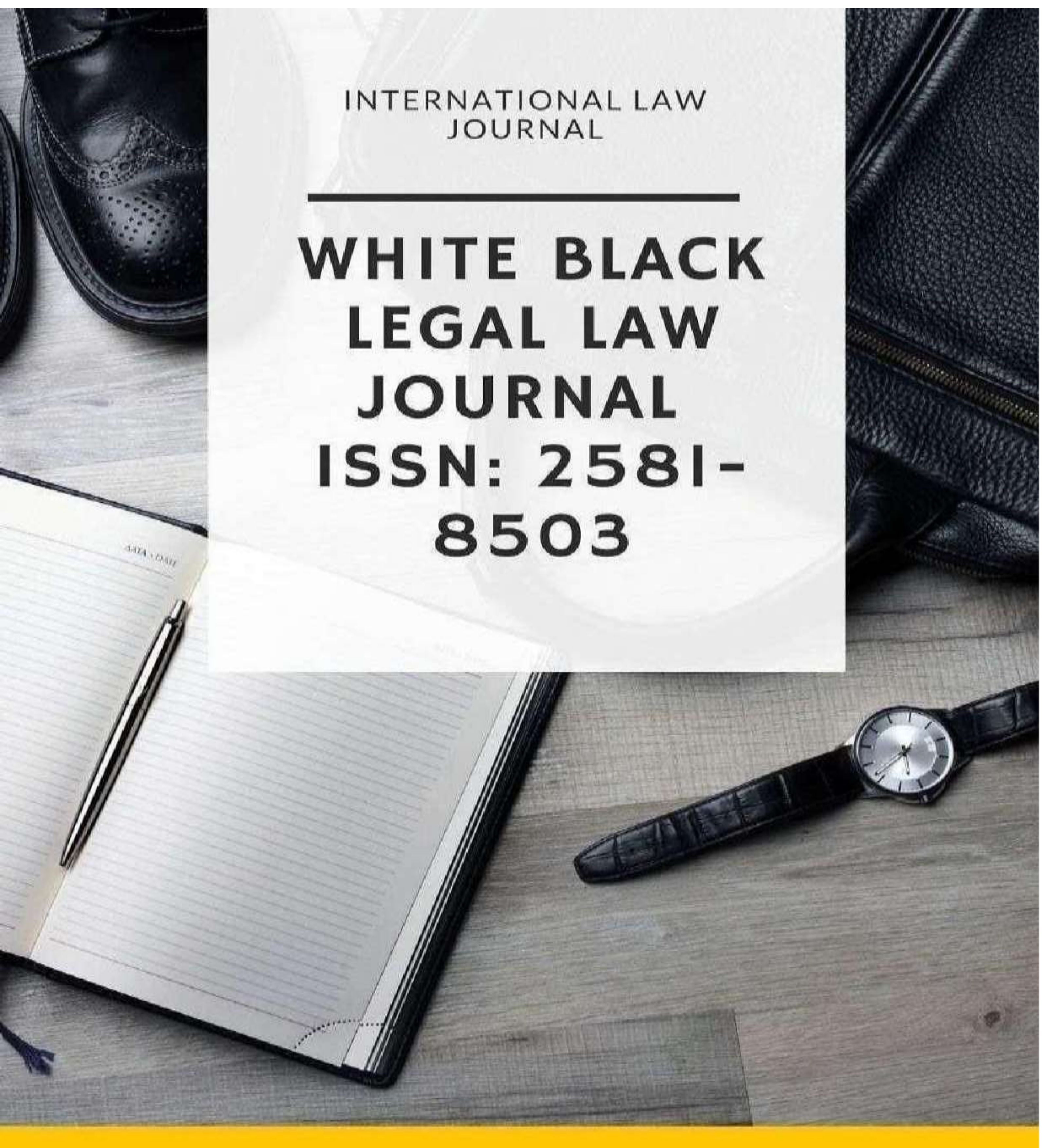

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With this thought, we hereby present to you

ANALYSIS OF A HOSTILE TAKEOVER – THE NDTV & ADANI SAGA

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ABSTRACT

While hostile takeovers are not a new occurrence over the Indian landscape, the takeover of NDTV by Adani Enterprises Ltd. definitely drew a lot of flak and controversy, due to the political considerations involved. A number of star journalists of NDTV quit as a result. While the rumours of a takeover had already been afloat around the market, the way in which it was conducted and executed definitely sent shockwaves throughout the nation. The fact that one loan borrowed back in 2009, haunted the founders 13 years later, and took from them the very company they had started. In this paper, we seek to analyse how the takeover was executed by Adani Enterprises. It involves a doctrinal study of the events and laws, rules and regulations giving effect to the whole takeover. In future, it is important to have more such regulations over hostile takeovers driven by political considerations. The paper aims to provide a bird's-eye view of this whole saga.

Keywords – *hostile takeover, equity share capital, convertible share warrants, loan agreement*

INTRODUCTION

The hostile takeover of NDTV Ltd by Adani Enterprises Ltd was a notable event of 2022. The same has been criticised and denounced by many as corporate takeover of independent journalism. The whole series of events inspired a novel discussion among commercial and legal fraternities on hostile takeovers, protection of rights of investors, and market reforms so required. New Delhi Television Limited ("**NDTV**") is one of the most popular news outlets in the country, and can boast about the long list of renowned journalists and reporters working for them. There is no denying that NDTV has a sizable online and offline audience, and a very loyal consumer base. The takeover of NDTV by a vast business conglomerate like Adani Enterprises, is a significant event, which rewrote the history of media and journalism in India. Independent journalism has always been under the radar of political parties and culture warriors since the beginning of our Republic. The takeover of a such an extensive media outlet by a business conglomerate having close ties with powerhouses in the country, definitely showcases another such attack on independent journalism.

Business conglomerates have understood the importance of media and public relations to garner public support and propagate policies and opinions in their favour. Recently, Mukesh Ambani, the Chairman of Reliance Industries acquired Network 18,[1] a popular news, and media outlet. Quintillion Business Media Pvt Ltd (QBM), a digital business news platform, was also purchased by Adani Media Ventures Ltd (AMVL), the media division of the group's flagship Adani Enterprises Ltd.[2]

While hostile takeovers of corporations are not a new story in India, the same is not a very common occurrence. There have been many attempts, but quite a few of them resulted in a change of ownership, including the takeover of NDTV. Examples of hostile takeovers in India would be the takeover of Satyam Computer Services by Mahindra Tech in 2013, Larsen & Toubro's acquisition of Mindtree Limited in 2019, India Cements' acquiring Raasi Cements in 1998, etc. [3] Recently, the Securities and Exchange Board of India ("**SEBI**") brought in various amendments with the aim of bringing in more transparency and accountability in the market and protecting the stakeholders in listed companies. This was inspired by the Adani-NDTV fiasco as well as the Amazon-Future group deal. [4]

The SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR Regulations"**) were amended, which were made effective from 15th June 2023. Herein Regulation 30A was added to LODR Regulations[5], which required the promoters, shareholders, key managerial personnel, directors, employees, and related parties to disclose any agreements so made which are ***"deemed material"***[6]. In addition to this, certain provisions have been added which require companies to verify any rumour or information floating about them in the market, or in mainstream media.

This article seeks to unfold the dramatic tale as it all happened, examine what hostile takeovers

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[1] The Hindu Bureau, *Reliance acquires controlling stake in Network18*, THE HINDU (March 12, 2018), https://www.thehindubusinessline.com/companies/reliance-acquires-controlling-stake-in-network18/article20786266.ece1
[2] Hartosh Singh Bal, *Private Interest Journalism - How conglomerates corrupt the Indian media landscape,* THE CARAVAN MAGAZINE (December 2, 2022), https://caravanmagazine.in/media/big-media-corrupts-journalism
[3] Ashima Obhan & Raunaq Kwatra, *Hostile Takeovers in India – Part 2,* MONDAQ (September 01, 2022), https://www.mondaq.com/india/corporate-and-company-law/1226644/hostile-takeovers-in-india--part-2
[4] Ratnadeep Roychowdhury, Anurag Shah & Parina Muchhala, *SEBI's Amendments to The LODR: Increasing Corporate Responsibility and Governance for India*, 13 The Nat' LR 206, (2023).
[5] Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, Gazette of India, pt.3, sec. 4 (Sept 6, 2015).
[6] Bhavin Gada, Mehak Gupta & Sanjana Bhasin, *India: Amendment To The SEBI LODR Regulations*, MONDAQ, (June 21, 2023),
https://www.mondaq.com/india/shareholders/1332198/amendment-to-the-sebi-lodr-regulations

are, how the acquisition was challenged, and the loopholes which allowed Adani Enterprises to unethically takeover NDTV.

HOSTILE TAKEOVERS

In simple words, a hostile takeover can be defined as a type of acquisition, wherein a company is taken over by another company without the consent of the former's Board of Directors. The terminology indicates that the takeover is not favoured by the management. The company which is being taken over is called the "target company;" and the company taking over is called is called the "acquirer company."
Hostile takeovers can be facilitated through 3 methods, i.e., a proxy vote, a tender offer, or a large stock purchase.

In a **proxy vote**, the acquirer company goes on to convince the shareholders to vote out the management of the company. In this way the acquirer can try and replace the existing Board of Directors of the company with a management favouring their intentions. The new management would be supportive towards the takeover of the target company by the acquirer.

In a **tender offer**, the acquirer can offer to buy the shares of the company from the existing shareholders of the target company, at a price higher than the market rate.

The other method of hostile takeover is **large stock purchase**, wherein the acquirer acquires a large percentage of voting stock of the company. This was the method adopted by Adani Enterprises to acquire NDTV.

Hostile takeovers can be prevented through a great number of defences. Some of them include,

- **Poison Pill** is a defence in the form of shareholders' rights. In event of a hostile takeover, the existing shareholders are given the right to purchase the existing stock of the company at a discounted price. This considerably dilutes the shareholding in the hands of the acquiring company.

- **White Knight** – When a target company is unable to prevent its hostile takeover, it can call upon a friendly company/firm/etc to takeover the shareholding of the company, in order to dilute the shareholding of the acquirer.

- **Crown Jewel –** Crown Jewel is a from of defence wherein the target company sells off its most valuable asset or business, either to the acquirer himself so that he does not takeover the whole company, or the asset or business can be sold elsewhere to make the acquisition less attractive for the acquirer.

- **Pac Man Defence –** Pac Man Defence is where the target company starts purchasing the shares of the acquirer company itself, putting them at the risk of hostile takeover.

- **Greenmail** is a method of defence, wherein the target company buys back its shares from the acquirer at a premium over the market price. The word "greenmail" refers to the extra money paid by the target company to buy back their own shares.

THE TAKEOVER OF NDTV

The history of this takeover can be dated back to the days of global recession in the years 2008 and 2009.

RRPR Holdings Pvt Ltd ("**RRPR"**) is the Promoter Company of NDTV, incorporated in 2005, with Radhika Roy and Prannoy Roy ("**founders**") as its directors. RRPR availed a loan of approximately INR 5,400,000,000 from Indiabulls Financial Services[7], pledging their shares in NDTV as a collateral. However, the global financial crisis ensued, which caused difficulties to the founders as well. Therefore, to offset their previous loans, RRPR had to borrow an additional amount of approximately INR 3,750,000,000 from ICICI Bank Ltd.

At this juncture, Vishwapradhan Commercial Pvt Ltd ("**VCPL**") came to their rescue. VCPL is a shell company, which loaned RRPR an approximate amount of INR 403 crores, without any interest, for a period of 10 years, in the years 2009 and 2010. Instead, VCPL was issued convertible share warrants by RRPR. VCPL had the sole discretion to convert these share warrants into equity, and upon conversion, the share warrants would amount to 99.99% of the equity share capital of RRPR.

It is interesting to note herein, that VCPL had financed the loan to RRPR with the help of Shinano

[7] Sach Chabria, Aarathi Das, Akash Kumar, Aishwarya Rao, Khyati Dalal & Nishchal Joshipura, *M&A Lab -Adani's Hostile Takeover of NDTV*, Nishith Desai & Associates (May 17,2023) https://nishithdesai.com/fileadmin/user_upload/pdfs/Research_Papers/M&A_Lab_Adanis-Hostile-Takeover-of-NDTV.pdf

Retail, a wholly owned subsidiary of Reliance Industries.[8]

It was this loan by VCPL that changed the game. Via a share purchase agreement dated August 23, 2022, AMG Media Networks Ltd. **("AMG"),** which is a wholly owned subsidiary of Adani Enterprises, acquired VCPL. Thereafter, VCPL, now under the control of Adani Enterprises through AMG, exercised its right of converting the RRPR share warrants into equity. Thereafter it acquired 1,990,000 equity shares, amounting to 99.50% of the equity share capital of RRPR.

This equity share capital of RRPR comprised of 29.18% of the voting share capital of NDTV, which was now indirectly controlled by Adani. Thereafter under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 **("SAST Regulations"** or **"Takeover Code"**), AMG, Adani Enterprises and VCPL had to make an open offer to the existing shareholders as the acquisition of shares fell above the threshold of 25% of equity shares.[9] In their Letter of Offer ("LOF") dated November 11, 2022, Adani Enterprises announced an open offer to buy 26% of shareholding from the existing public shareholders at Rs. 294/share, which was a deeply discounted price. At the time of the open offer, the price of one share was about Rs. 364.85.

The open offer could get Adani Enterprises about 53 lakh shares, culminating to 8.26% of the shareholding of NDTV.[10] Thereafter, while the open offer was still pending, on December 30 2022, RRPR, as under Adani enterprises, went on to purchase about 17 million shares of NDTV from founders Radhika Roy and Prannoy Roy, at the price of about Rs 342.65 per equity share. This amounted to acquisition of 27.26% of more equity shareholding of NDTV.

Adani Group thereafter announced publicly on January 2, 2023, that it would be paying NDTV's public shareholders, whose shares were accepted in the open offer, an additional INR 48.65 (or forty-eight and sixty-five rupees) per equity share, to make up for the difference in the prices of shares bought through the open offer and the price offered to the founders of NDTV.[11]

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[8] Authors Unknown, *Decoding Adani Group's hostile takeover bid for NDTV*, 5PAISA BLOG (December 12, 2022), https://www.5paisa.com/blog/decoding-adani-groups-hostile-takeover-bid-for-ndtv

[9] Regulation 3(1), Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, Gazette of India, pt.3, sec. 4.

[10] Press Trust Of India, *Adani Group acquires NDTV Founders' 27.26% Equity Stake*, THE ECONOMIC TIMES (December 30, 2022) https://economictimes.indiatimes.com/markets/stocks/news/adani-group-acquires-ndtv-founders-27-26-equity-stake/articleshow/96619390.cms?from=mdr

[11] *Supra* at 7.

Thereafter, with the acquisition of 64.71% of equity shareholding in NDTV, Adani enterprises became a majority shareholder, completing the process of hostile takeover.

Challenges to the Acquisition

The acquisition of the shareholding RRPR was contested by the founders on 2 grounds –

1. In 2020, the founders were barred by SEBI from trading on securities for a period of 2 years on account of insider trading, and violation of PIT Regulations, 1992. This restriction expired on November 26, 2022. [12]

The founders contested that with the ongoing restriction, Adani Enterprises would have to take prior approval of SEBI for furthering the deal. However, the restrictions were only till November 26, 2022, and the share warrants were converted into equity shareholding on November 28, 2022. Besides, the restriction on trading in securities was only upon the founders, and not RRPR. The conversion was pursuant to a loan agreement between RRPR and VCPL, and therefore, the restriction imposed by SEBI did not apply to the same. [13]

Despite all, both the parties wrote to SEBI to clarify on the preceding issue. Upon no reply from SEBI, VCPL and RRPR proceeded with the conversion of share warrants on November 28.

2. Another issue of contention was the approval from Income Tax ("**IT**") Authorities as per Sec 281 of the Income Tax Act. Pursuant to reassessment proceeding, the IT Department temporarily attached the equity shares in RRPR that the Founders owned. Once more, Adani Enterprises refuted the Founders' claim by taking the stance that the IT Department's prior approval would not be required because the restriction only applied to the shares of NDTV held by RRPR and would not affect the allocation of equity shares to VCPL in support of its warrant exercise notice.[14] Further, upon writing to the IT Department, it was clarified that no such approval was required.

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[12] PTI, IANS & ANI, *NDTV cites regulatory grounds to block Adani takeover*, THE INDIAN EXPRESS (August 25, 2022), https://www.newindianexpress.com/business/2022/aug/25/ndtv-cites-regulatory-grounds-to-block-adani-takeover-2491298.html

[13] BSE Ltd., *Disclosure filed by Adani Enterprises Ltd. u/ Regulation 30 of SEBI (LODR)* (August 26, 2022).

[14] National Stock Exchange of India Ltd, *Disclosure filed by Adani Enterprises Ltd. u/ Regulation 30 of SEBI (LODR)* (September 9, 2022).

Loopholes which allowed the Takeover

The saga definitely highlighted a number of issues relating to disclosure and transparency. It also shows how most businesses are unequipped to deal with hostile takeovers, and also that that the SEBI (SAST) Regulations is not well-equipped with regulations to prevent hostile takeovers. There were other loopholes highlighted which questioned the existence of VCPL. VCPL on paper was a company with the object to provide management and consultancy services, but had no assets and business of its own, and there was no independent management as such.[15] It was a shell company with the sole aim to bypass existing law and regulations. The acquisition of VCPL by AMG and the subsequent conversion of share warrants unanimously, was facilitated due to this loophole.

Another loophole that could be highlighted is the lack of due diligence. The loan agreement was questionable and without interest, and included terms which could have easily facilitated the takeover. It was important that loan agreements like these should have been subjected to proper disclosure and transparency requirements. This would have allowed the founders to detect the signs of a takeover at an earlier stage, and maybe, prevent the same from happening.

CONCLUSION

The takeover of NDTV marked the end of institutional and independent journalism in the country. The deal could prove very favourable for Adani Enterprises, as it would contribute to enhancing their presence in the media. However, most of the media houses are now owned by big business conglomerates. It is too early to say how the new amendments to LODR regulations might be useful in preventing such future occurrences. It is important for the regulators to understand how corporate giants are slyly bypassing laws, rules, and regulations to execute their own whims and fancies, and that they must take effective measures to put a stop to it.

[15]Deepak Rathore, *Hostile Takeover of NDTV: A Legal Evil*, 4 INDIAN J.L. & LEGAL Rsch. 1 (2022-2023).