Mergers, Acquisitions and Corporate Restructuring
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Lecture - 06
Takeover Tactics and Anti-Takeover Defenses – 1

Hello friends, we have discussed different mergers acquisition strategies, the purpose behind a mandate takeover attempts, where different companies you have also considered certain examples in the previous sessions. In this session, we will be talking about different takeover tactics and defense mechanism adapted by different companies in the **(())** **(00:50)** market.

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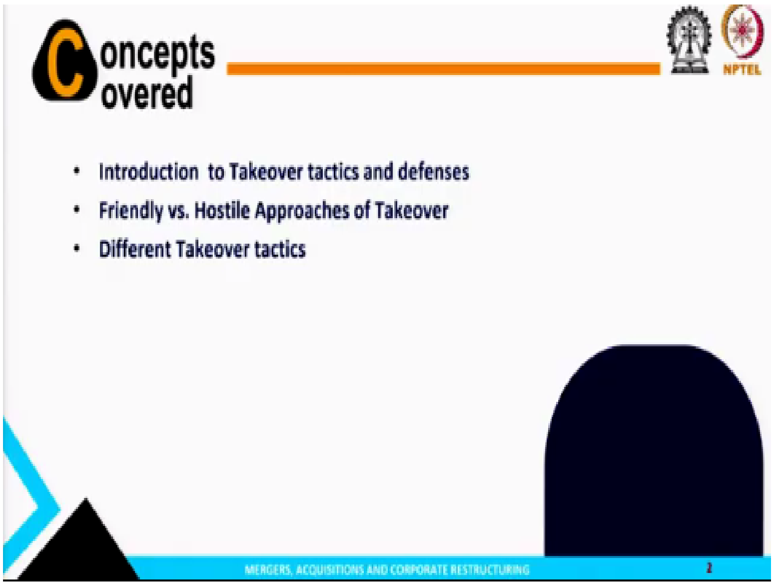

So, in the concept that you are going to cover are introduction takeover tactics and defenses. We will talk about friendly versus hostile approaches of takeover and different takeover tactics mechanism, and also defense mechanism.

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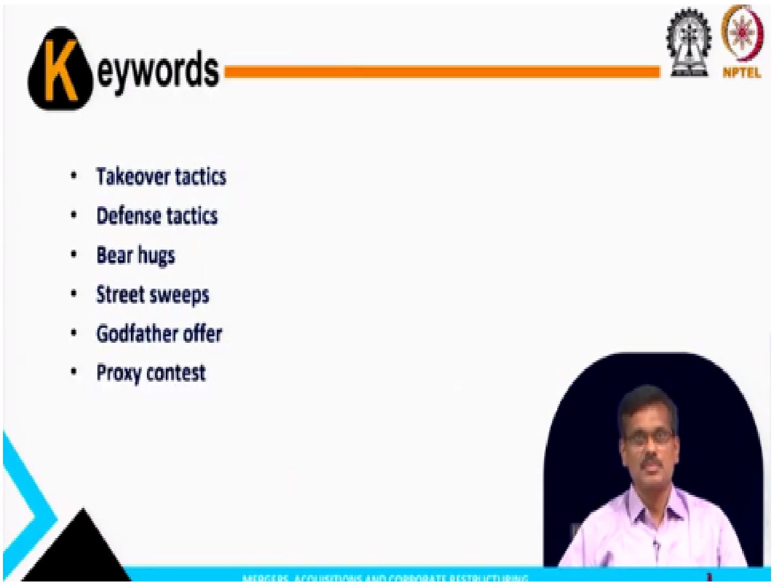

So, we will talk about different keyword that you have. These are the keywords, takeover tactics, defense tactics, bear hugs, street sweeps, godfather offer, proxy contest. But this is not an exhaustive list. We have a bigger list of takeover attempts and techniques, and defense techniques for that matter. The question arises, why do have so many techniques and defense mechanism?

The companies will not simply say that, please come and take over take us over a target company for that matter whether they like to manage themselves. At the same time, a company can be an attractive takeover target for another company and they will try to take over the company. And it can be hostile or it can be friendly for the matter. And depending on the hostility involved, the different techniques are applied by the acquiring company or the target company for that matter.

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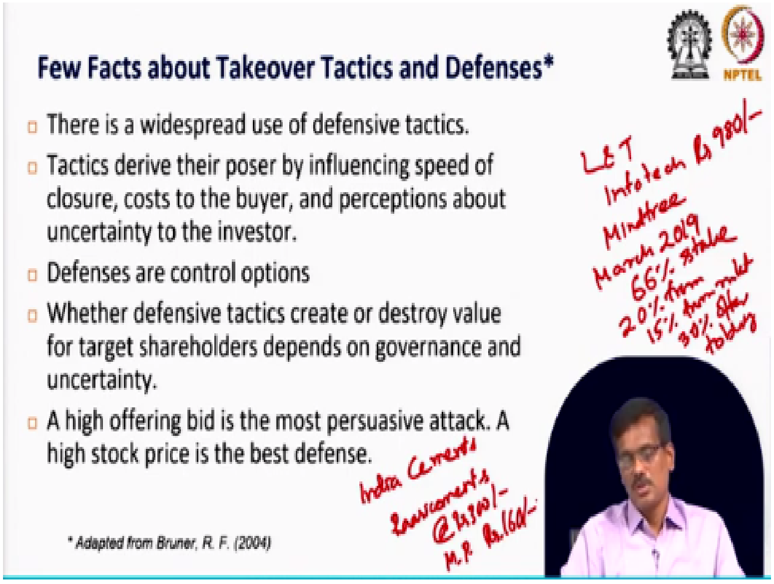

So, certain facts about takeover tactics and defenses. There are a widespread use of different takeover tactics. And it all depends upon the how quickly the tactics of takeover attempt are closed. So, that there is no uncertainty to the investor and the deal takes place as quickly as possible. At the same time, you have defenses which are like options, control options in the hands of target, they would like to delay the outcome for that matter.

And whether the defensive tactics will create destiny value, all depends on the entire governance and uncertainty. If the governance is good, then possibly attack tactics will not be useful. Defense tactics may be useful and the continuous errors may continue with the existing management. Similarly, it is said that if it is a very high offer made to a particular target company, so that can be the most persuasive attack.

Similarly, and the stock price is already high in the market it could the best defense for a particular company because in that case, the attacking company has to offer a premium over the stock price, which is already high in the market for that matter. And just an example, you might one might have heard recently that L and T took over Mindtree. So, L and T which is into multiple business segments, which also have a L and T Infotech for that matter.

They also have Infotech, so they propose to buy the shares of Mindtree which is also into IT segment. Now in March 2019, the company offered to, made an announcement actually, that they will be taking over some 66 percent stake in Mindtree. Now, how this 66 percent stake comes? They offer to buy around 20 percent from one of the promoter and owner, one of the major owner, Mr Siddhartha who was the CCD owner that time.

And then they talked, to told the market broker that, please buy 15 percent from market. And one we already discussed in previous sessions, that such type of acquisition can trigger open offer. So, they said that, we will also go for something around 30 percent offer to buy from the existing shareholder. So, all this together around 65-66 percent stake they had. And they offered to buy at something that there will be around rupees 980 per share.

And it was something around 1 to 2 percent premium over the existing market price, which was around 960 that time. It was a surprise announcement may be for somebody, but is an announcement. And subsequently, L and T's management they wanted to defend it they said, no we the Mindtree cannot taken over. Mindtree is being managed by the existing management well. So, all these things happened.

But finally, takeover took place, and now the Mindtree has become part of L and T. And the Mindtree shareholders have been given shares as well as cash by L and T for that matter. So, this is an attempt by the L and T and it was considered as something a hostile takeover attained by L and T of Mindtree for that matter. So, similarly if you go back in the history, the corporate history for that matter, in India the L and T market is not so vibrant earlier. It was not so vibrant earlier.

Now, you can see lot of M and A has taking place. And mostly in India, we will find that M and A as actually friendly. So, hostile M and A activities very less in India for that matter. We can count certain number of cases unlike other countries, where you have lot of hostile merger aggression take place. In the subsequent session, we will take off certain well-read, well discussed cases of takeover traction defense, added by different company in different cases.

And I just cited the example here L and T and Mindtree. In 1998 March, India Cements Limited offered to buy the shares, the India Cements Limited is the acquiring company, and the target was Raasi Cements a region then Andhra Pradesh based company. So, India seems to go for horizontal expansion. They offered to buy the shares of Raasi Cements at rupees 300, whereas the market price at that time was around rupees 160.

It was a huge, almost 100 percent around double the existing market price that time. So, it is a huge premium they offered to buy the shares. It was like a very huge offer and is very difficult resist for that matter. But Raasi cements which was that time, when Raju group was actually controlling. That controlling stakeholder they did not want to get the risk company and the battle took place.

It also went to the court of law for different things, and finally India cements acquired Raasi cements and Raasi cements became part of India cements group. That is in March 1998. So, someday around twenty, more than two decades back. So, these things happen India also but not in very big number for that matter. We also have might have heard about how Mittal group, that international steel group, Mittal group, they were tried to acquire.

In fact, if they eventually acquired the Arcelor group the steel making company. And they both the companies actually adopted different tactics and defense mechanisms. So, that we will discuss in detail in subsequent classes. So, just I want to sensitize that, yes, these things happen. Companies will like to take over the company and if they approach the company's management, and they agree to it becomes friendly, otherwise becomes hostile.

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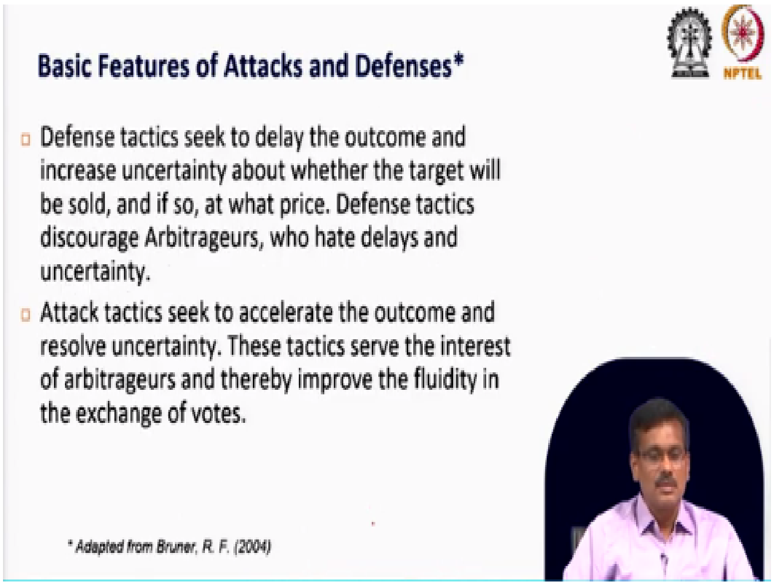

Then certain features of the attacks defense we discuss. Actually, defense tactics will try to delay the outcome. They will like delay this particular attack process itself, so that they can they best get the best price and they create lot of onset in the market. So, they will and but there are some arbitrageurs in the market, who will like to take the position and execute the deal as well as possible, so they get the advantage.

So, that is not in the interest of defense tactics are not in these arbitrageurs. They do not want the things to delay. Similarly attack tactics, multiple tactics group there where they like to accelerate the outcome. The outcome, the execution should be as quickly as possible. That is the attack tactics mechanism for that matter.

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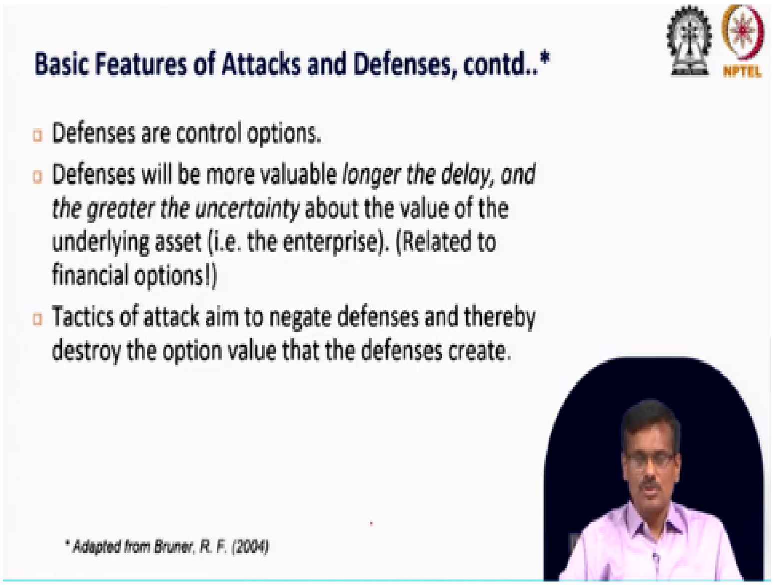

So, then yes, defense as like control options, we in the financial options you have something called, you have right to buy something, but not the obligation. So, defense is like an option embedded in the corporate structure. So, they can use the defenses option as a target company, as a response to the takeover attempt. And they may not use, suppose they get a very good deal from the acquiring company.

In that case they may not access that particular option for that matter. So, like in a option market, financial option, the value option is more if the time to expire is more and the lot more volatile in the underlying asset. So, similarly if there is a lot of uncertainty about the deal not being taking place and there is a lot of time it takes place to execute the deal, that will actually enhance the worth of the control option that is the defense options available that target company for that matter.

So, something like financial option in that case and but similarly attack techniques there could be some techniques adopted by the target company the defense and the acquiring company can always try to negate those defenses and thereby destroy the option value for that matter. So, this fight can take place for a longer duration or shorter duration. And finally, the acquisition may take place, may not take place.

But if both the companies, will both the parties will try to use as many options to defend their position for that matter.

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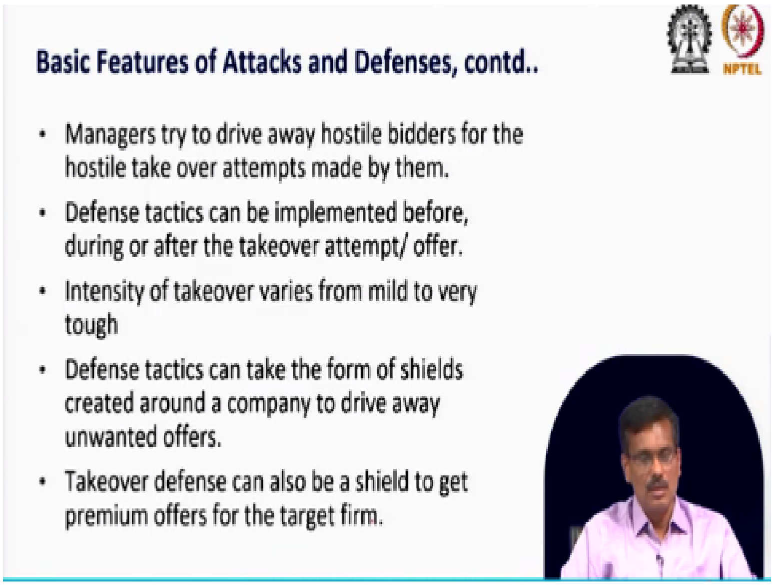

And certain other features that we discuss, managers of target company will always try to drive as hostile bidders. They are hostile they do not want to entertain them and takeover attempts. And similarly, the defense tactics is not necessary that you would be reactive to the takeover attempt. Defense tactics can also be inbuilt in the company's statute, or company's law, accessibility company. There could be some provisions available in the company itself.

Before the takeover attempt by anybody takes place itself, as a proactive metric for that measure for that matter. And intensity of takeover attempt can vary from mild to very top. We will discuss about different techniques subsequent slides. And defense will always try to create a shield out of around the company so that, they can drive away the hostile takeover attempt or the unwanted offers.

We do not want you to come here, so they will create a shield around the company so that you do not get taken over. And at the same time, this seal also can be used something like a finally, when you are defense tactics are actually very strong, and in that case acquiring company may offer to buy this share at a little higher premium. So, at the end of the day if that takes place that with having lot of defense tactics, if you are able to elicit a higher premium from the acquiring company.

Then nothing like it for that matter from the target company several responsible. At the end of the day target company's management should be protecting the interest of the target company shareholders, and interest, as well as value of this directed shareholders. If by having good defense mechanism, if they can do it, then nothing like it.

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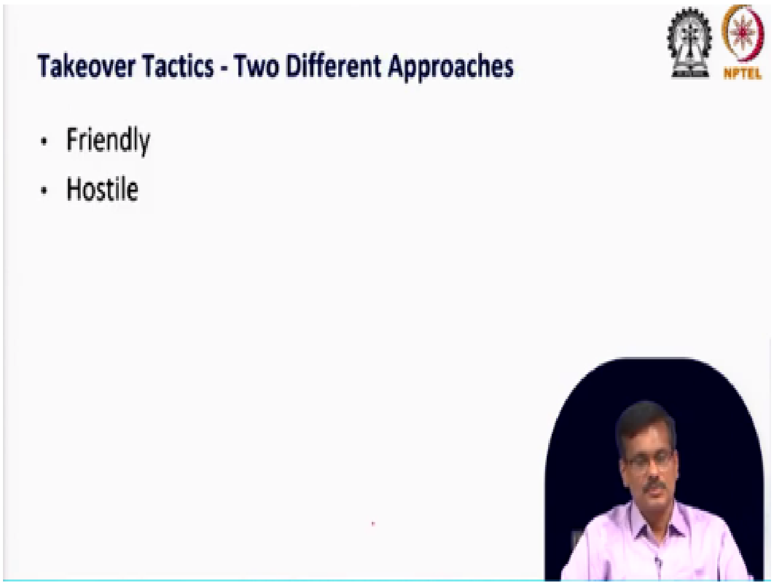

So, takeover tactics we discussed, can be a friendly one, or could be a hostile one.

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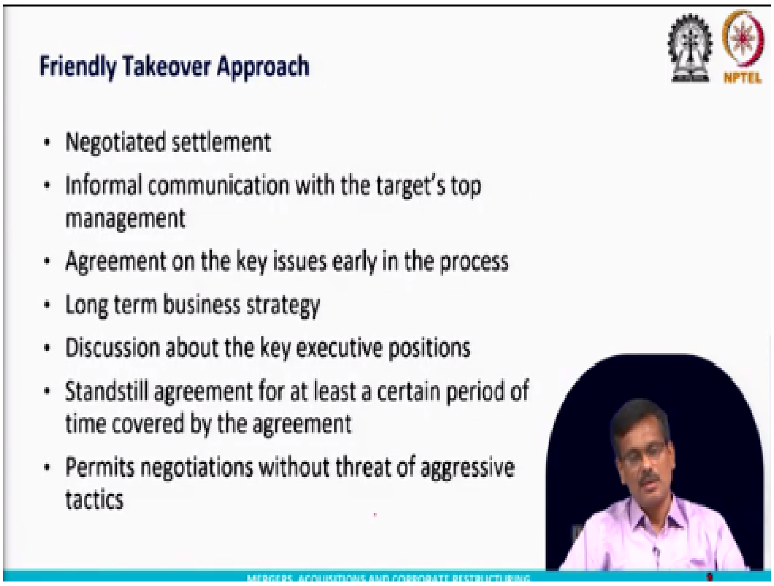

So, when you talk about friendly, then it is typically a negotiated statement. Before settlement, people come together to the table they discuss among themselves. They have their respective team target as well acquiring company they respect they respectively discusses on the table. And they try to sort it out what could the best deal for that matter. And there could also be lot of informal communication prior to this particular formal meeting with the target stop management that acquiring company does.

And there could be some agreements, they can take place. It could be taken as something like from acquiring other target companies point to as a long-term business strategy. And then they can also discuss about the CEO of two companies are there. What will happen target CEO? Whether they will continue, or they will get a different position. How are going to revert them in terms of different positions or they may leave the company for that matter also.

So, all those things have to be sorted out. Of course, these things are also part of deal structure, which we have as a part of this particular learning process. We have different such other sessions and deal structure there will also talk revisit these points. This particular point that what will happen to the; executive positions refund in the company particular target company, and they can also have an agreement among themselves to stand still.

That means do not go anywhere, let the target not go anywhere to solicit the offer from some other company. An acquiring company also can say, we are sincere about this, we will also now pursue this particular deal and later we may think something else. So, you do not have an aggressive tactics here. And people negotiate together and takeover can finally take place. Whereas, in fact when you have hostile takeover and finally in hostile takeover, if the both the parties agree.

And they sit on the table that is also can be taken as now the friendly takeover. So, hostile hostility can become actually friendly because eventually the deal is going to anyway take place.

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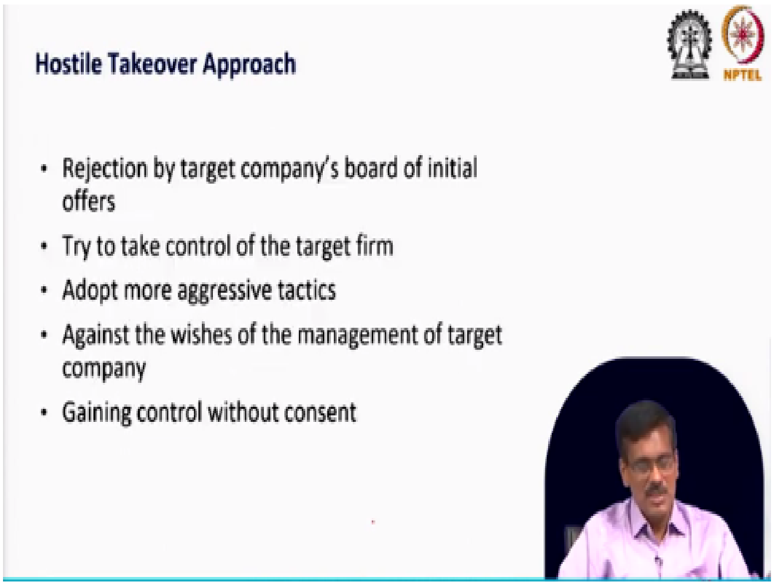

So, coming specifically hostile takeover approach, yes with the targets management the board has the rejected the initial offer. And they will try to take control of the target from in any case, because they found a target very suitable from strategy expansion etcetera point of view. So, they would like to adopt as many aggressive tactics, so that the target fall prey to the acquiring company strategy.

It is obviously against the wishes of the targets existing management and so you gain the control, try to gain the control without the consent of the targets management. In fact, that we talked about in the L and T's attempt to take over, when they in 2019. So, in fact, the fact that they got 20 percent stake from one of the major invest in the company and the CDD's owner that time.

So, that itself is an you know signal that we are interested in we are going to pursue the deal and going to acquire more and more shares in that case. So, that was obviously without the consent of the existing management.

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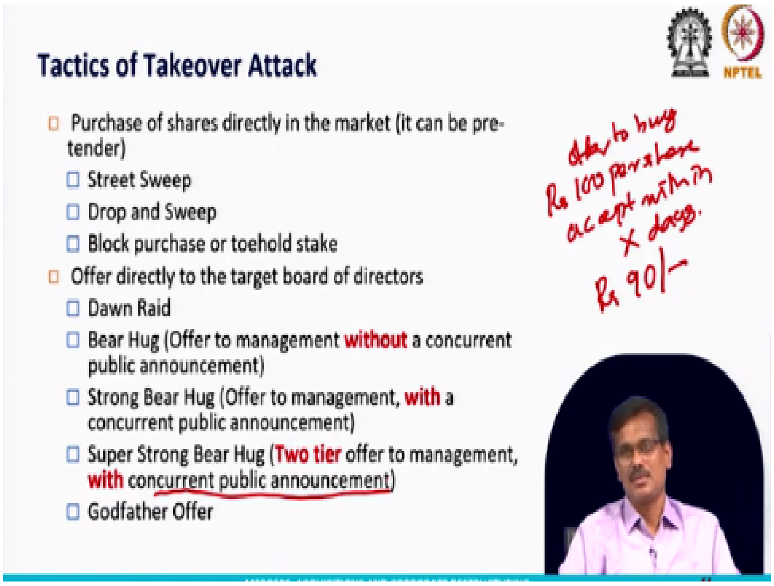

So, different tactics that we have in the attack tactics will first discuss, and subsequently we will discuss in the defense attack defense techniques also, in the subsequent sessions. So, you directly the street again company directly purchases shares from the market. So, it can be before the day tender. Again, going back to our L and T example they bought the share from one of the major owner and also they of instructed the brokers to buy around some 15% share in the open market.

So, you can always go and buy. So, this is called you go and buy a substantial stake and good percentage, it could be taken a street sweep. So, street sweep, you are actually sweep the market you will take over as many by as many such market. Of course, when you are buying certain percentage taken the company and depending on the particular country, if you the triggers a open of her regulation of the regulator like in SEBI.

So, once you buy a certain person stake, or your shareholding become certain X percentage in the particular company, as you discussed in the previous session, yes, we have to the acquiring company has to offer make an open offer, at least make an announcement stock action the company that your stake has become like this. So, all these regulations rules have to be followed by the acquiring company.

Otherwise, that can be taken as a negative, in fact weak point from the acquiring company fund that can be also sued in the court of law by the target company. So, street sweep is, you buy and shares as particular percentage. Drop and sweep will be something you actually make an offer to buy the shares in the market as a takeover attempt, but then you drop your idea.

So, because of that the sales may panic, and the share price of the company may actually go down. And then, you may take advantage of the lower share price and buy those shares in the market. It is like a street sweep, but possibly you trigger an incident event, so that which leads to lowering of the share price in the market for that matter. Then one can also have block purchase or toehold stake.

In fact, again let me cite this example, where the L and T bought this stake offered by 20% stakeholder of the major owner. That was also like toehold stake they have. So, you buy toehold stake and it is not necessary that you are going to take over the management. But you can always have, you know wait for some time, or you may you may also sell it in the market. But this could be a precursor to the takeover trend for that matter.

So, you in this case you directly purchase shares from the market. Then you offer to buy the shares from to the target board management you go and tell the managers yes, will like to buy the shares. Dawn raid in the early morning, something like early morning. It is not typically early morning but a early morning surprise, you go and approach the targets management that we will like to buy the shares in this particular company and that is one.

If you do that, it is called bear hug or suddenly in the early morning you come everybody comes to know that, there is a raid by a particular company to take over this company for that matter. So, it is the bear hug is that you offer to the management, but do not let the other people, let us say, I just know, you do not make any concurrent announcement. And strong bear hug is that, you offer to management and also you would make the public announcement so that public if they find public means, this other shareholder’s retail sellers.

If they find there is a merit in the offer made by the acquiring company, they may put up pressure on the target company’s management to accept the offer. So, that is called a strong bear hug, you are offering to the management; at the same time, you are making an announcement to the public that we have made such and such offer to them. Then another form of bear hug is the super strong bear hug.

Wherever two of two tier offer to the management with a concurrent public announcement. So, when you talk about two tier offer that means, they say that we, let us say the company may offer to buy the shares, as let us say 100 per share. And they say accept this offer, let us say within X number of days but if you do not accept this offer, then our price will be offer will be, maybe rupees 90.

So, invariable you are putting a pressure on the management to accept the offer, as well as possible because if you actually delay the particular thing and you actually offer later, then you will be getting rupees 90 per share. So, in that way, you have pressure inbuilt by the deal itself. As well as, you have the pressure from the shareholders, because it is also there is a concurrent public announcement. So, that is called a super strong bear hug.

Then you have something called godfather offer. So, in fact, when the India cements offered to buy Raasi cements at that one time at rupees 300 per share, whether the market price is rupees 160, it is like a godfather offer, means offer price is so high the target can possibly, say no to that asset. It will be very one the best deal they are going to get it for that matter. So, that is called a godfather offer for that matter.

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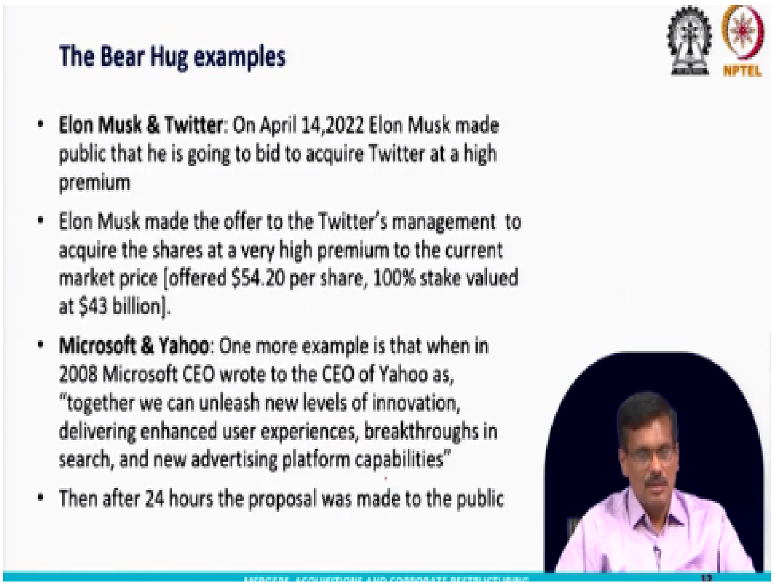

So, certain bear hug examples recently we have heard, lot of discussion took place as far as the Elon Musk trying to take over Twitter. And finally, the Twitter takeover has taken place and then you have lot of things have taken place, now lot of discussion. And so, on April before this whatever to happen today and on April 14, 2022, Elon Musk made the public that he is going to bid to acquire Twitter at a very high premium.

In fact, he offered to buy entire 100 percent stake in Twitter by paying 54.20 dollar, and this deal size was around 43 billion US dollar. So, it was like a bear hug because they made offer to the management, as well as they made a public announcement like a strong bear hug for that matter. Similarly, Microsoft made an announcement CEO that time, that to the CEO of Yahoo, that together we can unleash new levels of innovation delivery enhanced user experiences, breakthroughs in search, and new advertising platform capabilities.

So, Microsoft wanted to take over Yahoo, and but also, they made the announcement though like a bear hug they Microsoft management made the offer to Yahoo's management. And after some time, there is a concurrent public announcement. So, start which is a bear hug since there a public announcement was made, proposal was made public. So, it can be taken as a strong bear hug for that matter. So, this is an example that we have in the bear hug examples for that matter.

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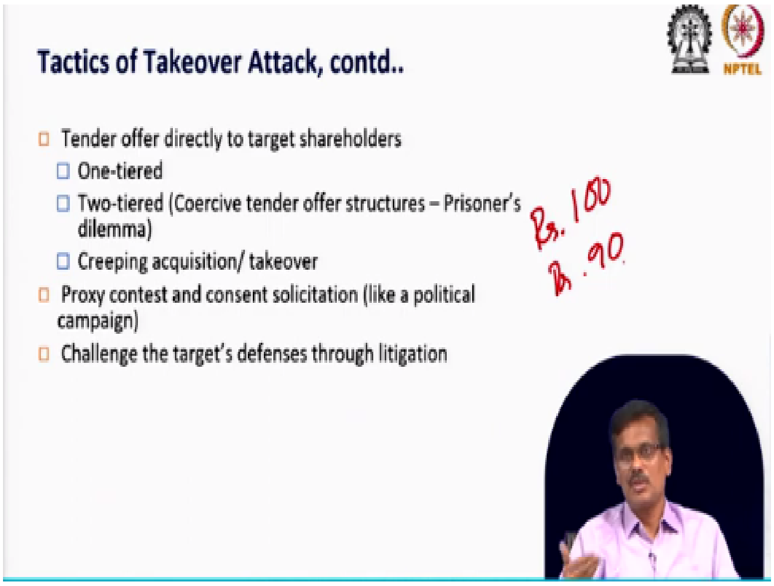

So, then tender offer you have where the company will directly offer to the shareholders. You can have one tier offer that means you offer to buy this share for particular price. Let us see, rupees 100 per share that the price as such. Two tier that will as you discussed in case of strong bear hug, in two tired offers you create a situation, so that people will like to execute they deal as quickly so the tender the shares as quickly as possible.

Because the offer could be that, if you buy the shares today is offer to sell this as today or tomorrow or something two days let us say something number day you get rupees 100, otherwise you get rupees 90. So, if you delay, it will be rupees 90. In fact, the company acquiring company may have a target to buy certain percentage of shares in the target. Once they achieve that particular target, they may not be interested to buy more shares.

So, if you have as a target shareholder, if you have delayed to offer, then you may be left in the large, you will not get the share even at 90 rupees also. Then you can also slowly buy the shares in the market like creeper, you can buy this share in the company and take over, I have time to take over. Then you have also like a proxy contest. That is the proxy contest means, suppose the two managements one management is having certain stake may be 20-30 percent stake.

And the per company has taken over acquiring company is there, they also 20-30 percent stake. Now another 40 percent stake,30 percent stake is there, but they do not have majority control. There is another 40 percent stake, which is with the other investors. So, there they can go for proxy, they can say that the management, that the acquiring company can say that we will like to displace the existing management we will have our board members.

And they can put a proposal in the resolution and offer to or ask for a general body meeting of the shareholders. And sellers meeting, everybody may not come so they may request the other shareholders to give a proxy in their favour. That is either for the acquiring company, the target company and depending the proxy board and your board together whatever board is higher, that management is going to be continuing for that matter.

Then that is a proxy contest you also have in target defenses. Target may also have defenses in mechanism, and there may not be valid in the court in the law. So, you can always go to the court of law, and say that this is not correct approach adapted by the target company. You can try to negate the difference. So, this can also another takeover attack for that matter.

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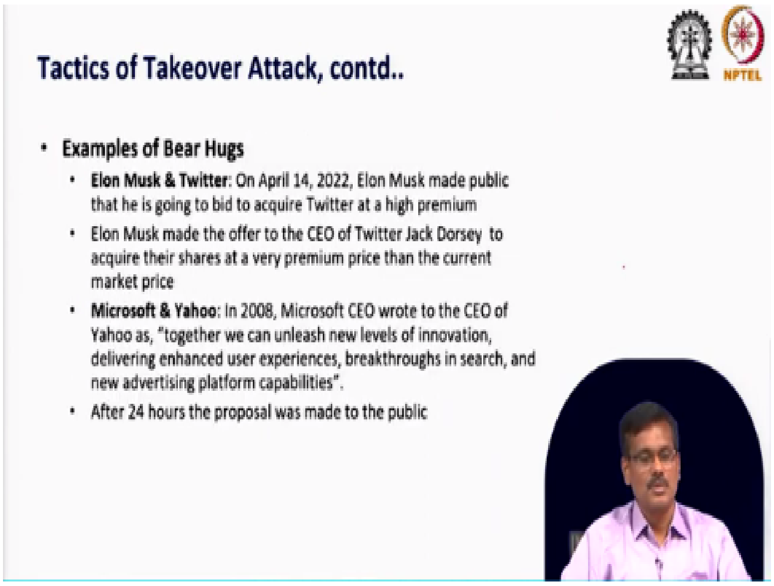

So, we discussed about this bear hugs earlier also.

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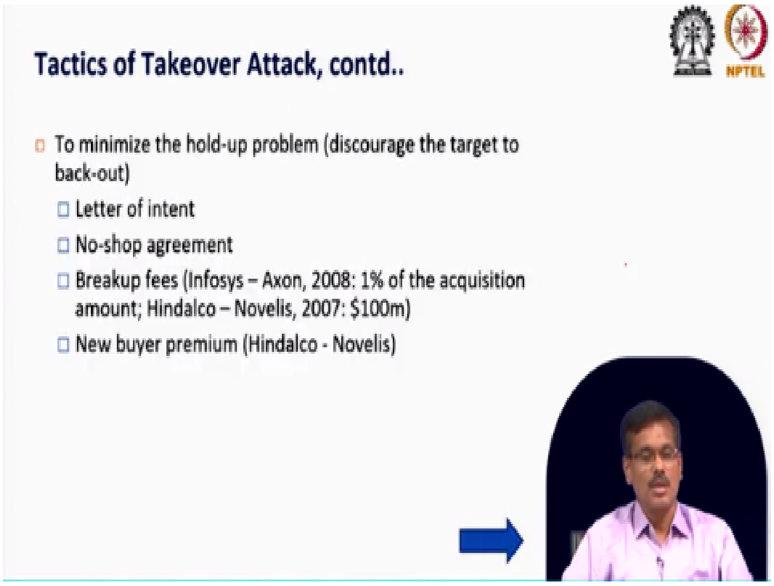

But at the same time, you have such a friendly takeover is taking place, you like to execute the drill as quickly as possible. In that case, the company can think of both the companies can think of acquiring company can think of certain things, so that they can execute the larger as possible. They can have a gentleman schedule a letter of intent, which will say that when we will see it one what will be the milestones when you are going to close the deal.

Then you can also have an agreement that, no-shop agreement that means, target is not going to solicit offer from or standstill agreement, also known as standstill agreement solicit offer from other companies, so we will not go for that. Acquiring company also can give a gentleman's assurance that, even this till the negotiation takes place we will be very much committed to this particular negotiation.

Then you can also have something called eventually the target may go to some other solicitor, so in that case, some other offer in that case the breakup fees like Infosys – Axon, which Axon was supposedly bought by Infosys. But finally, what happened Axon was actually bought by HP and another company and in that you had a breakup fee that 1 percent of the it was actually HCL which was supposed to finally the Axon was taken over by HCL.

And Axon had to agree to pay 1 percent acquisition amount as a breakup fees Infosys for that matter. And so subsequently, Infosys got that extra amount as a breakup fees like other source of income in that particular in 2008. In Hindalco-Novelis, Hindalco bought it the quote went for the agreement, takeover attempt or the friendly takeover attempt of Novelis in 2007, there was a breakup fee of few 100 million dollar was actually negotiated.

If the Novelis had gone to some other company for a takeover, then Novelis should have paid 100 million dollar to Hindalco but finally, Hindalco-Novelis deal took place. Similarly, you have another in Hindalco company, it is not the breakup fee as such Novelis cannot, the target company cannot accept offer at a price not at least, not more than X person offered by the existing acquiring company.

So, maybe let us say, X Hindalco is offering to buy the shares at X rupees or X dollar per share of Novelis. And that is a deal already done when a negotiation is taking place. Then if the Novelis is going for some other is not that because somebody offers a very small extra amount than what Hindalco has offered. Novelis cannot accept if certain X may be 5 percent 10 percent extra has to be offered by the other company, then only Novelis can do.

So, new buyer has to pay a premium over the old existing buyer for that matter. Then only the deal can be changed for that matter.

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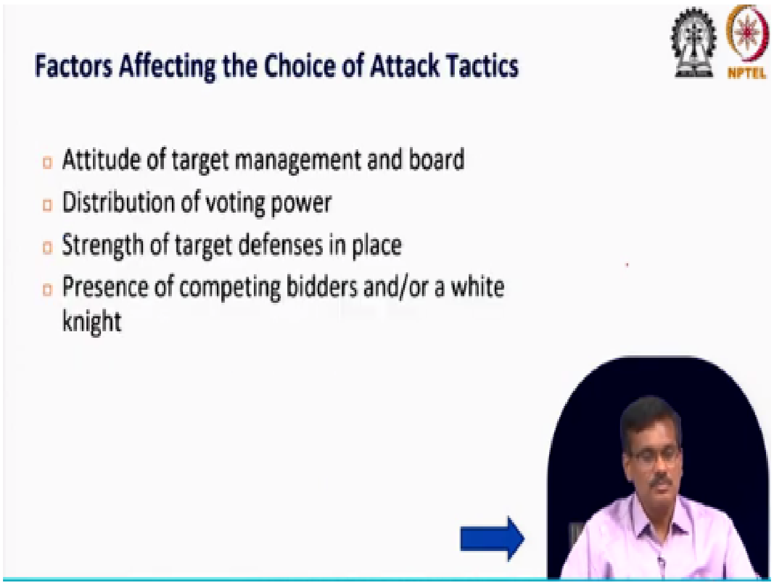

Then yes, how quickly it can be affecting the takeover tactics? It depends upon that what targets. A target management is ready to be taken over nothing like it, board is ready nothing like it. Voting power could be very dispersed, people do not come. So, you have a certain person stake and you can always display the existing management. Voting power is concentrated, then you have to approach those people who have got majority some certain percentage stake, that is also there.

And how type of defenses that is there in the target company? That also will talk about how takeover attacks can take place. And if there is any other competing bidders which are existing, as like a white knight or white square, we will talk about this as a defense as a part of defense tactics in the subsequent class for that matter.

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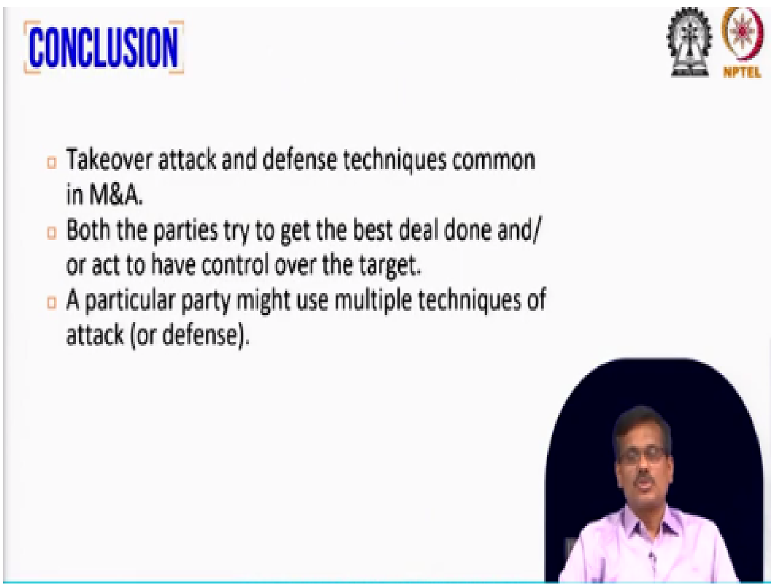

So, with this, so coming to the conclusion for this session, yes, takeover attack defense tactics are common in M and A both parties try to get the best deal done, or have to have control over the target. And particular party may use multiple techniques about attack defense we shall be discussing about defense techniques in the subsequent session.

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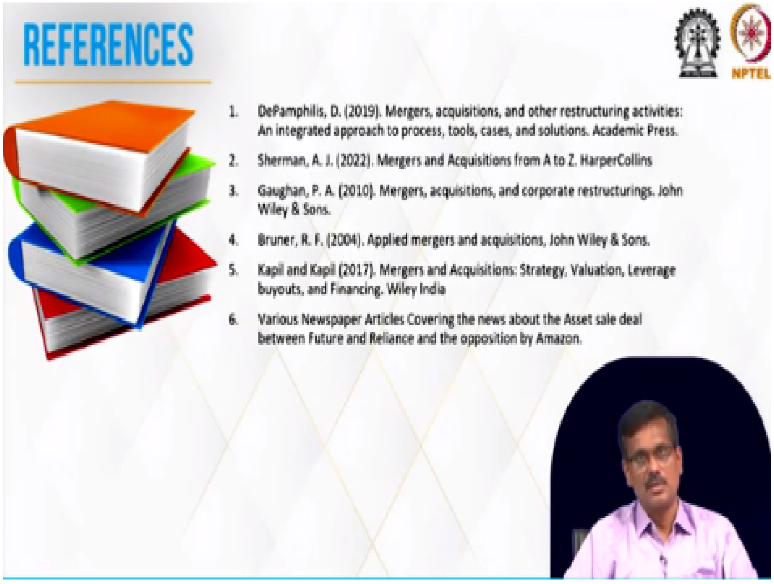

Thank you, happy learning.