



CURIOUS CASE OF OPEN-ENDED SHAREHOLDERS' APPROVAL FOR RELATED PARTY TRANSACTIONS

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Sanofi India Ltd., in its 61st Annual General Meeting ('AGM'), proposed a resolution for shareholders' approval. The resolution related to shareholders' approval for the Related Party Transaction under the Companies Act, 2013 and Regulation 23 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('Listing Regulations'). The transaction was between Sanofi India Ltd. and Sanofi-Aventis Singapore Pte. Ltd., Singapore. This article is summary of facts, analysis of the provisions relating to 'related party transactions', reference of Proxy Advisory Firm's Report, analysis of the corporate governance issues in the said transaction.

Broad Facts: Sanofi India Ltd., in its AGM, proposed an Ordinary Resolution relating to 'Related Party Transactions' for shareholders approval. The transaction related to purchase, sale, transfer or receipt of products, goods, active pharmaceutical ingredients, materials, services or other obligations, if any, with Sanofi-Aventis Singapore Pte. Ltd. The transaction was for an amount not exceeding in aggregate Rs. 20,000 million in each financial year.¹

In its Explanatory Statement, Sanofi India Ltd. stated that Sanofi-Aventis Singapore Pte. Ltd. is a 'Related Party' within the meaning of Section 2(76) of the Companies Act, 2013 and Reg. 23 of Listing Regulations. Sanofi India Ltd. also stated that the said transaction is deemed to be 'material' in nature (as defined in Listing Regulations) as the transaction may exceed 10% of the annual turnover of Sanofi India Ltd. The Company further disclosed that the members at 59th AGM (held on April 29, 2015) had approved the Related Party Transactions between the Company and Sanofi-Aventis Singapore Pte. Ltd., for an amount not exceeding in aggregate Rs. 11,000 million in each financial year. Sanofi India Ltd. has justified the related party transaction by stating that "Based on the future business projections of the Company, it is proposed to

increase this limit to an amount not exceeding in aggregate Rs. 20,000 million (Rs. Twenty Thousand Million only) in each financial year." This resolution was passed in the AGM² of Sanofi India Ltd. (56,09,905 (99.99%) votes in favour and 578 (0.01%) votes against the resolution).

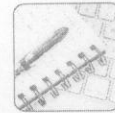
Issues raised by Proxy Advisory Firm³: Mumbai-based proxy advisor Stakeholders Empowerment Services ('SES') had asked shareholders of Sanofi India Ltd. to vote against the proposed Related Party Transaction with Sanofi-Aventis Singapore Pte Ltd. The SES report has said that although Sanofi India has "provided adequate justification and disclosures regarding the transaction in a detailed manner, and stated that the transactions are in the ordinary course of business and at arm's length" the company is seeking approval of the shareholders for perpetuity, that is, for RPTs up to Rs. 2,000 crore for every financial year without any further approval of the shareholders. In its report, it is stated that "SES believes that as owners of the company, shareholders have the full right to approve or disapprove any material-related party transaction of the company. Such resolutions with perpetual approval provide unfettered power to the Board of Directors, even if the company's business scenario changes... Therefore, SES believes that, as a good governance practice, the company must take such approval of the shareholders on a yearly or periodical basis, keeping in mind the dynamics of business." SES concluded that almost 25% of sales and more than 25% of purchases by Sanofi India Ltd. are through related party and said that "The Company must explain the advantage that it is accruing due to these RPTs in monetary and strategic terms"

Analysis of the provisions under Companies Act, 2013: According to the provisions of Section 188 of the Companies Act, 2013, a transaction is a 'related party transaction' if the company enters into a prescribed transaction (Section 188(1) of Companies Act, 2013) with prescribed related

¹ Notice of 61st AGM of Sanofi India Ltd.

² <http://www.bseindia.com/stock-share-price/VotingResultMtingResult.aspx?scripcode=500674&MI=17438&srno=1&T=AGM>

³ <http://www.thehindubusinessline.com/companies/ses-asks-sanofi-shareholders-to-vote-against-related-party-transaction/article9679081.ece>



parties (Section 2(76) of Companies Act, 2013). Section 188(1) of Companies Act, 2013 contemplates consent of the directors at the meeting of the board of directors of the company. Section 177 of the Companies Act, 2013 provides for approval of the Audit Committee for the 'Related Party Transactions'. The Companies Act, 2013 also provides for omnibus approval of related party transactions, with a condition on amount (Rs. 1 crore) and tenure of omnibus approval (1 year). The approval of the board of directors or shareholders depends on whether the transaction is in the ordinary course of its business and on arms' length-basis. Prior approval of the shareholders is required if the contract or arrangement exceeds the prescribed⁴ threshold. The member of the company shall not vote on such resolution relating to related party transaction, if such member is a related party.

Analysis of the provisions under Listing Regulations: Regulation 23 of the Listing Regulations relates to 'Related Party Transactions'. Under Listing Regulations, a transaction is a 'related party transaction' if the company enters into a prescribed transaction (as defined in Listing Regulations) with prescribed related parties (as defined in Listing Regulations). The Regulations contemplates approval of the Audit Committee for the said transactions. The Listing Regulations provides for omnibus approval of related party transactions, with a condition on amount (Rs. 1 crore) and tenure of omnibus approval (1 year). However, under the Listing Regulations, the Audit Committee shall quarterly review the related party transactions. Prior approval of the shareholders is required if the contract or arrangement exceeds 10% of annual consolidated turnover of the listed company. The member of the company and related parson to the members are ineligible to vote on such resolution relating to related party transaction.

Analysis of Companies Act, 2013 vis-à-vis Listing Regulations: Listed companies are required to

comply with the provisions of Companies Act, 2013 and Listing Regulations, both. Under the Companies Act, 2013, the approval of the shareholders is required on breaching the thresholds.⁵ It is also necessary to confirm whether the transaction is in the ordinary course of its business and on arms' length-basis. However, under the Listing Regulations, shareholders' approval is required if the contract or arrangement exceeds 10% of annual consolidated turnover of the listed company, irrespective of the fact that whether the transaction is in the ordinary course of its business and / or the transaction is on arms' length-basis.

Discussion on Sanofi India Ltd. & Sanofi-Aventis Singapore Pte. Ltd. deal: In my view, SES has rightly raised the issue with respect to the related party transactions between Sanofi India Ltd. and Sanofi-Aventis Singapore Pte. Ltd., Singapore. The concern is not about the nature of transaction, quantum of transaction and the terms and conditions decided inter-se (though not mentioned anywhere). The transaction would be in the interest of the company and shareholders, as well. The important corporate governance issue in the resolution is w.r.t. open ended shareholders' approval for the related party transaction i.e. the resolution without any expiry date. Though, as per resolution, there is a monetary cap on the related party transaction. It is also worth noting that neither Companies Act, 2013 nor Listing Regulations provide for a time period restriction on the Related Party Transactions. Under the Listing Regulations, the Audit Committee shall quarterly review the said transactions, for which it has given omnibus approval. However, the provisions relating to review is not applicable in case of approval by the board of directors or shareholders. Therefore, though the related party transaction (as discussed above) would be 'legally valid', the transaction, in my view, has not passed the test of good corporate governance practice.

⁴ As prescribed in Rule 15 of the Companies (Meetings of Board and its Powers) Rules, 2014

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