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M&A target firms may be asked to guide Shareholders

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Sebi panel may raise open offer trigger to 25%.

The Securities and Exchange Board of India's (Sebi) committee on takeovers headed by C Achuthan is seriously considering making it mandatory for boards of target companies to guide shareholders in the event of competitive bids in line with global best practice.

Currently, company boards in India leave it to shareholders to take a call on which bid to accept.

Globally, company boards have a fiduciary responsibility to objectively consider open offers. Shareholders benefit because they get guidance on the offer that is in the best interests of the company.

The issue has arisen after a recent spate of competitive bids. The current one is the counter-offer by Anil Dhirubhai Ambani Group (ADAG) company Reliance Media Works for multiplex operator Fame India at Rs 80 per share. Before this, rival INOX Leisure had already made an open offer to Fame promoters at Rs 51 per share.

Last year, there were two bidding wars. One was between offshore service provider Great Offshore by ship makers Bharati Shipyard and ABG Shipyard (the former won). The other was a three-way battle to acquire steel and mining firm Orissa Sponge Iron & Steel from Bhushan Steel, Bhushan Energy and Monnet Ispat & Energy (Bhushan Energy won).

"It makes sense to have something like this in India because the average investor is not sophisticated enough or have access to the necessary information to take a call on which offer is best. In such a situation, it becomes extremely important that the board gives unbiased recommendation on which offer is suited best for the target company," said Akil Hirani, Managing Partner, Majmudar & Company.

"Apart from a few knowledgeable investors, retail investors generally follow a herd mentality, which means that they tender shares for the higher price, irrespective of whether he offer is good for the company's long-term interests," added Saurabh Mukherjea, head of Indian equities at Executive Noble, a London-based research firm. Globally acquirers sometimes meet and make presentations to three or four large shareholders to make their case.

Sources said the Sebi committee was also comprehensively reviewing open offers and may raise the open offer trigger to 25 per cent from 15 per cent now — the reason being that 26 per cent shareholding in India gives acquirers the power to block special resolutions for important decisions during shareholder meetings.

Experts said the move would benefit private equity funds that look for a significant stake without having to trigger the open offer.

The move will align Indian regulations to global best practices. In the UK and the rest of Europe, the open offer trigger is set at 30 per cent. In the US, there is no mandatory trigger for an open offer.

The change in open offer trigger will also mean that Sebi will have to revise the size of open offers. Under current regulations, any entity that triggers an open offer has to make an offer for a further 20 per cent shares in that company.

People close to the development indicated that Sebi might ask the acquirer to make an offer for the total outstanding shares in that company, as they do in Europe.

This, again, would mean tweaking the delisting guidelines, which stipulate that shares to be acquired should result in the post-offer shareholding of the promoters reaching the higher of 90 per cent of the total issued shares of the class (excluding the shares already held by a custodian and against which depository receipts have been issued overseas) and the aggregate percentage of pre-offer promoter's shareholding and 50 per cent of the offer size.

"Either Sebi will need to integrate the open-offer trigger with delisting guidelines or alternatively, the acquirer may be required to bring back the public float to the minimum required levels of listing within a stipulated time frame," said Siddharth Shah, Partner at legal firm Nishith Desai Associates.

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