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JEWELRY

LVMH backs out of $16.2B Tiffany deal, leading to lawsuit meant to enforce merger

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By MICKEY ALAM KHAN

The $16.2 billion deal to acquire jeweler Tiffany & Co. fell through when potential acquirer, luxury conglomerate LVMH, backed out after citing threats of taxes on French products by the United States.

The withdrawal of the offer, based on a French ministerial letter to defer the acquisition, has led to an immediate lawsuit filed by New York-based Tiffany against LVMH to enforce the merger agreement. Tiffany claims the French government request that Paris-based LVMH delay the closing has no basis in French law.

"We believe that LVMH will seek to use any available means in an attempt to avoid closing the transaction on the agreed terms," said Roger Farah, chairman of the Tiffany board of directors, in a statement.

"But the simple facts are that there is no basis under French law for the Foreign Affairs Minister to order a company to breach a valid and binding agreement, and LVMH's unilateral discussions with the French government without notifying or consulting with Tiffany and its counsel were a further breach of LVMH's obligations under the Merger Agreement," he said.

"Moreover, this supposed official French effort to retaliate against the U.S. for proposed new tariffs has never been announced or discussed publicly; how could it possibly then be an effort to pressure the U.S. into revoking the tariffs? Furthermore, as we are not aware of any other French company receiving such a request, it is all the more clear that LVMH has unclean hands."

The acquisition of Tiffany would have been LVMH's biggest, coming nine years after its $5.2 billion purchase of Italian jeweler Bulgari. LVMH's portfolio includes some of the leading luxury brands worldwide, including Louis Vuitton and Christian Dior.

LVMH defended its actions to walk out of the Tiffany deal in a brief statement, which, it seems, was hurriedly drafted.

"The [LVMH] Board learned of a letter from the French European and Foreign Affairs Minister which, in reaction to the threat of taxes on French products by the US, directed the Group to differ *[sic]* the acquisition of Tiffany until after January 6th, 2021," LVMH said in a statement.

"Furthermore, the Board noted Tiffany & Co.'s requested to extend the "Outside Date" in the Merger Agreement from November 24th to December 31st, 2020.

"As a results *[sic]* of these elements, and knowledge of the first legal analysis led by the advisors and the LVMH teams, the Board decided to comply with the Merger Agreement signed in November 2019 which provides, in any event for a closing deadline no later than November 24th, 2020 and officially records that, as it stands, the Group LVMH will therefore not be able to complete the acquisition of Tiffany & Co."

Here is the LVMH statement, issued Sept. 9, in its entirety:

After a succession of events which undermine the acquisition of Tiffany & Co, the Board of LVMH met to review the situation relating to the contemplated investment in light of these recent developments.

The Board learned of a letter from the French European and Foreign Affairs Minister which, in reaction to the threat of taxes on French products by the US, directed the Group to differ the acquisition of Tiffany until after January 6th, 2021. Furthermore, the Board noted Tiffany & Co.'s requested to extend the "Outside Date" in the Merger Agreement from November 24th to December 31st, 2020.

As a results of these elements, and knowledge of the first legal analysis led by the advisors and the LVMH teams, the Board decided to comply with the Merger Agreement signed in November 2019 which provides, in any event for a closing deadline no later than November 24th, 2020 and officially records that, as it stands, the Group LVMH will therefore not be able to complete the acquisition of Tiffany & Co.

Here is the Tiffany statement, issued Sept. 9, in its entirety:

Tiffany Files Lawsuit Against LVMH To Enforce Merger Agreement

Asks Delaware Court to Require LVMH to Abide by Contractual Obligation to Complete Transaction

Says French Government Request That LVMH Delay Closing Has No Basis In French Law

Tiffany & Co. (NYSE:TIF) today announced that it has filed a lawsuit in the Court of Chancery of the State of Delaware against LVMH Mot Hennessy-Louis Vuitton SE and related entities ("LVMH").

The lawsuit relates to the November 24, 2019 Merger Agreement between Tiffany and LVMH providing for the acquisition of Tiffany by LVMH and seeks, among other things, an order requiring LVMH to abide by its contractual obligation under the Merger Agreement to complete the transaction on the agreed terms.

The lawsuit not only makes clear that LVMH is in breach of its obligations relating to obtaining antitrust clearance, but also refutes LVMH's suggestions that it can avoid completing the acquisition by claiming Tiffany has undergone a Material Adverse Effect ("MAE") or breached its obligations under the Merger Agreement, or that the transaction is in some way inconsistent with its patriotic duties as a French corporation.

Under the terms of the Merger Agreement, LVMH assumed all antitrust-clearance risk and all financial risk related to adverse industry trends or economic conditions. In addition, LVMH is required to do everything necessary to secure all required regulatory clearances as promptly as practicable.

The Merger Agreement provided for an initial outside date of August 24, 2020, which the parties agreed at signing would provide for more than sufficient time to obtain all the required regulatory clearances, because the transaction does not pose any substantive antitrust concerns. The Merger Agreement also gives either party the option to unilaterally extend the outside date to November 24, 2020 if antitrust clearances are the only remaining condition to closing at August 24, 2020.

As of August 24, 2020, LVMH had not even filed for antitrust approval in three of the required jurisdictions. Because all other conditions to closing were met on that date, Tiffany elected to extend the outside date to November 24, 2020. However, this extended outside date is now less than three months away, and LVMH still has not filed formal requests for antitrust approval in the European Union or Taiwan, and applications are still outstanding in Japan and Mexico, all due to LVMH's concerted efforts to delay or avoid receipt of regulatory approvals in those jurisdictions in breach of the Merger Agreement.

Roger N. Farah, Chairman of the Board, said, "We regret having to take this action but LVMH has left us no choice but to commence litigation to protect our company and our shareholders. Tiffany is confident it has complied with all of its obligations under the Merger Agreement and is committed to completing the transaction on the terms agreed to last year. Tiffany expects the same of LVMH."

Chief Executive Officer Alessandro Bogliolo said, "The fundamental strength of Tiffany's business is clear. The company has already returned to profitability after just one quarter of losses, and we expect our earnings in the fourth quarter of 2020 will actually exceed the same period in 2019."

The COVID-19 pandemic has not prevented other parties from making antitrust filings on a timely schedule. Among the ten largest transactions announced since the beginning of the fourth quarter of 2019, this is the only transaction that has not yet formally filed for antitrust approval in the European Union. All nine other transactions filed formal notifications with the EU between March 27 and July 7.

In response to Tiffany's valid extension of the outside date, LVMH claimed to reserve its rights to challenge Tiffany's extension. Yesterday, LVMH for the first time advised Tiffany of the existence of a letter, dated August 31, 2020, that LVMH purportedly received from the Ministre de l'Europe et des Affaires Etrangres. LVMH has not provided Tiffany with a copy of the letter, but an English translation provided by LVMH states that "the American government has decided to implement an additional customs duty on the import of certain French goods, in particular goods in the luxury sector" and that LVMH "should defer the closing of the pending Tiffany transaction until January 6, 2021" in order to support the French Foreign Affairs Minister's stated intent to "take measures in order to dissuade the American authorities from putting these tariff sanctions into effect."

Roger Farah stated, "We believe that LVMH will seek to use any available means in an attempt to avoid closing the transaction on the agreed terms. But the simple facts are that there is no basis under French law for the Foreign Affairs Minister to order a company to breach a valid and binding agreement, and LVMH's unilateral discussions with the French government without notifying or consulting with Tiffany and its counsel were a further breach of LVMH's obligations under the Merger Agreement. Moreover, this supposed official French effort to retaliate against the U.S. for proposed new tariffs has never been announced or discussed publicly; how could it possibly then be an effort to pressure the U.S. into revoking the tariffs? Furthermore, as we are not aware of any other French company receiving such a request, it is all the more clear that LVMH has unclean hands."

Despite having no contractual basis to do so, LVMH has advised Tiffany that it intends to honor this request from the French government to refuse to close the transaction until January 6, 2021, while also informing Tiffany that LVMH will not extend the outside date under the Merger Agreement beyond November 24, 2020, effectively stating that LVMH no longer intends to complete the transaction. In addition, LVMH has asserted there has been a Material Adverse Effect and a breach by Tiffany of the Merger Agreement, which LVMH suggested could give it the option to seek to terminate the Merger Agreement. LVMH did not provide any basis for these assertions.

The Merger Agreement does not excuse LVMH from completing the merger merely because a government minister has requested that LVMH breach the Merger Agreement. Further, Tiffany believes this latest development represents nothing more than LVMH's most recent effort to avoid its obligation to complete the transaction on the agreed terms, not dissimilar from LVMH's baseless, opportunistic attempts to use the U.S. social justice protests and the COVID-19 pandemic to avoid paying the agreed price for Tiffany shares. The Material Adverse Effect clause in the Merger Agreement is narrowly defined and, notwithstanding LVMH's focus on the COVID-19 pandemic and the U.S. social justice protests, the impact of these events cannot even be taken into account in determining whether an MAE has occurred under the Merger Agreement. In fact, during the pandemic, Tiffany's financial results compare favorably with those of other firms in the luxury goods industry, including LVMH itself. Tiffany has been a responsible steward of its business, all the while taking great care to protect the health and safety of its customers and employees.

Tiffany is seeking to expedite the Delaware proceedings to obtain a ruling prior to November 24, 2020 ordering LVMH to comply with its obligations and complete the transaction on the agreed terms.