Major Global Activist Campaigns in 2017

Shareholder activism is at its peak in the western hemisphere of the world. The number of campaigns as well as funds employed in these activist situations are at a record high than ever before. Shareholder activism in the mature markets of US, UK, etc are much different from that in India where the number of total campaigns was in single digit. In India, activism is limited to getting a board seat or litigation against the company in NCLT or other courts. In the West, shareholder activists have many objectives – a) getting a board seat, b) forcing a change in the management, c) opposing or calling for M&As, sale or restructurings, d) asking for better capital return through buybacks, etc.

This note discusses some of the key and large activist campaigns carried out in the US and Europe in 2017. Hopefully, we in India can have learnings from some of these cases and be better prepared to launch activist campaigns if need arise.

AkzoNobel NV

Elliott Advisors, the UK affiliate of American activist hedge fund Elliott Management started an activist campaign against AkzoNobel and its Board in March 2017 when the company rejected repeated takeover bids by its rival PPG Industries for as high as Euro 27bn. Elliott, which held 9.5% in the company was highly critical of AkzoNobel Board's refusal to engage in takeover talks. It called for and pursued an unsuccessful legal litigation for removal of the Chairman of AkzoNobel.

The campaign finally came to an end in August with AkzoNobel agreeing to Elliott appointing 3 directors on its Board. The company also agreed to sell off its speciality chemicals unit and focus only on its core businesses. The company also underwent a change in its CEO during this period.

General Electric Company

Trian Partners' activism at GE started with its investment in the company in 2015 and culminated with Trian's CIO Ed Garden getting elected to the Board of GE in October 2017. Trian has less than 1% stake in GE. Since its investment in GE, Trian has been pushing for cost cuts of around $2bn and higher borrowings by the company. In September 2017 Jeff Immelt stepped down as Chairman and CEO and was succeeded by John Flannery.

Whole Foods Market Inc

Investment fund Neuberger Berman and activist fund Jana Partners, both of whom held a sizeable minority stake in Whole Foods Market demanded the Board of Whole Foods Market to put the company for sale, in April 2017. The company's business was struggling and the Board was making efforts for a turnaround. Governance changes were affected which ranged from implementation of a new Board succession plan to the change in Chairman, CFO and 5 Board members. The company even offered Jana Partners Board seats for calling truce but the hedge fund refused. Finally, the company was acquired by Amazon in July 2017.

Nestle SA

Nestle SA was subject to an activist campaign by Third Point, an activist hedge fund in June 2017. Third Point owns about 4 crore shares in Nestle valued at around $3.5bn for the 1.3% stake. The fund demanded the company to - a) sell its 23% stake in L'Oréal SA, b) accelerate its share buy-back program, c) set and disclose a profitability target; amongst others. Third Point complained about the corporate strategy of Nestle in foraying into consumer healthcare along with having a presence in non-core segments like ice-cream and pizza. It said that it is right time for Nestle to divest its long-held stake in L'Oréal as it is no more aligned with Nestle's core businesses and owning a minority stake doesn't make sense.

In a positive response, nestle set an operating target for the first time and decided to accelerate its buy-back program. However, the company didn't give in to the demand of selling its investment in L'Oréal.

The Procter & Gamble Company

Trian Partners, an activist hedge fund launched a proxy campaign seeking appointment of its co-founder Nelson Peltz to the Board of P&G in July 2017. Trian Partners wanted P&G to be organized into 3 autonomous business units under a lean holding company. It also said that the management compensation targets are too low and should be reviewed. The hedge fund took around $3.4bn (1.5%) stake in the $250bn valued company. This was one of the largest and costliest proxy fights in the history of shareholder activism. The shareholder meeting was held in October and Trian Partner narrowly missed out on the election. However, P&G voluntarily appointed Peltz to its Board in December 2017.

Clariant AG

In May, Clariant AG announced of its intention to merge with its US-based rival Huntsman Corp in a $20bn deal. White Tale Holdings, an investment vehicle backed by hedge funds Corvex Management and 40 North built up a sizable ~15% stake in the company and started opposing the merger publicly in July. In its letter to the Board of Clariant, White Tail wrote that the merger would destroy Clariant shareholders' wealth by diverting Clariant from its main strategy of running a specialty chemicals business to being an unfocused and commodity-oriented business with increased volatility and market multiple. It also said that the merger significantly undervalued Clariant's shares while overvaluing Huntsman shares. The result of this campaign was that Clariant had to abandon its merger plans with Huntsman in October. Following the collapse of the merger, White Tail has also demanded three Board seats in Clariant.

BHP Plc & BHP Ltd

Elliott Advisors launched a shareholder activist campaign against BHP Group in April 2017 where it sought – a) unification of the BHP Plc (listed in UK) and BHP Ltd (listed in Australia), b) demerger and separate listing of petroleum business, and c) adopting a consistent and optimal policy of capital return for shareholders – to unlock value and maximize shareholders' return. Elliott's demands found support from other investors Standard Life Aberdeen Plc, Aberdeen Asset Management, City of London Investment Trust, and many others. The Group declined request for all three proposals stating that the unification costs would outweigh benefits, that the petroleum assets benefits the Group and that it was not the right time to undertake share buy-backs. However, during this period, the Group underwent a change in its Chairman, sold off its US-shale business and the new Chairman promised an increased focus on more rigorous capital allocation. Elliott has since, renewed its intensity by hiring FTI Consulting which studied the case and published a report in February 2018 on how the unification would be beneficial to the shareholders.

ADP, LLC

Pershing Square Capital, a US based hedge fund acquired 8% stake in ADP in August 2017. It conducted a webcast titled '*ADP: The Time is Now*' in which it attacked the management stating that the company is materially underperforming its potential and is losing ground, most notably against enterprise and mid-market competitors. It recommended a slew of measures as solutions which began with appointment of Pershing's CEO Bill Ackman and two of their chosen individuals to the Board of the company. Us based proxy advisory firms ISS, Glass Lewis and Egan Jones supported Pershing's nominations. However, the nominees received less than 25% votes in the shareholder meeting and failed to get elected to the Board of ADP.

Xerox Corporation

Carl Icahn, the activist investor and the largest shareholder in Xerox Corp. shares, played a major role in splitting Xerox into two independent and publicly traded companies – a) Xerox business services (dealing with the document technology business) and, b) Conduent Inc. (BPO operations). Icahn and Darwin Deason, both of whom are significant minority shareholders of Xerox believed the Board of Xerox was unwilling to make tough decisions and that the company's value would increase with Xerox focusing on selling devices and systems rather than services. In January 2016, Xerox Corp. announced its split and entered into a standstill agreement which gave the power to Carl Icahn to appoint 3 directors on the

Board of Conduent. In 2017, Jeff Jacobson was appointed as the new CEO of Xerox, relieving Ursula Burns. Looking forward into 2018, Xerox has ended its standstill agreement with Icahn and has instead decided to take his board nominees into consideration.

SandRidge Energy Inc

Petroleum and natural gas exploration company SandRidge got its taste of shareholder activism when in November 2017 it announced its $746mn acquisition bid to buy rival Bonanza Creek Energy. Carl Icahn, who held nearly 13.5% stake in SandRidge opposed the acquisition terming it as dilutive, overpriced and value destroying deal. He also intimated the company about other large shareholders, e.g., Fir Tree Partners which held 8% in the company, agreeing that the acquisition didn't make any sense. In response to this attack, the company adopted a poison pill which deterred large shareholders from buying more than 10% of the shares or further increase their shareholdings. As Icahn increased his pressure, the company had to finally give in and cancel the acquisition as it realised it may not receive enough shareholder support. On Icahn's further pressure, the company announced departures of its CEO and CFO.

Citigroup, BNY Mellon, Bank of America, Wells Fargo

Arjuna Capital, a private investment firm put shareholder proposals in some of the biggest banks including BNY Mellon, Citigroup, Bank of America, Wells Fargo etc., urging the companies to present detailed reports and disclose gender-wise pay data. In response, these four banks have agreed and disclosed efforts to remedy gender pay inequity. Citigroup became the first US bank to disclose its gender pay gap through an internal announcement and salary adjustments.