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Takeover of Publicly Traded Companies : Flashback 2021

A detailed report



Report on Takeover of Publicly Traded Companies : Flashback 2021
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A Thought Leadership Publication

We now present this report to enable readers to have an overview of the systems and legal rules and regulations that are essential for business operations in India.

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A. Introduction

The year 2021 saw 81 tender offers, aggregating INR 43,602 crore, for the acquisition of shares of publicly traded companies in India under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (**Takeover Regulations**)¹. This is higher, both in value and number terms, as compared to the pandemic-hit 2020 and the pre-pandemic 2019. During this period, strategic players took centre-stage in driving deal activities, making 78 out of 81 tender offers.

In terms of inflow of funds from abroad, the World Bank reported that India received foreign remittances of USD 87 billion in 2021 making it the world's largest recipient of foreign exchange this year. IT sector was one of the major recipients of foreign money. We are in the middle of an IT sector boom in India. Businesses are increasingly relying on work-from-home models which has led to increased investments in software and IT infrastructure. The IT sector has witnessed high volumes of growth stage funding, Initial Public Offers (IPOs) and Merger & Acquisition (M&A) deals.

In addition to regular M&A deals, the stressed asset space is also witnessing a high volume of deals. In 2021, the stressed housing finance company, Dewan Housing Finance Corporation Limited (DHFL), was sold to the Piramal Group through the framework under the Insolvency and Bankruptcy Code, 2016 (**IBC**). The Reserve Bank of India (**RBI**) too superseded the boards of few companies that were under financial stress, namely, SREI Infrastructure Finance Limited, SREI Equipment Finance Limited and Reliance Capital Limited and initiated IBC proceedings against them.

Separately, the Indian government's push towards disinvestment is a huge shift in its thinking. In 2021, the Indian Government successfully divested Air India to the Tata Group. We are expecting many other divestment initiatives in 2022. Since most of the PSUs proposed to be divested are publicly traded, we expect to see higher number of control deals in this space in the near future.

In this Report, we have provided a comparison of deal activities in the last three years to give you a better idea about the size and total number of tender offers made in pre-pandemic and the pandemic eras.

We hope you enjoy this report and would love to hear your views on it.

¹ As per the data available on the website of the Securities and Exchange Board of India as on January 3, 2022.

B

Sector-wise Activity in 2021

In calendar year 2021, the country witnessed a total of 81 tender offers for acquisition of shares of publicly traded companies in India. The aggregate value of these tender offers stood at INR 43,602 crore. In value and number terms, 2021 beat both, the pandemic hit 2020 and the pre-pandemic 2019.

In value terms, the mining and metals sector saw the highest aggregate value of tender offers at INR 15,525.22 crore, followed by the IT sector aggregating at INR 10,630.06 crore. In number terms, the non-banking financial company (**NBFC**) sector continued to see the highest number of tender offers (15 in all), closely followed by, (i) the manufacturing sector (14 in all) and (ii) IT sector (10 in all).

In 2021, the five biggest tender offers by value were for companies operating in the following sectors:

1. Mining and metals sector (Vedanta Limited);
2. IT sector (Mphasis Limited);
3. Manufacturing sector (Escorts Limited);
4. NBFC sector (PNB Housing Finance Limited); and
5. IT sector (Just Dial Limited).

The five biggest tender offers comprised approximately 82.89% of the aggregate value of all tender offers in 2021².

² For further details please refer to Section E below.

As you will notice from the graph below, the NBFC sector saw the highest number of tender offers. However, since two tender offers in the NBFC sector, namely, for PNB Housing Finance Limited and Canopy Finance Limited were withdrawn, the manufacturing sector will see the highest number of tender offers being completed.

The following graph shows in number and value terms tender offers in major sectors in 2021:



C

Quarter-wise analysis of tender offers of 2021

1. The fourth quarter (Q4) of 2021 was the busiest of the four with as many as 24 tender offer announcements. The second quarter (Q2) of 2021 was the quietest with 17 tender offers announcements. The first quarter (Q1) of 2021 had the highest aggregate value of tender offers at INR 16,857 crore, while the third quarter (Q3) of 2021 witnessed the lowest aggregate value of tender offers at INR 3,449 crore.

Below is a graph analysing the number and aggregate value of tender offers announced in 2021 in each calendar quarter:



2. In both value and number terms, tender offers made in each quarter of 2021 exceeded the tender offers announced in the same quarters of 2020 and 2019 (other than in Q2 of 2021 where 17 tender offers stood marginally lower than the 19 announced in Q2 of 2019.)

Below is a graph comparing the number and aggregate value of tender offers announced in 2021, 2020 and 2019 in each calendar quarter:



3. Below is a list of Indian listed companies for which tender offers were announced in 2021 as per each calendar quarter:

| Quarter | Name of the Company | |
|--------------------------------|--|------------------------------------|
| Q1 (Jan 1 – Mar 31) | Vedanta Limited | Oracle Credit Limited |
| | Modern Convertors Limited | Spaceage Products Limited |
| | Lloyds Steels Industries Limited | Canopy Finance Limited |
| | Magma Fincorp Limited | Solex Energy Limited |
| | Towa Sokki Limited | Majesco Limited |
| | Ritesh Properties and Industries Limited | Assam Roofing Limited |
| | Constronics Infra Limited | BNK Capital Markets Limited |
| | Siel Financial Services Limited | Kumbhat Financial Services Limited |
| | Pratik Panels Limited | Integra Garments and Textiles |
| | Netlinks Solutions (India) Limited | |

| Quarter | Name of the Company | |
|------------------------|--|--------------------------------------|
| Q2 (Apr 1 – Jun 30) | Specular Marketing and Financing Limited | White Organic Retail Limited |
| | Shalimar Agencies Limited | Diggi Multitrade Limited |
| | Mphasis Limited | Clariant Chemicals (India) Limited |
| | Trijal Industries Limited | Intellivate Capital Advisors Limited |
| | Lloyds Metals and Energy Limited | Richfield Financial Services Limited |
| | Pentokey Organy (India) Limited | Hipolin Limited |
| | Sparc Systems Limited | Thyrocare Technologies Limited |
| | PNB Housing Finance Limited | Sanjivani Paranteral Limited |
| | Gayatri Tissue and Papers Limited | |
| | | |
| Q3 (Jul 1 – Sep 30) | Elitecon International Limited | HG Industries Limited |
| | Meenakshi Enterprises Limited | Goldstone Technologies Limited |
| | Just Dial Limited | Intellivate Capital Ventures Limited |
| | Lords Chloro Alkali Limited | AKM Lace and Embrotex Limited |
| | Tejas Networks Limited | Sea Gold Infrastructure Limited |
| | 7NR Retail Limited | Kernex Microsystems India Limited |
| | Hazoor Multi Projects Limited | TTI Enterprise Limited |
| | Mangalam Industrial Finance Limited | Akashdeep Metal Industries Limited |
| | Kintech Renewables Limited | Mrugesh Trading Limited |
| | Moongipa Securities Limited | Choksi Imaging Limited |
| Megasoft Limited | | |

| Q4 (Oct 1 – Dec 31) | Sterling and Wilson Solar Limited | Nicco Parks & Resorts Limited | |
|--------------------------------------|---|--|--|
| | Sunshield Chemicals Limited | Punit Commercials Limited | |
| | Datasoft Application Software (India) Limited | IKAB Securities and Investment Limited | |
| | OneSource Ideas Venture Limited | KLK Electrical Limited | |
| | Maitri Enterprises Limited | Devki Leasing and Finance Limited | |
| | Mercury Metals Limited | Lyka Labs Limited | |
| | Mehai Technology Limited | Escorts Limited | |
| | Kachchh Minerals Limited | Escorts Finance Limited | |
| | Supremex Shine Steels Limited | ISMT Limited | |
| | Rama Steel Tubes Limited | APM Finvest Limited | |
| | Hotel Rugby Limited | IFL Enterprises Limited | |
| | Parsharti Investment Limited | Krishna Ventures Limited | |

D

Key features of the tender offers and comparison of 2021 with 2020 and 2019

Majority of the tender offers, being 55, were made as the underlying triggering transactions were secondary purchases. As many as 11 transactions involved primary issuances by the target companies. Ten transactions involved a combination of primary issuances and secondary purchases. Two transactions were indirect acquisitions, while three were voluntary tender offers.

Following table gives comparison in numbers of key features between the years 2021, 2020 and 2019:

| Calendar year | 2021 | 2020 | 2019 |
|--|--------------------|-------------------|-----------------|
| Number of tender offers | 81 | 44 | 61 |
| Completed tender offers (tender offers that were launched and completed in the same calendar year) | 50 | 27 | 39 |
| Number of direct tender offers | 76 | 37 | 58 |
| Number of indirect tender offers | 2 | 5 | 3 |
| Number of tender offers made due to breach of 5% creeping acquisition limit | 4 | 4 | 7 |
| Total value of tender offers | INR 436.02 Billion | INR 54.57 Billion | INR 226 Billion |
| Number of tender offers for NBFCs | 15 | 6 | 9 |
| Number of tender offers where underlying transaction was closed before closure of the tender offer | 17 | 13 | 8 |

E

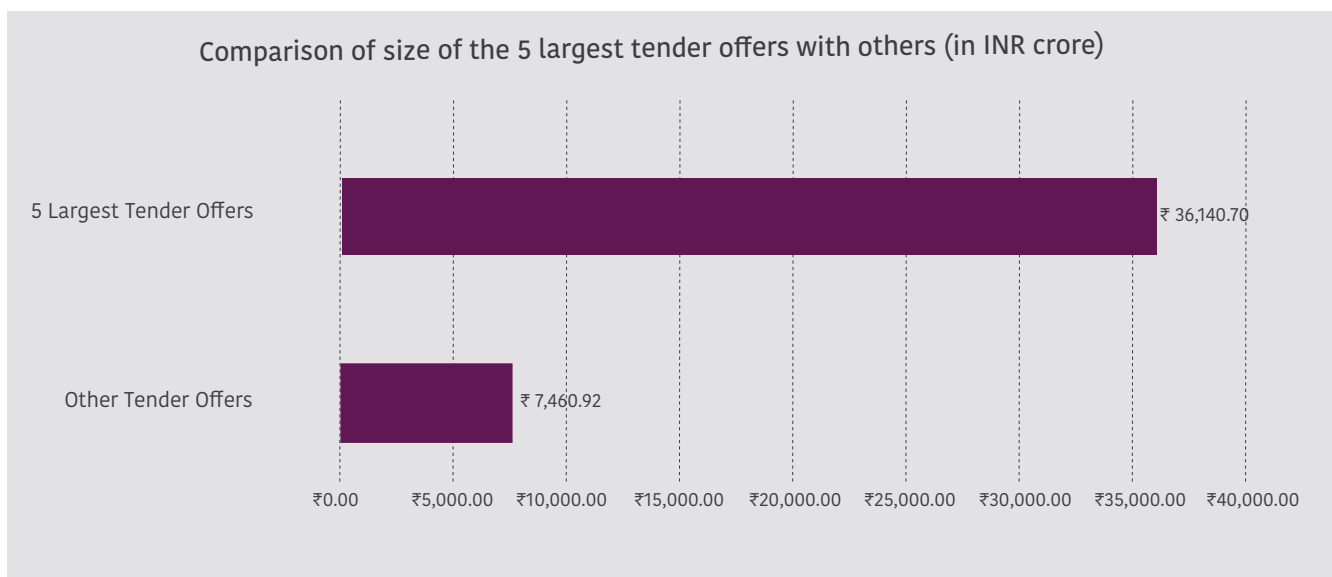
Biggest tender offers of 2021

In 2021, the five biggest tender offers by value were (in descending order of value):

1. Vedanta Resources’ voluntary tender offer for Vedanta Limited (aggregating INR 15,299 crore, appx.);
2. Blackstone’s offer for Mphasis Limited (aggregating INR 8,262 crore, appx.);
3. Kubota Corporation’s offer for Escorts Limited, along with the indirect offer for Escorts Finance Limited (collectively, aggregating INR 7,503 crore, appx.);
4. The Carlyle Group’s offer for PNB Housing Limited (aggregating INR 2,855 crore, appx.)³; and
5. Reliance Retail Ventures’ offer for Just Dial Limited (aggregating INR 2,222 crore, appx.).

These offers comprised 82.89% of the aggregate value of all tender offers in 2021. The biggest tender offer by value was for Vedanta Limited, being INR 15,299 crore (appx.) and the smallest tender offer was for Assam Roofing Limited, being INR 3 lakh.

Below is a graph comparing the aggregate value of these biggest tender offers with the aggregate value of the other tender offers made during 2021:

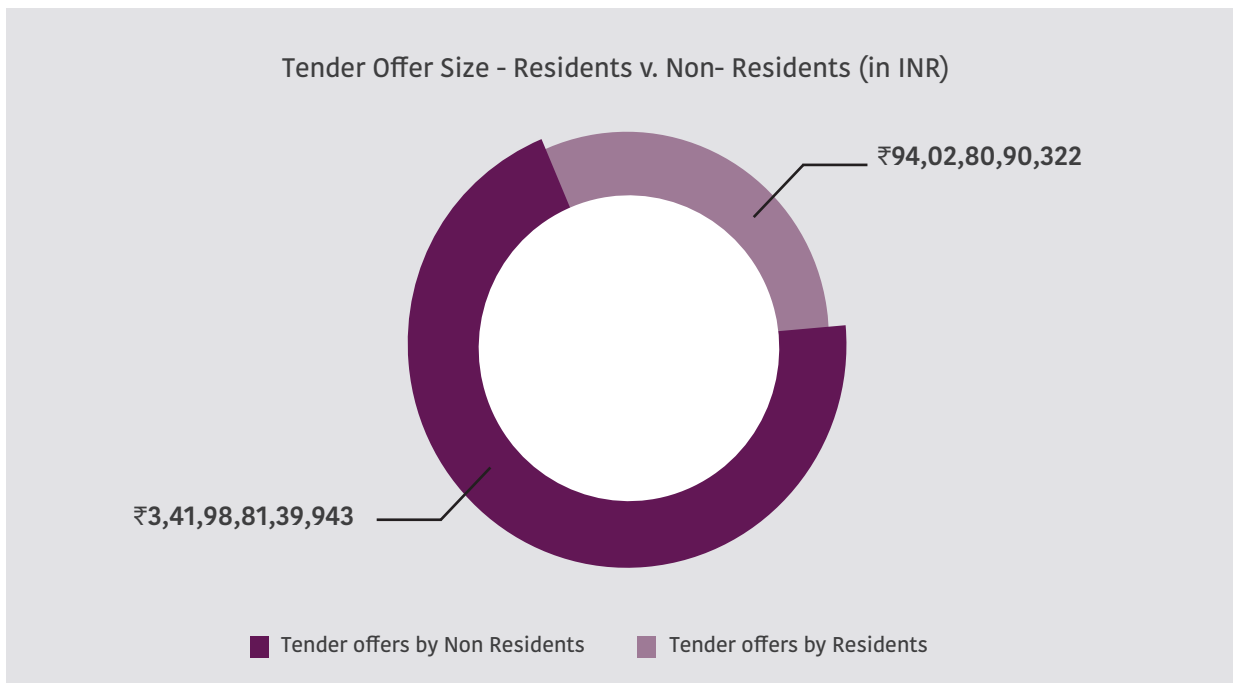


³This offer has been withdrawn.

F

Tender offers by non-residents

Non-residents made six tender offers in 2021.⁴ The aggregate value of such tender offers was INR 34,199 crore, which constitutes 78% of the aggregate value of all tender offers in 2021.



⁴ Please note that The Carlyle Group's tender offer for PNB Housing Finance Limited has been withdrawn.

In comparison,

1. In 2020, non-residents made 11 tender offers, aggregating INR 5,190 crore, which was 95% of the aggregate value of all tender offers in 2020; and
2. In 2019, non-residents made 10 tender offers, aggregating INR 15,939 crore, which was 70.44% of the aggregate value of all tender offers in 2019.

Below is a graph comparing the tender offers made by non-residents and residents during 2021, 2020 and 2019:



The year 2021 saw lesser number of tender offers by non-residents as compared to 2019 and 2020. However, the aggregate value of tender offers made by non-residents in 2021 was substantially higher than in 2020 (by 559%) and 2019 (by 115%).

G

Time taken by SEBI to clear DLOF

The time taken to complete an open offer is mainly a function of the time taken to receive SEBI's observations on the draft letter of offer (**DLOF**) and other regulatory approvals, as the rest of the process typically moves on an auto-pilot mode.

On an average, SEBI took 41 days to issue observations on the DLOFs, with the longest being 115 days (in BNK Capital Markets Limited, operating in the NBFC sector) and the shortest being 11 days (in Constronics Infra Limited, operating in the real estate sector). As compared to 2020, the time taken by SEBI to issue observation letters in 2021 was significantly less.

Generally, SEBI took longer to issue observation letters in relation to takeovers of NBFCs (on an average 67 days), with the longest being 115 days (in BNK Capital Markets Limited) and shortest being 34 days (in Magma Fincorp Limited).

The time taken by SEBI to issue observation letters for some of the large tender offers (exceeding INR 200 crore in value) are set out below:

| Serial No. | Name of the Company | Time taken by SEBI to clear DLOF (in days) |
|------------|-----------------------------------|--|
| 1 | Vedanta Limited | 28 |
| 2 | Mphasis Limited | 46 |
| 3 | Just Dial Limited | 35 |
| 4 | Sterling and Wilson Solar Limited | 49 |
| 5 | Thyrocare Technologies Limited | 21 |
| 6 | Magma Fincorp Limited | 34 |
| 7 | Tejas Networks Limited | 48 |
| 8 | Lloyds Metals and Energy Limited | 50 |

H

Tender offers by financial investors

Strategic players (both resident and non-resident) were at the helm of nearly all (78 out of 81) the takeovers/tender offers in 2021.

Tender offers made by PE investors/ funds in 2021 are listed below. As mentioned above, the tender offer made by The Carlyle Group for PNB Housing Finance Limited has been withdrawn:

| Serial No. | PE Investor / Fund | Target Company | Sector | Value of Tender Offer (in INR crore) |
|------------|---------------------|------------------------------------|-----------|--------------------------------------|
| 1 | Blackstone | Mphasis Limited | IT | 8,262.23 |
| 2 | The Carlyle Group | PNB Housing Finance Limited | NBFC | 2,854.52 |
| 3 | SK Capital Partners | Clariant Chemicals (India) Limited | Chemicals | 280.16 |
| | | | Total | 11,396.91 |



Quick closure of underlying secondary transactions

Underlying secondary transactions, i.e. share purchase transactions, can be closed at any time after making the public announcement for open offer.

The language of Regulation 22(2A) of the Takeover Regulations has been amended⁵ in such a way that you do not have to wait for the expiry of 21 working days from the date of detailed public statement (**DPS**) for an on-market closure of the underlying share purchase deal. The shares so acquired should lie in the regulatory escrow until the expiry of at least 21 working days from the DPS. In addition, 100% of the open offer consideration should have been deposited in cash in the regulatory escrow to move the acquired shares to the acquirer's demat account so that the acquirer can start exercising voting rights on the acquired shares⁶. Please note that this quick closure is not possible for off-market transactions.

The quick on-market closure ensures (i) greater deal certainty; and (ii) no impact of market volatility if the deal is announced after market hours on one working day and is closed first thing in the morning on the next working day.

The acquirers will have to take a conscious call to adopt such quick on-market closure since the acquirer will not be able to exercise any voting rights on the purchased shares for approximately 30 days after the public announcement of the tender offer.

This approach of quick on-market closure was recently taken by Reliance Retail Ventures Limited when it acquired Just Dial Limited and by the Tata Group in its acquisition of Tejas Networks Limited. In the case of Just Dial Limited, the share purchase agreement was signed on July 16, 2021, and closed on market on July 20, 2021. Reliance-Just Dial deal set the precedent for such quick on-market closures of underlying share purchase transactions.

In the case of Tejas Networks Limited, the share purchase agreement was signed on July 29, 2021, and closed on-market on July 30, 2021. We are expecting a higher number of quick closures based on the Reliance-Just Dial deal precedent.

⁵ Words "other than through bulk deals or block deals," omitted by the SEBI (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2020, w.e.f July 1, 2020.

⁶ Indeed, the acquirer has the option not to deposit the 100% of the open offer consideration and move the shares into its own demat account only after the open offer closure.



Other trends and highlights of 2021

1. Share swap deals

In Spaceage Products Limited and KLK Electrical Limited, the open offer was triggered when the listed company agreed to acquire shares of unlisted companies and allot listed shares in consideration for such acquisition. The shareholders of such unlisted entities had to make the tender offer.

2. Payment of interest for delay

Illustrations of direct tender offers where interest was paid to the shareholders for delay are listed below:

- a. a delay in receipt of the RBI approval for change of control impacted the tender offers for NBFCs made for Magma Fincorp Limited (delay of 14 days), Oracle Credit Limited (delay of 96 days) and Richfield Financial Services Limited (delay of 14 days);
- b. a delay in the receipt of certain exemptions and no action relief from the U.S. Securities and Exchange Commission impacted offer for Vedanta Limited (delay of 20 days); and
- c. past breaches of Takeover Regulations resulted in the tender offer for OneSource Ideas Ventures Limited (delay of 224 days) and Rama Steel Tubes Limited (delay of 1821 days).

In indirect tender offers, namely for Clariant Chemicals (India) Limited and Escorts Finance (India) Limited, interest will have to be paid to shareholders as part of the open offer price.

3. Voluntary tender offers

Promoters of Vedanta Limited, Lords Chloro Alkali Limited and Mangalam Industrial Finance Limited announced voluntary tender offers to consolidate their respective shareholding in these entities.

4. Withdrawal of tender offer

Tender offers which were withdrawn were PNB Housing Finance Limited (due to non-receipt of in-principle approval from the stock exchanges for the preferential allotment) and Canopy Finance Limited (due to RBI rejecting the application for change of control).

5. Tender offer pursuant to SEBI directions

Tender offer for Rama Steel Tubes Limited was made pursuant to SEBI directions.

6. Trend in penalty for disclosure violations

While reviewing the draft letters of offer, SEBI also analyses past compliance with disclosures required to be made under the Takeover Regulations. Like in the past, in 2021, too, SEBI typically imposed penalties in the range of INR 1,00,000 to INR 3,00,000 per violation. If the violations are repetitive, then the penalties tend to be higher.

K

Need for amendments

Resolution of stressed assets through the IBC process takes a long time (approximately 2.5 years on an average) for final resolution. Outside the IBC framework, RBI's 'Prudential Framework for Resolution of Stressed Assets'⁷ (**Stressed Asset Framework**), along with Regulation 164A of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 (**ICDR Regulations**), introduced by SEBI in 2020, allow for resolution of stressed assets in a quicker time frame, i.e. approximately six months.⁸ Quick resolution of stressed assets benefits all stakeholders involved, including lenders, public shareholders, employees and the incoming promoter and also reduces the administrative burden on the National Company Law Tribunal. However, the main concern holding back such deals is the higher risks faced by the incoming promoters/ acquirers, especially in relation to actions of the past management.

As we had argued earlier⁹, there is a need for the government/ regulators to introduce measures to ring fence the incoming promoters from past actions of previous managements in stressed companies. We propose that all acquirers who are acquiring controlling stake in stressed companies under Regulation 164A of the ICDR Regulations and RBI's Stressed Asset Framework should be offered immunity from liabilities arising out of past actions of previous managements, similar to the immunity granted under Section 32A of the IBC.

SEBI has recently amended the pricing guidelines under Regulation 164A of the ICDR Regulations from 2-week VWAP to 10 trading days VWAP¹⁰. In stressed company deals, the 10 trading day pricing regime is not particularly helpful as any rumor of potential control transaction may also make the 10 trading day VWAP a thoroughly unacceptable proposition. Since such deals will be hard fought battles with the lenders who will not agree to any random pricing for change in control, fixing the price for the deal should be purely a matter of negotiation and contract and not a pricing regime.

We are already seeing a lot of interest from Indian as well as foreign acquirers in the takeover of stressed assets. Therefore, ring-fencing measures and freedom of contracting as summarised above will encourage different categories of acquirers (especially, the PE funds) to do such deals.

⁷ RBI's circular on Prudential Framework for Resolution of Stressed Assets dated June 7, 2019 with reference number RBI/2018-19/ 203 DBR.No.BP.BC.45/21.04.048/2018-19.

⁸ The bail out of CG Power and Industrial Solutions Limited by Muruguppa Group was completed in approximately 8 months.

⁹ <https://corporate.cyrilamarchandblogs.com/2021/01/takeover-of-publicly-traded-companies-flashback-2020/>

¹⁰ On the date of writing of our blog, SEBI had proposed this change to the pricing guidelines under Regulation 164A of the ICDR Regulations. SEBI has introduced this amendment on January 14, 2022.



The Year Ahead

The IT sector will continue to receive a large amount of funding. We are also expecting a lot of M&A transactions in the clean energy space.

The number of M&A transactions in the stressed assets space will also rise.

Additionally, with the successful divestment of Air India to Tata Group in 2021, we expect the Indian government to decisively go ahead and formalise its disinvestment agenda in 2022. We expect a lot of interest from both Indian and foreign acquirers in such divestment initiative.

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