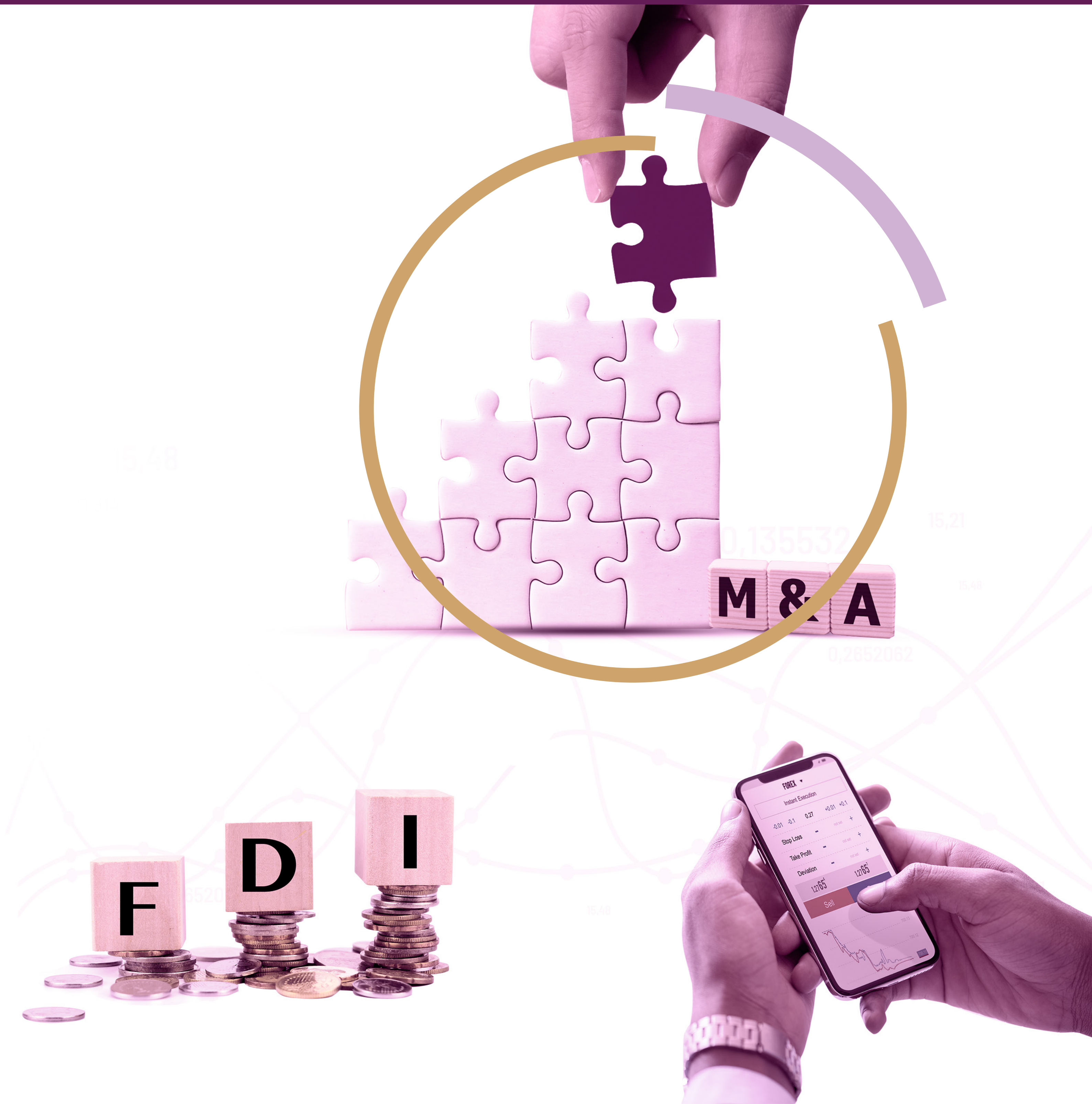
cyril amarchand mangaldas
ahead of the curve

Takeover of Publicly Traded Companies: Flashback 2020

A detailed report



Takeover of Publicly Traded Companies: Flashback 2020
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Report on Takeover of Publicly Traded Companies: Flashback 2020
This booklet has been updated till December 31, 2020.

A Thought Leadership Publication

We now present this report to enable readers to have an overview of the systems and legal rules and regulations that are essential for business operations in India.

Content

A. Introduction

During the first five-months of financial year 2020-21 (i.e. during the Covid-19 lockdown), India received the highest ever foreign direct investments[1] and near the end of the calendar year 2020, Indian stock exchange indices reached record highs[2].

The year 2020 was tumultuous to say the least and saw unprecedented business disruption due to the pandemic. Many Indian businesses were forced to re-organise and innovate to deal with the pandemic and acquirers re-valued Indian companies. Cash rich and savvy investors took advantage of this unrivalled opportunity to make acquisitions and investments, which is evident from the overall high deal activity in calendar year 2020, especially in Q4. Sectors such as tourism, hospitality, manufacturing (excluding pharma), commercial real estate, retail and aviation were severely impacted, but sectors like technology, pharmaceuticals and healthcare flourished in these difficult times.

The calendar year 2020 saw a fair deal of control transactions in the country. Thankfully, due to the new regulatory exemptions and government driven bailouts, some major takeovers / buyouts did not require the acquirers to make a tender offer to public shareholders, thereby reducing cost and time involved in closing such deals. We think this is the *changing face of control deals* as the number of stressed assets is rising and thereby the number of bailout transactions, requiring exemptions from routine processes is becoming the flavour of this unprecedent season.

In this Report, we are sharing with you our two-part detailed analysis *viz.* (i) control deals in which exit was offered to public shareholders through the tender offer route in 2020[3], under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (***Takeover Regulations***), and (ii) key control deals for which no tender offer was required to be made.

In most major transactions, the incoming controlling shareholder completely replaced the outgoing controlling shareholder. In very rare cases, the incoming shareholder allowed the existing controlling shareholder to continue as joint promoter of the target company.

[1] https://economictimes.indiatimes.com/news/economy/finance/india-receives-highest-ever-fdi-in-apr-aug-fy21-government/articleshow/78773388.cms?from=mdr

[2] https://www.reuters.com/article/india-stocks/indian-shares-hit-record-high-as-country-approves-covid-19-vaccines-idUSL4N2JF11G

[3] Based on public announcements for open offers available on SEBI website as on January 4, 2021.

In 2020, we saw many transactions where the financial investors/ private equity players acquired controlling stake in publicly traded companies. All these financial investors were overseas investors, demonstrating their long-term vision and belief in the Indian economy.

As a firm, we were happy to see both domestic and foreign acquirers showing interest across various sectors in India in 2020 despite the pandemic, and with the emergency use of the vaccine being approved, we foresee a better 2021. As eternal optimists, we see 2021 witnessing robust M&A activity in India. We believe significant amount of deal activity in 2021 will be driven by key amendments introduced by SEBI to stimulate acquisition of stressed assets and amendments to other key laws, including the (Indian) Insolvency and Bankruptcy Code, 2016.

We hope you enjoy this report and would love to hear your views.

B

Sector-wise Activity in 2020

Between January and December 2020, the country witnessed as many as 44 control deals, involving tender offers, the aggregate value of which stood at INR 5,457 crore, making it a muted year compared to 2019, both in terms of value and numbers for such deal category. Due to the new regulatory exemptions and government interventions, some major deals did not require the acquirers to make a tender offer to the public shareholders, thereby reducing cost and time involved in closing such deals, and with the disruption caused by the pandemic, it is unsurprising that the control deals involving tender offers were muted in number and value in 2020.

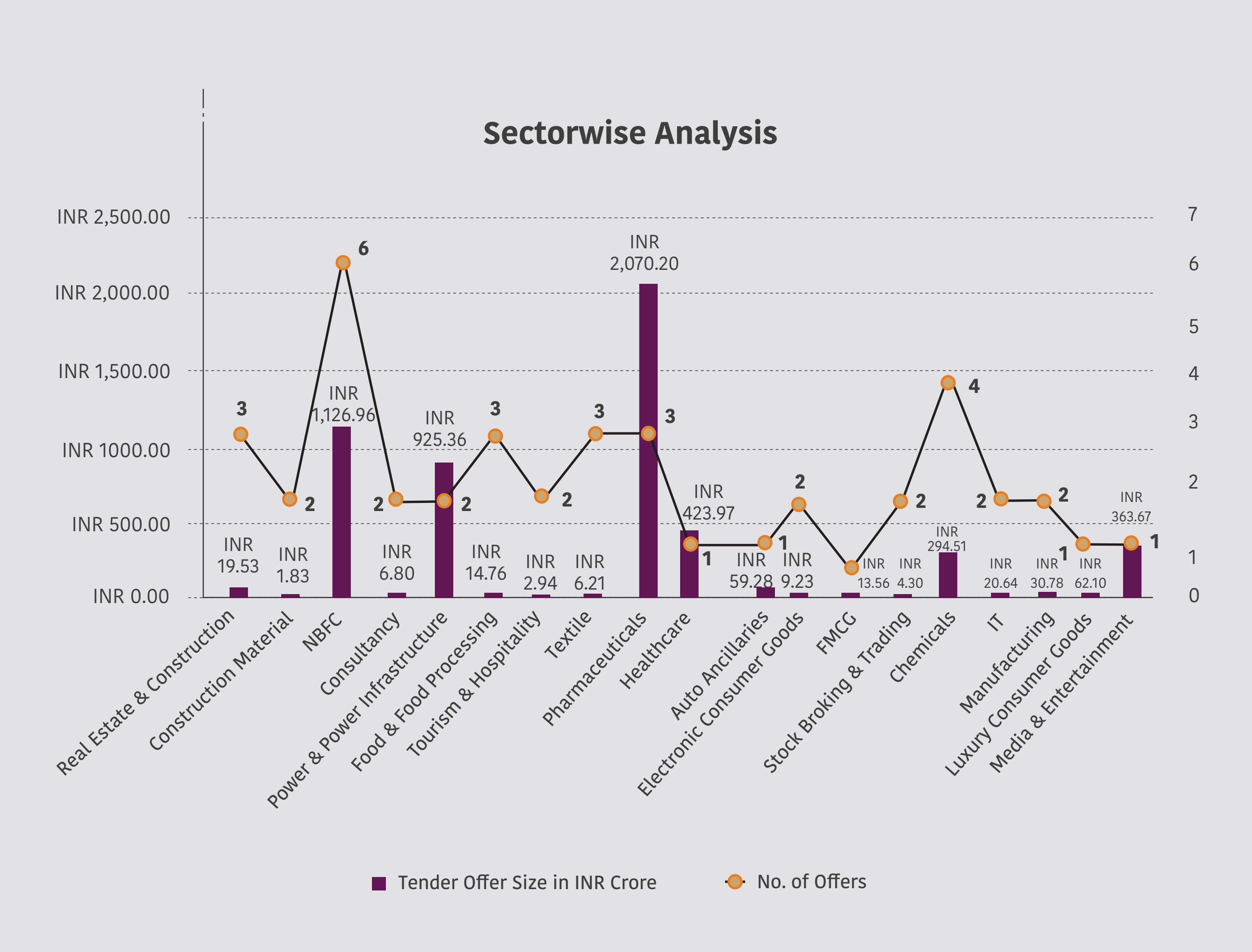
In value terms, the pharmaceutical sector saw the highest aggregate value of tender offers at INR 2,070.20 crore. In number terms, the non-banking financial company (***NBFC***) sector continued to see the highest number of tender offers (six in all). Other sectors that saw high activity were power and power infrastructure, textiles, food processing and chemicals.

In 2020, the five biggest tender offers by value were for J.B. Chemicals & Pharmaceuticals Limited (pharmaceutical sector), IndoStar Capital Finance Limited (NBFC sector), ABB Power Products and Systems India Limited (power infrastructure sector), SeQuent Scientific Limited (pharmaceuticals sector) and HealthCare Global Enterprises Limited (healthcare sector).

In 2020, the five biggest tender offers comprised approximately 82% of the aggregate value of all tender offers in 2020[4].

[4] For further details please refer to Section E below.

The following graph shows in number and value terms tender offers in major sectors in calendar year 2020:



As you would have noticed, the NBFC sector saw the highest number of control transactions in the listed space, but in value terms it is less when compared to the pharma sector.

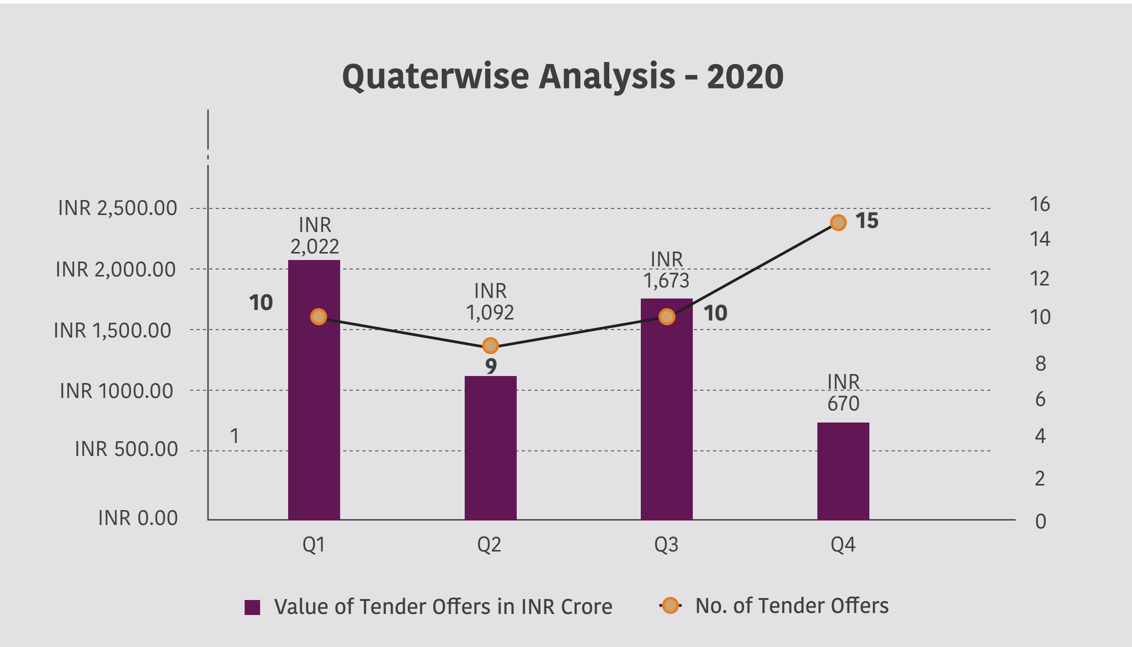
Generally, the pharma sector saw several big-ticket deals, which were the highest in value terms in 2020. When considered along with its allied sectors, namely healthcare and chemicals, these sectors combined had the highest control deals, both in number and value terms. The pandemic has redrawn investor attention to the pharma industry, worldwide and in India.

C

Quarter-wise analysis of tender offers in 2020

The fourth quarter (Q4) of 2020 was the busiest quarter for such control deals, with fifteen (15) tender offers being announced. The second quarter (Q2) of 2020 was the quietest with nine (9) tender offers being announced. The first quarter (Q1) of 2020 had the highest aggregate value of tender offers at INR 2,021 crore, while the fourth quarter (Q4) of 2020 witnessed the lowest aggregate value of tender offers at INR 670 crore.

Below is a chart analysing the number and aggregate value of tender offers announced in 2020 in each calendar quarter:



Below is a list of target companies for acquisition for which tender offers were announced in 2020 as per each calendar quarter:

QUARTER	TARGET COMPANIES	
Q1 (Jan 1 – Mar 31)	Epsom Properties Limited	IndoStar Capital Finance Limited
	Beryl Securities Limited	IEL Limited
	Titan Securities Limited	KD Leisures Limited
	First Financial Services Limited	Angel Fibers Limited
	IND Renewable Energy Limited	ABB Power Products and Systems India Limited

QUARTER	TARGET COMPANIES	
Q2 (Apr 1 – Jun 30)	SeQuent Scientific Limited	Lykis Limited
	Jay Ushin Limited	Aditya Vision Limited
	HealthCare Global Enterprises Limited	Thirdwave Financial Intermediaries Limited
	IM+ Capitals Limited	International Conveyors Limited
	Network Limited	
Q3 (Jul 1 – Sep 30)	J.B. Chemicals & Pharmaceuticals Limited	Aarti Surfactants Limited
	Stampede Capital Limited	Welcon International Limited
	Crown Tours Limited	Ashok Alco-chem Limited
	Punjab Alkalies and Chemicals Limited	Parsoli Corporation Limited
	Amaze Entertech Limited	Resonance Specialties Limited
Q4 (Oct 1 – Dec 31)	Ovobel Foods Limited	M/s Fraser and Company Limited
	Prem Somani Financial Services Limited	Mangalam Industrial Finance Limited
	Hindustan Everest Tools Limited	Nidhi Granites Limited
	Vandana Knitwear Limited	Jindal Capital Limited
	Tejassvi Aaharam Limited	Timex Group India Limited
	Mehta Housing Finance Limited	Sindu Valley Technologies Limited
	Fairchem Organics Limited	Prime Focus Limited
	Art Nirman Limited	

D

Key features of control deals and comparison with 2019

A majority of the tender offers (being 32) were made by acquirers due to secondary market purchases. Three transactions involved primary issuances by the target companies. Two transactions involved a combination of primary issuance and secondary market purchase. Five transactions were indirect acquisitions.

The following table gives comparison in numbers of key features between the calendar years 2020 and 2019:

Calendar year	2020	2019
Number of tender offers	44	61
Completed tender offers (tender offers that were launched and completed in the same calendar year)	27	39
Number of direct tender offers	37	58
Number of indirect tender offers	5	3
Number of tender offers made due to breach of 5% creeping acquisition limit	4	7
Total value of tender offers	INR 5,457 crore	INR 22,629 crore
Number of tender offers for NBFCs	6	9
Number of tender offer where underlying transaction was closed before closure of the tender offer	13	8

E

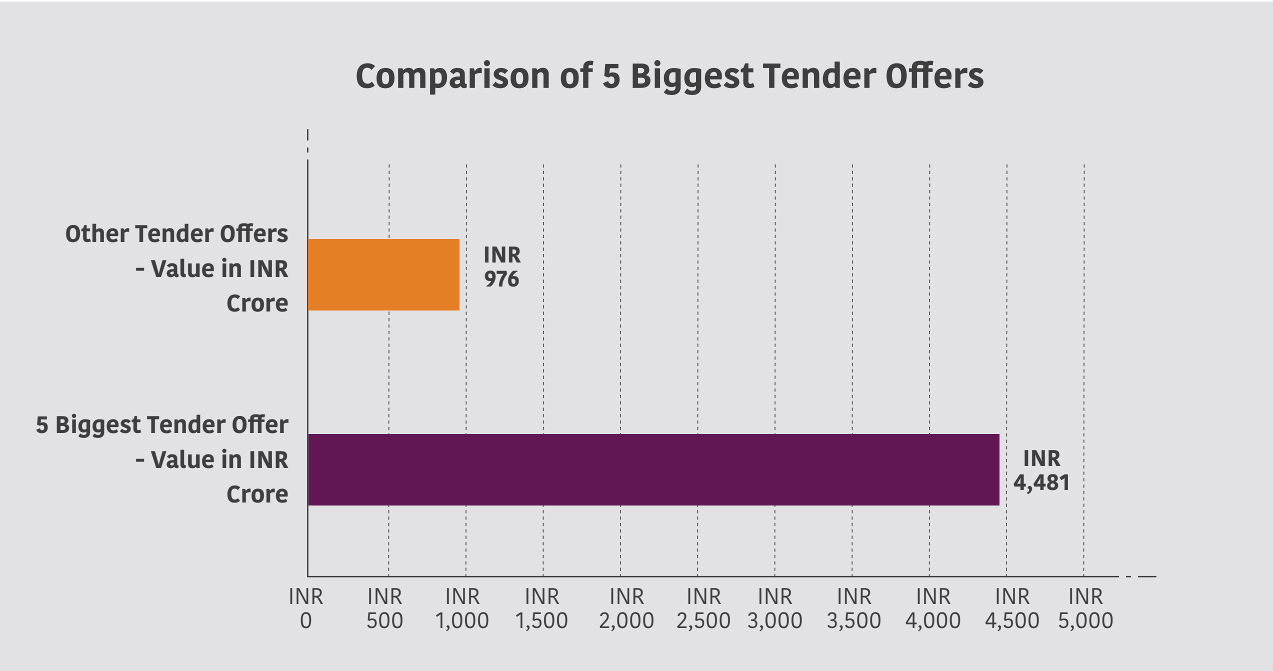
Biggest tender offers of 2020

In 2020, the five biggest tender offers by value were (in descending order of value):

1. KKR's offer for J.B. Chemicals & Pharmaceuticals Limited (pharmaceutical sector);
2. Brookfield's offer for IndoStar Capital Finance Limited (NBFC sector);
3. ABB Switzerland Limited and Hitachi Limited's offer for ABB Power Products and Systems India Limited (power infrastructure sector);
4. The Carlyle Group's offer for SeQuent Scientific Limited (pharmaceuticals sector); and
5. CVC Capital Partners' offer for HealthCare Global Enterprises Limited (healthcare sector).

These offers comprised 82% of the aggregate value of all tender offers in 2020. At the other end of the spectrum, the tender offer for Tejassvi Aaharam Limited was the smallest by value.

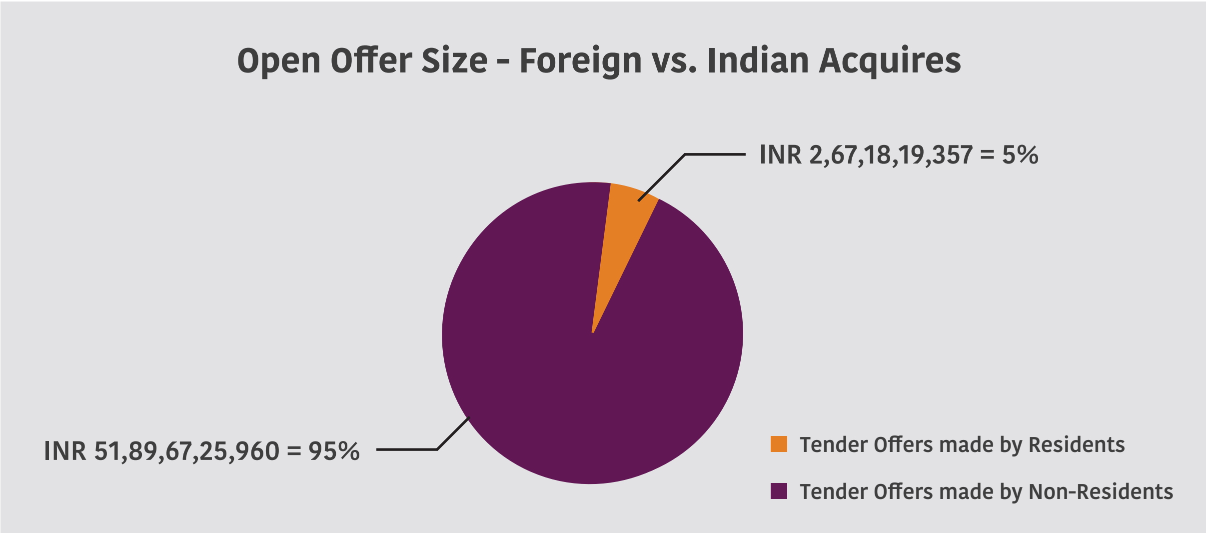
Below is a graph comparing the aggregate value of these top tender offers with the aggregate value of the other tender offers made during 2020:



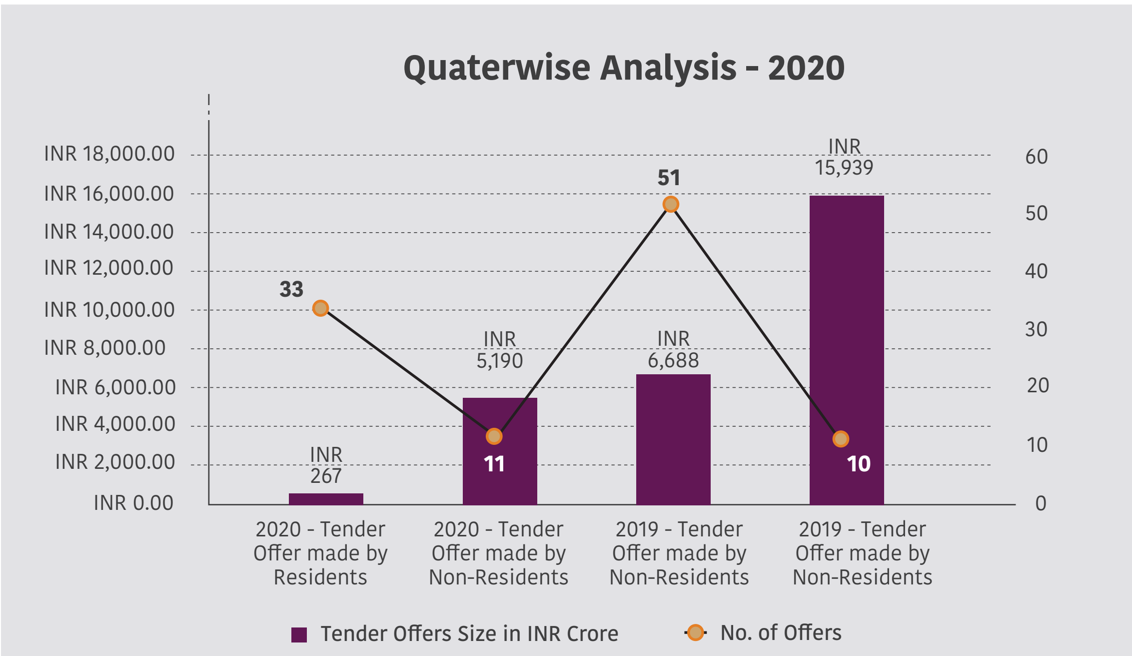
F

Tender offers by non-resident acquirers

Non-resident acquirers made eleven (11) tender offers in 2020 to acquire control of publicly-traded companies, with an aggregate value of INR 5,190 crore, which was 95% of the aggregate value of all tender offers in 2020.



In comparison, in 2019, non-resident acquirers made ten (10) tender offers to acquire control of publicly-traded companies, at an aggregate value of INR 15,939 crore, which was 70.44% of the aggregate value of all tender offers in 2019. Below is a graph comparing the aggregate number and the value of the tender offers made by non-resident acquirers to the tender offers made by resident acquirers during 2020 and 2019:



The aggregate value of the tender offers made for control acquisition by non-resident acquirers in 2020 is approximately 70% lower as compared to 2019. However, when compared to the tender offers made by domestic acquirers during the same period, the value of tender offers made by non-residents far surpasses all open offers made by domestic acquirers.

This evidences that the confidence of non-resident acquirers in Indian companies from 2019 continued in 2020.

G

Tender offers by financial investors

As mentioned in our last-year's report, in the last few years, there has been a significant uptick in PE players going for control deals. This behavioural change is because PE investors now have a deeper understanding of the Indian regulatory environment and markets.

Tender offers made by PE investors/funds to acquire control in 2020 are listed below:

Sr. No.	PE Investor / Fund	Target Company	Sector	Value of Tender Offer (in INR Crore)
1.	Brookfield	IndoStar Capital Finance Limited	NBFC	1,079
2.	The Carlyle Group	SeQuent Scientific Limited	Pharmaceuticals	555
3.	CVC Capital Partners	HealthCare Global Enterprises Limited	Healthcare	424
4.	KKR	J.B. Chemicals & Pharmaceuticals Limited	Pharmaceuticals	1,498
5.	Baupost Group	Timex Group India Limited	Luxury Consumer Goods	61
6.	Fairfax Group	Fairchem Organics Limited	Chemicals	194
			Total	**3,811**

We believe that the trend of PE investors closing big-ticket control deals will continue in 2021 as well. Although, there is already significant traction towards control deals for stressed assets, we believe with certain amendments to regulatory regime, the interest will increase in the near future.

H

Other Trends of 2020

1. Time taken by SEBI to clear DLOF

The time taken to complete an open offer is mainly a function of the time taken to receive SEBI's observations on the draft letter of offer (***DLOF***) and other regulatory approvals, as the rest of the process typically moves on an auto-pilot mode.

In 2020, the average time taken by SEBI to issue its final observations on the DLOF was approximately 60 days. To issue its final observations, SEBI took anywhere between 20 days (in the case of Aditya Vision Limited) and 181 days (in the case of Beryl Securities Limited), which when compared to 2019 is significantly more, but not surprising in current times.

2. Trend in penalty for disclosure violations

While reviewing the draft letter of offer, SEBI also goes into past compliances with disclosures required to be made under the Takeover Regulations. Like in the past, in 2020 too, SEBI typically imposed penalties in the range of INR 1,00,000 to INR 3,00,000 per violation. If the violations are repetitive, then the penalties tend to be higher.

3. Voluntary tender offer

IGE (India) Private Limited, one of the promoters of International Conveyors Limited, made a voluntary open offer to the public shareholders under Regulation 6(1) of the Takeover Regulations to consolidate its shareholding.

4. Independent Valuations

In two tender offers, which were completed in 2020, namely, Tenneco Inc's offer for Federal-Mogul Goetze (India) Limited[5] and Aurora UK Bidco Ltd.'s offer for Accelya Solutions India Limited[6], SEBI exercised its power to appoint independent valuers to value the shares of the target companies. SEBI's decision to go for an independent valuation was challenged and upheld in both cases. The acquirers eventually accepted higher valuations and completed the tender offers.

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[5] The tender offer was announced on April 16, 2018.

[6] The tender offer was announced on November 19, 2019.

I

Changing Face of Control Deals

In Part B of our earlier blog post in April, 2020[7], we discussed the much needed 'Deal Freedom', focussing primarily on two concepts, (i) freedom from the pricing regime; and (ii) freedom from the tender offer requirement, for encouraging deals in distressed companies. SEBI introduced amendments to the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (***ICDR Regulations***), and the Takeover Regulations to introduce greater freedom of contracting as booster shot to stressed company acquisitions and to ease further capital raising by companies.

1. Acquisition of stressed companies – pricing and open offer exemptions

SEBI introduced Regulation 164A in the ICDR Regulations, which exempts stressed listed companies from the 26-week pricing regime applicable to preferential allotments and allows such companies to issue shares through preferential allotment to new/incoming promoters at a price linked to the 2-week volume weighted average price (VWAP). Acquisitions which meet the conditions of Regulation 164A are also exempt from the tender offer obligations under the Takeover Regulations[8]. These amendments are beneficial to all stakeholders of companies under extreme financial stress.

To qualify for exemption granted under the Regulation 164A regime, at least 2 out of 3 conditions specified under Regulation 164A have to be met, namely (1) the target company should have disclosed all payment defaults on its borrowings (including debt securities), (2) lenders must have signed an Inter-creditor Agreement (***ICA***)[9], and (3) the credit rating of the target company should have been downgraded to "D". In addition to these requirements, Regulation 164A requires the preferential issue to the incoming controller/promoter to be approved by majority of minority (i.e., public shareholder) vote.

Takeover of CG Power and Industrial Solutions Limited by the Murugappa Group (through Tube Investments of India Limited) is the first deal to be closed under this new regime and sets a good precedent. This deal took approximately eight (8) months to complete.

2. Government driven bailouts

The calendar year 2020 saw the bailout of two publicly traded banks namely, YES Bank Limited (***Yes Bank***) and Laxmi Vilas Bank (***LVB***). Both banks were initially put

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[7] https://corporate.cyrilamarchandblogs.com/2020/04/control-premium-analysis-of-recent-top-deals-and-what-2020-is-likely-to-see/

[8] Even the existing promoters have been given certain exemptions from the creeping acquisition limits under Takeover Regulations but we are not dealing with the same in this Report.

[9] The Inter-creditor agreement must be in terms of Reserve Bank of India (Prudential Framework for Resolution of Stressed Assets) Directions 2019 dated June 07, 2019

under moratorium by the Reserve Bank of India (***RBI***) and then bailed out pursuant to government notified schemes under Section 45 of the Banking Regulation Act, 1949. A scheme notified under Section 45 has an overriding effect and therefore, the obligations to make a tender offer, follow SEBI pricing regime and the SEBI Delisting Regulations are not applicable.

	YES Bank	LVB
Manner of implementation	Preferential allotment of 10,000 crore equity shares of YES Bank at INR 10[10] per share to eight domestic entities/banks[11].	Merger of LVB into DBS Bank India Limited.
Listing status	YES Bank continues to be listed on the stock exchanges.	LVB was automatically delisted pursuant to the merger scheme.
SEBI Regulations superseded	Market linked pricing under ICDR Regulations was superseded and no tender offer under Takeover Regulations was required.	Mainly, the following were superseded: a. SEBI (Delisting of Equity Shares) Regulations, 2009; and b. Requirements of a 'no-objection' of SEBI/ stock exchanges for schemes of arrangements and other processes under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2018, and related SEBI circulars.
Write off	Additional Tier 1 bonds of YES Bank were written off.	Entire paid-up share capital, reserves, surplus and securities premium account of LVB were written off under the merger scheme. As per RBI's instructions, the Tier II bonds of LVB were written off prior to the implementation of the merger scheme.

With the LVB bailout, the regulatory reluctance to allow a foreign bank to control an Indian bank is a thing of the past.

Different circumstances of each bank, implementing a viable bailout plan and protecting the interest of the bank's depositors, governed the RBI's approach in each scheme. Such government driven bailouts are an opportunity for acquisition of stressed banks at a price and using structures, which would not be possible in a privately negotiated deal. Completing such transactions within a very short timeframe of a few weeks, which would otherwise take many months to complete is a welcome regulatory move.

[10] Face value of equity shares of Yes Bank is INR 2 per share.

[11] The shares were allotted to: (1) State Bank of India; (2) Housing Development Finance Corporation Limited; (3) ICICI Bank Limited; (4) Axis Bank Limited; (5) Kotak Mahindra Bank Limited; (6) The Federal Bank Ltd.; (7) Bandhan Bank Limited; and (8) IDFC First Bank Limited.

J

The Year Ahead

While SEBI introduced positive measures to revive stressed companies, there is need for the government/ regulators to introduce measures to ring fence the incoming promoters from actions of the previous management. We propose that all acquirers who are acquiring controlling stake in stressed companies under Regulation 164A of the ICDR Regulations should be offered immunity from liabilities arising out of actions of the previous management. Also, the two-week pricing regime is not particularly helpful as any rumour of potential control transaction may also make the two-week VWAP a thoroughly unacceptable proposition. Since such deals will be hard fought battles with the lenders who will not agree to any random pricing for change in control, fixing the price for the deal should be purely a matter of negotiation and contract and not a pricing regime.

In 2021, we are likely to see an uptick in the takeover of stressed assets. Therefore, ring-fencing measures and freedom of contracting as summarised above will encourage more acquirers (especially, the PE funds) to go for such deals.

Separately, from a sector perspective, we believe that IT and pharma may see exponential growth. Retail sector will grow through hybrid model of physical and online-retail, so technology will play a key role in connecting the two formats for commercial success. Retail sector players who are operating with this model will continue to receive substantial investments. While, manufacturing activity has picked up, it will take some time to come back in full swing and be in sync with the pre-pandemic expected growth.

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