

Don't Mind: You've been Acquired!

L&T's Hostile Takeover of Mindtree

April 2020

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2020, 2019, 2018, 2017, 2016, 2015
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1. Prologue

The acquisition of Mindtree, one of India's leading information technology and research and development services companies, made headlines for several days last year for various reasons but primarily as a result of it being India's first hostile takeover in the IT sector. Mindtree was originally incorporated as Mindtree Consulting Private Limited in 1999 by ten Indian IT professionals determined to turn their ideas into reality. After a steady growth, Mindtree successfully listed its shares at a premium, on Indian stock exchanges in February, 2007.¹ The company continued to maintain its growth momentum since then and reached the USD 1 billion revenue milestone recently in fiscal 2019.² This along with the company's strong focus on IT services and strong portfolio of large customers with long-standing relationships made it an attractive target for PE investors.

Since June 2018, there were media speculations regarding a couple of PE investors being in initial talks with the founders of Mindtree for a bite of controlling stake of the company.³ Around the same time, there were also unconfirmed reports⁴ of V.G. Siddhartha, one of the early investors in Mindtree contemplating sale of a portion of the stake held by him and his affiliate companies. The then promoters of Mindtree at this stage appeared to be unwilling to relinquish control and therefore were not inclined to participate in any sale of their stake. L&T, one of the interested buyers and an enterprise that has successfully thwarted takeover attempts in the past, finally outbid others and even amongst the strong opposition from the promoters of Mindtree, on March 19,

2019, entered into a share purchase agreement (“SPA”) with V.G. Siddhartha and other Coffee Day enterprises (“CCD Group”) for the purchase of all of the Equity Shares held by the CCD Group amounting to 20.15% of the Emerging Voting Capital of Mindtree. Simultaneously with the execution of the agreement, L&T placed a purchase order (“Purchase Order”) with its stock brokers to purchase an additional up to 15% of the Emerging Voting Capital, on any recognized stock exchange in India. The execution of the SPA and the Purchase Order triggered the Open Offer under the SEBI Takeover Regulations. Despite the regulatory uncertainties and the vehement opposition from the promoters of Mindtree, L&T managed to successfully acquire control over this prized asset making it one of India's first successful hostile acquisitions under the new SEBI Takeover Regulations of 2011. L&T currently holds 60.55% of the total share capital of Mindtree.⁵

History of Hostile Takeovers in India

There have only been a handful of hostile takeover attempts in India and even fewer successful ones. Prior to Mindtree's acquisition, the last successful hostile takeover that made news was in 2008 when Emami Limited (“Emami”) entered into share purchase agreements with the Vaidya family (part of the promoter group of Zandu Pharmaceutical Works Limited) (“Vaidya SPA's”) to acquire 12.70% stake in Zandu Pharmaceutical Works Limited (“Zandu”).⁶ In our dissection of this transaction under our M&A Lab titled Zandu – Emami Deal Dissected,⁷ we noted

1. *Red Herring Prospectus of MindTree Consulting Limited*, available at https://www.sebi.gov.in/filings/public-issues/feb-2007/mindtree-consulting-limited_8806.html (last visited on March 29, 2020)
2. *Annual Report of Mindtree for Fiscal 2019* available at <https://www.mindtree.com/sites/default/files/2019-07/mindtree-limited-integrated-report-2018-19.pdf>
3. <https://www.moneycontrol.com/news/business/mindtree-promoters-in-talks-with-2-foreign-entities-to-sell-stake-report-2639751.html>
4. <https://www.moneycontrol.com/news/technology/caffe-coffee-day-founder-considering-selling-stake-in-mindtree-report-2580721.html>

5. *According to the shareholding pattern filed by Mindtree with BSE, as of December 31, 2019.*
6. *The letter of offer filed by Emami with SEBI* available at https://www.sebi.gov.in/sebi_data/commondocs/zandupharmalof_p.pdf
7. http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Ma%20Lab/Zandu-Emami%20Deal%20-%20December%203%202008.pdf

that Emami acquired approximately 23.62% of the share capital of Zandu from the Vaidya family in tranches. Immediately prior to the entry of the Vaidya SPA's, Emami along with PACs with Emami held 14.81% of the share capital of Zandu which was acquired in the preceding 12 months through open market purchases out of which 10.92% was acquired from the Vaidya family on May 28, 2008.⁸ As a result of the consummation of the transaction originally envisaged under the SPA's with the Vaidya family, Emami along its PACs would hold approximately 27.51% of the share capital of Zandu (without accounting for the equity shares tendered as a result of the open offer). The deal was not a runaway victory for Emami as it went into a dispute with the Parikh family, the other co-promoters of Zandu with whom all the management rights at Zandu vested. The Parikh family alleged violation of the former takeover regulations, insider trading regulations and the companies act and initiated litigations opposing the acquisition by claiming inter alia their right of first refusal in respect of the stake that the Vaidyas sold to Emami.⁹ Zandu's intention all along was to acquire the entire promoter group stake which included the additional 18.18% held by the Parikhs. Pursuant to the settlement efforts initiated by the Company Law Board, after more than four months and Emami revising purchase price to more than twice the amount, the Parikhs agreed to sell their 18.18% shareholding in Zandu to Emami.¹⁰ Pursuant to the aforesaid acquisition from the Parikhs and the purchases from open market along with the acquisition of shares in the open offer, Emami ultimately secured 70.34% stake in Zandu.

L&T itself has not been spared from takeover attempts. In the late 1980's the Reliance Industries Limited ("RIL") group bought

a significant stake in L&T and was on route to planning a takeover. However, RIL did not find support from the Government at that time or the financial institutional shareholders that were the largest block of shareholders in L&T at the time. This forced the RIL group to abort the takeover plan and remain a passive shareholder. The Birla group also wanted a part of the L&T enterprise a few years later. After acquiring the RIL group stake in L&T, Grasim Industries in October 2002 made a public offer to acquire 20% of the share capital of L&T. L&T tried to hive off its cement business in a manner that made the hostile acquisition unattractive for the Birla group. In addition to the above, SEBI raised concerns over the initial acquisition made by Grasim Industries and this prolonged the open offer. As a final outcome of the long drawn battle, L&T management trust (an employee trust) bought out the shares that the Birla group held in L&T and ironed out a deal with the Birla group for their cement division.¹¹

In another successful hostile acquisition in 1998, India Cements Limited, which already held 9.75% of Raasi Cements triggered the open offer under the erstwhile takeover regime after an acquisition of an additional 8.28% on a spot basis from a certain section of the promoters of Raasi Cements. The remaining promoters of Raasi Cements opposed the acquisition. After an unsuccessful litigation and failing to come up with a counter offer, the promoters of Raasi Cement finally agreed sell their 32% shareholding to India Cements. With the acquisition of the entire promoter group stake and a successful open offer of 20%, India Cements took over control of Raasi Cements.¹²

8. *Id.*

9. <https://economictimes.indiatimes.com/industry/healthcare/biotech/pharmaceuticals/zandu-promoters-emami-fight-enters-courtroom/articleshow/3335180.cms>

10. <https://economictimes.indiatimes.com/industry/healthcare/biotech/pharmaceuticals/zandu-owners-emami-attempt-out-of-court-deal/articleshow/3567935.cms?from=mdr>; <https://www.reuters.com/article/emami-zandu/zandu-co-founders-sell-18-18-pct-stake-to-emami-idINBOM17310420081016>;

11. <https://www.businesstoday.in/buzztop/buzztop-corporate/lt-hostile-bid-for-mindtree-when-prey-turns-predator/story/329384.html>; <https://www.financialexpress.com/market/cafainvest/lt-mindtree-battle-three-times-engineering-giant-successfully-staved-off-hostile-takeover-attempts/1561482/>

12. https://www.business-standard.com/article/specials/india-cements-chanceless-coup-198041101081_1.html; https://www.business-standard.com/article/specials/india-cements-open-offer-for-20-in-raasi-198022701029_1.html; https://www.business-standard.com/article/specials/raju-selling-raasi-shares-to-india-cements-198033001066_1.html; and https://www.business-standard.com/article/specials/moves-on-icl-raasi-offer-need-govt-sebi-nod-hc-198031201072_1.html

There have been few other hostile takeover attempts which were ultimately retracted. One of the most famous one which shook the India's corporate world was attempted in 1983, when London-based industrialist Swaraj Paul sought to control the management of two Indian companies, Escorts Limited (“Escorts”) and Delhi Cloth Mills Limited (“DCM”) by acquiring a 7.50% and 13.00% stake respectively on the stock market under the NRI portfolio investment scheme which was recently introduced at that time. As a result of this acquisition and an already existing large government share in these companies, the founders of Escorts and DCM ended up with a lower stake than Swaraj Paul. Such aggressive strategies were a rare move at that time. In response, Escorts filed a petition against the Reserve Bank of India's notification under which the investments were made. There were also reports of the government being pressurized by industry players with similar shareholding structures being at a risk of acquisitions by wealthy industrialists. Ultimately, in 1986 after a mediation between the concerned parties, Swaraj Paul sold his shares to the promoters, but this move did send ripples across businesses in India.¹³

In 2000, Abhishek Dalmia holding 10.50% in Gesco Corporation made an open offer to acquire 45.00% of share capital in Gesco. The promoters of Gesco scouted for a white knight and found support of Mahindra Realty and Infrastructure Developers. After couple of rounds of bidding war, Gesco and the Dalmia group finally announced an amicable settlement with the promoters along with Mahindra bought out Dalmias' 10.5% stake.¹⁴

The general regulatory and financing challenges in India make hostile takeovers a difficult proposition in India. The SEBI Takeover Regulations, which primarily govern the

takeovers in India, however, does not contain any prohibitive framework for hostile takeovers. Despite this, such takeovers have been unpopular primarily because of typical business structures that exist in India where companies are promoter or family run and very few are professionally managed. These promoter driven companies have founders (who in turn would generally be related to each other) and friends and families of founders categorized as promoter group where a majority of control lies. A number of large private sector Indian conglomerates such as Reliance, Wipro, Aditya Birla, Sun Pharma and Dabur, even though publicly listed continue to be closely held and controlled by the founding family and their friends. These structures have been reinforced by Indian financial institutions, which have historically been staunch supporters of controlling shareholders, valuing personal relations over financial returns based solely on stock ownership and the foreign investment regulatory regime in India that is highly protective of incumbent management. Further, the Reserve Bank of India does not allow banks to lend for acquisition financing and leveraged buyouts making a hostile takeover difficult. Corporates in such eco system therefore shy away from corporate war strategy for expansion. Mindtree however did not have a traditional shareholding structure. Its shareholding presented a perfect recipe for a hostile takeover in the Indian context, where promoters held a mere 13.21%. In this lab, we attempt to examine this takeover, from a commercial, legal, regulatory and tax perspective and aim to answer various questions surrounding the deal including why and how Mindtree ended up becoming a subject of a hostile takeover and what could have the promoters possibly done.

13. <http://indiabefore91.in/node/6/submission/15>

14. <https://www.moneycontrol.com/news/business/companies/a-lookback-at-a-rare-hostile-takeover-bid-and-why-indian-cos-dont-go-down-that-route-2263753.html>

2. Glossary

Glossary of Terms

Abbreviation	Meaning
Acquirer/L&T	Larsen and Toubro Limited
Acquisition	The acquisition of the Equity Shares of the Target under the SPA, the Purchase Order and the Open Offer
BFSI	Banking, Financial Services and Insurance
BSE	Bombay Stock Exchange
CCD Group	Café Coffee Day along with its affiliates
CCI	Competition Commission of India
CDEL	Coffee Day Enterprises Limited
CDTL	Coffee Day Trading Limited
Companies Act	Companies Act, 2013
Competition Act	Competition Act, 2002
DLOF/ Draft Letter of Offer	The draft letter of offer dated April 2, 2019, filed with SEBI pursuant to Regulation 16(1) of the SEBI Takeover Regulations
DPS	The detailed public statement in connection with the Offer, published on behalf of the Acquirer on March 26, 2019 in the following newspapers: (a) Financial Express (all editions); (b) Jansatta (all editions); (c) Vishwvani (Bangalore edition); and (d) Navshakti (Mumbai edition)
Emerging Voting Capital	<p>The total voting equity share capital of the Target on a fully diluted basis as of the 10th working day from the closure of the tendering period of the Open Offer based on publicly available data but which may change on account of any future corporate actions.</p> <p>Per the LOF, the Emerging Voting Capital of the Target was 165,565,714 Equity Share consisting of outstanding share capital of 164,214,041 Equity Shares as on March 31, 2019 and 13,51,673 Equity Shares eligible for being allotted by 10th working day from the closure of the tendering period, in relation to the convertible instruments issued by the Target.</p>
Equity Share Capital	Rs. 1,642,140,410 being the total paid-up equity share capital of the Target consisting of 164,214,041 Equity Shares
Equity Shares	Fully paid-up equity shares of the Target of face value of Rs. 10 each
Escrow Account	The amount deposited by the Acquirer in the Escrow Account in compliance with Regulation 17 of the SEBI Takeover Regulations, being approximately Rs. 5,780,000,000
Income Tax Act	Income Tax Act, 1961
IPO	Initial Public Offering
Rs.	Indian National Rupee
LOF	Letter of offer dated June 6, 2019 filed with SEBI

Long Stop Date	The long stop date for the completion of the transaction under the SPA is the date of expiry of 90 days from the execution date of the SPA, or such other later date as may be mutually agreed in writing between the parties (with written consent of the debenture trustee), provided that if the statutory approvals have not been obtained by the expiry of 86 days from the execution date, the Long Stop Date shall automatically be extended by 30 days and the Long Stop Date shall mean the date of expiry of 120 days from the execution date.
Managers to the Offer	Axis Capital Limited and Citigroup Global Markets India Private Limited
NCD	Non-convertible debentures
Open Offer	Open offer being made by the Acquirer to the Shareholders of the Target to acquire up to 51,325,371 Equity Shares, representing 31.00% of the Emerging Voting Capital, at the Offer Price per share
Offer Price	Rs. 980 per offer share
PACs	Persons acting in concert as defined under the SEBI Takeover Regulations
PE	Private Equity
Public Announcement	The public announcement in connection with the Open Offer made by the Managers to the Offer on behalf of the Acquirer to the stock exchanges on March 18, 2019, submitted to SEBI on March 19, 2019 and sent to the Target on March 18, 2019
Public Shareholders	Shareholders of the Target other than the Sellers
Purchase Order	The purchase order of the Acquirer placed with its stock broker Axis Capital Limited on March 18, 2019 after the Public Announcement, to purchase up to 24,834,858 Equity Shares aggregating to 15.00% of the Emerging Voting Capital of the Target, at per Equity Share price of not more than Rs. 980, subject to the Purchase Order Conditions (as discussed below under Section 2 " Details of the Deal ").
Tanglin	Tanglin Retail Reality Developments Private Company
Target/Company/Mindtree	Mindtree Limited
SEBI	Securities Exchange Board of India
SEBI ICDR Regulations	SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, as amended
SEBI Listing Regulations	SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, as amended
SEBI Takeover Regulations	SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011, as amended
Sellers	Collectively, (a) V.G. Siddhartha, (b) Coffee Day Enterprises Limited and (c) Coffee Day Trading Limited
SPA	The share purchase agreement dated March 18, 2019 between the Acquirer and the Sellers, for acquisition of the SPA Shares at per Equity Share price of Rs. 980 for an overall consideration amount of the SPA Consideration
SPA Consideration	Rs. 32,690 million, being the total consideration for sale of the SPA Shares at a price of Rs. 980 for each of the Equity Share, under the SPA
SPA Escrow Agreement	The escrow agreement dated March 18, 2019 between the Acquirer, Sellers, Standard Chartered Bank as the escrow agent and IDBI Trusteeship Services Limited as the debenture trustee

3. Details of the Deal

I. The Parties

A. Acquirer

The Acquirer is a public listed company in India and part of the Larsen & Toubro group. The L&T group is a major technology, engineering, construction, manufacturing and financial services conglomerate, with global operations. The L&T group addresses critical needs in key sectors including hydrocarbon, infrastructure, power and defence, for customers in over 30 countries around the world. It is engaged in core, high impact sectors of the economy.¹⁵ The Acquirer's manufacturing footprint extends across eight countries in addition to India.¹⁶ The L&T group has several international offices and a supply chain that extends around the globe. The Acquirer holds 74.58%¹⁷ in Larsen and Toubro Infotech Limited, a global IT services and solutions company and operates in various geographies including North America, Europe and Asia Pacific. Larsen and Toubro Infotech was incorporated by the Acquirer in December, 1996 and listed in July, 2016. The Acquirer's exposure in the information technology and business process management industry was perhaps one of the critical factors in its persisting interest in the acquisition of the Target.

B. Target

Mindtree Limited is public listed company providing information technology and research and development services. It was founded in 1999 by a group of ten IT professionals. Its early year investors included Capital Group and Franklin Templeton.¹⁸ Mindtree set up its

first U.S. delivery center in Florida in 2012.¹⁹ It now has offices in multiple locations in a total of 18 countries in America, Europe, APAC, India, Middle East and Africa and customers in all such locations as well as in France, Netherlands and Denmark. The Company manages mission-critical applications for some of the world's most successful companies. Recently, on the 20th anniversary of the Company, it crossed the USD 1 billion revenue mark.²⁰

C. Sellers

The Sellers in this transaction are (a) Coffee Day Enterprises Limited; (b) Coffee Day Trading Limited; and (c) V. G. Siddhartha.

i. Coffee Day Enterprise Limited (“CDEL”)

CDEL is a listed parent company of the CCD Group, which houses Café Coffee Day that pioneered the coffee culture in the chained café segment in India. CDEL held 17,461,768 Equity Shares of the Target (representing 10.55% of the Emerging Voting Capital) prior to the transaction.²¹

ii. Coffee Day Trading Limited (“CDTL”)

CDTL is a subsidiary of CDEL and holds investments in certain IT- ITES and other technology companies and was founded in 2000. CDTL held 9,994,244 Equity Shares of the Target (representing 6.04% of the Emerging Voting Capital) prior to the Acquisition.²²

15. <https://www.larsentoubro.com/corporate/about-lt-group/overview/>

16. *Id.*

17. *According to the shareholding pattern filed by Larsen & Toubro Infotech Limited with BSE, as of December 31, 2019.*

18. *Based on disclosures included in the prospectus dated February 19, 2007 filed by Mindtree with SEBI.*

19. *Annual Report of Mindtree for Fiscal 2013 available at https://www.mindtree.com/sites/default/files/2017-10/mindtree_annual_report_2012-2013.pdf.*

20. *Annual Report of Mindtree for Fiscal 2019 available at <https://www.mindtree.com/sites/default/files/2019-07/mindtree-limited-integrated-report-2018-19.pdf>*

21. *LOF*

22. *Id.*

iii. V.G. Siddhartha

V.G. Siddhartha was the promoter of CDEL. He held 5,304,217 Equity Shares of the Target (representing 3.20% of the Emerging Voting Capital) prior to the Acquisition.²³

Out of the total of 33,360,229 Equity Shares of the Target (aggregating to 20.15% of the Emerging Voting Capital) held by the Sellers, 32,760,229 Equity Shares (aggregating to 19.79% of the Emerging Voting Capital) were pledged with Tanglin Retail Reality Developments Private Company (“**Tanglin**”), an associate company of the Sellers. A detailed discussion on the pledge is provided under paragraph II (i) - ‘Conditions Precedent’.

II. Transaction Documents

A. Share Purchase Agreement (“SPA”)

The SPA was entered into between the Sellers and the Acquirer on March 18, 2019, for acquisition of 33,360,229 Equity Shares for a total consideration of Rs. 32,690 million at a price of Rs. 980 for each share.²⁴ In addition to the usual conditions precedent in the SPA such as receipt of all statutory approvals, representations and warranties continuing to be true and correct and no breach of obligations and duties under the SPA, there were certain additional conditions precedent discussed below.

Conditions Precedent

- a. In January 2019, V.G. Siddhartha had received an order under Section 281B of the Income Tax Act, provisionally attaching a portion of shares held by certain Sellers in the Target to safeguard the interest of revenue in respect of likely tax and penalty obligations in respect of open assessments. In an intimation to BSE, CDEL mentioned that a response to these tax notices had been filed clarifying that V.G. Siddhartha

and CDEL have filed the required revised returns. CDEL also confirmed that there is no tax liability as per the revised returns filed.²⁵ Accordingly, a condition precedent was included by the Acquirer in the SPA requiring the Sellers to confirm that no order of provisional attachment has been passed by any governmental authority over any of the shares being sold to the Acquirer, or where any such order has been passed, such order has been vacated by the relevant authority.²⁶ The Acquirer also initially required the Sellers to obtain a specific permission from the relevant tax authorities in respect of the transaction.²⁷ The Acquirer later however agreed to waive this condition on the basis of the aforementioned ‘no tax liability’ confirmation and a tax indemnity included in the SPA.²⁸

- b. Execution of the SPA Escrow Agreement simultaneously with the execution of the SPA and deposit of the entire shareholding of the Sellers in the escrow account opened pursuant to such SPA Escrow Agreement. Details of the SPA Escrow Agreement are provided below.

B. SPA Escrow Agreement

The SPA Escrow Agreement was executed among the Acquirer, Standard Chartered Bank as the escrow agent and IDBI Trusteeship Services Limited as the debenture trustee on March 18, 2019, simultaneous with the execution of the SPA. The SPA Escrow Agreement required the Acquirer to deposit Rs. 32,690 million, the total consideration for the sale of Equity Shares, and the Sellers agreed to deposit their entire shareholding of 33,360,229 Equity Shares, in an escrow account to facilitate the completion of this transaction through an escrow mechanism.

²³. *Id.*

²⁴. *Id.*

²⁵. Corporate filing made by CDEL with BSE available at - <https://www.bseindia.com/xml-data/corpfiling/CorpAttachment/2019/1/578078e9-30df-4f66-9958-92208be9fb82.pdf>

²⁶. LOF

²⁷. DLOF

²⁸. *Supra* note 26.

A detailed description of the escrow mechanism is provided under paragraph A. ‘SPA and SPA Escrow Agreements’ of section 5 ‘Deal Structure’.

C. Purchase Order

The Acquirer placed a Purchase Order with its stock broker, Axis Capital Limited on March 18, 2019, to purchase up to 24,834,858 Equity Shares aggregating to 15.00% of the Emerging Voting Capital, on any recognized stock exchange in India in lots or tranches at a price of not more than Rs. 980 per equity share and for an overall consideration amount not exceeding Rs. 24,338 million. The Purchase Order was to be acted upon by broker subject to (a) the Acquirer informing the broker of the receipt of relevant approvals required from various regulatory authorities; and (b) the purchases being made only until such period as permitted under applicable laws (together the “Purchase Order Conditions”).

III. Deal Snapshot

Target	Mindtree Limited
Acquirer	Larsen & Toubro Limited
Sellers	V. G. Siddhartha, CDTL and CDEL
Modes of Acquisition	<p>Direct Acquisition:</p> <ul style="list-style-type: none"> The Acquirer agreed to acquire 33,360,229 Equity Shares of the Target aggregating to 20.15% of the Emerging Voting Capital from the Sellers, pursuant to the SPA. While the SPA was entered into with the Sellers to acquire 33,360,229 Equity Shares of the Target from the Sellers, as on the execution date of the SPA, the Sellers held 32,760,229 Equity Shares in the Target.²⁹ The actual number of Equity Shares that were actually purchased from the Sellers pursuant to the SPA was 32,760,229 Equity Shares aggregating to 19.79% of the Emerging Voting Capital.³⁰ <p>On-market Purchase:</p> <ul style="list-style-type: none"> The Acquirer placed a Purchase Order with its stock broker Axis Capital Limited to purchase up to 24,834,858 Equity Shares of the Target aggregating to 15.00% of the Emerging Voting Capital subject to fulfilment of the Purchase Order Conditions. The actual number of Equity Shares finally acquired by the Acquirer in open market was 15,564,579 aggregating to 9.4% of the Emerging Voting Capital.³¹ <p>Open Offer:</p> <ul style="list-style-type: none"> The Acquirer made a mandatory Open Offer to acquire up to 51,325,371 Equity Shares of the Target representing 31.00% of the Emerging Voting Capital.
Offer Size	Up to 51,325,371 Equity Shares of the Target representing 31.00% of the Emerging Voting Capital
Open Offer	Open Offer by the Acquirer to acquire up to 51,325,371 Equity Shares of the Target, representing 31.00% of the Emerging Voting Capital

29. LOF

30. LOF and as disclosed in the post offer report dated July 15, 2019 (“Post Open Offer Report”) filed by the Managers to the Offer under Regulation 27(7) of the SEBI Takeover Regulations.

31. Id.

Acquisition Price	<p>Direct Acquisition:</p> <p>The purchase price for acquisition of Equity Shares of the Target from the Sellers under the SPA was Rs. 980 for each Equity Share aggregating to Rs. 32,690 million.</p> <p>On-market Purchase:</p> <p>The Purchase Order was placed by the Acquirer for acquisition at a price of not more than Rs. 980 per Equity Share and for an overall consideration amount not exceeding Rs. 24,340 million. The open market purchases were made between April 30, 2019 to June 7, 2019 at varied prices ranging between Rs. 967.05 to Rs. 980 per Equity Share.³²</p> <p>Open Offer:</p> <p>The Open Offer was made by the Acquirer at a price of Rs. 980 per Equity Share aggregating to Rs. 50,300 million.³³</p>
Total contemplated acquisition	<p>The Acquirer intended to acquire control of the Target and in this regard executed an SPA with the Sellers and placed a Purchase Order with their broker which triggered the Open Offer. A break-up of the total contemplated acquisition of 66.15% of the Emerging Voting Capital is provided below:</p> <ul style="list-style-type: none"> i. 20.15% of the Emerging Voting Capital pursuant to the SPA ii. Maximum of 15.00% of the Emerging Voting Capital through open market purchase pursuant to the Purchase Order iii. 31.00% of the Emerging Voting Capital under the Open Offer
Total actual acquisition	<p>The Acquirer held 60.19% of the Emerging Voting Capital post the Open Offer. The details of actual acquisitions made by the Acquirer are:³⁴</p> <ul style="list-style-type: none"> i. 19.79% of the Emerging Voting Capital pursuant to the SPA ii. 8.87% of the Emerging Voting Capital through open market purchase pursuant to the Purchase Order, alongside the Open Offer iii. 31.00% of the Emerging Voting Capital under the Open Offer iv. 0.53% of the Emerging Voting Capital open market purchase pursuant to the Purchase Order post the closure of tendering period

32. LOF and Post Open Offer Report.

33. The price has been calculated as per Regulation 8 of the SEBI Takeover Regulations, being the highest negotiated price per share for any acquisition under an agreement attracting the obligation to make the public announcement for an open offer.

34. Post Open Offer Report.

4. Chronology of Events

Date	Particulars
March 9, 2018	V.G. Siddhartha resigns as an non-executive director from the board of Mindtree.
January to March, 2019	Reports of Sellers in talks with various potential investors for purchase of their shareholding in the Target ³⁵
March 18, 2019	<ul style="list-style-type: none"> ▪ SPA executed between the Acquirer and the Sellers ▪ SPA Escrow Agreement executed among the Acquirer, Sellers, escrow agent and debenture trustee ▪ Purchase Order placed by the Acquirer with its stock broker Axis Capital Limited ▪ Public announcement issued by the Acquirer
March 25, 2019	Detailed Public Statement is published in the newspapers
April 2, 2019	Draft Letter of Offer is filed with SEBI
April 4, 2019	<ul style="list-style-type: none"> ▪ CCI approves the transaction ▪ Approval received from anti-trust authority of Germany ▪ Deemed anti-trust approval required for the transactions in United States of America
April 30, 2019	Acquisition by the Acquirer under the SPA pursuant to a block deal on BSE
April 30 to June 7, 2019	Acquisitions in the open market by the Acquirer pursuant to Purchase Order
May 30, 2019	SEBI provides its observations in relation to the DLOF
June 6, 2019	Final letter of offer issued
June 12, 2019	Committee of Independent Directors of the Target issued its recommendations in relation to the Open Offer
June 13, 2019	Publication of pre-offer advertisement and corrigendum to the Detailed Public Statement
June 17, 2019	Date of opening of tendering period
June 20, 2019	Publication of second corrigendum to the detailed public statement
June 28, 2019	Date of closing of tendering period
July 12, 2019	Last date for payment of consideration to the public shareholders who have tendered their shares to the Acquirer under the Open Offer
July 19, 2019	Publication of Post-Offer public announcement
July 2019	Resignation of the Promoters from various positions held in Mindtree and filing of letter with the company for declassification to the public category ³⁶
August 2019	Appointment of Debashis Chatterjee as the new CEO and Managing Director of Mindtree

35. <https://www.livemint.com/Companies/wgRi3vXcc564q5OSoGW9EP/VG-Siddharthas-exit-puts-Mindtree-promoters-in-sell-or-st.html>; <https://www.financialexpress.com/industry/ccd-founder-vg-siddharthas-mindtree-stake-management-stance-key/1450867/>; <https://economictimes.indiatimes.com/markets/stocks/news/i-t-dept-releases-coffee-days-mindtree-shares-attaches-siddharthas-partial-stake-in-coffee-day/articleshow/67989382.cms?from=mdr>

36. Mindtree issued a press release on July 5 announcing the submission of promoters' resignation as members of the Board of Directors and as employees of the company and along with the other founders, for de-classification as promoters under applicable laws. The press release mentioned that the promoters will stay as Board members till July 17, 2019 and as employees in line with their employment contracts to ensure smooth transition.

5. Shareholding Pattern and Capital Structure

Brief History of Capital Structure

Before looking at the shareholding structure of Mindtree pre and post the Acquisition, it is worthwhile to understand the capital structure build-up of Mindtree and analyze certain key events that led to the promoters not being the largest shareholders of the company, which is not a typical scenario of companies in India (as discussed above).

Period	Brief description of the event
1999	Mindtree was incorporated by a group of ten individual promoters of which three invested through an entity incorporated in Mauritius. ³⁷
2000 to 2001	Mindtree received various rounds of funding from investors including Walden, Franklin Templeton and AIG Offshore Systems, which led to some dilution of promoter shareholding. ³⁸ Further, V.G. Siddhartha had been associated with Mindtree since 2000 when Global Technology Ventures, a company founded by him, bought a minor stake in Mindtree from certain other investors. Siddhartha also acted as a non-executive director on the board of the company for a long period. ³⁹
2007	At the time of the IPO in 2007, the promoter and promoter group of Mindtree held 42.23%, the investors held 49.45% (which included 8.36% held by Global Technology Ventures) and the remaining 6.47% was held by employees. ⁴⁰ Post the IPO, the promoter and promoter group shareholding was diluted to 35.78%. ⁴¹
2011	Ashok Soota, the founding partner of Mindtree resigned as a director and thereafter sold his shareholding to Coffee Day Resorts Private Limited, a company promoted by VG Siddhartha. ⁴²
End of 2013	VG Siddhartha together with his affiliate entities held 19.79% stake in Mindtree whereas the promoters and promoter group holding had reduced to 16.58%. ⁴³

Until the sale of his shares to L&T pursuant to the SPA, Siddhartha remained the single largest holder of Mindtree. However, based on the disclosures in the prospectus filed by Mindtree with SEBI in 2007, Siddhartha did not seem to have any rights associated with his shareholding in the Company. Keeping a distance and allowing Mindtree's management to grow in the way they believed was best suited for the company appears to have been the reason why the promoters were comfortable with Siddhartha continuing to hold a large block of shares while the promoters retained a minority holding.

37. Prospectus dated February 19, 2007 filed by Mindtree with SEBI.

38. *Id.*

39. *Id.*

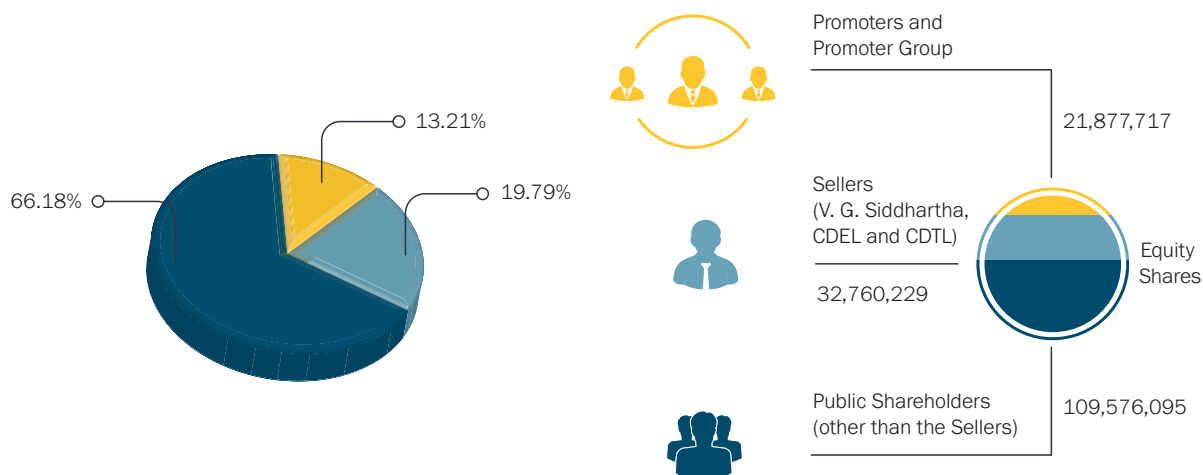
40. *Id.*

41. *Id.*

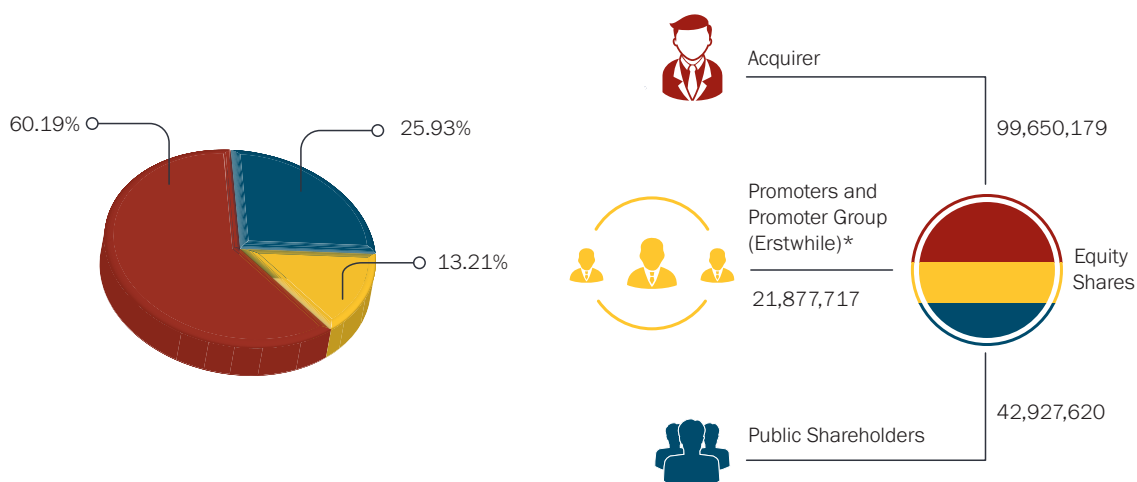
42. Based on the filings made by Ashok Soota and Coffee Day Resorts Private Limited with BSE under the SEBI Takeover Regulations. The filings are available at [bseindia.com/xml-data/corpfilings/CorpAttachment/2011/6/MindTree_Ltd_300611_SAST6.pdf](https://www.bseindia.com/xml-data/corpfilings/CorpAttachment/2011/6/MindTree_Ltd_300611_SAST6.pdf) and https://www.bseindia.com/xml-data/corpfilings/CorpAttachment/2011/6/MindTree_Ltd_300611_SAST3.pdf

43. The shareholding of Mindtree as of December 31, 2013, available at https://www.bseindia.com/corporates/ShareholdingPattern.aspx?scripc-d=532819&flag_qtr=1&qtrid=80.00&Flag=New

Pre-Acquisition Holding (as of March 31, 2019)⁴⁴



Post-Acquisition Holding (as of July 15, 2019)⁴⁵



**Mindtree filed a letter dated July 5, 2019 with the stock exchanges, requesting for reclassification of the existing promoters of the company. Further, on July 3, 2019, the Acquirer had also made relevant filings under Regulation 29(2) of the SEBI Takeover Regulations and Regulation 7(1) and (2) of the SEBI Insider Trading Regulations, classifying itself as promoters of the Target.*

Note: The total percentages do not add up to 100% since the calculation is based on the Emerging Voting Capital. In their post offer report filed with SEBI, the Managers to the Offer calculated the percentage holding on Emerging Voting Capital 165,565,714 Equity Share instead of the actual share capital of the Target post listing as disclosed by the Target to the stock exchanges. The actual equity share capital post the Open Offer was 164,455,516 Equity Shares consisting of outstanding capital of 164,214,041 Equity Shares (as of March 31, 2019) plus 241,475 Equity Shares allotted pursuant to employee stock option scheme on June 17, 2019.

44. As disclosed in the LOF, based on the shareholding pattern as of March 31, 2019 filed by Mindtree with the stock exchanges.

45. Post Open Offer Report.

6. Deal Structure

The Acquisition had the following steps

I. Secondary acquisition from the Sellers under the SPA and SPA Escrow Agreement

A. Transaction Documents

The Sellers and the Acquirer entered into the following documents in connection with the sale of the 33,360,229 Equity Shares of the Target (“**Sale Shares**”):

- i. SPA, under which the Acquirer agreed to purchase from the Sellers 33,360,229 Equity Shares of Mindtree aggregating to 20.15% of the Emerging Voting Capital at a price of Rs. 980 per Equity Share.
- ii. SPA Escrow Agreement: Simultaneously with the SPA, an escrow agreement was entered into amongst the Acquirer, Sellers, Standard Chartered Bank as the escrow agent and IDBI Trusteeship Services Limited as the debenture trustee. In terms of the SPA Escrow Agreement, the Acquirer agreed to deposit SPA Consideration and the Sellers agreed to deposit the Sale Shares in escrow to facilitate the transaction contemplated in the SPA.

B. Steps to completion of the Secondary Acquisition

- i. **Tanglin Financing:** The Sale Shares were encumbered in favour of certain pre-existing lenders of the Sellers and the CCD Group (“**Original Lenders**”). To cause the Original Lenders to facilitate the secondary transfer, Tanglin Retail Reality Developments Private Limited (“**Tanglin**”) (a company associated with the Sellers) raised financing by way of issuance of non-convertible debentures (“**NCDs**”) from other lenders (“**Tanglin Lenders**”) which amounts were used to repay the Original Lenders. The NCDs were listed on BSE Limited. Per the Information Memorandum dated March 19, 2019,⁴⁶ the issue date of the NCDs was March 25, 2019 and the scheduled redemption date was April 25, 2020. There was also a mandatory redemption that was required with respect to all the NCDs as and when a “sale event” took place. A “sale event” was defined as the sale of the Sale Shares by the Sellers.

- ii. **Escrow Arrangements:** One of the terms of the Tanglin Lenders as specified in the SPA Escrow was for the Acquirer to deposit the SPA Consideration in escrow and the Sellers to deposit the Sale Shares in escrow to facilitate the completion of this transaction through escrow mechanism and for a pledge to be created over the escrowed shares for the benefit of the Tanglin Lenders. Accordingly, simultaneously with the SPA, an escrow agreement was entered into among the Acquirer, Sellers, Standard Chartered Bank as the escrow agent and IDBI Trusteeship Services Limited as the debenture trustee. In terms of the SPA Escrow Agreement, the Acquirer deposited the SPA Consideration and the Sellers agreed to deposit the 33,360,229 Equity Shares of the Target in escrow to facilitate the transaction contemplated in the SPA. Based on the disclosures made on the DLOF and the LOF, although it was agreed that 33,360,229 Equity Shares of the Target (i.e. the total amount of shares agreed to be acquired by the Acquirer) would be deposited in the escrow account, only 32,760,229 Equity Shares were actually deposited by the Sellers. A pledge of the Sale Shares in escrow (i.e. 32,760,229 Equity Shares) was created in favour of IDBI Trusteeship

46. The information memorandum is available at <https://www.bseindia.com/downloads/ipo/201949172346958699.pdf>

Services Limited being the debenture trustee representing the interests of the Tanglin Lenders.⁴⁷

- iii. **Release of the pledge of Sale Shares:** Subject to the receipt of the Statutory Approvals, IDBI Trusteeship Services Limited agreed to revoke the pledge as necessary to facilitate the sale and purchase of the Sale Shares on the basis of a waterfall payment mechanism which prioritized the payment to the Tangling Lenders in full before any remainder amounts of the SPA Consideration are transferred to the Sellers.
- iv. **Block deal:** Post receipt of the Statutory Approvals and after complying with the provisions of Regulation 22(2) of the SEBI SAST Regulations (i.e. (i) depositing the Maximum Offer Consideration in the Escrow Account and (ii) expiry of 21 working days from the date of DPS), the Acquirer acquired 3,27,60,229 Equity Shares, pursuant to the SPA, on April 30, 2019, by way of a block deal on BSE.

II. Various open market purchases

As states above the Acquirer also placed a Purchase Order with its stock broker, Axis Capital Limited simultaneously with the execution of the SPA, to purchase a maximum of

24,834,858 Equity Shares aggregating to 15.00% of the Emerging Voting Capital at a price of not more than Rs. 980 per Equity Share and subject to fulfillment of the Purchase Order Conditions. The Acquirer ended up acquiring only 15,564,579 Equity Shares through the Purchase Order⁴⁸ in various tranches, on different dates and prices (not exceeding Rs. 980 per share).

III. Open Offer

The execution of the SPA between the Sellers and the Acquirer, and the Purchase Order placed by the Acquirer with the stock broker, triggered the requirement to make a mandatory open offer under the SEBI Takeover Regulations. Accordingly, the Acquirer made an open offer to purchase up to 51,325,371 Equity Shares amounting to 31.00% of the Emerging Share Capital of 165,565,714 Equity Shares at an offer price of Rs. 980 per Equity Share. The Open Offer was not conditional upon any minimum level of acceptance pursuant to the terms of Regulation 19(1) of the SEBI Takeover Regulations.

The offer was oversubscribed. The actual number of shares tendered in the open offer was 61,186,943 as opposed to 51,325,371 Equity Shares for which the Open Offer was made.⁴⁹ Therefore, Equity Shares validly tendered were accepted by the Acquirer on a proportionate basis in consultation with the Managers to the Offer.

47. https://www.bseindia.com/xml-data/corpfiling/AttachHis/F3B3CFC7_4C2D_4E76_92C8_8756968CA6E6_150038.pdf

48. Post Open Offer Report

49. Id.

7. Commercial Considerations

I. Why did V.G. Siddhartha and other Coffee Day enterprises want to exit from Mindtree?

V.G. Siddhartha, who had been associated with Mindtree for several years stepped down from the board in the year 2018, reportedly due to his pre-occupation with his immediate business priorities⁵⁰ and so that he could devote more time to his founding business of the CCD group.⁵¹ The CCD Group was heavily burdened with debt. CDEL had borrowings which amounted to Rs. 3,264.98 million⁵² while its total income and net loss were Rs. 1,240.58 million⁵³ and Rs. 676.59 million⁵⁴ respectively as of and for the year ended March 31, 2019 on a standalone basis. In addition to the above, it was reported that V.G. Siddhartha had a personal debt of over Rs. 10,000 million.⁵⁵ Additionally, there was also the amounts owed to the income tax authorities.⁵⁶ On January 26, 2019, CDEL also informed the stock exchanges regarding the order of the income tax authorities issued under section 281B of the Income Tax Act to V.G. Siddhartha for provisionally attaching his shares in Mindtree (“**IT Order**”).⁵⁷ The situation worsened as a result of the NBFC crisis in late 2018 when several lenders of CCD Group were

reported to have refused to roll over debt as they would have normally done.⁵⁸ This in turn resulted in a serious liquidity squeeze faced by the group. This seems to have been the reason for Siddhartha's urgent need to liquidate his holdings in Mindtree.

II. Why did the Sellers choose L&T for the stake sale despite oppositions from the Promoters?

L&T offered to buy the Seller's stake at Rs. 980 per Equity Share, which is reported to be the highest offer received by the Sellers from any prospective buyer.⁵⁹ It was reported that a global PE firm offered Rs. 975 per share,⁶⁰ which made L&T's aggregate payment Rs. 164 million more than such PE firm. The difference is not a big amount given the overall consideration and specially in the light of the express reservation from the Promoter (with whom VG Siddhartha shared a very good relationship) regarding a sale to L&T. However, it is reported that other investors may have had reservations with the complexities of the transaction given the IT Order. Further, since the Sellers' shares had already been pledged with various lenders, for any sale to take place, the potential buyer needed to either pay or accommodate the mechanism for de-pledging of the shares before buying them or at least agreeing to an arrangement wherein the shares remained pledged with the lenders even while the transaction to sell them was underway. While several firms and PE investors such as NEC, KKR, Baring PE and Advent continued to

50. <https://www.bseindia.com/xml-data/corpfiling/CorpAttachment/2018/3/596995e1-6af2-45ff-8654-0c5334314b8a.pdf>

51. <https://economictimes.indiatimes.com/news/company/corporate-trends/vg-siddhartha-quits-mindtree-board-to-focus-on-coffee-day/articleshow/63242947.cms?from=mdr>

52. <https://www.bseindia.com/xml-data/corpfiling/AttachHis/2276c7a6-1b3e-4edc-8760-46bba1aebc38.pdf>

53. <https://www.bseindia.com/stock-share-price/coffee-day-enterprises-ltd/coffeeday/539436/financials-results/>

54. *Id.*

55. <https://economictimes.indiatimes.com/industry/cons-products/food/trouble-breeds-at-coffee-retailer-siddhartha-had-personal-debt-of-more-than-rs-1000-crore/articleshow/70474483.cms?from=mdr>

56. <https://www.livemint.com/industry/infotech/why-ccd-founder-siddhartha-wants-to-sell-his-mindtree-stake-1548698619358.html>

57. <https://www.bseindia.com/xml-data/corpfiling/CorpAttachment/2019/1/578078e9-30df-4f66-9958-92208be9fb82.pdf>

58. <https://thewire.in/business/cafe-coffee-day-ccd-v-g-siddhartha>; <https://www.livemint.com/companies/news/why-v-g-siddhartha-went-with-l-t-ignoring-mindtree-promoters-1553710517498.html-should-we-keep-it?>

59. <https://www.livemint.com/companies/news/why-v-g-siddhartha-went-with-l-t-ignoring-mindtree-promoters-1553710517498.html>

60. *Id.*

be strongly attracted to buy the Seller's stake,⁶¹ the complicated mechanics of the transaction where these investors were not likely to get a clean title representation (which in most cases is a primary requirement for investment committees of firms to approve a transaction) could be a reason why deals with large PEs did not materialize. The Sellers and the Acquirer on the other hand were able to reach a commercial arrangement where an agreement was entered into while the shares proposed to be transferred were still pledged. The mechanics agreed to between the Acquirer and Sellers for de-pledging the shares before the transfer is discussed in detail in paragraph 5 of **'Legal and Regulatory'** section. Further, the Acquirer found comfort with the various investigations being undertaken by the IT department against V.G. Siddhartha and the other Sellers, which may have been another concern for the foreign firms and PE investors. As disclosed in the LOF, the SPA (as discussed above) initially had a Condition Precedent whereby the Sellers were required to obtaining a letter from the IT department regarding no attachment of shares, which was also later relaxed by the Acquirer. Separately, it was also reported that as is common for PE investors, certain investors in return for their investments demanded board seats, information rights, affirmative rights and a proactive role in the company's management, which the management of Mindtree, which was previously engaged along with Sellers in talks with various PE investors, was not entirely comfortable with.⁶² All of this made L&T a favorable buyer for the Sellers.

III. Why did L&T want to acquire control of the Target?

The LOF filed by the Acquirer with SEBI specifically mentioned that the object of the

acquisition was aligned with the strategy of the Acquirer to grow the revenue and profit of its asset light services business portfolio, thereby, increasing the consolidated return on equity and further diversifying the consolidated group revenue and profits into the information technology and technology services areas.⁶³ The Acquirer's subsidiary Larsen & Toubro Infotech Limited is a global IT solutions and services company based in Mumbai, India with a revenue of Rs. 97,481 million for the year ended March 31, 2019. Larsen & Toubro Infotech has more than 360 clients and operates in over 30 countries.⁶⁴ While various market analysts⁶⁵ suggest a likely intention of the Acquirer to merge the Target with Larsen & Toubro Infotech in the mid to long term, the Acquirer, in the LOF declared that the Target is expected to operate as an independent company within the L&T Group in the short to medium term and that the board of the Target may recommend its consolidation with other entities in the L&T Group, which may be given effect to after obtaining the necessary approvals under applicable law.

The Target's acquisition is likely to add scale to L&T's business and escalate its position in the IT&TS industry. L&T Infotech has a strong presence in BFSI, followed by manufacturing sector.⁶⁶ On the other hand for Mindtree, hi-tech and media, and retail and consumer packaged goods that the strong contributors.⁶⁷ Since the two operate in different areas with a minimum client overlap, the acquisition will help L&T add clients to its IT services portfolio, enhance the digital capabilities and presence in infrastructure management space.

Separately, the past few years have been tough for Indian information technology industry with changing technology landscape and even leading players have struggled to maintain

61. <https://economictimes.indiatimes.com/tech/ites/nec-competes-with-kkr-advent-to-buy-ccd-owners-mindtree-stake/articleshow/67170906.cms>

62. <https://economictimes.indiatimes.com/tech/ites/how-mindtree-became-the-object-of-a-hostile-takeover-battle-between-its-management-and-it/articleshow/68490409.cms?from=mdr>

63. https://www.sebi.gov.in/sebi_data/commndocs/jun-2019/mindreetkoverlof_p.pdf

64. <https://www.ltinfnotech.com/company/>

65. <https://www.nirmalbang.com/Upload/Mindtree-Event%20Update-20%20March%202019.pdf>

66. Annual Report of Larsen & Toubro Infotech Limited for fiscal 2019.

67. Annual Report of Mindtree Limited for fiscal 2019.

projected growth rates. Mindtree too had to push its USD 1 billion annual revenue targets several times which it only achieved recently in fiscal 2019. The company however managed to survive with its strategy including its focus on digital technologies such as artificial intelligence and machine learning back in 2011, way before most of the peers and gained early-mover advantage from this.⁶⁸ Digital services contributed 50% of the Target's revenue for fiscal 2019. These matrices made the Target a particularly attractive target for acquisition.

IV. What could be the reasons behind the promoters resisting the stake sale to L&T?

The founder promoters of Mindtree initially resisted a sale to any third party which desired participation in affairs of the company either through a board representation or other contractual rights, which primarily seemed a result of their emotional connect and the desire to retain control and management of the company. The founders were not completely comfortable with a third party managing or intervening in the company's affairs. While they were eventually fine with giving away some of the rights and to some extent at a later stage after the founders suspected a deal materializing between the Sellers and the Acquirer, even persuaded PE investors to purchase the Sellers' stake, the various complications in the transaction (discussed in paragraph 2 above) may have led other PE investors from being reluctant to invest.

Specifically, in case of the Acquirer, the promoters were concerned that the principles of business on which Mindtree and L&T functioned was very different. They perhaps feared that L&T as a strategic investor and the single largest shareholder of Mindtree would pave a different path for the company, which destiny the promoters might not be aligned with. In

addition, given that L&T Infotech, a subsidiary of the Acquirer was operating in the IT sector, the founders may have been anxious about the possible competitive tension. It was reported that even with one of the other interested investors, Baring PE, the founders had raised concerns over a possible merger of Mindtree with Hexaware, a portfolio company of Baring PE also operating in the IT sector.⁶⁹ With the Acquirer as well, the founders feared a merger of Mindtree with L&T Infotech post acquisition. They believed that in a people centric business, a hostile deal could be a *'grave threat and value destruction for shareholders'*.⁷⁰ In an emotional statement,⁷¹ the founders outlined potential negative consequences to the corporate culture and client relationships of Mindtree, as result of the takeover. According to the founders, a hostile takeover could undo all of the progress the founders made and immensely set the organization back. The founders mentioned that they did not see any strategic advantage in the transaction and strongly believe that the transaction would be value destructive for all shareholders. They further mentioned that the takeover will disrupt relationships with clients and partners and impair Mindtree's ability to differentiate itself in the market and continue to deliver client value and great shareholder return. For these reasons, the founders vehemently opposed the sale to L&T

V. What are the various mechanisms promoters undertook to prevent the hostile take-over by L&T?

The Target on March 15, 2019, just a couple of days before the public announcement regarding the Open Offer was made by the Acquirer,

69. <https://economictimes.indiatimes.com/tech/ites/how-mindtree-became-the-object-of-a-hostile-takeover-battle-between-its-management-and-lt/articleshow/68490409.cms?from=mdr>

70. https://www.business-standard.com/article/pti-stories/what-message-is-being-sent-to-start-ups-mindtree-promoters-to-lt-on-hostile-bid-119031900766_1.html

71. <https://economictimes.indiatimes.com/tech/ites/mindtree-promoters-condemn-hostile-takeover-remain-opposed-to-lt-takeover-bid/articleshow/68473744.cms?from=mdr>

68. <https://qz.com/india/1578373/is-lts-hostile-bid-for-mindtree-worth-it/>

informed the stock exchanges of an upcoming meeting of the board of the Company on March 20, 2019 to consider a buy-back of shares.⁷² The intention of the buy-back was to stave off the anticipated hostile takeover. Typically, a share buyback is undertaken by a company to improve earnings per share, return on capital and return on net worth, and to enhance long-term shareholder value. In this case however, the intention of the Target was to increase the cost for the Acquirer and reduce the number of shares available for purchase.

According to the Companies Act,⁷³ an exemption from passing a special resolution at a shareholders' meeting to approve a buy-back by a company is available only if the size of the buyback is 10% of a company's capital and free reserves. In any case, the maximum size for a buyback as permitted under the Companies Act is 25% of the share capital and free reserves subject to authorisation by a special resolution. Further, buybacks under Companies Act can only be undertaken out of free reserves and securities premium account. Mindtree's net worth was approximately Rs. 27,414.00 million as of March 31, 2018⁷⁴ which meant it could buy back shares worth Rs. 2,741.40 million without a special resolution, and Rs. 6,853.50 million after a special resolution. The total outstanding shares of the Target as on March 31, 2018 were 163,900,000 Equity Shares.⁷⁵ Therefore, even if a buyback of the maximum permitted threshold, that is, the entire 25% would have been undertaken, assuming price of Rs. 1,000 per share, the outstanding share capital would only have reduced by 4.20%. This would not have fulfilled the objective for which the buyback was being considered. The move of the board to consider a buyback at a stage when a long-term strategic investor was in the final rounds of sale of his stake is also discouraged from a good governance standpoint.

The Target ultimately did not go ahead with the buy-back. It made another filing on March 20, 2019⁷⁶ post the board meeting and informed the stock exchanges that no decision in relation to undertake a buyback was concluded.

In line with the popular 'white knight' defense available in case of hostile takeover, the SEBI Takeover Regulations permit a third person to make an open offer to acquire the shares of the target company when the acquirer's open offer is subsisting. This is referred to as a competing offer aims to protect the interests of the public shareholders by providing an exit opportunity at the best possible terms, it only adds to their benefit if there are multiple competing acquirers. In the present Open Offer, the founders hoped for a third party to counter the acquisition efforts of the Acquirer and in this regard initiated an outreach exercise with private equity investors, family offices, institutional and HNI (high net worth individual) shareholders in the company to prop up a friendly 'white knight'.⁷⁷ However, no competing offer was made in the Open Offer.

Since the founders' efforts on both counts failed, the Target in compliance with Regulation 26(6) of the SEBI Takeover Regulations, constituted a committee of independent directors to provide reasoned recommendations of the open offer. The details of the recommendations provided by the committee of independent directors of the Target are provided in paragraph 9 below.

VI. What are some other strategies that are available in case of a hostile takeover?

Hostile takeovers are not common in the Indian scenario due to the shareholding pattern of

72. The filing made by the Target is available at - <https://www.bseindia.com/xml-data/corpfiling/AttachHis/efe815e2-59c6-483a-8be1-145ad7a74do8.pdf>

73. Section 68 of the Companies Act, 2013.

74. Annual Report of Mindtree for fiscal 2018

75. Id.

76. The filing made by the Target is available at - <https://www.bseindia.com/xml-data/corpfiling/AttachHis/10284f7b-818d-4263-a6ab-6f357jbc523.pdf>

77. <https://economictimes.indiatimes.com/news/company/corporate-trends/mindtree-founders-eye-white-knight-to-check-takeover-bid/articleshow/67681253.cms>

the Indian companies. Majority of the Indian companies even until now are promoter driven or closely held and managed as a family business. Indian corporates and securities law do not permit most of the defenses used in other jurisdictions. Consolidating promoter shareholding thereby making a company hostile takeover-proof, is a strategy some corporates like the Tata Sons and Birla group have adopted through creeping acquisitions. Some of the Indian companies have adopted embedded defenses like (i) trusts that guarantee lifetime chairmanship provisions and long-term rights of the promoters to nominate a certain percentage of the board of directors, (ii) contractual term that prevents a hostile bidder who succeeds in taking control of the target company from using the brand name of the company,⁷⁸ and (iii) contractual restrictions on change in control.

Some popular defenses available in other jurisdictions are:

- **Poison Pills:**

The company grants special rights or allots stock warrants to the shareholders in order to purchase the shares at a discounted value at the time of takeover. Under the Indian legal regime, the SEBI Takeover Regulations⁷⁹ allow the target and its subsidiaries to issue shares upon conversion of the securities which were issued prior to the public announcement of the open offer. However, the SEBI ICDR Regulations do not allow the exercise of warrants at a substantial discounted value and prescribes a minimum price for exercise of warrants for listed companies. The board of Netflix utilized the above strategy in order to prevent the hostile takeover by investor Mr. Carl Icahn.⁸⁰

78. This strategy called as brand pill has been adopted by Tata Group which by laying down a clause in its articles of associations retains its brand name and associated trademark even in the event of a hostile takeover.

79. Regulation 26(2)(c)(i) of the SEBI Takeover Regulations

80. <https://www.bbc.com/news/business-20214401#:~:targetText=The%20board%20of%20film%20rental,than%2010%25%20of%20the%20firm.>

- **Staggered Board:**

This is also known as 'Classified board'. Here, the board comprises of different classes of directors having different tenure and are appointed at different times of the year. The staggered board typically consists of three classes. This ensures that only a third of the board can change each year. Hence, it would not be possible for a hostile bidder to replace the board, except through a gradual process of changing a third of the board each year. In the India context, while the Companies Act already provides for provisions for two third of a company's directors to be liable to retire by rotation, the shareholders through a simple majority (and a 3/4th majority for certain independent directors⁸¹) have the power to remove all directors (whether appointed by general meeting through rotation or in the manner permitted by the articles). This power in the hands of shareholders makes staggered boards an entirely ineffective defense, in the Indian context.

- **Pac-man:**

At the time of hostile takeover, the target shall make a counter-offer to the acquirer. Here, the target will acquire the stock of the acquirer at the time of hostile takeover. Thus, there shall be reversal of roles where the target will attempt to acquire the acquirer. In 2009, Cadbury considered trying a Pac-Man defense if no bid emerged to challenge Kraft Foods' hostile offer.⁸²

- **White-knight:**

Under this defense, the target company and/or the promoters will make an offer to the public shareholders of the target company that is more enticing and beneficial than the offer of the hostile bidder. If the competing offer of the target company and/or the promoters is accepted by the public shareholders in preference to the offer of the hostile bidder then

81. Proviso to Section 169 of the Companies Act provides that an independent director re-appointed for second term shall be removed by the company only by passing a special resolution and after giving him a reasonable opportunity of being heard.

82. <https://mypost.com/2009/11/24/revenge-is-sweet/>

the aggregate shareholding of the promoters shall be further consolidated. If the target company and/ or the promoters cannot make the counter offer, then they can approach an affiliate or associate company to make a more beneficial counter offer to acquire the shares of the target company. Such counter offer by the affiliate or associate company shall constitute a competing offer permitted under the SEBI Takeover Regulations. A classic example of the White Knight strategy is the East India Hotels case. East India Hotel is controlled by the Oberoi family and they faced a hostile takeover from ITC in 2010. Reliance Industries stepped in as a White-knight by acquiring 14.98% in East India Hotels.⁸³

▪ **Crown Jewels:**

In this strategy, the target sells its most valuable/core assets during the time of the takeover. The main intention behind the crown jewel is to intentionally drop the value of the company with a hope that the acquirer will drop his intention to acquire the target. Another way of implementing this type of defense strategy is for the target to sell its crown jewels (i.e. a valuable asset) to another friendly company (white-knight) and later on, when and if the acquiring company withdraws its offer, buy back the assets sold to the white-knight at a fixed price agreed in advance.

▪ **Shark repellents:**

Shark repellents or porcupine provisions refer to the amendments which are made to the legal charter of the company which become operative only in the case of takeover. These help to prevent an attempt of hostile takeover of the target.

VII. How did the Acquirer fund the entire acquisition?

The Acquirer maintained that it had financial flexibility to fund this acquisition through

83. <https://www.livemint.com/Companies/x5FQjVIWYNDUWadZ-3JlZ/Reliance-turns-white-knight-buys-EIH-stake.html>

internal resources.⁸⁴ The Acquirer's total funding requirement was Rs. 107,329 million approximately including (a) Rs. 32,690 million approximately for purchase of shares from the Sellers pursuant to the SPA; (b) upto Rs. 24,340 million approximately for the purchase of shares of the Target in the open market pursuant to the Purchase Order; and (iii) Rs. 50,299 million approximately for the Open Offer assuming full acceptance. Based on the disclosures in the annual report for financial year 2019, the Acquirer had cash surplus and decided to use this available surplus to acquire shares of the Target. In addition to other funds that the Acquirer had through borrowings.⁸⁵ The annual report further mentioned that the acquisition was in line with the stated strategy of growing the Acquirer's services business. As of March 31, 2019, the Acquirer had a 'cash and cash equivalent' of Rs. 27,334.10 million on a standalone basis and Rs. 65,094.90 million on a consolidated basis.⁸⁶

VIII. In hindsight, is there anything the promoters could have done to prevent the risk of a hostile takeover?

The unilateral decision taken by VG Siddhartha to sell the shares held by him and his enterprises in Mindtree to L&T paved the way for L&T to structure a deal to acquire control of Mindtree. VG Siddhartha was a friend of the founders and came in as an early stage long term investor in Mindtree. In these circumstances, the founders probably did not anticipate an adverse situation as this one and perhaps disregarded the necessity of an agreement to safeguard their rights. Their relationship continued on

84. <https://www.vccircle.com/l-t-buys-vg-siddhartha-s-20-stake-in-mindtree-for-461-mn/>

85. <http://investors.larsentoubro.com/upload/Analysttrans/FY2020AnalysttransLT-Transcript-Q1%20FY20.pdf> (last visited on April 10, 2020)

86. *Annual report of Larsen and Toubro Limited available at bseindia.com/bseplus/AnnualReport/500510/5005100319.pdf*

an informal basis. Typically, if a company has an investor acquiring a large block of shares, it would enter into a shareholders' agreement to bind the shareholders and the company to certain rules to preempt issues that could become contentious in the future. These rules generally include, transfer restrictions, protective provisions (such as a supermajority), put and call options, etc. Some of these rights/obligations relevant in the present scenario are discussed in brief below:

Transfer Restrictions

Right of first refusal ("ROFR")

A right of first refusal entails that in the event a shareholder in a company intends to sell its shares to a third party, the right-holder must first refuse to purchase the shares in question. The right-holder will, however, have to match the price and terms offered by the third party. In an investment agreement, this right would usually be available to the promoters. The idea behind granting such a right is that the promoters are given an opportunity to block the entry of any third party into the company where they are certain that the selling shareholder is determined to exit.

Right of first offer ("ROFO")

A right of first offer entails that in the event that a shareholder in the company intends to sell their shares, they may only do so after offering the shares to the right-holder. The right-holder may choose a price and terms and respond to the selling shareholder accordingly. While the selling shareholder will usually have the option to reject the right-holder's offer, having the first mover advantage is generally beneficial to the right-holder.

In the present case, if similar transfer restrictions were available to the founders, they could have been in a relatively advantageous position. Transfer restrictions such as ROFO and ROFR are generally drafted with provisions to allow a minimum number of days' notice for the selling shareholder to offer and the right-holder to exercise their right. While it is not known if the founders had the ability to even collectively fund such a large purchase, having these

transfer restrictions and procedures in place would have definitely allowed them to have a better control over the transfer and adequate notice to plan their move.

Permitted Transfers

Shareholders' agreements often have provisions to protect future direct or indirect transfers to competitors of the company. In few cases, such transfer will be completely prohibited, while in majority, such transfers would subject to certain conditions such as a prior approval of the right holder. Given the nature of this clause, the right would generally be available to the promoters/founders. However, in order to ensure that this clause is not unreasonably restrictive, investors often ensure that the clause provides a clear and watertight definition of a 'competitor' and may at times be valid only for a limited period.

Given the large block of shares held by the Sellers, it is likely that the risk of transfer to a competitor would have been anticipated and protected if there was a shareholders' agreement. However, since the acquisition was not from a direct competitor and occurred several years after the Sellers' investment in the Target, a usually drafted permitted transfer clause would have not have been enough to protect the promoters. Just like the transfer restrictions, while such a restriction may not have prevented the sale, it could have helped in delaying the sale and as a result bought time for the promoters and the Target to reflect over the proposed takeover.

IX. Were the employees of the Target supportive of the takeover?

When the news of the takeover came into light, the employees of Mindtree came out in huge numbers to support the promoters. A social media movement⁸⁷ was created by the employees in order to render their support to the promoters and oppose the possible takeover

87. The employees started #MindtreeMatters on Twitter to express their support.

by L&T.⁸⁸ One of the common fear in the mind of the employees seemed to be the difference in culture between the two companies which they believed could create various integration problems.⁸⁹ Further, although L&T has been maintaining its stand on keeping Mindtree as a separate entity, industry observers contemplate a high likelihood of a merger of Mindtree with L&T Infotech in the mid-term if not in near future. As a result, there was also a possible distress of retrenchment and eventual loss of jobs that lurked the minds of the employees.

X. What could be the reasons behind oversubscription/ shareholder support of the Open Offer?/Who were the key participants in the Open Offer? What could be the reason for their participation?

The Open Offer proposed to acquire 51,325,371 Equity Shares amounting to 31.00% of the total diluted share capital of the Target. The shares tendered in response to the Open Offer were an aggregate of 61,186,943 shares amounting to 119.00% of the shares proposes to be acquired. Accordingly the shares were acquired by the Acquirer on a pro-rata basis. Almost all the large institutional investors in the Target sold their stakes to the Acquirer in the open offer, including Singapore-based Nalanda Capital, UTI Mutual Fund, Amansa Holdings Private Limited, Arohi Asset Management, Franklin Templeton Asset Management (India) Pvt Ltd and other alternative investment funds and more mutual funds.⁹⁰

Under the SEBI Takeover Regulations, while the ultimate decision on whether to sell or hold on to shares rests with the shareholders and since

the promoters and management are inherently conflicted on such matters, the target's board has a duty under Regulation 26 (6) of the SEBI Takeover Regulations to set up committee of independent directors to provide reasoned recommendations to the shareholders. Such a committee is entitled to seek independent professional advice at the expense of the target. Section 166 of the Companies Act also codifies certain fiduciary duties of the board and provides that in its duties would be guided not only by the interests of shareholders, but also other stakeholders such as employees, customers, etc. The independent directors committee set up by the Target consisted of four independent directors and opined that the Offer Price of Rs. 980 per share as offered by the Acquirer was fair and reasonable and in accordance with the SEBI Takeover Regulations.⁹¹ The price of Rs. 980 per Equity Share offered by the Acquirer was lucrative for the Shareholders. The Offer Price was based on highest negotiated price per share of the Target Company for any acquisition under the agreement attracting the Open Offer, that is the price paid under the SPA and Purchase Order. The volume-weighted average market price per Equity Share for a period of 60 trading days immediately preceding the date of the Public Announcement, another criterion under SEBI Takeover Regulation relevant in the present offer for determining the offer price, was only Rs. 885.04 per share.

XI. What are the post-acquisition challenges being faced or in future could be faced by L&T?

Acquisitions across the world, especially in the technology based sector, are evaluated on parameters such as synergies, cost reduction, expanding customer base, introduction of new technology, etc. A number of acquisitions,

88. <https://www.thehindubusinessline.com/info-tech/mindtree-staff-take-to-twitter-to-oppose-takeover-back-founders/article26571970.ece>

89. <https://www.moneycontrol.com/news/business/companies/mindtree-takeover-saga-employees-support-founders-3659541.html>

90. <https://www.livemint.com/companies/news/with-60-stake-l-t-completes-its-hostile-takeover-of-mindtree-1561536743325.html>

91. https://www.sebi.gov.in/sebi_data/commondocs/jul-2019/mindtreecorridpstatement_p.pdf

despite necessary due diligence fail as a result of neglect of post-acquisition cultural and human resource integration. L&T and Mindtree are two culturally diverse companies and this difference of culture may pose to be the biggest post acquisition concern for the Acquirer. L&T works on the principles of traditional management hierarchy with a top-down management culture in place in contrast to Mindtree, which has comparatively informal culture. For a talent led sector such as IT sourcing, culture fitment becomes one of the most important factors for success of an acquisition. Further, the top management of Mindtree including Mr. Krishnakumar Natarajan, Mr. Parthasarathy NS

and Mr. Rostow Ramanan, who were directors and held the positions of Executive Chairman, Executive Vice Chairman and Chief Operating Officer and Chief Executive Officer, respectively have already resigned from the company. The loss of critical talent specifically those that manage large accounts could negatively impact the major client accounts if not handled prudently by L&T. There have been speculations of further attrition given the promoter exit. Addressing this, along with integrating Mindtree's existing workforce and instilling confidence in key clients will be crucial for L&T for a smooth transition.

8. Legal and Regulatory

I. What triggered the open offer and why?

According to Regulation 3(1) of the SEBI Takeover Regulations, an acquirer together with the PACs cannot acquire shares or voting rights in a target company which would entitle them to exercise 25.00% or more voting rights in such company, without making a public announcement of an open offer to purchase at least 26.00% from the remaining Public Shareholders. Additionally, as per Regulation 4 of the SEBI Takeover Regulations, irrespective of any acquisition of shares or voting rights, a person cannot acquire control over a target company without making an open offer as mentioned above.

In the present case, the SPA and the Purchase Order contemplated acquisition of 35.15% of the Emerging Voting Capital, including 20.15% through the SPA and the remaining 15% through the Purchase Order, with an intention of acquiring the control of the Target as described in the Letter of Offer. For the reasons above, the transactions contemplated under the SPA and the Purchase Order together triggered the Open Offer.

II. Why was the acquisition structured in the manner explained above?

Unlike in an amicable acquisition, where all parties are on board, the present acquisition of the Target involved a very vocal opposition from the promoters of the Target. The promoters were generally unwilling to part with their shareholding and control of the company and specifically had reservations with respect to a sale to the Acquirer. Given that the SPA contemplated a purchase of only 20.15% held by the Sellers, this made the acquisition dynamics a bit complex for the Acquirer. Strategically it did not make sense for the Acquirer to acquire just the 20.15% held by the Sellers, without

any right to exercise control over the Target. The Acquirer came in with an intention to take over control. Ideally, if the promoters would've been agreeable, the Acquirer would have in addition to the Sellers' stake, agreed to purchase the 13.32% shares held by the promoter group, thereby triggering the open offer requirement under the SEBI Takeover Regulations. Then, pursuant to the open offer acquired an additional at least 26.00%⁹² (assuming full acceptance) resulting in an acquisition of a majority stake of 59.11%. However, in a hostile situation as this one, the promoter shares were not available for purchase and Acquirer could not be sure of a positive outcome of the open offer. Accordingly,

- i. In order to trigger the open offer requirement under the SEBI Listing Regulations, the only option left with the Acquirer was to purchase shares from the public shareholders. This is perhaps one reason why the Acquirer placed a Purchase Order with its broker to purchase an additional 15% from public shareholders in the open market. While the Acquirer may have been able to make a voluntary open offer just by signing of the SPA (thereby agreeing to acquire 20.15% shares of Mindtree) and keeping the offer size of the open offer to a minimum of 26.00%, it seems that in order to steer clear of ambiguities and in the light of lack of precedents on the framework of voluntary open offers, especially by acquirers and PACs holding less than 25%, L&T decided to place a Purchase Order to acquire additional 15% shares of Mindtree from the open market so the total acquisition breaches the 25% limit set for triggering a mandatory open offer.
- ii. While a purchase order for acquisition of 5% (such that an intention to acquire

⁹². SEBI Takeover Regulations requires an open offer size to be a minimum of 26%.

shares or voting rights worth 25%) would have been enough to trigger the open offer, the Acquirer included an extra 10% because they were targeting an acquisition of maximum possible stake. The minimum public shareholding requirement for a listed company is 25%. The promoters, prior to the Open Offer held 13.21% in the Target. Keeping in mind that until the existing promoters got declassified, they would be counted towards the total promoter shareholding in the company, the maximum shares that the Acquirer could target acquiring was 61.79%.⁹³ Out of the available 61.79%, the Acquirer proposed to acquire 20.15% from the Sellers pursuant to the SPA, 31.00% through the Open Offer⁹⁴ and the remaining through open market purchases.

- iii. Although the SEBI Takeover Regulations require minimum offer size for an open offer to be at least 26.00%, the Acquirer made an Open Offer proposing to acquire 51,325,371 Equity Shares amounting to 31.00% of the Emerging Voting Capital. The reason for this structure was likely to mitigate the risk of open market purchases, where purchase depends on the availability of shares in the market over which the Acquirer had no control. With acquisition of 20.15% from the Sellers and 31.00% from the public shareholders (assuming full acceptance), the Acquirer proposed to at least acquire 51.00% of the Target, irrespective of the Purchase Order.
- iv. The reason why the Acquirer added the extra 10% by way of a Purchase Order and not by further increasing the Open Offer size is probably because the outcome under an open offer is uncertain. Through the open market purchase route, the Acquirer had a longer period to purchase the Equity Shares which could vary depending on the response under the Open Offer. Subject to fulfillment of certain conditions, the SEBI

Takeover Regulations permits an acquirer to act upon the underlying transaction triggering an open offer after the expiry of 21 day from the date of the DPS and complete the acquisition no later than 26 weeks from the expiry of the open offer which means the Acquirer had time to assess the response to the Open Offer and accordingly act on the Purchase Order.

- v. Since the open offer was fully subscribed, the Acquirer limited their purchase through the Purchase Order to maintain the minimum public shareholding. As per the post offer report filed by the Managers with SEBI, the Acquire ultimately acquired 19.79% from the Sellers, 8.87% through Purchase Order before the commencement of Open Offer, 31.00% pursuant to the Open Offer and 0.53% through the Purchase Order after the conclusion of Open Offer.⁹⁵ As of December 31, 2019, the Acquirer held 60.55% of the total share capital of the Target.⁹⁶

Separately, usually, private share purchase arrangements that trigger the open offer requirement under the SEBI Takeover Regulations contain provisions regarding the purchase being contingent upon the outcome of the open offer. For instance, a potential acquirer will enter into an agreement to purchase 25% of shares from an existing shareholder of a target only if the open offer triggered is successful and results in a minimum of 26.00% acquisition. Thereby leading to such acquirer holding a majority (i.e., 51%) stake in the target company. In the present case however, this was not possible. The acquisition was not initiated pursuant to an active offer from the Acquirer; it was triggered as a result of the exigency of the Sellers to dispose off their entire stake. The Sellers were prompted to exit as a result of financial crunch and such a condition would not have been acceptable by them.

93. $100 \text{ (Total)} - \text{Promoter shareholding pre Open Offer (13.21\%)} + \text{Minimum public shareholding (25\%)} = \text{Targeted stake (61.79\%)}$

94. 26% being the minimum offer size according to the SEBI Takeover Regulations.

95. The percentages are based on the Emerging Voting Capital.

96. According to the shareholding pattern filed by Mindtree with BSE, as of December 31, 2019.

III. What were the conditions precedent that were required to be met for the completion of the transaction?

Regulation 23 (1) of the SEBI Takeover Regulations prescribe that an open offer once made can be withdrawn only under limited circumstances, including but not limited to (i) statutory approvals required for the open offer/for effecting the acquisition triggering the offer having been finally refused; and (ii) any conditions stipulated in the agreement for triggering the open offer not being met for reasons outside the reasonable control of the acquirer. In addition, such withdrawal conditions must be specifically disclosed by the Acquirer in the detailed public statement and the letter of offer.

In the present case, relying on Regulation 23 (1) of the SEBI Takeover Regulations, the Open Offer was subject to completion of the following conditions:

- a. receipt of the following statutory approvals in relation to the Open Offer:
 - i. approval from the CCI (or such approval being deemed to have been granted) in accordance with the Indian Competition Act;
 - ii. approval under Section 39 (1) of the 'Act against Restraints of Competition' from Bundeskartellamt in Germany; and
 - iii. approval under, or expiry of the Hart-Scott-Rodino waiting period, as required pursuant to rules for Certain Mergers and Acquisitions as applicable in the United States of America.
- b. fulfilment of the conditions precedent (as discussed above under paragraph II 'Transaction Documents' of section 2 "***Details of the Deal***') relating to the acquisition of the Equity Shares as stipulated in the SPA and for the acquisition of Equity Shares pursuant to the Purchase Order.

The approvals from CCI and the anti-trust authority in Germany were received on April 4, 2019. Further, the anti-trust approval in United States of America was deemed to have been received with effect from 9:29 AM (Indian standard time) on April 4, 2019 pursuant to rules for Certain Mergers and Acquisitions as applicable in the United States of America. Further, the conditions precedent of the SPA and Purchase Order were either met or waived off/amended by the parties.

IV. Did the Acquirer require any approvals to undertake the acquisition?

Under Section 179 of the Companies Act, in order to exercise its power to take over a company or acquire a controlling or substantial stake in another company, the board of directors of a company is required to approve the transaction by means of a resolution passed at its meeting. Accordingly, the Acquirer's board would have passed a resolution to approve the Acquisition. Further, under Section 186(2) of the Companies Act, if a company proposes to purchase the securities of any other body corporate and if such purchase exceeds 60% of its paid-up share capital, free reserves and securities premium account or 100% of its free reserves and securities premium account, whichever is more, such company can only do so after passing a special resolution at a general meeting. Based on the disclosures made to the stock exchanges by the Acquirer, the Acquirer did not pass a shareholders' resolution for the present acquisition. It is therefore presumed that the acquisition did not meet the threshold under Section 186(2) of the Companies Act and accordingly did not require a special resolution to be passed.

In addition to the corporate approvals discussed above, the Acquirer may have required additional approvals from its creditors or other third parties with whom it has entered into commercial agreements, depending on the terms of such agreements. Financing agreement are likely to have clauses that require borrowers

to obtain a prior approval of the lender if the funds of the company are being utilized for purposes outside the ordinary course of business.

V. Did SEBI issue its observations on the draft letter of offer? Why was the Open Offer delayed?

Pursuant to Regulation 16 of the SEBI Takeover Regulations, SEBI is required to provide its comments on the draft letter of offer as expeditiously as possible, but not later than 15 working days of the receipt of the draft letter of offer, after which it shall be deemed to have no comments. However, in the event SEBI seeks clarifications or additional information from the manager to the open offer, the period for issuance of comments stands extended to the fifth working day from the date of receipt of satisfactory reply. The Acquirer filed the DLOF with SEBI on April 2, 2019 and accordingly the last date for receipt of observations from SEBI was determined to be April 25, 2019. The open offer was scheduled to open on May 14, 2019 and close on May 27, 2019. It was reported that SEBI issued certain queries to the Acquirer on April 25, 2019,⁹⁷ some of which required the Acquirer to seek answers from the Target which delayed the response filed by the Acquirer. Further, given the unique and unusual nature of the transaction including modes of acquisition not being traditional to a typical mandatory open offer in India, it is likely that the regulator would've posed additional queries to the Acquirer which may have extended the review period. According to the disclosures made in the LOF, SEBI issued its final observations only on May 30, 2019 and with respect to the Purchase Order, specifically observed that it is "...examining it separately and appropriate action, if any, in this regard may be taken by SEBI against the Acquirer."

97. https://www.google.com/url?sa=t&rct=j&q=&es-rc=s&source=web&cd=3&cad=rja&uact=8&ved=2a-hUKEwio_urk_PLAhUQjlkKHZBoCRgQFjACe-gQIAhAB&url=https%3A%2F%2Fwww.livemint.com%2Findustry%2Finfotech%2Fmarket-regulator-s-queries-delay-l-t-s-bid-for-control-of-mindtree-1557687787021.html&us-g=AovVaw3FZfj3e-VVUBY6wl1WhuSc

The Open Offer finally opened on June 17, 2019 and closed on June 28, 2019.

VI. Why was the CCI approval required for the transaction? Were such approvals obtained?

According to Section 6 of the Competition Act, as amended, any acquisition of shares that breaches the numerical thresholds prescribed under Section 5 of the Competition Act will require the approval of the CCI. In the current transaction, the value of the assets and turnover of the group to which Mindtree would belong (post-acquisition) breached the thresholds prescribed under Section 5, necessitating the requirement to obtain CCI approval.

The Acquirer applied for CCI approval on March 19, 2019, and identified the following as the relevant markets:

- a. the broad relevant market for the provision of Information Technology and Information Tech⁶nology Enabled Services (“IT and ITES”) in India; or
- b. alternatively, the narrow relevant markets for the provision of the following services in India: (i) IT Consulting; (ii) Hardware Support Services; (iii) IT Implementation Services; (iv) Customer Software Support Services; (v) IT Outsourcing Services and (vi) IT Engineering Services.

CCI decided to leave the exact delineation of relevant market open as it observed that the proposed combination is not likely to cause appreciable adverse effect on competition in any of the possible alternative relevant markets. CCI further observed that the combined market share of the L&T and Mindtree at the broader level i.e. IT and ITES in India is insignificant and only between 0-5%. It observed that there are other large players operating in the market such as Tata Consultancy Services, Wipro, Infosys, HCL and Tech Mahindra, etc. Accordingly, based on the above, the CCI approved the proposed transaction and held that the transaction was

unlikely to have any appreciable adverse effect on competition in India. The approval of CCI was received dated as of April 4, 2019.

VII. How was the Offer Price determined and justified?

The Equity Shares of the Target were 'frequently traded' in accordance with the definition under the SEBI Takeover Regulations.⁹⁸ Regulation 8 of the SEBI Takeover Regulations deals with the aspect of determination of offer price and provides various criteria for such determination. In the present open offer, the applicable criteria would be the highest negotiated price of the target company's shares under an agreement which triggered the open offer, or, the volume-weighted average market price of the target company's shares for a period of 60 trading days immediately prior to the public announcement. The highest price from the above methodology has to be taken into consideration in order to ascertain the offer price.

The negotiated price per share of the Target determined under the SPA and the ceiling price in the Purchase Order, which together triggered the open offer was Rs. 980 per Equity Share. The volume weighted average price per share of the Target for a period of 60 trading days prior to the public announcement was Rs. 885.04 per Equity Share. Thus, the offer price was determined to be Rs. 980 per Equity Share under the applicable provisions of SEBI Takeover Regulations.

VIII. What was the mode of transfer of shares in the Open Offer?

The shares were accepted by the Acquirer through settlement mechanism on the floor of the stock exchange. SEBI pursuant to its

⁹⁸ Regulation 2(1)(j) of SEBI Takeover Regulations states that 'frequently traded shares' refers to shares of the target company which have been traded on any stock exchange during the twelve calendar months preceding the calendar month in which the public announcement is required to be made under the regulation is at least 10% of the total number of shares of such class of the target company.

circular dated April 13, 2015 ("SEBI Circular") permitted the acquisition of shares through stock exchanges pursuant to an open offer under the SEBI Takeover Regulations. Until the Finance Act, 2018 withdrew the exemption for long term capital gains ("LTCG") arising from transfer of equity shares through recognized stock exchanges and for which a securities transaction tax was paid (explained in section 8. 'Tax Considerations'), this move had significant incentive for the Acquirer initiating an open offer, given the tax advantages available to Public Shareholders which increased the likelihood of tendering their shares.

Further it is pertinent to note here that as per the proviso to Regulation 40(1) of the SEBI Listing Regulations recently notified, read with the press release dated December 3, 2018 and March 27, 2019 issued by SEBI, effective from April 1, 2019, transfer of securities of listed companies are not permitted to be processed unless the securities are held in the dematerialized form with a depository. Since the tendering period for this Open Offer opened after April 1, 2019, the Public Shareholders could only tender their shares in dematerialized form. The Acquirer made requisite disclosures in this regard in the DLOF and LOF.

IX. What are the steps that were taken by the Acquirer for appointment of their representatives as non-executive directors on the board of the Target during the offer period?

Regulation 24 of the SEBI Takeover Regulations governs the provisions relating to the appointment of directors to the board of the target company during the open offer period. The regulation clearly provides that during the pendency of the open offer period, an acquirer is not permitted to appoint its representative to the board of the target company as a director, unless, the acquirer has deposited

the entire consideration of the said open offer into the escrow account and a period of 15 days has lapsed since the date of the detailed public statement. Further, Section 160 of the Companies Act, as amended provides the right to any person other than a retiring director to be appointed as a director of the company if such person or a member proposing such person as a director provides a notice in writing specifying the intention along with a deposit of Rs. 100,000 at the registered office of the company.

In relation to the Open Offer, the Acquirer established an escrow account and made a cash deposit of approximately Rs. 5,780 million in such escrow account pursuant to the escrow agreement dated March 20, 2019 and in accordance with Regulation 17 of the SEBI Takeover Regulations. The pre-offer advertisement and corrigendum dated June 13, 2019 filed by the Managers to the Offer on behalf of the Acquirer with SEBI confirmed that on April 26, 2019, the Acquirer had deposited an additional amount of Rs. 44,520 million in the escrow account. With the second deposit, the Acquirer had deposited an aggregate amount of Rs. 50,300 million which constituted the maximum offer consideration.⁹⁹ Further, the DPS in relation to the Open Offer was published on March 25, 2019. Accordingly, upon satisfaction of the two conditions under Regulation 24, the Acquirer has pursuant to its letter dated June 12, 2019 sent to Mindtree, proposed Mr. Sekharipuram Narayanan Subrahmanyam, Mr. Ramamurthi Shankar Raman and Mr. Jayant Damodar Patil as candidates for the office of director of the Target pursuant to Section 160 of the Companies Act.¹⁰⁰ The nomination and remuneration committee and the board of directors of the Target on June 20, 2019 approved and recommended the appointments of representatives of the Acquirer on the board of Target subject to approval of the shareholders, which was also obtained by way of a resolution passed at the annual general meeting

of the Target on July 16, 2019.¹⁰¹ Based on public disclosures available on the website of Ministry of Corporate Affairs Mr. Sekharipuram Narayanan Subrahmanyam, Mr. Ramamurthi Shankar Raman and Mr. Jayant Damodar Patil are also directors of certain companies within the L&T group.¹⁰²

X. Will the founders remain the promoters of the Company?

The SEBI ICDR Regulations define promoters as persons who are in control of a company, irrespective of their shareholding. Control is defined under the SEBI Takeover Regulations as a person's right to appoint majority of the directors or to control the management or policy decisions acting individually or in concert, directly or indirectly, in other manner including by virtue of their shareholding or management rights or shareholders agreements or voting agreements.

Prior to its acquisition, the founders of Mindtree (or their respective investment entity) who continued to be involved in the operations of the company were categorized as promoters. These founder promoters along with the promoter group collectively held a mere 13.32% stake in the Target. Having a group of promoter managers with their collective stake lower than the largest financial investor is not typical of a promoter run company structures in India. With minority promoter stake and more than half of the Board comprised of independent directors, Mindtree functioned more as a professionally run company.

¹⁰¹. The intimation filed by Mindtree of the shareholders' meeting appointing the representatives of L&T on the board of Mindtree is available at - <https://www.bseindia.com/xml-data/corpfilings/AttachHis/47c3f5ed-1b4f-46df-9cec-99bc56670c29.pdf>

¹⁰². Mr. Sekharipuram Narayanan Subrahmanyam is a director on L&T Infotech Limited, L&T Realty Limited, L&T Metro Rail (Hyderabad) Limited and L&T Technology Services Limited. Mr. Ramamurthi Shankar Raman is a director of L&T Metro Rail (Hyderabad) Limited, L&T Hydrocarbon Engineering Limited, L&T Finance Holdings Limited, L&T Seawoods Limited, L&T Infrastructure Development Projects Limited, L&T Investment Management Limited and L&T Infotech Limited. Mr. Jayant Damodar Patil is a director of L&T MBDA Missile Systems Limited, Spectrum Infotech Private Limited (wholly owned subsidiary of Larsen and Toubro Limited) and L&T Shipbuilding Limited.

⁹⁹. Maximum consideration is the total consideration payable to the shareholders by an acquirer pursuant to the open offer, assuming full acceptance of such offer.

¹⁰⁰. The corrigendum to the DPS and LOF is available at - https://www.sebi.gov.in/sebi_data/commondocs/jul-2019/mindtreecorridpstatement_p.pdf

Post the Open Offer, as per the shareholding pattern of Mindtree as of September 30, 2019, the Acquirer had acquired 60.55% of the total shareholding of the Target. In addition, the Acquirer also appointed three representatives as directors on the Board of the Target, as detailed above. As discussed above, the promoters had strongly resisted sale of Equity Shares from the Sellers to the Acquirer and the subsequent takeover of control of the Target by the Acquirer for various reasons. When all their efforts failed and the Acquirer successfully acquired a majority stake in the Target, the founder promoters were left with no option but to cede control. This led to the founders requesting the Target to be declassified as promoters¹⁰³ and resigning from various management positions held in the company. The Acquirer on the other hand, with its majority shareholding and board representations now exercises control over the company and is classified as a 'promoter' of the company.

XI. What are the steps that have been/would have to be taken by the founders for reclassification as non-promoters?

As stated above, in India, the primary test to classify a person or entity as a promoter of a given company is to ascertain as to whether such person or entity exercises 'control' over the company. There are various obligations and liabilities that come along with being a promoter of an Indian listed company. Accordingly, pursuant to the SEBI listing Regulation, SEBI laid down a framework for reclassification of existing promoters as public shareholders provided such outgoing promoters cease to have control over the company and fulfil certain other criteria. The SEBI Listing Regulations was amended in November 2018 and upon the recommendations of the Kotak Committee on

¹⁰³. Also see our response under paragraph 11 for a detailed discussion on declassification of the promoters.

Corporate Governance the regulations now provide for the following conditions¹⁰⁴ that need to be satisfied by outgoing promoters and persons related to such promoters¹⁰⁵ (together the "Promoter Affiliates") which are relevant in the present scenario:

- i. The voting rights held by the Promoter Affiliates should not be more than 10% of the voting rights in the listed entity.
- ii. The Promoter Affiliates must not be exercising control over the affairs of the listed entity either directly or indirectly.
- iii. No special rights should be available to the Promoter Affiliates in the listed entity through formal or informal arrangements, including, any shareholders agreement.
- iv. The Promoter Affiliates must not be represented (including by way of a nominee director) on the board of directors or act as a key managerial person (as defined in Companies Act) of the company.

As per the SEBI Listing Regulations, the outgoing promoters are first required to submit a request seeking reclassification to the listed entity, explaining the rationale behind seeking such reclassification and the manner in which the aforementioned conditions are satisfied. In the present case, the pre-Offer promoters of Mindtree on behalf of themselves and members of their respective promoter group, on July 31, 2019, made a request to the company for seeking reclassification to the public category.¹⁰⁶ In order to satisfy the aforementioned requirement, Mr. Krishnakumar Natarajan, Mr. Parthasarathy

¹⁰⁴. Regulation 31A(3) (b) of the SEBI Listing Regulations.

¹⁰⁵. Regulation 31A(1)(b) states that 'persons related to promoters' seeking reclassification refers to the promoter group as defined under the SEBI ICDR Regulations.

¹⁰⁶. The disclosures made by Mindtree to the stock exchanges regarding receipt of the reclassification application are available at:

- <https://www.bseindia.com/xml-data/corpfilings/AttachHis/01424a2b-cc56-4fe1-8586-51b60faf4f5d.pdf>
- <https://www.bseindia.com/xml-data/corpfilings/AttachHis/10492ff2-9b07-4ae9-a888-022a871095b9.pdf>
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- <https://www.bseindia.com/xml-data/corpfilings/AttachHis/417bf6a2-2b43-4a15-a9dc-9e670c7c7b8c.pdf>

NS and Mr. Rostow Ramanan, who were previously directors on the board of Mindtree and held the posts of Executive Chairman, Executive Vice Chairman and Chief Operating Officer and Chief Executive Officer, respectively, resigned from all positions held. An undertaking regarding fulfilment of all the requirements provided above and other conditions as provided in the SEBI Listing Regulations was included in the request application of the promoters. As required under SEBI Listing Regulation, Mindtree informed the stock exchanges regarding the receipt of the requests from pre-Offer promoters and members of promoter group of Mindtree within 24 hours.¹⁰⁷ As a procedure, the SEBI Listing Regulations as a next step require revaluation of the application by the board and the final approval of such request by the board followed by the approval of the shareholders.¹⁰⁸ There must be a gap of minimum 3 months and maximum 6 months between the date of meeting of the board and the date of meeting of the shareholders

considering the proposed reclassification. At this meeting of the shareholders, the Promoter Affiliates are not permitted to vote.¹⁰⁹ If the shareholders of a company approve the proposed reclassification, then an application in this regard has to be made to the stock exchanges,¹¹⁰ which will consider the application and approve or reject the reclassification.¹¹¹

Based on the disclosures made by Mindtree to the stock exchange, the board of the Target has passed a resolution on March 11, 2020 approving the reclassification of previous promoter/promoter group to public category, subject to the approval of the Shareholders. The shareholders resolution has not yet been passed as a result of which, while L&T has been classified as a promoter of Mindtree, the pre-Offer promoters and their respective promoter groups have not been reclassified to the public category.¹¹²

107. *Id.*

108. As per the SEBI Listing Regulation, only an ordinary resolution is required to be passed by the shareholders.

109. Regulation 31(A)(3)(a)(iii) of the SEBI Listing Regulations.

110. Such application is to be made within 30 days from the date on which the shareholders of the company have approved the proposed reclassification.

111. As per Regulation 31(8)(c) of the SEBI Listing Regulations, the submission of the application and receipt of the decision of the stock exchanges is required to be disclosed to the stock exchanges within 24 hours of respective submission and receipt.

112. The shareholding of Mindtree as of September 30, 2019 is available at - <https://www.bseindia.com/corporates/shpPromoterNGroup.aspx?scripcd=532819&qtrid=103.00&QtrName=September%202019>

9. Tax Considerations

I. What were the tax implications for the Sellers under the SPA for sale of shares pursuant to a block deal?

The transaction between the Sellers and L&T under the SPA was executed by way of an on-market deal through a block deal on the stock exchange. An on-market deal would result in taxation of the gains in the hands of the Sellers and taxed as long-term capital gains (“LTCG”). Further, the gains arising in the hands of the Sellers will be taxed at the rate of 10%¹¹³ in the hands of the Sellers. It is important to note that in determining the LTCG in the hands of the Sellers, it was not the subscription / acquisition price of the shares that would have been considered but the share price as of January 31, 2018. This is due to the insertion of section 112A in the Income Tax Act, 1961, pursuant to the Finance Act 2018. Prior to the introduction of section 112A, LTCG arising out of on-market sale of shares was exempt from tax. However, section 112A was introduced to levy a tax in respect of LTCG arising in respect of sale of shares on the floor of the stock exchange at the rate of 10%. In order to provide a grandfathering benefit for existing shares held, the Finance Act, 2018 introduced the concept of step up in the cost basis of the shares to the price that was prevailing on the day of introduction of the provision in the Parliament, being January 31, 2018. In other words, the deemed cost of acquisition for the purposes of calculating the LTCG in the hands of the Sellers for the purposes of section 112A will be the higher of (a) the actual cost of acquisition; (b) the lower of (i) the fair market value of the asset as on January 31, 2018; and (ii) the sale consideration. Fair market value is defined as the highest price of the equity share quoted on any recognized stock exchange on January 31, 2018. It is also important to note that

the tax reduced tax treatment of LTCG (on gains computed on a stepped up cost of acquisition) would only apply in case the Seller sold the shares on the floor of the stock exchange. An off-market sale of shares by the Sellers would have otherwise resulted in increased tax consequences in the hands of the Sellers as it would have been taxable at the rate of 20% (with indexation benefits) without the benefit of the step up in cost basis being made available.

In addition to the LTCG that was applicable to the Sellers, such Sellers who were incorporated as a company, would have also been subject to the levy of Minimum Alternate Tax (“MAT”) in their hands. The MAT provides for a minimum levy of tax of 18.5%¹¹⁴ and in the event the tax payable by a person is less than the MAT rate (as calculated on book profits), the rates set out for MAT will apply. It should however be noted that additional tax paid under MAT can be carried forward and set off against future taxes for a period of 8 (eight) years, if levied at more than the rates set out for MAT.

II. What are the tax implications for the Public Shareholders who have tendered shares pursuant to the offer?

The rate of taxation of the Public Shareholders would depend on the duration for which the Equity Shares were held by the Public Shareholders and the nature of the Public Shareholders. In case of a listed company, if the Equity Shares were held for a period of 12 months or less, gains arising on sale of such Equity Shares would have been taxable as short-term capital gains at the maximum marginal rate. On the other hand, if the Equity Shares were held for a period longer than 12 months, gains arising on sale of Equity Shares

¹¹³ The tax rates provided are exclusive of surcharge and cess.

¹¹⁴ The tax rates provided are exclusive of surcharge and cess.

would have been taxable as LTCG. As noted earlier, the Finance Act, 2018 withdrew the exemption earlier available for LTCG arising from transfer of equity shares (i.e. acceptance under an open offer) on or after April 1, 2018 if transacted through a recognized stock exchanges and for which a securities transaction tax (“STT”) has been paid. After taking into account the introduction of section 112A, LTCG (as calculated on the stepped up cost basis of the shares as of January 1, 2018 as detailed earlier) exceeding Rs. 100,000 is taxable at 10% without allowing the benefit of indexation in the hands of the selling shareholders. However, this exemption will not apply if such equity shares are acquired on or after October 1, 2004 and STT was not paid.¹¹⁵ If the benefit of rate under section 112A was not applicable to any shareholder, for a resident shareholder, an option is available to pay tax on such LTCG

under section 112 at either 20% with indexation or 10% without indexation, in both cases, the gains being calculated without giving effect to stepped up cost basis as on January 31, 2018. STCG arising from such transaction is subject to tax at 15%.¹¹⁶ In case of non-residents, they would have been taxable at the rate of 10% (without indexation) in case of LTCG or 15% (in case of STCG) or as per the provisions of the double taxation avoidance agreement, whichever was more favorable.

Further, Minimum alternate tax (“MAT”) implications are also triggered in the hands of a resident corporate Public Shareholder pursuant to the open offer. Participating Public Shareholders that are foreign companies would however, not be subject to MAT absent a permanent establishment in India.

¹¹⁵. Except as provided in notification no. 60/2018/F. No. 370142/9/2017-TPL dated 1st October, 2018 issued by the Central Government which lays down certain situations where section 112A of the Income Tax Act will continue to be applicable even if STT is not paid at the time of acquisition of equity shares.

¹¹⁶. Section 111A of the Income Tax Act. The tax rates provided above are exclusive of surcharge and cess.

10. Epilogue

The Indian IT industry has seen a number of promoter exits in the recent years including exit of Atul Nisar from Hexaware Technologies through a stake sale to Baring Asia in 2013 and exit of the promoters of Patni Computers Systems as a result of acquisition by IGATE in 2010. An unprecedented takeover drama however did unfold in this first ever hostile takeover in the India's IT sector. While only time will justify whether two culturally diverse organizations will be integrated successfully, with the rise of the anti-offshoring sentiment in US, it is possible that Mindtree, now with

the backing of a strong parent will be in a better position to win bigger deals in this age of artificial intelligence and automation of processes and digital services. Mindtree continues to function as a separate entity with many financial advisors continuing to suspect an eventual merger with L&T Infotech. On a separate note, this hostile takeover will definitely compel traditional promoter run companies in India to rethink their strategies to protect the promoter group from the likes of opportunistic companies.

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NDA Insights

TITLE	TYPE	DATE
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