SEBI’s Tweaks for Government Deals

What is the issue?

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- SEBI’s regulatory clauses for acquisition of business are being repeatedly waivered for government deals.
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- This could erode the credibility of SEBI and also affect investor sentiment.
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What is the SEBI regulation for takeovers?

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- Recently, the central government has sealed a series of deals involving listed Public Sector Companies (PSCs), where it has given up its majority stake.
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- These have precipitated a change in management, and were carried out to meet disinvestment targets and free up budgetary resources.
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- Whenever there is a stake sale that results in a “change in management” of a listed entity, the acquirer entity will have to follow “SEBI’s Takeover Code”.
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- The SEBI code states that “the acquirer must make an open offer to public shareholders of the entity, to give them a fair exit”.
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- In this context, the centre has been actively lobbying for its deals to be exempted from these requirements.
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What are the recent takeovers that have been exempted?

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- In 2017, ONGC was persuaded to buy Centre's 51.1% equity in HPCL for over Rs. 36,000 crore in order to meet the shortfall in disinvestment proceeds.
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- Discussions are now on to offload the government's 73.4% stake in listed "Dredging Corporation of India" to three central Port Trusts.
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- The centre had managed to secured exemptions from "SEBI's Takeover Code" for both the above mentioned deals.
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- These are clear cases of a change in management control for the listed companies, with the equity stake changing hands well above 25%.
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- Therefore, it is unclear on what grounds the acquirers have been exempted from open offer requirements.
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- Further, exemption has also been sought for LIC's proposed acquisition of IDBI Bank, but the case is yet to be decided by the SEBI.
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Do the exemptions stand up to scrutiny?

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- The government's argument is that as the sale is to 'government' entities, there is no trigger for an open offer.
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- But this argument is hollow, as the Centre showcases the very same deals as successes of its public sector 'disinvestment' programme.
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- SEBI is indeed empowered to grant open offer exemptions in special cases to safeguard the interests of minority investors in securities markets.
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- But in the above cases, interests of investors in the acquired firms are best served by insisting on open offers rather than waiving them.
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- Further, in the LIC-IDBI case, the whole objective of the deal is to anoint LIC as the new 'promoter' to infuse necessary capital into the ailing bank.
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- Hence, exempting that deal from open offers would be a sham.
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What are the risks?

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- The multiple instances of securities market laws being bent for the government, reflect poorly both on the Centre and the markets regulator.
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- The government is also proving to be a poor role model on corporate governance for the promoters of India Inc.
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- The government needs to recognise that it is repeatedly mistreating market investors in listed PSUs, by seeking exemptions from SEBI.
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- Meting out high-handed treatment to shareholders can put them off government-owned entities and thereby starve PSUs of funds for development.
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- Notably, given the persisting budgetary constraints, Centre will have to lean heavily on market investors in the next few years for capital investments.
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Source: Business Line

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