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India Inc relieved over new takeover norms

BS Reporters / Mumbai July 29, 2011, 1:04 IST

Consultants, lawyers and companies across the board believe the decision of Securities and Exchange Board of India (SEBI) to raise the open offer trigger to 25 per cent from the current 15 per cent will enliven the deal market, both for private equity (PE) players and foreign institutional investors (FIIs).

"It is a very good and positive move, especially for financial investors who can now come in without having to worry about triggering an open offer. Earlier, they would be cautious about going beyond 15 per cent. It is a good move for corporates as well, who can now go for more private placements. It will encourage foreign institutional investors to come in and invest in good stocks in India," said V Ashok, group chief financial officer, Essar group.

The decision to increase the trigger limit will lead to more transactions in companies where private equity players have to be satisfied with slightly lower than 15 per cent in a company despite their preference to remain just financial investors, said Ashok Wadhwa, Group CEO, Ambit. "However, strategic investors will have to be ready to spend more to get control because 25 per cent to get the open offer triggered and 26 per cent minimum for buying shares through an open offer," he added.

The trigger to raise the figure to 25 per cent is "very good" especially for private equity (PE) investors who faced a hurdle of 15 per cent, agreed H V Harish, partner at Grant Thornton, India. Jai Manvani, executive director, PWC India too said that the "change is welcome". "The 15 per cent trigger was a very low threshold. This should hopefully result in more deals," he added.

Gaurav Deepak, Co-founder and Managing Director, Avendus Capital, opined that though private equity fundraising was not tough for private companies, public companies faced difficulties because of the 15 per cent limit for open offer. "However, listed space will witness more PE deals once the proposals implemented," he concurred. His views were corroborated by Abhijit Joshi, Senior Partner and CEO, AZB & Partners.

Incidentally, in Japan, the trigger for an open offer is 33.3 per cent, while in Hong Kong it is 30 per cent and in Singapore it is 29.99 per cent. In all three, the trigger requires an acquirer to make an offer for the entire company.

However, there were mixed opinions over SEBI's proposal to increase the open offer size to 26 per cent from the current 20 per cent. Last year, the Achuthan Committee on Takeover Regulations had recommended that an open offer ought to be for all the shares (100 per cent) of the target company "to ensure equality of opportunity and fair treatment of all shareholders, big and small".

Satyen Shah, Head, Equity Capital Markets of Edelweiss Capital says it's a "welcome step as it would have made acquisitions too expensive, especially for Indian promoters who do not have access to bank funds for acquisitions". However, Wadhwa Of Ambit believes that limiting open offer to minimum 26 per cent "is not in the interest of minority shareholders" as they will not get a complete exit opportunity. Manvani said "it's not going to radically change the scenario but will be helpful for serious shareholders in a strategic buyout". Deepak of Avendus Capital agreed with this line of thinking.

On SEBI abolishing non-compete fees, consultants like Manvani of PWC say that "the move may have been triggered by SEBI's need to usher in better governance in deals". They explained that in some deals, companies would split the total pricing consideration (deal size) into a non-compete fee portion too so that the acquirer spent less on the total transaction cost while the promoter earned more as he got the additional "non-compete fee" portion which other shareholders would not receive.

"The reduction of open offer size from 100 per cent to 26 per cent and scrapping of non-compete fees is a welcome balancing act," opined Joshi of AZB & Partners. However, Shah of Edelweiss Capital says "abolishing of non-compete fees or control premium will pose problems". "The fact is very often people with a considerable stake in a company signify some extra value for the acquirer -- that person could be a technology innovator, a progressive leader and/or manager with in depth understanding of the business and the environment, etc. A control premium/non-compete fee is often recognition of this reality. With non-compete fees abolished, what is likely to happen is that promoters may look to issue different classes of shares -- a practice that is legal in India, but almost never followed -- to ensure a premium."

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