

Disney and marvel

Business



There was a remarkable period of intense negotiations for about two weeks. Despite the hot negotiations from both parties, some terms remained outstanding (Graser, 2009). For instance, Disney maintained that a “force the vote” provision that was contained in the merger agreement be retained. In addition, he insisted on being no deal of protection measures especially that was contained in its first draft. The first draft defined the voting agreement by Perlmutter. Marvel’s had developed a special transactions committee that was assigned the role of ensuring that its financial and legal advisor were well informed on various issues relating to the terms of agreement. On the contrary, Marvel considered Disney’s concept of “force the vote” as an improper form of restriction by Disney to Marvel (Patton, 1991). This forced the Marvel’s board to reconsider the terms of the agreement before they entered into any transactions.

They put into consideration bids by other potential buyers before they consummated the Disney’s deal. On the other hand, Marvel was willing to agree to break up the fee equal to about 2.9 % of the overall value of transaction. This was in return for the concession by their partner among any other deal that was considering the protection measures. The following were the terms of the agreement that Disney made with Marvel during the negotiations; firstly, to remove the force of what was referred to as “force the vote” (Fisher & Shapiro, 2006).

Secondly, Marvel was to allow Marvel to end the terms of the merger in favor of the established superior proposal. This was only possible if the board that was involved in the negotiations decided to drop the bid. Another agreement was to reduce the process of break up fee. This was to be reduced from 4%

to 3.5 % of the total transaction value (Lewicki, et al, 2009). Disney also agreed to allow the Marvel's board to alter its recommendations of the overall transaction process.

This was in case Marvel claimed it had a fiduciary duty to change the recommendations. The last agreement was to eliminate the 18 month voting agreement. This implied that in case the merge agreement will be terminated, the voting agreement will also be terminated. During the negotiations, Marvel's board of directors held a meeting. Disney's proposal was revised by its legal and financial advisors.

During the meeting, Marvel's legal advisor advised the company to protect measures concerning its fiduciary duties among other rights in the process of transaction. In case the company received a possible superior proposal mainly from a third party such as Delaware General Corporation, it would be allowed to drop the initial agreement by Disney. In the course of the meeting, Disney analyzed the procedure that consisted of various alternative bids that might develop under the merger agreement. The conditions under which the company would terminate the merger were also discussed. Moreover the condition under which the company would break up the payable amount to Disney was some of the important issues raised by the lawyers.

On the same, Marvel attorney's Disney would also develop protection measures to bid the merger agreement (Lewicki, et al, 2009). They should provide Marvel's directors with the most flexible way of entertaining the bona fide with the various alternative proposals. Their fiduciary duties should

be honored by Disney. Most importantly, they were not to coerce Marvel and their stakeholders. After the meeting, Disney and Marvel entered into agreement by signing the merger agreement (Patton, 1991). Therefore, they entered into the voting agreement with Disney.

After the completion of the deal, Disney would acquire the ownership of Marvel as well as its characters. Criticism can be seen in the discussions between Disney and Marvel. This entails the background of the merger. Disney stresses on the measures of protection without first considering the direction of the negotiations. Disney established his own “superior” proposal describing the terms of agreement that Marvel had to abide with. This made Marvel develop a negative perception that they were restricted from expressing their autonomy.

Moreover, the negotiations that emphasized the terms of purchase, the price, the proportion of cash, as well as the stock, possess a major critic. This is because the state holders did not consider most of their subplots in the agreement and in taking the main action. Their back and forth negotiations show a negative picture. They resembled a theater that made the process more complicated because of their conflicting issues. Some critics thought that the marriage between the two companies would not last for long (Lewicki, J.

et al, 2009). Marvel’s board fiduciary duties were placed under the Delaware law. This was meant to minimize the purchase price of the company.

However, it is obvious that the deal does not legally prescribe any steps that

the director was obliged to follow in order to satisfy their Revlon duties.

Thus, this was not a shrewd step by Marvel's board (Patton, 1991).

However, Delaware has played a big role in outlining the major duties of the director to the shareholders to ensure that the sale of the company is done in the most effective manner. On the other hand, Disney's S-4 was entangled with questions about the main purpose of including some of the terms in the overall deal. They argued that some of the terms were not useful in making the final decisions. For example, the term that stressed on bargaining chips in the process of making the initial offer by any potential buyer apart from Disney was useless. In deed, elimination of these terms as protection measure, does not add value to the transaction of the company.

On the same, some of the protective measures that each party held on did not concede any values to the transaction of Marvel (Lewicki, J. et al, 2009). It made the negotiation length and complicated. Much of the discussions between the two companies do not describe what a superior proposal entails. As earlier stated, Disney allowed Marvel to enter another agreement with any other buyer in case he offered a more superior bid. However, it does not specifically constitute other terms in the superior proposal.

Therefore, much of the discussions in the merger agreement signify very little in the overall process of negotiation. Some critics argue that Marvel was not worth \$ 4 billion due to some of the issues surrounding the merger such as copyright.