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Takeover of Publicly Traded Companies : Flashback 2022

A detailed report



Report on Takeover of Publicly Traded Companies : Flashback 2022
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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.

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A. Introduction

The year 2022 saw 93 control deals in the listed space implemented through the tender offer route under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (**Takeover Regulations**)¹. This is the highest number of tender offers that we have seen in the last five years.

The overall size of such deals (including underlying transactions) announced in 2022 was ₹ 1,180 billion, marking a 45% jump over 2021's deals worth ₹ 812 billion. However, the aggregate value of tender offers (minus the underlying deal size) was comparable to the year 2021. In continuation of the trend from 2021, even in 2022 strategic players took the center-stage in driving deal activity, making 87 out of 93 tender offers.

Despite a challenging global environment, dotted with rising geopolitical tensions, disruption of supply chain, rising energy prices, increasing interest rates and higher input costs, the Indian economy and stock markets were quite resilient and reached all-time highs in 2022. Companies having either strong financials and cash balances or the ability to avail debt cheaply grabbed the opportunities for inorganic growth to increase their market share, integrate supply chains or enter new market segments. One such instance was the Adani Group's entry into the cement sector through the acquisition of Ambuja Cement Limited and ACC Limited from Holcim Group, which were the biggest tender offers in 2022. The manufacturing sector benefitted from the companies looking to diversify supply chains and saw the highest number of control deals involving tender offers (15 in all) in 2022.

Generally, the IT sector saw a high volume of deals this year, driven by robust M&A activity in the Indian start-up ecosystem. Many innovative start-ups born during the peak pandemic period are now in a consolidation phase. The year gone by saw more mergers / share swap deals than just all cash deals, such as the acquisition of Blinkit by Zomato through a share swap and the merger of L&T Infotech and Mindtree. This merger created India's 5th largest IT company by market capitalisation.

The Government of India (**GOI**), as part of its disinvestment agenda, has put IDBI Bank for sale, which we expect will be completed in 2023. It is our belief that many divestment proposals of the GOI will be implemented in the near future. To give effect to the implementation of such proposals, GOI and regulators have even started amending certain crucial aspects of the legal regime, e.g., the Takeover Regulations were amended recently to clarify that 60-Day VWAP criterion for pricing will not apply to divestments of majority stake in Public Sector Undertakings. Further, the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (**LODR Regulations**) were amended to allow SEBI to grant exemptions from the applicability of the LODR Regulations to GOI in cases involving strategic disinvestment of a listed entity. These amendments will ensure smoother execution of divestment proposals. More amendments will come though shortly.

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

¹ As per the data available on the website of the Securities and Exchange Board of India as on December 31, 2022.

B

Sector-wise Activity in 2022

In calendar year 2022, the country witnessed a total of 93 tender offers for acquisition of shares of publicly traded companies in India.

In value terms, the cement sector saw the highest aggregate value of tender offers at ₹ 31,139.55 crore, followed by the pharmaceuticals and chemicals sector aggregating at ₹ 3,603.49 crore. In number terms, the manufacturing sector saw the highest number of tender offers (15 in all), followed by, (i) IT sector (10 in all); (ii) non-banking financial companies (**NBFCs**) (10 in all); and (iii) trading companies (10 in all).

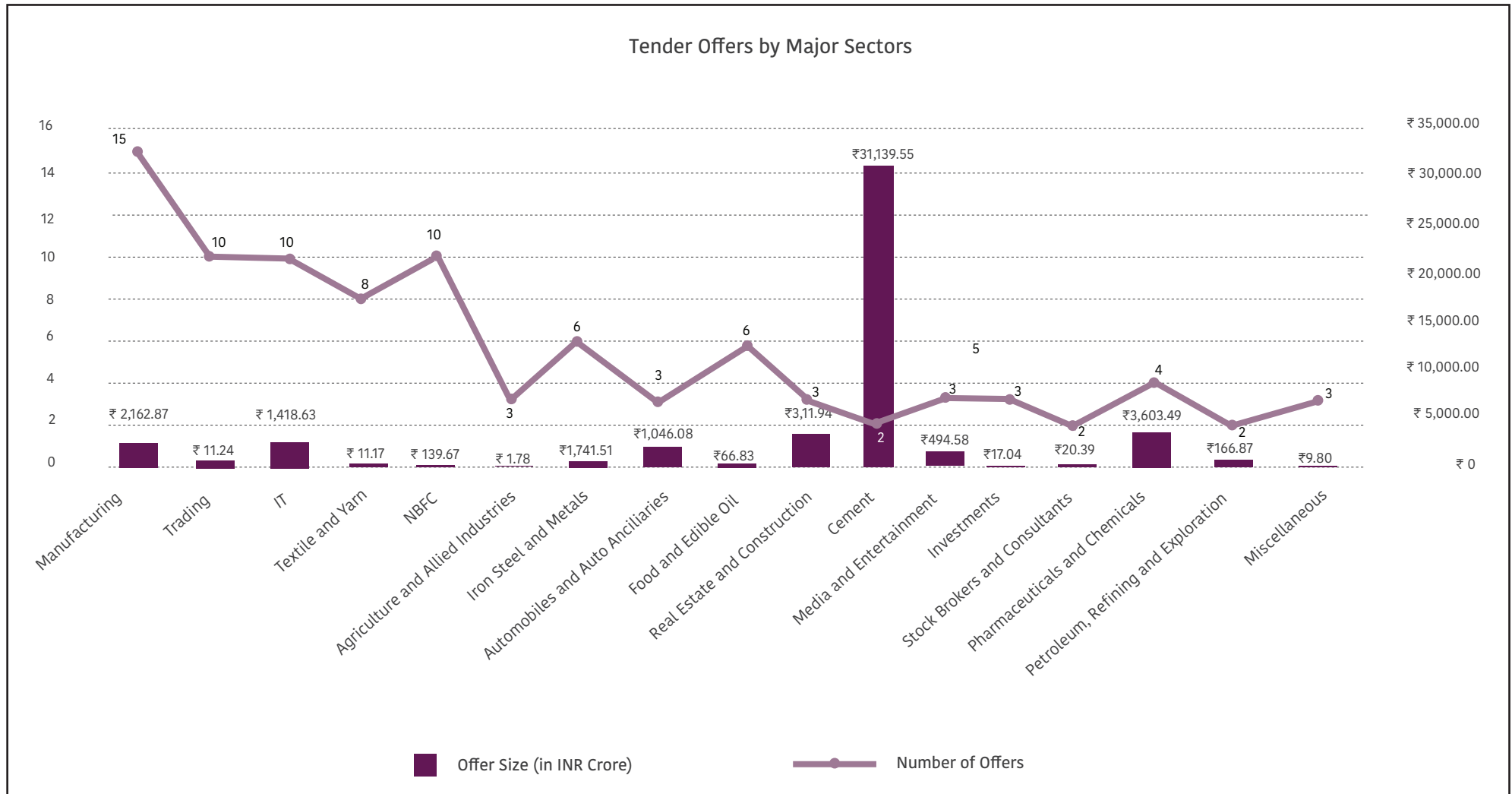
In 2022, the five biggest tender offers by value were for companies operating in the following sectors:

1. Cement sector (Ambuja Cements Limited);
2. Cement sector (ACC Limited);
3. Pharmaceutical sector (Suven Pharmaceuticals Limited);
4. Metals sector (Lloyds Metals and Energy Limited); and
5. IT sector (R Systems International Limited).

The five biggest tender offers comprised approximately 88.21% of the aggregate value of all tender offers in 2022².

² For further details please refer to Section E below.

The following graph shows the number and value terms of tender offers in major sectors in 2022:



C

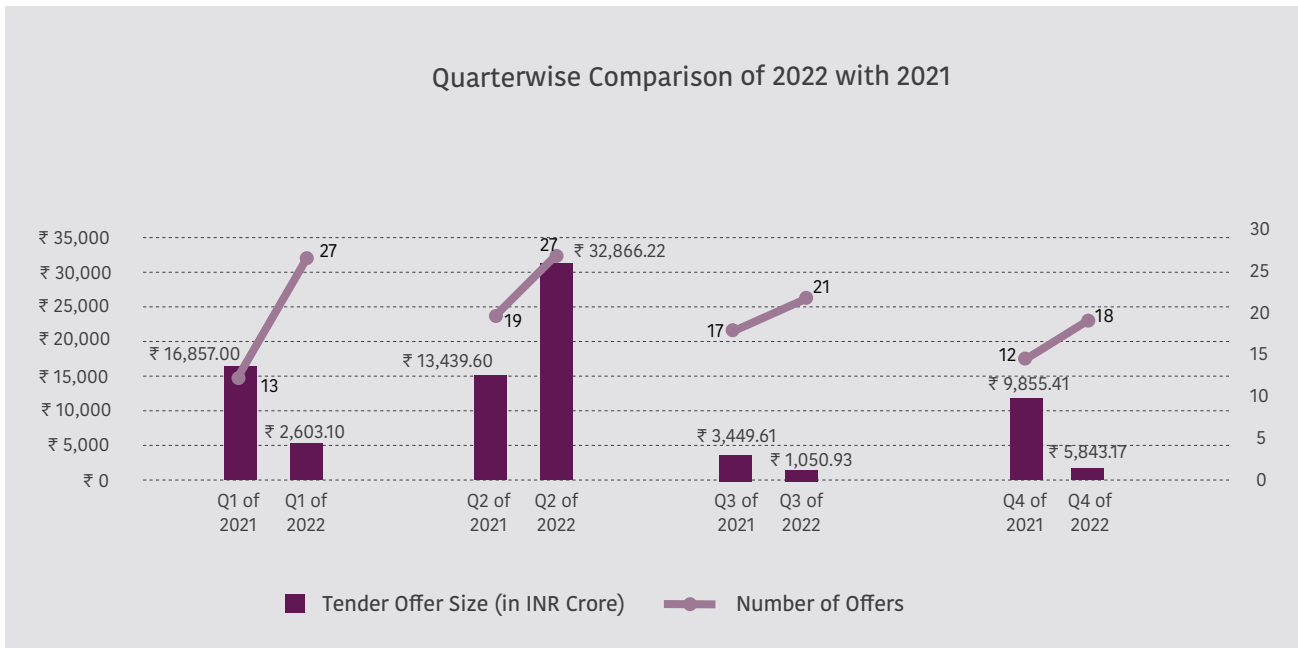
Quarter-wise analysis of tender offers of 2022

1. The first and second quarters (Q1 and Q2) of 2022 were the busiest of the four with each witnessing as many as 27 tender offers. The fourth quarter (Q4) of 2022 was the quietest with 18 tender offer announcements. The second quarter (Q2) of 2022 had the highest aggregate value of tender offers at ₹ 32,866 crore, while the third quarter (Q3) of 2022 witnessed the lowest aggregate value of tender offers at ₹ 1,051 crore.

Below is a graph analysing the number and aggregate value of tender offers announced in 2022 in each calendar quarter:



2. By comparing the two years, we find that (i) in number terms, tender offers made in each quarter of 2022 exceeded the tender offers announced in the corresponding quarters of 2021; and (ii) in value terms, however, each quarter of 2021 saw higher value of tender offers, except Q2. Below is a graph comparing the number and aggregate value of tender offers announced in 2022 and 2021 in each calendar quarter:



3. Below is a list of Indian listed companies for which tender offers were announced in 2022 as per each calendar quarter:

Quarter	Name of the Company	
Q1 (Jan 1 – Mar 31)	IO System Limited	Macro International Limited
	Amrapali Fincap Limited	GI Engineering Solutions Limited
	Visco Trade Associates Limited	Dynamic Portfolio Management & Services Limited
	Tanfac Industries Limited	Rishab Special Yarns Limited
	AARV Infratel Limited	Indergiri Finance Limited
	Mewat Zinc Limited	Infronics Systems Limited
	Vegetable Products Limited	Mirch Technologies (India) Limited
	SPS International Limited	Sylph Technologies Limited
	Amani Trading and Exports Limited	Eureka Forbes Limited
	Butterfly Gandhimathi Appliances Limited	Shreyas Intermediates Limited

Quarter	Name of the Company	
Q1 (Jan 1 – Mar 31)	Federal-Mogul Goetze (India) Limited	Selan Exploration Technology Limited
	Eveready Industries India Limited	Indsoya Limited
	Panth Infinity Limited	Mudunuru Limited
	Jagsonpal Pharmaceuticals Limited	
Q2 (Apr 1 – Jun 30)	Chhatisgarh Investments Limited	Step Two Corporation Limited
	Chitradurga Spintex Limited	Ambuja Cements Limited
	Sumuka Agro Industries Limited	ACC Limited
	JSG Leasing Ltd	Delta Industrial Resources Limited
	Leena Consultancy Limited	ADVIK Capital Limited
	I-Power Solutions India Limited	Veritas (India) Limited
	Justride Enterprises Limited	Syschem India Limited
	Reliance Jute Mills (International) Limited	Sarda Papers Ltd
	Ganesh Films India Limited	Vintron Informatics Limited
	Sicagen India Limited	Samyak Corporation Limited
	Lloyds Metals and Energy Limited	Aaswa Trading and Exports Limited
	W.S. Industries (India) Limited	Velox Industries Limited (Khatau Exim Limited on BSE)
	Anshuni Commercials Limited	Quest (Softech) India Limited
	Mercury Trade Links Limited	
Q3 (Jul 1 – Sep 30)	The Baroda Rayon Corporation Limited	Aishwarya Technologies And Telecom Limited

Quarter	Name of the Company	
Q3 (Jul 1 – Sep 30)	TTI Enterprise Limited	Asit C Mehta Financial Services Limited
	Iykot Hitech Toolroom Limited	Keerti Knowledge & Skills Limited
	Arunjyoti Bio Ventures Limited	Aris International Limited
	Acrow India Limited	New Delhi Television Limited
	Sharad Fibres & Yarn Processors Limited	Shreeshay Engineers Limited
	Moongipa Securities Limited	Fruition Venture Limited
	HKG Limited	HCKK Ventures Limited
	Mediaone Global Entertainment Limited	Rajath Finance Limited
	INEOS Styrolution India Limited	Inertia Steel Limited
	Shree Vijay Industries Limited	
Q4 (Oct 1 – Dec 31)	Ritesh Properties and Industries Limited	Savant Infocomm Limited
	Omega Interactive Technologies Limited	Yarn Syndicate Limited
	Automotive Axles Limited	Good Value Irrigation Limited
	Grand Foundry Limited	Integrated Technologies Limited
	Som Datt Finance Corporation Limited	Shree Global Tradefin Limited
	Arihant Tournesol Limited	Unimode Overseas Limited
	Vaksons Automobiles Limited	Prism Medico and Pharmacy Limited
	R Systems International Limited	The Indian Link Chain Manufacturers Limited
	Suven Pharmaceuticals Limited	Lotus Chocolate Company Limited

D

Key features of the tender offers and comparison of 2022 with 2021

Majority of the tender offers (72 in all) were made when the underlying triggering transactions were secondary purchases. Five transactions involved primary issuances by the target companies, six were indirect acquisitions, seven of them were a combination of primary issuances and secondary purchases, and 1 transaction involved a combination of indirect acquisition and primary issuance. There was a voluntary tender offer and a tender offer triggered due to an agreement (simpliciter) granting control. The past year also saw a ‘fixed price’ tender-cum-delisting offer being launched by a major private equity player; this transaction, if completed, will be the first successful delisting (under the newly amended Regulation 5A of Takeover Regulations) without having an obligation to follow the reverse book build (bidding) requirement under the Securities and Exchange Board of India (Delisting of Equity Shares) Regulation, 2021 (**Delisting Regulations**).

Following table gives comparison in numbers of key features of such deals between the years 2022 and 2021:

Calendar year	2022	2021
Number of tender offers	93	81
Completed tender offers (tender offers that were launched and completed in the same calendar year)	70	50
Number of direct tender offers	84	76
Number of indirect tender offers	7	2
Number of tender offers made due to breach of 5% creeping acquisition limit	6	4
Total value of tender offers	₹ 423.63 Billion	₹ 436.02 Billion
Number of tender offers for NBFCs	10	15
Number of tender offers where underlying transaction was closed (whole or in part) before closure of the tender offer	26	17

E

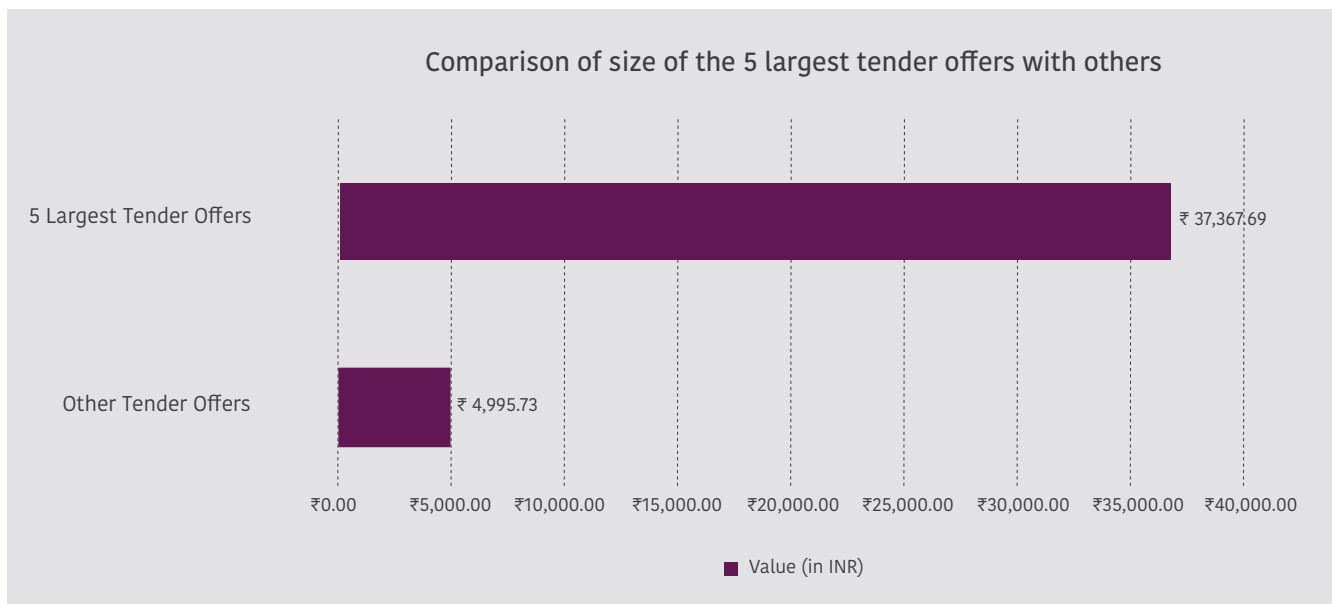
Biggest tender offers of 2022

In 2022, the five biggest tender offers by value were (in descending order of value):

1. Adani Group’s tender offer for Ambuja Cements Limited (aggregating ₹ 19,880 crore, appx.);
2. Adani Group’s tender offer for ACC Limited (aggregating ₹ 11,260 crore, appx.);³
3. Advent International’s tender offer for Suven Pharmaceuticals Limited (aggregating ₹ 3,276 crore, appx.);
4. Thiveni Group’s and Lloyds Group’s tender offer for Lloyds Metals and Energy Limited (aggregating ₹ 1,545 crore, appx.); and
5. Blackstone’s composite offer (i.e. open cum delisting offer) for R Systems International Limited (aggregating ₹ 1,406 crore, appx.).

These offers comprised 88.21% of the aggregate value of all tender offers in 2022. The biggest tender offer by value was for Ambuja Cements Limited, being ₹ 19,880 crore (appx.)⁴ and the smallest tender offer was for Shree Vijay Industries Limited, being ₹ 2.90 lakh.

Below is a graph comparing the aggregate value of these biggest tender offers with the aggregate value of the other tender offers made during 2022:



³The tender offer for ACC Limited was triggered due to the indirect acquisition of Ambuja Cements Limited.

⁴ Please note that The Carlyle Group’s tender offer for PNB Housing Finance Limited has been withdrawn.

F

Tender offers by non-residents

Non-residents made 11 tender offers in 2022. The aggregate value of such tender offers was ₹ 38,160 crore, which constitutes 90% of the aggregate value of all tender offers in 2022.



In comparison, in 2021, non-residents made six tender offers, aggregating ₹ 34,199 crore, which was 78% of the aggregate value of all tender offers in 2021. Below is a graph comparing the tender offers made by non-residents and residents during 2022 and 2021:



The year 2022 saw higher number of tender offers by both residents and non-residents as compared to 2021. The aggregate value of tender offers made by non-residents in 2022 was higher than in 2021 (by 12%).

G

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.

On an average, SEBI took 47 days to issue observations on the DLOFs, with the longest being 107 days (in Lloyds Metals and Energy Limited, operating in the Metals sector) and the shortest being 13 days (in Amani Trading and Exports Limited, operating in the textile sector). The average time taken by SEBI to clear the tender offers in 2022 was higher than the time taken in 2021.

Consistent with past practice, SEBI took longer to issue observation letters for takeovers of NBFCs (on an average 71 days), with the longest being 98 days (in Visco Trade Associates Limited) and shortest being 45 days (in Indergiri Finance Limited).

The time taken by SEBI to issue observation letters for some of the large tender offers (exceeding ₹ 200 crore in value) are set out below:

Serial No.	Name of the Company	Time taken by SEBI to clear DLOF (in days)
1	Ambuja Cements Limited	85
2	ACC Limited	85
3	Lloyds Metals and Energy Limited	107
4	Eureka Forbes Limited	60
5	Automotive Axles Limited	47
6	Eveready Industries India Limited	64
7	New Delhi Television Limited	61
8	INEOS Styrolution India Limited	63

SEBI's observations on other large tender offers, i.e. R Systems International Limited, Federal-Mogul Goetze (India) Limited, Ritesh Properties and Industries Limited and Suven Pharmaceuticals Limited, are awaited.

H

Tender offers by financial investors

Tender offers made by PE investors/ funds in 2022 are listed below:

Serial No.	PE Investor / Fund	Target Company	Sector	Value of Tender Offer (in INR crore)
1	Advent International Corporation	Suven Pharmaceuticals Limited	Pharmaceuticals	₹ 3,276
2	Blackstone	R Systems International Limited	IT	₹ 1,406
3	Advent International Corporation	Eureka Forbes Limited	Manufacturing	₹ 1,057
4	Apollo Global Management	Federal-Mogul Goetze (India) Limited	Auto Ancillaries	₹ 411
5	Infinity Investment Management	Jagsonpal Pharmaceuticals Limited	Pharmaceuticals	₹ 160
6	Infinity Investment Management	Sharad Fibres & Yarn Processors Limited	Textiles and Yarn	₹ 0.59
			Total	₹ 6,310.59



On-market Acquisition of Tendered Shares by Non-Resident Acquirers

As our readers may be aware, under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 (**NDI Rules**) a non-resident acquirer is permitted to purchase equity shares of an Indian listed company on the stock exchanges (i.e. on-market) only if such non-resident acquirer is already in control of such company.⁵ Hence, tender offers involving non-resident acquirers, generally involve acquisition of the shares tendered by the public shareholders through the off-market mode. This structure is tax inefficient for the public shareholders and the non-resident acquirer when compared to acquiring tendered shares on market, i.e. through the stock exchange mechanism.

Currently, the transaction structure being adopted to allow on-market acquisition is to divide the underlying transaction into two tranches. In this structure, the non-resident acquirer completes the acquisition of one tranche of the shares from the sellers through off-market mode and acquires control of the target company prior to the commencement of the tendering period. This allows the public shareholders to tender their shares through the stock exchange mechanism and the non-resident acquirer to acquire these tendered shares on-market.

This approach was taken by Advent International in its open offer for Eureka Forbes Limited. Advent International completed Tranche 1 of the underlying transaction, i.e. acquisition of 123,555,843 equity shares constituting 63.86% of the voting share capital, and acquired control of Eureka Forbes during the offer period. The shares of the public shareholders in the open offer were tendered and acquired through the stock exchange mechanism. This has been done before by another private equity player.

We are expecting many non-resident acquirers to take this approach to enable acquisition of shares tendered by public shareholders on market.

⁵ Paragraph 1(b) of Schedule I of the NDI Rules.

J

Other trends and highlights of 2022

1. Delisting through tender offer

Blackstone's offer for R Systems International Limited is the first attempt at delisting a listed Indian company through a composite tender offer (open offer cum delisting offer) since the new Regulation 5A of the Takeover Regulations was introduced in 2021.

2. Discharge of funding obligations by depositing securities

In the tender offers for Ritesh Properties and Industries Limited and Shreeshay Engineers Limited, the obligations of the acquirers were secured by depositing frequently traded securities in the regulatory escrow account. Previously, SEBI was reluctant to allow funding of the escrow by deposit of listed securities though the Takeover Regulations allowed the same. In the transactions named above, we have observed a positive shift in regulatory thinking. SEBI seems to now allow such discharge of obligation to fund the escrow account for tender offer if the value of securities have a good enough margin. The value of the securities compared to the amount deposited to meet the tender offer obligation was 2.26 times in Ritesh Properties and Industries Limited and 3.17 times in Shreeshay Engineers Limited.

3. Payment of interest for delay

Illustrations of direct tender offers where interest was paid to the shareholders for delay are listed below:

- a. a delay in receipt of the RBI approval for change of control impacted the tender offers for NBFCs namely Indergiri Finance Limited (delay of 88 days); and
- b. past breach of the Takeover Regulations led to the offer price being increased in The Baroda Rayon Corporation Limited (delay of 2156 days).

In indirect tender offers, namely for Federal Mogul Goetze (India) Limited (delay of 275 days) and Automotive Axles Limited (delay of 235 days), interest was paid to shareholders as part of the open offer price.

4. Voluntary tender offers

Promoters of Sicagen India Limited announced a voluntary tender offer to consolidate their shareholding in the company.

5. Trend in penalty for disclosure violations

While reviewing the draft letters of offer, SEBI also analyses past compliance with disclosures required to be made under the Takeover Regulations. Like in the past, in 2022, too, SEBI typically imposed penalties in the range of ₹ 1,00,000 to ₹ 3,00,000 per violation. If the violations are repetitive, then the penalties tend to be higher.

K

Penalty for Open Offer Violations

In 2022, in cases involving failure or delay in making an open offer, SEBI typically imposed penalties in the range of ₹ 10,00,000 to ₹ 15,00,000 per violation. If the violations are repetitive, then the penalties tend to be higher.

The names of the cases and penalties imposed are set out below:

Serial No.	Particulars	Order Date	Penalty for failure or delay in making the open offer (in ₹)
1	Gati Ltd.	24.03.2022	10,00,000
2	IIFL Finance Ltd.	28.03.2022	10,00,000
3	Shri Krishna Prasadam Ltd.	30.03.2022	20,00,000
4	Gujarat Arth Ltd.	31.03.2022	30,00,000
5	Indian Infotech and Software Ltd.	12.04.2022	4,00,000
6	Amarnath Securities Ltd.	27.04.2022	10,00,000
7	Linde India Ltd.	28.04.2022	10,00,000
8	M/s Camson Bio Technologies Ltd.	29.04.2022	20,00,000
9	Art Nirman Ltd.	31.05.2022	10,00,000
10	Indiabulls Ventures Ltd.	21.06.2022	10,00,000
11	Netlink Solutions India Ltd.	21.06.2022	10,00,000
12	Sterling Greenwoods Ltd.	22.06.2022	25,00,000
13	Alfa ICA India Ltd.	30.06.2022	10,00,000
14	Metkore Alloys and Industries Ltd.	27.07.2022	25,00,000

15	Rose Zinc Ltd.	29.07.2022	10,00,000
16	Thirdwave Financial Intermediaries Ltd.	29.07.2022	10,00,000
17	SI Capital and Finance Services Ltd.	30.08.2022	10,00,000
18	Murli Industries Ltd.	30.08.2022	22,00,000
19	Rammaica India Ltd.	23.09.2022	15,00,000
20	TCM Ltd.	28.09.2022	2,00,000
21	First Financial Services Ltd.	30.09.2022	10,00,000
22	Worth Investment and Trading Company Ltd.	30.09.2022	10,00,000
23	SVC Resources Ltd.	30.11.2022	28,60,000

Where the cases were settled through SEBI's settlement mechanism, the settlement amount were as below:

Serial No.	Particulars	Settlement Order Date	Settlement Amount (in ₹)
1	APLAB ltd.	25.01.2022	3,31,500
2	PNB Housing Finance Ltd.	28.06.2022	5,20,800

L

Need for amendments

1. Quick Closure of off-market deals

By ‘quick closure’, we mean flexibility to close the underlying secondary transactions immediately after deal signing. As of now, the Takeover Regulations allow quick closures of underlying secondary deals only if such deals are closed on-market. We believe that there is no reason to not permit such a closure for off-market closures. Therefore, Regulation 22 of the Takeover Regulations should be amended to provide this flexibility rather than making the parties wait until the expiry of 21 working days from the date of Detailed Public Statement (**DPS**).

2. 21 Working Days principle

As a necessary corollary to the above, Takeover Regulations should do away with the requirement of making the parties wait to close the deal until an entire month has passed from the date of deal signing. In case the acquirer has fully funded the escrow as per the Takeover Regulations, then the availability of funds and desire to move ahead with the open offer (in term of the Takeover Regulations) has already been demonstrated. Hence, in this context, the waiting period of 21 working days from the date of DPS is a redundant requirement.

3. Requirement of RBI Approval for bank guarantees

The newly amended Regulation 22 of Takeover Regulations allows the escrow to be funded with bank guarantee (for quick closures of underlying deals) provided it is accompanied with an approval from the Reserve Bank of India (**RBI**). Though this shift in regulatory thinking from 100% cash escrow to bank guarantee is very welcome, the RBI approval requirement complicates the shift in stance. Since the general escrow requirements do not need RBI approval for bank guarantee, to introduce this concept for quick closures alone is counterproductive. So long as the bank guarantee is obtained from a scheduled commercial bank whose rating for long term debt instruments is AAA and it covers the entire tender offer payment obligation, it should suffice. Hence, the RBI approval requirement should be done away with.

4. Requirement of Special Escrow Account

The Takeover Regulations require creation of a special escrow to pay the public shareholders. This requirement is redundant as it does not grant any additional protection to the public shareholders but merely adds a procedural step for the acquirer. A similar special escrow construct existed under the erstwhile delisting regulations, which was done away with in the Delisting Regulations of 2021. A similar step is required for the Takeover Regulations.

5. Takeovers under Regulation 164A

For takeovers implemented under Regulation 164A of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (**SEBI ICDR Regulations**), we propose that for making this provision more effective, all acquirers who are acquiring controlling stake in financially stressed companies under Regulation 164A of the ICDR Regulations should be:

- i. allowed to take the company over at the price negotiated with the lenders, who would not allow a change in management at any random price that is being offered and also, the stock market price of such companies is completely irrelevant; and
- ii. offered immunity from liabilities arising out of past actions of previous management, similar to the immunity granted under Section 32A of the Insolvency and Bankruptcy Code, 2016 (**IBC**);

provided that, such an acquisition is being implemented under RBI's Stressed Asset Framework⁶.

Moreover, the framework under Regulation 164A needs to be expanded by replacing the term 'equity shares' with 'specified securities' to allow for flexibility in choice of instruments in resolution of stressed assets.

Since the introduction of Regulation 164A in the year 2020 and corresponding exemption from making a tender offer, we are already seeing a lot of interest from Indian as well as foreign acquirers in the takeover of stressed assets. Therefore, ring-fencing and freedom of contracting measures as summarised above will encourage different categories of acquirers (especially, the PE funds) to do such deals.

⁶ Reserve Bank of India (Prudential Framework for Resolution of Stressed Assets) Directions, 2019 issued by the RBI vide its circular dated June 7, 2019

M

The Year Ahead

Like in 2022, we are expecting the IT sector to remain a favorite irrespective of how the stocks of listed companies have performed, as technology and innovation will continue to drive every aspect of our lives.

Green energy space will also see a record amount of funding and M&A transactions in the near future as there is a compelling need to become more sustainable and environment friendly.

We are already seeing a lot of interest in the health care sector (both pharma and hospitals) from both foreign PE and strategic players. Local interest in this sector was always there but we do see increased traction from overseas players. In 2023, we will see foreign players closing more control deals in this space.

Resolution of stressed assets outside of the IBC will gain more popularity as it is less time consuming. With appropriate amendments to Regulation 164A of SEBI ICDR (as proposed above), we will see more bailout deals in the near future.

In 2023, we expect to see many profitable companies returning capital to their shareholders through share buybacks or dividends, a trend which has already started in the later half of 2022.

Banks and financial services sector will also see both consolidation and M&A deals. Foreign players will actively bid in GOI's public sector bank divestments. We think that large corporates might also be interested in acquiring banks, but they are more likely to push for new bank licences from RBI in order to shed historic baggage and start afresh.

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