

MEMORANDUM

From: Samira

Subject: Practical Advice

Date: December 6, 2020

The Transaction

Provide urgent advice to the client's board regarding the emergence of a new bidder in the transaction

Abstract

Hi Rachel

I have prepared a proposed response to your question below – please let me know if I can assist further

Best,
Samira

Abstract

Hi Rachel

Thank you for your email – it's great to hear there has been further interest in the sale process

In short, Rajdanto is not prohibited outright from launching a takeover bid of Denove under Delaware law, however, there will be additional hurdles to be aware of for Rajdanto to participate in the sale process if Rajdanto is looking to partner up with another private equity firm

Rajdanto is an 'interested stockholder' for the purposes of § 203 of Delaware General Corporations Law (DGCL) which generally prevents Rajdanto from making this type of takeover bid for a period of 3 years (from the date it acquired more than 15% of its voting stock. While Rajdanto acquired its stock more than 3 years ago, there is a concern that, if it teams up with Amiko, Amiko may be deemed to become an "owner" of Rajdanto's stock by virtue of its arrangements with Rajdanto, and thus itself become an interested stockholder, who has not yet held the stock for three years. If that is the case, the bid could still proceed, but it gets more complicated. Under § 203, Denove would have two options:

1. Have the Denove board approve, in advance, that arrangement (or the potential transaction involving Amiko and Rajdanto) that would cause Amiko to become an "interested stockholder", or
2. The acquisition by Rajdanto/Amiko would need to be approved by both the Denove board, and 66 or 2/3% of the outstanding stock not owned by Rajdanto/Amiko

The first option would be preferable to the second, since the heightened voting threshold would potentially create some real deal risk (i.e., it would mean you need two-thirds of the 75% not owned by Rajdanto to get the transaction approved, instead of a simple majority). However, doing so will take some work and consideration (and education for the Denove board), so we should make sure that Rajdanto is thinking about this risk, too, if they are really considering to pair up with Amiko, and stay coordinated with them so that they do not accidentally create a foot-fault under these rules

I would be more than happy to chat further on the phone about this – let me know if you think this would be helpful. Also, please keep us updated as we learn more

Best regards,
Samira