

Linde India: Is it noxious for minority investors?

Global companies struggle to deal with listed subsidiaries in India, given that in most markets they operate through wholly owned subsidiaries. They need not. The same governance framework that applies to the parent and globally, should also apply to businesses in India. Loyalty to the parent is one thing, but it cannot be at the expense of the Duty of Care owed to public shareholders of a listed company.



Linde India's parent filed a [writ petition](#) in the High Court of Bombay, in January 2024, in connection with SEBI seeking financial information and details regarding certain business transactions of the Company. SEBI has also issued summons to the parent's management and directors. The parent company has filed a writ petition in Bombay High Court seeking to quash the proceedings and a stay in the interim.

Linde plc, the parent, was formed in 2018, through the merger of Linde AG, Germany and Praxair Inc, US. Both entities were then present in India, and continue to be so: Linde AG, through Linde India Limited (Linde India), a listed entity in which it held 75% equity, and Praxair Inc., through Praxair India Private Limited (Praxair India), its wholly-owned subsidiary.

Pursuant to this global merger, Linde plc became an indirect controlling shareholder of Linde India, and was expected to make an open offer to its domestic investors.

Linde AG [sought informal guidance from SEBI](#) regarding its eligibility for being exempt from making an open offer. SEBI [responded](#) that the Linde group will have to make an open offer as this is an indirect take-over. At this point, the parent company had confirmed that it will make an open offer and delist Linde India. After this, they intended to merge the Indian businesses.

In December 2018, the Linde group initiated the delisting in December 2018 making an open offer at a floor price of Rs 276.09. This [open offer](#) led to a discovered price of Rs 2,025 per share of the target company that Linde plc did not accept.

Linde plc then made an offer to buy the shares of Rs 328.21 per share, which was subsequently revised upwards to Rs 478.40. This offer too was unsuccessful.

In parallel, Linde India and Praxair India moved the Competition Commission of India ('CCI'), to merge their two businesses. CCI gave its [approval](#) subject to:

- Divestment of Linde India's entire shareholding in Bellary Oxygen Company Private Limited (Belloxy), a joint venture between Linde India and Inox Air Products Limited.
- Divestment of Linde's on-site plant located at Bellary (- JSW's facility), a cylinder filling station at Hyderabad and one in Chennai.
- Divestment of Praxair's three on-site plants located in Jamshedpur (- Tata's facilities), one cylinder filling station at Asansol and one in Kolkata.

The company complied with these divestitures but given its inability to delist Linde India, the two India entities have yet not been merged.

Investors believe that the group has since taken a series of steps that seem to capture a disproportionate amount of the value directly in the parent entity and in the unlisted company, rather than the listed entity. All these bear regulatory scrutiny.

1. Inter-se allocation of business between the Indian entities:

- Linde India and Praxair India will handle new business based on a geographical split. Linde India will handle new business exclusively in Eastern India, Northern India and Western India (excluding industrial bulk business in Maharashtra) and Praxair India will handle new business in South India, Central India and in the Industrial Bulk Business in Maharashtra.
- Linde India will pursue the project engineering business.
- Praxair India will pursue the CO₂, HyCO and Green Energy business.
- Expansions and/or renewals of existing business will be guided by the principle of incumbency – an entity already having an existing business relationship will get to bid for any expansions and/or renewals related to such existing business.

While a geographical split and principles of incumbency provides a framework for carving out the business without competing, the listed entity is left with a far smaller geographic footprint: Central India, South India and parts of Western India are excluded.

Further the rationale for carving out the CO₂ and HyCO businesses and allowing Praxair to pursue these suggests that these businesses were unique to Praxair India. But in the past Linde India has repeatedly highlighted its presence and strengths in CO₂ and HyCO, including winning a major contract with Reliance Industries Limited. The inter-se arrangement between Linde India and Praxair India is effectively a non-compete agreement. It curtails the market size for the listed company for the

operational benefits of the Linde group. We believe this arrangement should be brought to Linde's minority shareholders for a vote.

2. Related party transactions

Linde India had sought shareholder approval in its shareholder meeting on 24 June 2021 to undertake RPT's with Praxair and Linde South Asia Services (LSAS). This resolution was defeated.

Exhibit 1: Voting outcome AGM 2021 - Approve related party transactions of Linde India Limited with Praxair India Private Limited (fellow subsidiary) and Linde South Asia Services Private Ltd. (JV with Praxair India Private Limited) for three years from 1 January 2021 aggregating to Rs. 9.5 bn per annum

Promoter/ Public	No. of shares held	No. of votes polled	% of votes polled	No. of votes in favour	No. of votes against	% of votes in favour	% of votes against
Promoter	63,963,167	-	-	-	-	-	-
Institutional holders	10,315,587	9,137,156	88.58	790,237	8,346,919	8.65	91.35
Others	11,005,469	4,494,299	40.84	34,655	4,459,644	0.77	99.23
Total	85,284,223	13,631,455	15.98	824,892	12,806,563	6.05	93.95

Source: IIAS Adrian

Even so, the company has continued undertaking related party transactions stating that it is compliant with SEBI regulations. This is based on legal advice obtained by the company that individual transaction value and not the aggregate sum determines the need for shareholder approval under the 10% materiality threshold. Consequently, the company believes none of these transactions require shareholder consent.

Apart from investor dissent, the company has received inquiries and information requests from the Securities and Exchange Board of India in connection with certain related party transactions and arrangements, which it has been responding to from time to time. This has also been raised as a matter of emphasis by the company's statutory auditor.

This matter needs an early regulatory resolution.

3. Linde plc competing for business in India with Linde India

Today, in addition to Linde plc, the group operates in India through Linde India Limited (75% ownership by Linde plc), Praxair India Private Limited (100%), Linde Engineering India Private Limited (100%), Linde Global Support Services Pvt Limited (100% owned Global Captive Centre, GCC) and Linde South Asia Services Limited (owned jointly by Linde India and Praxair India, to manage the operations and maintenance of the facilities set-up/owned by both entities).

At a recent global investor call of Linde Plc held on 26th October 2023, Linde Plc's deal with Indian Oil Corporation for hydrogen and other gases was discussed. Linde Plc CEO, Sanjiv Lamba, highlighted its huge upside for the global entity.¹

¹ No disclosure regarding this order-win has been made on the Indian stock exchanges.

Under the *inter-se agreement* between Linde India and Praxair India, expansions and/or renewals of existing business is to be guided by the principle of incumbency: an entity already having an existing business relationship will get to bid for any expansions and/or renewals related to such existing business.

Linde India has a history of hydrogen technology - its manufacturing and sales. And as Indian Oil Corporation has been a customer of [Linde India](#), under the inter-se agreement, the business should have been undertaken by Linde India.

The commentary by Sanjiv Lamba at the Linde plc earnings call (and the absence of an announcement by Linde India), seems to suggest that the business will be undertaken by Linde plc directly or through its wholly owned subsidiaries. This decision could well have been a likely fallout of the investor push-back on related party transactions. But rather than merge Praxair India and Linde India or go back to its investors, Linde plc has begun competing with its own listed Indian subsidiaries.

As a 75% equity-holder, Linde Plc is expected to transfer the latest technology to the listed Indian company and ensure that the Indian business remains competitive. Otherwise, there is a clear risk of steady leakage of revenue from the Indian entity, which will likely lead to value erosion.

Minority investors in India are resigned to global parents 'competing' with their listed Indian subsidiary by operating two (or more) entities in the country. While the GCC and engineering business may not be viewed differently from the gas business as they do not directly compete, a multiplicity of entities enables MNC's to choose which entity will pursue the newer opportunities.

As the India business grows, and newer opportunities like chip manufacture picks up in India, the additional and more complex gas requirements of the economy, will need to be met. Which group entity gets to service the sector – the parent company directly, the wholly owned subsidiary or one in which the economics are shared with public investors. This, as already mentioned, will have a bearing on the entity's profitability.

Global companies struggle to deal with listed subsidiaries in India, given that in most markets they operate through wholly owned subsidiaries. They need not. The same governance framework that applies to businesses globally, should also apply to businesses in India. Loyalty to the parent is one thing, but it cannot be at the expense of 'Duty of Care' owed to public shareholders of a listed company.

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