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Religare takeover battle: Courts must trust regulators' wisdom

J.N. Gupta | 6 min read | 13 Feb 2025, 02:56 PM IST

Sebi’s rejection of the US-based Digvijay 'Danny' Gaekwad's counteroffer to the Burmans' open offer is not wrong as the regulator acted according to its regulations. (Bloomberg)

SUMMARY

The problem of delay is not limited to takeover cases alone. From mergers to insolvency, litigations continue to make a mockery of law.

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The Supreme Court, while castigating the Securities and Exchange Board of India (Sebi) for rejecting the competing offer, has raised a couple of pertinent questions.

One, why was there a long gap between the public announcement and the open offer?

Two, how and why is the price as of the public announcement date still relevant?

But first, why the top court's criticism of Sebi is unfair and misplaced.

Sebi's rejection of the US-based Digvijay 'Danny' Gaekwad's counteroffer to the Burmans' open offer is not wrong as the regulator acted according to its regulations. The offer did not satisfy a single requirement of Sebi (Substantial Acquisition of Shares and Takeovers) Regulations to qualify as a competing offer.

Also Read: Who is Danny Gaekwad—the US tycoon taking on the Burmans' open offer for Religare?

Had Sebi acted in any other manner, it would have faced allegations of favouring one party or another.

The Sebi SAST Regulations do not allow a letter to the chairperson to be considered a counteroffer, that too at the eleventh hour.

In legal parlance, the counteroffer was "non est", both in letter and spirit. The Sebi chairperson does not have any executive responsibilities on a day-to-day basis. Even the letter dated 25 January 2025 had inconsistencies. The law must prescribe timelines, which must be adhered to. Otherwise, no process will ever close.

What did Gaekwad have to lose if his counteroffer was rejected? It appears the point was missed that Gaekwad had an alternative channel available: making an open offer just by placing an order with a broker to purchase shares beyond the 25% limit in accordance with Sebi SAST Regulations.

The other reason criticism is misplaced is that the open offer price is determined based on a formula as per regulations. More importantly, an open offer is not coercive, and shareholders can tender

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shareholders had no choice but to exit at a historical price.

If one looks at it objectively, while shareholders have options available, an acquirer is not that lucky. The acquirer has to offer the same price (calculated as of the date of public announcement) even if the price is much lower on the day of the open offer launch.

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In fact, the law is more taxing for an acquirer, and rightly so, as Sebi has a mandate to protect investors. The Sebi SAST Regulations, last reviewed by Securities Appellate Tribunal (SAT)'s former member C. Achuthan, are time-tested norms and have served both shareholders and corporates well.

The legal quagmire

The apex court's observation about the long period between the public announcement (in October 2023) and the open offer opening (in January 2025) is an excellent opportunity for the court to examine the details and cure the disease of unusual delays.

However, if the court becomes interested, it would have to first point fingers at the country's legal system and see how it is abused. From police complaints, lower courts and the SAT to the Supreme Court, every forum available has witnessed the Religare takeover battle.

The Madhya Pradesh high court passed a stay order on Religare's annual general meeting (AGM) and later vacated it, observing that the petitioner had no locus standi. Was the high court not required to ask this question at the beginning?

Next, there are different requirements for different regulators. Regulations and laws have not provided an answer to the what-if situation. The open offer was stuck because the Reserve Bank of India (RBI) did not give the green light to the change in management.

The delay was not caused by the acquirer's ineligibility but by the fact that it could not apply to the RBI. Why? Because RBI regulations require t[illegible]mpany's (Religare) board to make an application.

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The deeper malaise

The problem of delay is not limited to takeover cases alone. Data will reveal that, barring a few exceptions like Religare, most open offers happen within a short time frame as envisaged. Most delays are due to legal interventions.

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The most affected are merger/demerger/amalgamation schemes in which valuation reports, which are akin to historical documents, are used as the basis for transactions, even though the underlying assets may have lost value or gained disproportionally.

Another set of cases is bankruptcy cases, where, in theory, the law has prescribed a time limit, but litigation end up making a mockery of the law.

If a question can be raised on the relevance of price at the time of the public announcement, questions must be raised on valuation reports dated a year or two before the National Company Law Tribunal (NCLT) approval.

The courts must realize that business is dynamic. Value, price, and markets will be volatile. Faster decision-making and skipping avoidable litigation are vital to reducing risk for investors. The practice of ordering stays on events like AGMs without hearing the affected parties, as happened in the Religare case, must stop.

Sectoral regulators have enough wisdom and organizational memory. They must be trusted for their wisdom.

The time has come for the Supreme Court to pass a pathbreaking order, advising courts that on matters related to Sebi/RBI/ministry of corporate affairs, extra care must be taken while passing any stay orders as it did in the case of letters of credit (LCs) and bank guarantees (BGs). The top court advised that LCs and BGs are essential parts of the wheels of commerce and stay orders should be rare or else the wheels of commerce will sto

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The same is true for the corporate/securities market/banking space. The courts must seek the opinion of sectoral regulators before granting any stay.

said amount, the order would automatically be set aside and warned that non-compliance could be viewed as creating obstacles in the regulatory process.

This observation will be the ultimate test of the competing acquirer's sincerity, and if it fails to deposit the amount, consequences must follow. The consequences must be proportionate to the damage caused and the misuse of the legal system.

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Lastly, in an urgent hearing on 12 February 2025, the apex court has extended the timeline for Gaekwad to deposit ₹600 crore till 12pm on 13 February 2025 and directed the RBI to provide an account and allow the deposit. This is unprecedented. Though the order dated 7 February said this order is not to be used as a precedent, this effectively means the bank guarantee is no longer an option.

Will one see an end to this tussle on 13 February or not? Unlikely, as cases are still pending at Sebi and high court levels.

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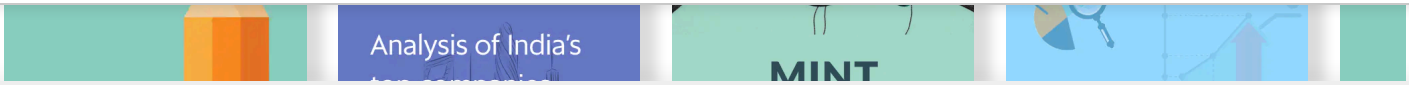

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