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Open offer route by L&T paved with uncertainty for warring parties: Experts

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Larsen & Toubro

Any open offer by Larsen & Toubro (L&T) and a counter-offer by promoters in the ongoing battle for control of Mindtree may not be a smooth one for the warring parties, said legal experts.

In a significant majority of the cases, it has been found that no more than 15-16 per cent of shareholders tender into an open offer, noted Harsh Pais, partner, Trilegal.

“This could be a challenge if the deal is premised on acquisition of a larger stake through a tender offer, unless the price is very attractive,” Pais added.

While Securities and Exchange Board of India’s (Sebi’s) takeover code allows for an unsolicited offer, there are numerous potential challenges, including the possibility of a competing offer from a white knight as well as complications in getting regulatory approvals.

Experts said promoters enjoy some degree of price protection because of the Sebi-prescribed formula for fair price determination in a tender offer. "That said, since the promoters are not in favour of the takeover, they also have the option of launching a competing offer with the help of a white knight to counter/defeat the original open offer," said Shreyas Bhushan, partner, Nishith Desai Associates.

Promoters have around 20 days from the original open offer announcement to initiate this process, after which both the offers will run parallel, he added.

Technically, the promoters could explore buyback/poison pill options, while an open offer is pending. "However, these actions require super-majority consent (>75 per cent) from shareholders through a postal ballot and could also be a long-drawn/litigious process," said Bhushan.

Most experts said given the circumstances, aggressive shareholder activism, coupled with exploring a competing offer, is the likely strategy to follow by the promoters.

Vaibhav Kakkar, partner, L&L Partners, pointed out that the other option would be for the management to convince the minority shareholder that the existing hostile bid does not take into account the upside on the valuation of the current shareholdings, which could be generated in future under the existing management.

Independent directors are likely to play an important role in influencing the mind of minority shareholders towards the open offer, said experts.

Independent directors are statutorily required to give their recommendation to public shareholders on the open offer. Some experts, however, felt if the open offer price is attractive enough, minority shareholders may not heed the advice of independent directors even if they were to recommend that deal is not beneficial to the company.