takeover bid. The pool of talented individuals include investment bankers *(primary),* accountants, attorneys, tax specialists, etc. They aid by utilizing various anti-takeover strategies, mechanisms and techniques thereby making the target company economically unattractive and acquisition more costly".

(I) GREENMAILING

"It is a variant of the corporate raid strategy of asset stripping. However, once an acquirer have secured a large share of a target company instead of completing the hostile takeover, it

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[15]The Finish Line, Inc. (a shoe stores company) ,a classic example of using the shark repellent strategy.
[16]Oxford University Press, Scorched Earth policy, The Oxford Dictionary of phrase & Fable, 2 ed., (2005).
[17]Scorched Earth Policy select documents, Charter of the (Nuremberg) International Military Tribunal, (1945).
[18]Ron Scherer ,The Pac-Man battle of Martin Marietta and Bendix, CSMonitor, Sept. 23, 1982.

offers to sell the shares back to the target company but at a substantial premium. Whilst benefitting the predator, the company and its shareholders are impoverished. Even thought it doesn't seem practical to buy its own shares and that too at a higher price but the target company normally views it as a goodbye kiss to ward off the danger of being taken over. The origin of the term as a corporate metaphor is unclear, although it will be taken in context as kissing the greenmailer and, certainly, a few million dollars goodbye at the cost of the years of commitment and hardwork in building the company. In return, the bidder agrees to abandon the takeover attempt and may sign a confidential agreement with the greenmailer. In the 1980s, Icahn used the greenmail strategy when he threatened to take control of Marshall Field, Phillips Petroleum, and Saxon Industries. In the case of Saxon Industries, a New York distributor of specialty papers, Icahn purchased 9.5% of the company's outstanding common stock. In exchange for Icahn agreeing to not undertake a proxy battle, Saxon paid $10.50 per share to buy back its stock from Icahn. This represented a 45.6% profit to Icahn, who originally paid an average price of $7.21 per share".[19]

(J) TARGETED REPURCHASE

"It is a technique used to overcome a hostile takeover in which the target firm purchases back its own stock from an unfriendly bidder, usually at a price which is above the market price. In the event of a hostile takeover attempt, a target company can use a top-up to increase time for enhancing takeover defenses. Stock repurchases are often used as aim pressive tax-efficient strategy to put cash into the shareholders' hands, rather than to pay dividends. This is the most used technique when the stock is undervalued on the open market or to provide an added bonus to provide incentives to employees. But the main and most important motive for stock repurchase is to protect the company against a takeover threat".[20]

(K) BANKMAIL

"A bankmail strategy is normally aimed to refuse financing options to firms with takeover bids as this strategy serves multipurpose. It is used to ward off merger acquisition through strict financial restrictions and increasing the transaction costs of the competitor's firm to find other financial options at the same time. It can also be used as an innovative technique to give more time to the target firm develop alternative strategies and viable ideas thus helping overcome the obstacle of being taken over".

[19]Robert J. Cole, Icahn bids $8.1 billion for Phillips, NYT, Feb. 6, 1985.

[20]S. Sinha, Share Repurchase as a Takeover Defense :The Journal of Financial and Quantitative Analysis, 26 jstor, (1991).

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(L) WHITE KNIGHT

"The White Knights are often referred to as individuals, companies which acquire a target firm which otherwise is on the verge of a hostile takeover. They are considered as a savior against any type of takeover threats with the current management remaining intact and investors receiving higher compensation for their shares at the same time. It's a metaphor of referring to white knights as white due to their virtue and good relations with the target firm making this type of an acquisition a friendly relationship or an affair. The intention of the acquisition is to circumvent the takeover of the object of interest by a third, unfriendly entity, which is perceived to be less favorable. A classic example of such an arrangement can be traced back to 2008 financial crisis wherein JP Morgan Chase acquired Bear Sterns *(Investment Bank & Brokerage house).* If JP Morgan would not have acquired it at that crunch time, Bear Sterns would have to consider filing bankruptcy and therefore making JP Morgan a White Knight in this case of friendly acquisition.[21] Another example of white knight can be experienced as Wells Fargo and Company, a west coast behemoth in the banking industry, launched an unsolicited offer to acquire First Interstate Bancorp based in Los Angeles, CA".[22]

(M) WHITE SQUIRE

"A white squire is pretty much on a similar line as that of a white knight, except that it only exercises a significant minority stake, as opposed to a majority stake. A white squire doesn't go with the intention of buying a company but only to be used as an antitakeover defense. The white squire may often also get special voting rights for their equity stake".

(N) WHITEMAIL

"An anti-takeover strategy whereby the target company will sell off its stock at a deeply discounted price to a friendly third party individual or corporation. In return, the target company helps thwart takeover attempts, by raising the acquisition price for the prospective buyer and also increasing the aggregate stock holdings of the firm by diluting the number of shares of the hostile bidder. If the strategy is successful, the company can either buy back the issued shares or keep them outstanding. This helps to make a target look unattractive and at the same time save a company from the potential threats of a takeover bid".

[21]David Ellis & Tami Luhby, JPMorgan scoops up troubled Bear as The deal values Bear Stearns at just $2 a share. Regulators hope purchase will stave off wider chaos in financial markets, CW,
[22]First Interstate Bancorp v. Wells Fargo. Mar. 17, 2008.

III. THE INEVITABLE DISCLOSURE DOCTRINE:

The Inevitable Disclosure Doctrine consists of a trade secret which normally comprises of any piece of information, compilations, computer databases, as *"literary works"*[23], technique, process or certain formula which is inherent to an organization and helps in deriving independent economic value. Such a trade secret remains vital and should not be ascertainable to other persons who can obtain value or profit from its disclosure. A trade secret is the subject of efforts put in by an organization wherein such efforts are reasonable under the circumstances to maintain its secrecy.[24] The UTSA also describes misappropriation of such trade secrets to be the acquisition of value of a firm in the form of *(acquiring trade secret)* by improper means. Its important to have a legislation like IDD in the Indian jurisprudence to help companies from being taken over".

Therefore in order to protect the same IDD helps with the legal protection of a trade secret by allowing courts to restrict the choice given to the employees who possess trade secrets of such value to join rival companies. It is important to have a legislation for the same as it helps prevent a firm from loosing its hold on the market. The legal doctrine in the IDD is based on the concept of threatened misappropriation. If there is an explicit threat by an employee of a who knows all the trade secrets of a company and decides to disclose the same to the rival company, the role of courts become paramount to step in and refrain that particular employee from working in a rival company or only allow him to have limited responsibilities in such a rival firm".

"In *Burlington Home Shopping Pvt Ltd v RajnishChibber*[25], the Delhi HC stated that trade secret protection appies to a wide variety or range of business data and other compilations of business data may be copyrightable as works of fact. Also in *Govindan v Gopalakrishna*[26], it was stated that even though the amount of originality in a compilation is little or small, it is still protected by law. Hence, no party or an organisation may steal or appropriate the result of another's intelligence, skills or labor, even in such works".

In trade secret infringement cases, if one party states that its trade secrets are infringed or is likely to be infringed, the court shall order the other to raise specific defense denying such allegations of the victim party.[27] The court therefore has come to a conclusion wherein the party claiming such breach of trade secrets is given a remedy by directing the other party

[23] The Copyright Act, 1957, NO. 13, Acts of Parliament, § 2(o),1992 (India).
[24]Uniform Trade Secrets Act, 1985, Acts of Parliament, § 1,1985 (India).
[25]Burlington Home Shopping Pvt Ltd v.RajnishChibber, 1995 PTC (15) 278 (India).
[26] V. Govindan v. E.M. GopalakrishnaKone And Anr.AIR 1955 Mad 391 (India).
[27] The Intellectual Property Case Adjudication Act , art. 10(1) and (2).

because of whom such a complaint has been filed to produce the preliminary proof that such infringement has not taken place".

If we look at it from the angle of acquisitions, an employee or a shareholder working for a particular firm knows all the trade secrets of the firm he/she is working for and when acquired by the acquirer poses a potential threat to the target firm with respect to trade secrets being disclosed. Therefore anti takeover provisions are very important for a firm as it helps in preventing the takeover and at the same time protect a firm from trade secret infringement.

"Since India is a signatory to the Paris Convention, it is relevant to mention that Article 1(2) of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs)[28] states that intellectual property shall include protection of undisclosed information. Further, Article 39 of TRIPs[29] states concerns ensuring effective protection against unfair competition as provided in Article 10 of the Paris Convention[30], with respect to information which":

- *is a secret not generally known or readily accessible;*
- *has commercial value by virtue of secrecy; and*
- *has been subjected to reasonable steps for ensuring its secrecy.*

"This clearly states that disclosure of trade secrets which are of economic value to an organization would pose a potential threat to that organization with respect to its economic value being disclosed. This is also one of the main reasons why anti – takeover provisions are important for protecting an organization and its trade secrets from being take over by an acquirer".

IV. RATIONALE FOR INCREASING TAKEOVER DEFENSES:

(A) INNOVATION ACTIVITY:

The second rationale behind increasing takeover defenses lies the strategy or a mechanism to not hamper the innovative think tanks from using their innovative techniques in the best possible manner. One main motive is to protect firms long term investments and innovation. An increased risk of being taken over can affect the target firm in 2 ways:

- First it reduces the managerial influx into devoting time and effort into something they would have normally put their heart and soul provided a company wouldn't have been taken over. Also a hostile takeover may unnecessarily promote myopic behavior

[28]The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) 1995, art, 1(2).
[29]The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs), 1995, art. 39.
[30] Paris Convention for the Protection of Industrial Property, 1883, art. 10.

from the point of view of an acquirer as he might be concerned with what entails him right in the present without any concern for the future.[31]

- Second, the takeover attempt could prove to be vital initially or during early stages of long-term projects when acquirers won't fully value r understand the full potential of investments. Also there are times when the acquirer wants a particular target firm without any intention for increasing his investments in the near future, in that scenario the acquirer might refrain from important Research & Development initiatives post acquisition. This will be potentially detrimental to long-term shareholding".[32]

Firms that have a storehouse of talented individuals or workers such as scientists and technicians would protect long-term valuable investments using many levels of R&D techniques[33] and measure the proportion of knowledge which will in turn have greater incentives for stressing on anti- takeover defenses.[34]

(B) Managerial Entrenchment:

Another motive that can be used by the managers to their advantage comes from the fact that when they realize that they can gain so much power and use the firm in furthering their own interests rather than the interests of the shareholders, their desire to shield themselves from the market increases as well. In nutshell firms with greater managerial entrenchment will increase takeover defense immensely therefore there exists a direct relationship between Managerial entrenchment and Increasing takeover defenses.[35]

(C) Long-Run Innovative Output:

If firms perceive that in the near future their output would increase then they will be more inclined towards increasing the takeover defenses to increase the profitability of its business in the coming years. Thus long run innovative output and antitakeover defenses have a direct relationship with each other.

V. Acquisitions:

An acquisition is when one company purchases the another company's shares to gain control of that company. Purchasing more than 50% of a target company's assets and other valuable securities allows the acquirer to make decisions about the new company without need for approval of the company's shareholders.

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[31]Shleifer&Summers,Stein, (1988).
[32]Hitt et al., 1996; Valentini, (2012).
[33]Zingales, 2000; Barth et al., (2001).
[34]Chen et al., FlyBase reference report, (2018).
[35]Berger et al., Managerial entrenchment and Capital Structure, (1997).

Acquisitions are one of the most powerful tools available to companies for achieving growth and building long-term value by diversifying its operations and profitability. According to the Harvard Business Review[36], somewhere between 70-90% of all deals fail whereas 50-60% actually destroy shareholder value. There is no straight jacket formula of stating how an acquisition will succeed but rather a practical and simply way to hope for a successful acquisition is by studying and analyzing what strategy didn't work for others and refrain from doing so. The main reasons of failued acquisitions in the past are as follows:

(A) STRATEGY:

Poor strategic fit not able to harness or determine goals of integration wherein the company was not in a position to integrate fully. **EBay & Skpye's failed acquisition:** EBay Inc. has sold 65 per cent of its stake in Skype Technologies (the wildly popular Internet phone company) thereby retaining only 35% at a time when the business was expanding and had skyrocketed its revenue in the recent years. With shareholder perks pushing the final price after much deliberations, EBay finally paid a whopping price of more than $3-billion in purchasing Skype. The analysts were not of the opinion and support of such an acquisition Analysts slammed the stating the price was far too high. In April of this year, the company went a step ahead announcing plans to spin off Skype in an initial public offering in 2010. But with the reputation that Skype enjoys in the market, the company that was once criticized for such an acquisition are now being criticized for its sale too. It was the most heavily criticized acquisitions in recent memory, selling off an asset that was once projected - but failed - to revolutionize its core business".

But for now, the acquisition has ended marking a tech- heavy divorce apparently welcomed by both sides[37]

(B) SYNERGY:

Inefficiency in interacting to produce a combined effect greater than the sum of their separate effects.

At a time when news started doing rounds regarding the acquisition of Time Warner and AOL, everyone across the globe thought it to be start of a new era for media worldwide Little din everyone know that trouble had long started even when the ink was dry. American online had joined hands with Time warner in an expensive deal valued at $350 billion only to walk out dissatisfied at the end of it without having a hint of it. The deal without a doubt still

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[36]Clayton Christensen, "et al", The New M&A Playbook, (Harvard Business School) (2011).

[37] Omar El Akkad, EBay hangs up on failed Skype strategy, G&M, Sept. 1, 2009.

stands as the worst transaction of all times because the intellectual minds in technology and media had joined to produce something spectacular and amazing but didn't materialize due to overestimation of potential synergies or underestimation of synergy or timetable to delivery, now regarded as a colossal mistake.[38]

(C) CULTURE:

Fundamental difference in working, ineffective integration, conflict of interests as each business wants to be managed by its own methods, ways and cultural ideologies are some of the classic examples of why a cross- cultural acquisition fails.

When Lucent and France's Alcatel joined hands in one of the cross- cultural acquisitions, it was anticipated to be a success amidst very tough business challenges. The biggest concern was regarding who gets to run the business and who's in charge. Russo became CEO of the combined entity and Tchuruk became chairman. This was the main confusion because in American terminology its stated that the CEO runs the company whereas in European context and a French sitting, the chairman is the boss. This lead to conflict of interests right there at the top. Another cultural dilemma was with regards to the managing of company when its in crisis as the American and French model for the same is entirely different. The American way of going about a business in crisis is like a euphemism for cutting jobs and lowering costs whereas the French model for the same is different as it focuses on looking for assistance from a friendly government owned bank. In nutshell the problem is cultural and is the very reason for the failed acquisition of the two as each side is protecting its own turf by using its own methods thereby making the business unmanageable. As stated by DaimlerChrysler, If an investment banker comes knocking on your door with a cross-border merger or acquisition, just say *"no"*.[39]

(D) LEADERSHIP:

Weak leadership, delays in appointing new leadership team, loss of key talent, insufficient participation in the transaction and integration processes, ego clashes, failure to deliver on pledges.

Five years after Sprint merged with Nextel, the deal remains a controversial topic in the financial world as the combined company struggled through several difficult quarters, but also Bloomberg recently named the acquisition as one that *"never should have happened."* According to the report, though Sprint paid $36 billion for Nextel in 2005, the carrier now is

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[38]Tim Arango, How the AOL-Time Warner Merger Went So Wrong, NYT, Jan. 10, 2010.
[39]William Holstein,Lucent – Alcatel : Why cross – cultural Mergers are so tough, CBS, Nov. 6, 2007.

valued at $30 billion, including dept. From the start, the Sprint Nextel marriage posed several unique challenges, including merging different corporate identities and integrating incompatible CDMA and iDEN networks. A bumpy road soon followed, and the carrier lost revenue and shed customers for several quarters. Therefore this acquisition still remains the worst of all for poor leadership, delays in appointing new leadership team, etc.[40]

(E) DUE DILIGENCE:

Failure to translate and anticipate tasks into real action and lack of proper investigation or not having enough acumen for due diligence still remains the root cause of failed acquisitions.

After Charlotte bank bought Countrywide Financial for a whopping $2.5 billion, little did they know that history would have been written for having been part of such a filed acquisition. Instead of reaping the profits which was the actual idea behind joining hands, instead Instead the bank's shareholders have spent six-plus years paying for Countrywide's slipshod lending practices. It was a crippling deal for Bank of America as the genesis of it was based on Insufficient investigation *(especially little or no strategic and operational due diligence)*, failure to translate findings into actions. Therefore the Bank of America is still in recovery mode because of it.[41]

(F) COMMUNICATIONS:

Failure to communicate with sufficient transparency, awareness, depth or frequency; failure to take key messages to appropriate stakeholders, failure to address the concerns of each group with targeted yet strategically consistent messaging, making empty promises.

(G) HUBRIS:

Various lines of research clearly states that when an acquirer acquires a target firm, they normal overestimate their ability to manage or assess a firm thereby paying way more than what is required. It goes without saying when are value of affirm sounds fluffy, walk away quickly rather than indulging in acquiring a target firm no matter what.

(H) Getting a bargain is not easy:

When you're negotiating with an owner of a privately held target firm *(who knows far more about his firm's prospects than you)* he/she will always look for a higher price holding the stacks and odds against you. If an acquirer is not in a position to pay more, the owner of the

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[40]KENT GERMAN,BLOOMBERG RANKS SPRINT NEXTEL DEAL AMONG WORST MERGERS, CNET, AUG.18, 2010.
[41]Rick Rothacker, The deal that cost Bank of America $50 billion – and counting, The Charlotte Observer, Aug. 16, 2014.

target firm will always look for a higher bidder. In nutshell an acquirer is always exposed to the threat of paying more than the target firm's worth or value.

VI. Demerits of acquisitions:

- **Integration problems:** New and old organization may find it difficult to integrate with one another which in turn would hamper the decision making power within the organization".
- **High cost:** The acquirer may pay higher price to acquire a target firm thereby not adding nay value to the new firm".
- **Financial Consequences:** The returns from acquisition may not be that attractive and therefore executed cost savings may not materialize.
- Too much focus on acquisitions can be detrimental to the internal functioning of acquiring firm.
- Diversification can pose an additional threat in managing resources and competencies.

VII. Conclusion:

Managers strengthen Anti-Takeover provisions when they are faced with an increased and adequate threat of being acquired and therefore there are many potential mechanisms driving their decision and acting as a defense mechanism at the same time".

The Inevitable disclosure doctrine also helps in preventing the victim firms from being acquired as it helps with the legal protection of a trade secret by allowing courts to restrict the choice given to the employees who possess trade secrets of such value to join rival companies. It is important to have a legislation for the same as it helps prevent a firm from loosing its hold on the market .The legal doctrine in the IDD is based on the concept of threatened misappropriation. Takeover Defenses experience reductions in the probability and possibility of being acquired. We also showcase various ATPs that managers choose to strengthen their firm when faced with an increased threat of takeovers, and the effectiveness of these ATPs in deterring and reducing takeover attempts. Finally, we add to the growing context on the changes in various governing policies and outcomes in states or organizations that adopt such anti takeover provisions. Therefore its important to have a legislation like IDD in the Indian jurisprudence to help companies from being taken over."

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