

REVISITING THE LEGISLATIVE FRAMEWORK ON SECURITIES MARKET REGIME AND INVESTOR PROTECTION: EMERGENCE OF NEW CONUNDRUMS IN WAKE OF THE ADANI-HINDENBURG CRISIS

BY- SUBHANKAR DAS¹

PALLAVI ROUT²

ABSTRACT

In 2022, India by superseding the United Kingdom eventually went on to become the 5th largest economy in the world. Due to its growing investment potential, India has been considered to be an emerging business hub for both foreign as well as home-grown businesses. However, despite all these positive aspects, multiple instances of stock-market manipulations and scams such as the Harshad Mehta scam, Sahara Scam, 2-G scam etc have acted as negative indicators towards ensuring protection of the investors, other stakeholders thereby ensuring a healthy security market structure and have raised serious question-marks regarding the existing statutory framework and the effectiveness of the SEBI as the regulator of the securities market in India and ministries of the Government of India in creating a healthy financial environment in the stock-market for all the stakeholders concerned.

The debate on investor protection has once again resurfaced, in the wake of the financial-search report by US based business research think-tank, Hindenburg, who in their reports have made alleged disclosures about the manipulation of stock markets and defrauding of the investors and stakeholders concerned by the Adani Group, one of India's largest and fastest growing conglomerates. While the present NDA government and Adani group have strongly refuted the allegations made in the report as baseless and have termed it as an attack on the reputation of India, the notable members of the opposition parties have alleged that the Adani group has gone largely scot-free in making bonafide disclosures and compliances due to the strong support received by the central government. In wake of the above situation, the authors will make an attempt to study the authenticity of the report vis-a-vis the allegations made in the

¹ LLM Student (Corporate and Commercial Law Specialization), Siksha O' Anusandhan (Deemed to be University), Bhubaneswar, Odisha.

² LLM Student (Corporate and Commercial Law Specialization), Siksha O' Anusandhan (Deemed to be University), Bhubaneswar, Odisha.

report and analyze the statutory framework on investor and stakeholder protection in the prevalent securities market system in wake of the newly brewed controversy.

KEYWORDS: Stock-market manipulations, investor and stakeholder protection, Hindenburg Report, statutory framework, Regulatory bodies.

REGULATORY FRAMEWORK ON INVESTOR PROTECTION

In order to examine succinctly the debate on investor protection arising out of the issue at hand in the Adani-Hindenburg controversy, it is imperative at the outset to preliminarily examine the regulatory framework on investor protection in India. The genesis of the commencement of the various regulations of SEBI, Ministry of Corporate affairs with regards to investor protection in the stock market, first received an impetus with the *“Harshad Mehta- Bombay Stock Exchange Fraud Case- popularly referred to as Scam 1992”* (to be discussed elaborately later during the course of the paper) which brought to the forefront the concept of stock-market frauds endangering the rights of the investors.³ Before proceeding further with the intricacies of the paper, it is essential to define in a nutshell, the concept of a stock market fraud, *“which includes an action which is done with a guilty intention while dealing with securities, and assets in order to cause a wrongful gain or defraud an investor for one’s own personal gain by an individual or an entity”*⁴.

The situation arising therein and the utter chaotic market situation therein of brazen stock-market manipulations led to the need of a regulatory authority that had to be vested with specific authority in order to ensure control of stock markets, leading to the establishment of the **Securities and Exchange Board of India (SEBI)** on the 12th of April 1992 in order to regulate the securities market and lay special emphasis upon investor protection.⁵ The cardinal principles of investor protection finds its origins in the *“Kumar Mangalam Birla Committee”*

³ Samir K .Barua , Jayanth R. Varma, *Securities Scam: Genesis, Mechanics and Impact*, 18 Vikalpa IIM-A, 16, 17 (1993).

⁴ Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market), 2003, § 2(1)(c), No. 29, Acts of Parliament, 2003 (India).

⁵ The Securities and Exchange Board of India Act, 1992, No.15, Acts of Parliament, 1992 (India).

report that especially formulated **Clause 49** of the SEBI listing agreement that enlists some of the major reasons because of which the need arose to give special emphasis upon investor protection by taking into account the following initiatives, the important ones of which are enlisted below:⁶

1. To give assurance to the investors with regards to the health and security of the investments made by them.
2. To create a healthy, transparent and secure environment for the purpose of encouraging investments in the stock market.
3. For ensuring fairness, accountability and transparency towards the key stakeholders.
4. To ensure the creation of a capital market, that is encouraging, resonating and investor friendly in nature.
5. To ensure stringent regulation of the stock-markets.

The major bottleneck towards protecting the rights of the investors, is the malpractice of **insider trading**, which can be enunciated as follows: *“Insider trading is an act of buying, selling, subscribing or agreeing to subscribe in the securities of a company, directly or indirectly, by the key management personnel or the director of the company who is anticipated to have access to Unpublished Price Sensitive Information with reference to securities of the company and it is deemed to be insider trading”*.⁷ The practice of insider trading jeopardizes the investment potential and the right to equal opportunity of earning dividends or returns from investments by the investors, due to the unfair measures or malpractices undertaken by people who are at an influential position possessing confidential information, thereby being able to indulge in activities leading to the stock-market manipulation.⁸ Furthermore, in order to strengthen the regulatory framework, the 1992 regulations were replaced by the *“Securities and Exchange Board of India (Prohibition of Insider Trading Regulations) 2015”*, to further enhance the cause of investor protection, and ensure free and fair operation of the capital markets in India creating thereby a healthy environment of stock-market in the country.⁹

Despite the fact, that there has been a strong regulatory framework which has been at the cornerstone of the various policies of the Government’s for enhancement of India’s stock-

⁶ *Id.*

⁷ The Securities and Exchange Board of India Act, 1992, § 12A, No. 15, Acts of Parliament, 1992 (India).

⁸ Sakshi Rewaria, *An Analysis of Insider Trading in India*, 2 IJRPR, 816, 817 (2021).

⁹ Sonu Choudhary, *Insider Trading, “Efficacy of the Latest Amendment”: A Comparative Study With Special Reference to the Legislative Framework in the U.S.A.*, 1 IJBLR, 67, 68 (2021).

market and business potential, unfortunately, post the 1992 Harshad Mehta Scam, Indian economy has been subject to a multitude of scams that have led to the casting of serious aspersions on the credibility of the role of SEBI as a regulatory body as well as the robustness of the statutory, legal and judicial framework in India.¹⁰ At this critical juncture, it is noteworthy of mentioning that, the Hindenburg report has ushered in a new debate and the demands for a complete examination of the regulatory framework in the securities market. The authors shall be discussing in detail in the subsequent portions about the notable scams and the Adani controversy in order to critically analyze the situation therein on the debate upon investor protection in the current scenario.

A BRIEF STUDY OF NOTABLE STOCK MARKET SCAMS

The Adani-Hindenburg controversy has in essence re-ignited the debate on the legal and regulatory framework of the securities market in India, with recommendations being made from all corners by experts from various fields to effectuate a total refurbishing of the capital market sector in India.¹¹ While, the investigations regarding the alleged misappropriation of stocks by the Adani-Group are underway, it is pertinent to note that, the Indian securities market and economy has been a witness to a variety of stock-market scams that have brought into the forefront various regulatory challenges in the securities market.¹² The authors will be discussing elaborately about the notable stock-market scams therein in furtherance of diving deep into the intricacies of the issue at hand.

The Harshad-Mehta Scam 1992- Where it all began?

During 1991 India was going through the LPG or the Liberalization-Privatization and Globalisation reforms with an emphasis laid down upon liberalizing the economic and trade regime, for the purpose of promotion and expansion of the Indian economy. The abovementioned scam happened during this time, and the major perpetrator behind the same was stock-broker Harshad Mehta, who by usage of fake bank receipts created an artificial increase in the prices of the stocks, thereby leading to a loss of around Rs. 3500-5000 crores in approximation in the Indian economy, which is considered to be the first major and notable

¹⁰ Anil K. Sharma, Neha Seth, *Recent Financial Crisis and Market Efficiency: An Empirical Analysis of Indian Stock Market*, 2 IIMJR, 28, 29 (2011).

¹¹ Yagya Sharma, *Explainer: Adani vs Hindenburg- All you need to know about the story so far*, Hindustan Times, Feb 2, 2023, at A4.

¹² HK Pradhan, Lakshmi S. Narasimhan, *Stock Price Behaviour in India Since Liberalization*, 9 Asia-Pacific Development Journal, 84, 85 (2002).

stock-market scam in India.¹³ The intervention and investigation by the CBI led to discovery of many stock-market manipulations by Harshad S. Mehta, alleged misappropriation of funds and usage of illegal money and funds in order to influence the top political machinery including the office of the erstwhile Prime Minister PV. Narasimha Rao.¹⁴ The major loophole as experienced in this case was, the lack of regulatory framework and mechanism in order to control the manipulation of the stocks in the securities market, that eventually proved to be the catalyst behind the creation of SEBI and the enactment of the insider trading regulations, the prior absence of which could not ensure proper regulation of the stock manipulation in the securities market, leading to the issue of the commencement of stock-market manipulation in the country .¹⁵

The Ketan Parekh Scam 2001:Stock Manipulation via Information and Entertainment

¹³ Alka Rani, Veena Gautam, *Corporate Governance: Need for Changing Scenario*, 7 IJEMS, 23, 24 (2017).

¹⁴ Gangineni Dhanaiah, *Dr. R. Siva Ram Prasad, Frauds in Indian Capital Market- A Study*,11 JCAT, Society for Advanced Management Studies, 32, 33 (2016).

¹⁵ Harshad H. Mehta v. Custodian & Ors.,(1998) 5 SCC 1.

This was a unique stock-market scam that was effectuated by a combination of financial manipulation and usage of Information, Communication and Entertainment sector in the year 2000-2001, by Ketan Parekh, a Chartered Accountant by usage of the less stringent norms of the Kolkata Stock Exchange, leading to a loss to the approximation of Rs. 40,000 crores.¹⁶ While Harshad Mehta used stamp papers and defrauded banks in form of availing loans while manipulating the stocks, Ketan Parekh devised the strategy of targeting small sized firms and stocks and used the technique of artificial inflation of the stocks in order thereby manipulating the stock market to his own benefit vide manipulation of the stocks of around ten companies known as the K-10 pack of companies.¹⁷ Finally, a ban of 15 years was imposed upon him on trading by the SEBI, and he was held guilty of committing economic offences after due intervention by the CBI, however the case at hand once again brought to the forefront the lacunas in the lack of pro-active measures taken in the securities market by SEBI in the securities market, especially when Ketan Parekh's erstwhile mentor was Harshad Mehta who was the chief perpetrator in the 1992 scam and Parekh in essence defrauded investors following the footsteps of his mentor thereby raising further questions on the effectiveness of the SEBI as a regulatory body for the securities market.¹⁸

The Satyam Scam 2009: Story of fake job offers and false accounting standards

¹⁶ Amit Kumar, Dr. Priyanka Rai, Dr. Sudhir Narayan Singh, *Exploring the Recent Scams and Frauds in the Indian Banking System*, 11 Bi-Lingual IRJ, 266, 267 (2021).

¹⁷ Dipika Jain, *Corporate Governance Practices: A Comparative Study of Baroda and Yes Bank*, 9 IJMIE, 257, 258 (2019).

¹⁸ Ketan V. Parekh v. Special Director, Directorate of Enforcement and Anr, (2011) 15 SCC 30.

While the world was reeling under the effects of the first notable economic recession of the 21st century during 2008-09, the abovementioned scam virtually brought the Indian economy to a virtual standstill, leading to the downgrading of the Indian stock market, raising multiple questions on the then UPA led government's ability to ensure transparency in overall socio-economic governance of the nation in the background of multiple scams and corruption scandals taking place at that point of time.¹⁹ This scam first came into the limelight after a confessional email by the founder-chairman B.Ramalinga Raju to SEBI, with the admission of guilt towards issuance of around 5 lakh fake job letters, and manipulation of stocks to the tune of Rs 7000 crores by non-compliance with the requisite accounting and auditing standards, thereby indulging in the falsification of the accounts of the company by virtue of showcasing fake bills of expenditures and receipts showcasing fake loans owed by the entity.²⁰ In corporate governance, the independent auditors or the auditing firms in essence are expected to be playing a major role in conducting a neutral examination of the company's accounts to ensure that there is no tax evasion and manipulation of finances.²¹ However, the case of Satyam which has been coined as the Indian version of the US Enron scandal was a unique case wherein Price-Water Coopers (PWC) - the independent auditors of the company, were held to be liable and complicit in the manipulation of accounts and stock-market by Satyam Computers Limited as PWC did not take into notice the fact that Satyam in essence had indulged in an accounting fraud leading to the commission of fraud upon the Indian economy.²² In this case at hand therein, investigations had been conducted by the SEBI after the receipt of the email as well as the CBI, after which it was found out that the actual amount of money siphoned off from the stock market was in excess of Rs 12,500 crores, thereby leading to the arrests of the founding chairperson and a ban was imposed on PWC from conducting audits in the Indian markets for a period of 2 years, the convictions in the case herein were held to be valid both by the Telegana High Court and Supreme Court of India.²³ Though this case showcased a detailed investigation into the illegal and unfair practices, however, yet again the SEBI as a security regulating agency and other governmental agencies failed to unearth the fact that many job letters were being issued when the entire world was facing a global depression, and instead of taking into account a pro-active investigation into the same, waited for a confessional email in order to take notice of the matter and discharge its responsibilities in conducting of investigation into the alleged fraud that had been effectuated in this case at hand.²⁴

¹⁹ Dr. Ruchi Gupta, *Creative Accounting Practices: A Case Study of Enron and Satyam Scandals*, 5 IJRAR, 238, 239 (2018).

The Sahara Parivar Scam: Downfall of one of India's biggest financial empires

The name “Sahara” was a household name in the country for a major chunk of the beginning of the 21st century, with the iconic cricket team jersey's, its involvement in the airlines, entertainment and other industries, by which it had created a long-standing good-will and reputation in the society. However, the case of Sahara is one which can be described as the perfect example of *“the fall of a great empire because of its own follies”*.²⁵ This case was a welcome departure from the previous stock-market scams, due to the relentless pressure towards the investigation of the financial irregularities by the conglomerate by SEBI and other investigative agencies, whose roles had earlier been under the scanner due to the occurrence of previous such stock-market scams.²⁶

In this case at hand, it is noteworthy of mentioning that, the Sahara Group was a private limited entity which was not listed with any of the stock exchanges, and therefore in order to raise money from its investors they were involved in the practice of issuing, *“Optionally Fully Convertible Debentures”*²⁷, wherein the investor bonds could be converted into the equity shares subject to a ceiling limit prescribed by the SEBI i.e. less than 50 investors. However, the fact that it had obtained investments from more than 3 million investors by rolling out its shares in the form of *“Initial Public Offerings (IPO's)”* like a public listed company despite of not being listed with any of the stock exchanges in India was in clear contravention of the SEBI regulations by taking advantage in the loopholes under the law.²⁸ The SEBI after conducting a thorough and detailed investigation into the said irregularities found that there was a fraud of nearly Rs 25,000 crores that had been committed by the Sahara Group, and the SEBI ordered the Sahara Group to pay-back the requisite amount to the investors, which was upheld by both the Securities Appellate Tribunal and the Supreme Court of India in the case of

²⁰ Kalpana Pai, Thomas D. Tolleson, *India's Satyam Scandal: Evidence the Too Large to indict mindset of Accounting Regulators is a Global Phenomenon*, 6 RBFS, 38, 39 (2015).

²¹ K.R. Balachandran, A. Dossi, W. Van Der Stede, *“Corporate Governance Research in the rest of the world”*, 25 J. of Acc. Aud and Fin., 523-529 (2010).

²² Dr. Madan Lal Bhasin, *Debacle of Satyam Computers Limited: A Case Study of India's Enron*, 23 Wulfenia Journal, 126,127 (2016).

²³ Chintalapati Srinivasa Raju v. Securities and Exchange Board of India, (2018) 7 SCC 443.

²⁴ JP Singh, Naveen Kumar, Shigufta Uzma, *Satyam Fiasco: Corporate Governance Failure and Lessons Therefrom*, 9 IUP Journal of Corp Gov., 32, 33 (2010).

²⁵ Vivek Malhotra, Rohan Aniraj, *Corporate Governance Failures in India*, 4 IJLMH, 4176, 4177 (2021).

²⁶ Anurag K Agarwal, *Corporate Governance: Financial Regulators and Courts Need to be on the Same Page*, 38, Vikalpa Journal of IIM-A, 3,4 (2013).

²⁷ The Companies Act, 2013, § 71, No.18, Acts of Parliament, 2013 (India).

²⁸ The Securities and Exchange Board of India Act, 1992, No. 15, Acts of Parliament, 1992 (India).

Sahara India Real Estate Corporation v. SEBI.²⁹ The Sahara group was found guilty of trying to manipulate the stock-exchange regulations, leading to the seizure of its assets and the eventual arrest of Subrata Kumar Roy, the founder and Chairman of the group. This case, once again highlighted the loopholes under the law that the conglomerate tried to exploit, however, a more dynamic role was played by the SEBI in bringing about the scam and alleged irregularities to the limelight.

Though the author's have limited the scope of the work towards the brief study and analysis of the above-mentioned scams there are many such other notable scams such as the **UTI scam, Nirav-Modi PNB scam, Chit-Fund Saradha scam etc.**, which have been major hindrances to the cause of the economic and financial reputation of the country, bringing into the forefront the inefficiencies, lacunas and lack of stringency of the legal-regulatory framework in the country in ensuring the prevention of such scams, that are detrimental towards encouragement of the investment practices and ensuring investor trust and protection in the capital and securities market in India. In the upcoming sections, the author's will make a detailed study upon the controversy surrounding the alleged manipulation of stock-markets by the Adani-Group as per the Hindenburg report and thereby make a critical analysis and suggest effective recommendations towards the major improvements and reforms that can be carried out in the securities for the purpose of securing investor protection.

²⁹ Sahara India Real Estate Corporation v. SEBI, 2013 (1) SCC 1.

ALL ABOUT THE ADANI-HINDENBURG CONTROVERSY

The authors will be elaborately discussing at length about the Hindenburg report and the controversy surrounding the Adani Group. For the purpose of diving deep into the intricacies of the topic under consideration in the present matter, the controversy in essence is summarized below in the following table in the form of a timeline of events to lay more emphasis on the important events surrounding the controversy at hand in the present set of circumstances.

DATE	NOTABLE EVENT
24 th January 2023	A report was published by Hindenburg Research a US based fintech research organization regarding the alleged financial irregularities and stock market manipulations by the Gautam Adani led Adani Group, titled as <i>“How the World’s 3rd Richest Man is Pulling the Largest Con In Corporate History”?</i> .
26 th January 2023	The group legal head of the Adani Group- Jatin Jalundwala, released a statement in the media on behalf of the group stating that the, <i>“maliciously mischievous,unresearched report published by the Hindenburg Research has adversely affected the Adani Group, our shareholders and investors. The volatility in Indian stock markets created by the report is of great concern and has lead to unwanted anguish for Indian citizens.”</i>
29 th January 2023	The Adani Group came up with a 413 page response in its defence, by making claims that the accusations that were levelled against it, were in essence an utter disregard for the integrity, ambitions and sovereignty of India.
30 th January 2023	Hindenburg in its counter reply, stated that <i>“Fraud Cannot Be Obfuscated By Nationalism Or A Bloated Response That Ignores Every Key Allegation We Raised.”</i>
30 th January 2023	Opposition parties such as RJD, AAP and Congress stalled the parliamentary proceedings alleging the ruling NDA Government’s

	apparent reluctance to ensure a free fair and debate on the Hindenburg Report. Allegations had also been levelled against the Government's alleged connivance in Adani's tax misappropriations and granting special privileges to the conglomerate.
1 st February 2023	Adani Enterprises called off FPO (FURTHER PUBLIC OFFER) citing an " <i>unprecedented situation and the current market volatility.</i> "
10 th February 2023	The Supreme Court of India issued directions to SEBI to submit its response to its existing regulatory framework.
2 nd March 2023	The apex court constituted a committee under the Chairmanship of Retired Justice of Supreme Court of India, Justice Abhay Manohar Sapre, and provided a time period of 2 months to SEBI to submit its full fledged report regarding the alleged tax evasions, stock manipulations and alleged financial irregularities by the Adani group.
30 th April 2023	The SEBI has approached the Hon'ble Apex Court seeking a further extension of 6 months, in order to conduct a cohesive and comprehensive investigation into the alleged malpractices by the Adani Group.

In January 2023, Hindenburg research, a financial research organization based out of the USA, published a report spanning 100 pages against the reputed Indian conglomerate Adani group headed by Gautam Adani alleging that it had indulged in a series of malpractices, inclusive of manipulation of stocks in the securities market, usage of off-shore or sham companies for entering into alleged tax evasions thereby defrauding its investors, stakeholders and indulging in violation of public trust and good faith.³⁰ While experts of the field of securities market and law have termed it as a prime example of enforcement and governmental inefficiency, the same has been refuted by the group itself and the supporters of the government as an attack upon the reputation and integrity of India.³¹

The Background: A brief about Hindenburg and investigation in the present matter

The Hindenburg research is a financial research and short-selling firm named after the German aircraft disaster in 1937, founded by **Nathan Anderson** is headquartered in New York, USA and has a historic track record of delving deep and discovering the financial misappropriations

³⁰ Vivek Shankar, New York Short Seller Takes On a Little-Known Indian Goliath, NY Times, Feb 1 2023, A2.

³¹ John Hyatt, There's Evidence that the Adani group likely bought into its own \$2.5 billion Share Sale, FORBES MAGAZINE, (Apr. 30, 2023, 10:35 AM). <https://www.forbes.com/sites/johnnyart/2023/02/01/theres-evidence-that-the-adani-group-likely-brought-into-its-sale/?sh=3e96594b017>.

by various corporate and organizations.³² The **Nikola** fraud was one of the notable frauds discovered by Hindenburg, leading to the conviction of its founder along with a fine of \$125 million being imposed on the electric vehicle company and it has apparently carried out research and investigation into 16 companies for alleged misappropriations.³³

In this case at hand, it is stated that as a part of its 100 page report, Hindenburg made a detailed enquiry for over a period of 2 years by conducting detailed analysis of the off-shore transactions about the alleged wrongdoings of the Ahmedabad based conglomerate. Furthermore, the publication of the research report has led to the reduction of its stock prices, thereby triggering a broader debate about the notions of transparency and accountability in Indian corporate governance and business practices, thereby bringing in the demands for enhanced transparency and accountability in the business and securities market.³⁴

Key findings of alleged wrongdoings in the report

The discussion of the entire controversy begets the fact that, there has to be a study of the alleged wrongdoings by the group, major portions of which are summarized below in the following manner.³⁵

³² Lawrence Volodarsky, *An Insight into the world of SPAC fraud*, 5 MURAJ, 3, 4 (2021).

³³ Maria Lucia Passador, *In Vogue Again: The Re-Rise of SPACS in the IPO Market*, 16 Brooklyn J. Corp Fin & Com, 107, 108 (2022).

³⁴ CKG Nair, MS Sahoo, Short Selling and Activism Don't Go Together, *The Business Standard*, Mar 29, 2023, A3.

³⁵ Rakesh Sharma, Adani Group says allegations made in Hindenburg report, 'stale and baseless', *The Business Standard*, Jan 25, 2023, A5.

1. *Commercial practises:* In accordance with the report, Adani group has indulged in a multitude of wrongful practices on account of leveraging its position due to its alleged close nexus with the ruling central government.
2. *Corporate governance:* The report states that the group has some of the worst governance practices wherein the rights of the minority shareholders are compromised to a great extent due to the executive influence of the founding chairperson Gautam Adani.
3. *Financial performance:* The group is actually complicit in overestimating the total profits earned by it and actually is in a debt-ridden state due to its improper and fraudulent policies.
4. *Port business:* The group is allegedly indulging in practices of building unfair ties with the government to earn special concessions and profits in this industry.
5. *Environmental concerns:* The emissions from Adani's coal mines are allegedly detrimental to the environment, which has been reported and raised as a major point of concern under the report.

Broad impact of the report on Adani's investors and Follow on Public Offers (FPO's)

One of the most significant consequences of the Hindenburg Research was the tremendous shadow it put on Adani Enterprises' Follow-On Public Offer (FPO). Many retail investors were wary of investing in the report because it was released just days before Adani Enterprises' FPO went live. Furthermore, given the drop in Adani Enterprises' share price, which had "*fallen to around Rs. 2,761 per share, the pricing of the FPO, which ranged from Rs. 3,112 to Rs. 3,276 per share, appeared excessive*" and just as it appeared that Adani Enterprises' Rs. 20,000 crores FPO would fail, it was revealed that the entire issue had been oversubscribed. Despite the fact that the majority of retail investors declined to subscribe to the company's FPO, institutional investors and other domestic entities stepped in to do so.³⁶ However, Adani Enterprises announced in a dramatic turnaround that it had cancelled the FPO and would return all proceeds to investors within a few days. The business argued that the investors' interests

³⁶ Reeba Zachariah, Partha Sinha, Adani scraps fully subscribed FPO, says going ahead 'morally wrong', The Times of India, Feb 05 2023, A3.

are paramount and that it would be immoral to subject them to financial losses as a result of the Adani Enterprises stock route.³⁷

The analysis by Hindenburg Research has had a detrimental impact upon a significant number of its institutional investors. For instance, the **(LIC) Life Insurance Corporation of India** has nearly 1% of total **(assets under management)** of total exposure in the Adani group. The report has also affected the stock ratios of a number of public sector banks having significant in the Adani group and has had a detrimental effect on their investments in the Gautam Adani led conglomerate.³⁸

Adani Group's rebuttal to the claims

The Adani group in its 413 page strong rebuttal denied all the 88 points of allegations on various points as submitted by Hindenburg across its report stating that the same were baseless and inconsequential and construed this as a larger attack on the reputation and sovereignty of India.³⁹ The conglomerate further claimed that it was fully compliant with Indian laws and regulations and this report was in essence biased and inaccurate in essence, thereby initiating legal action against Hindenburg research firm.⁴⁰

Present political debate and Judicial Discourse

The fallout from the damaging disclosures contained in the Hindenburg Research report has definitely sent shockwaves throughout the Indian financial and political systems, casting doubt on the integrity of the country's regulatory authorities.⁴¹ Meanwhile, almost all Indian stock-broking firms have increased the broker-level margins required to trade Adani stocks in order to protect their interests. This is in addition to the significant increase in exchange-level margins caused by the unprecedented and constant fall in the stock prices of Adani Group.⁴²

The Hindenburg report sparked a major furore in the Indian parliament, with the majority of the opposition parties alleging that the present ruling NDA government is hand-in-glove with the Adani group which has major stakes and investments in many key sectors in the country,

³⁷ Sahil Sinha, The Adani-Hindenburg Saga: A complete guide to what's happened so far, The Indian Express, Feb 04 2023, A4.

³⁸ Shuhadeep Choudhary, Investment in Adani group by LIC and SBI has exposed financial system to risk, alleges Congress, The Tribune, Feb 03 2023, A2.

³⁹ Mahesh Langa, Adani-Hindenburg saga continues: Fraud cannot be obfuscated by nationalism, Adani response ignores key questions, says Hindenburg, The Hindu, Jan 30, 2023, A3.

⁴⁰ Meghna Chaudhari, Adani response to Hindenburg report: Embattled corporations invoking nationalism, or national sentiment, is not unheard of, The Indian Express, Feb 04 2023, A3.

⁴¹ Basudha Das, Hindenburg impact: Issues surrounding Adani Group will eventually hurt India's growth, says top economist Nouriel Roubini, Business Today, Feb 23, 2023, A2.

⁴² Hannah Elis Petersen, Could trouble for Adani trip up Narendra Modi ?, The Guardian, Feb 15, 2023, A3.

and is intentionally aiding the conglomerate in its multiple malpractices and illegal business activities.⁴³ The opposition parties have majorly criticized and targeted the ruling NDA government for its inability and inefficiency to regulate the economy and in a scathing attack have been severely critical of the government's reluctance to have a free and fair debate upon the controversy concerning the Adani-Hindenburg issue at hand.

Pursuant to the filing of multiple petitions, the Hon'ble apex court by its order dated 2nd of March 2023, constituted a committee under the chairmanship of retired Justice AM Sapre, in order to probe into the alleged irregularities of the businesses undertaken by the Adani group as alleged in the report circulated by Hindenburg research.⁴⁴ There was an initial time frame of 2 months that was given to SEBI to submit its report, whereas the SEBI has recently approached the Hon'ble Supreme Court praying for giving it a time frame of 6 months for the purpose of diligently probing into the alleged irregularities of the conglomerate. The said action of the SEBI has once again led to divided factions in the legal arena, wherein this has been criticized as a government backed move in order to divert attention from the veracity of the claims against the Ahmedabad based conglomerate as a part of the larger political discourse.

The authors in the next sub-topic will be describing the overall viewpoints arising out of the controversy at hand, in order to provide a constructive and critical analysis of the issue at hand, and to suggest ultimately, measures regarding ensuring the betterment of the securities market and the investor protection in the Indian scenario.

CRITICAL ANALYSIS IN LIGHT OF THE CONTROVERSY

The critical study and analysis of the controversy at hand, has sparked media outrage and widespread debates have originated on this issue with divergent viewpoints coming across from different sections of society with one side heavily tilting in view of the Gujarat based conglomerate, while the critics of the present ruling party in particular are allegedly putting across claims of the Hindenburg report's essence being played down due to the NDA government's strong backing of the Adani Group.⁴⁵ This case in a nutshell has raised serious concerns about the role of the SEBI and the lack of pro-active role played by it, as it had to allegedly wait for a report by a foreign based financial research organization in order to get

⁴³ Saubhadra Chaterji, Hindenburg report on Adani: Opposition plans joint attack on govt with focus on SBI, LIC, The Hindustan Times, Feb 03, 2023, A4.

⁴⁴ Vishal Tiwari v. Union of India & Ors., Writ Petition (C) No. 162 of 2023.

⁴⁵ Jonathan Barrett, Us activist investor who accused Adani of biggest con in corporate history dares Indian group to sue, The Guardian, Jan 27, 2023, at A3.

into the intricacies of the alleged stock-market manipulations and defrauding of the investors.⁴⁶ There was a similar case concerning the CCI (**Competition Commission of India**) regarding the case of Google Inc, wherein before levying fine on Google regarding its abuse of dominant position, the CCI had to in essence wait for elaborate complaints to be filed before taking stringent action against the tech giant.⁴⁷ It has been argued by many legal scholars and experts that the securities regime and the system of stock market isn't stringent enough in the Indian scenario, considering the fact that Indian economy has already been a witness to a majority of the stock-market scams and manipulations, and the fact that such allegations have come up against such a big conglomerate have once again raised criticisms about the health of the securities market and investor protection regime in India.⁴⁸

In the present set of circumstances, a big political debate involving some of the largest media factions has come to the forefront which has further added fuel to the controversy. There is an apparent nationalist-narrative that has been indoctrinated by media houses apparently having connections with the ruling NDA government, who are trying to project this report as an apparent attack on the reputation, integrity and sovereignty of India.⁴⁹ Furthermore, as per the SEBI guidelines, the organizations or individuals undertaking financial research are not entitled to publish confidential information regarding the company's stock financials and should provide a notice of the details intended to be published before the said information is shared in the public domain.⁵⁰ Many of Hindenburg's critics have questioned the fact that, being a US based organization gather access to such critical information of a company based in India, thereby even raising questions regarding the credibility of the financial report and statements made by the research organization.⁵¹ It can be put forth in a nutshell, the whole controversy showcases the fact that, while India intends to be the largest growing economy by the end of this decade, the report circulated by a foreign based organization, can lead to serious aspersions

⁴⁶ Basudha Das, Adani-Hindenburg Issue: Sebi has not found any irregularities yet, claims report, The Hindustan Times, Feb 28, 2023, at A2.

⁴⁷ Umar Javed and Ors v. Google LLC, CCI In re Case No. 39 of 2018.

⁴⁸ Jayesh Parekh, Why didn't SEBI get to the bottom of issues raised by Hindenburg, asks Rajan, The Indian Express, Mar 5, 2023, at A4.

⁴⁹ Snehashish Roy, Amid Adani-Hindenburg row, Anand Mahindra warns not to 'bet against India', The Hindustan Times, Feb 04 2023, at A3.

⁵⁰ Securities and Exchange Board of India (Research Analysts) Regulations, 2014.

⁵¹ Vivek Shankar, New York Short Seller Takes On a Little-Known Indian Goliath, New York Times, Feb 01 2023, A3.

with regards to the faith of the investors about the security of the investments made by them in the stock market.⁵²

The counter-view point that arises or that can be taken is that, if the NDA led government has intended to introduce transparency in governance, what are the reasons for their reluctance in giving due impetus and having an open and transparent parliamentary debate in order to bring clarity upon the issue at hand? ⁵³ Moreover, the fact that the SEBI has approached the Hon'ble apex court seeking a six month extension apparently for the purpose of conducting a full-fledged investigation into the alleged misappropriations by Adani, has also given birth to apprehensions of this being a government backed step in order to play down the importance of the report and melt down this controversy taking into account the upcoming Lok Sabha elections in 2024.⁵⁴ At this critical juncture, it is noteworthy of mentioning that, though certain factions of society have taken this as an attempt of the west to sabotage India's economic growth and reputation, however, this report can also be taken into account as a blessing in disguise, as it exposes the lacunas in the working of the regulatory regime of the securities market and raising question marks regarding investor protection, giving an opportunity to explore in essence the regulatory framework in India regarding the securities market especially in an era, where there is a full-fledged attempt being made in order to make India an economic and investment hub, the Hindenburg report at large can be a catalyst in bringing major reforms in the securities market in the country .⁵⁵

CONCLUSION

The Hindenburg report on Adani while being subject to multiple criticisms of varied forms as well as receiving support from different factions of the mainstream society has brought about an important issue of investor protection and securities regime in the 21st century in a country like India, whose economy has been previously subject to multiple stock-market scams of huge proportions. While such scams have also taken place in the western countries like the USA and the UK, it is imperative to understand that these nations have formulated and modified their regulations in a stringent and efficient manner, in order to counter the negative effects of

⁵² Mohd Noor Alam, Md. Shabbir Alam, Kavita Chavali, *Stock Market Response during COVID-19 lockdown period in India: An Event Study*, 7 J. Asian Fin Eco Business, 131,132 (2020).

⁵³ Sahil Sinha, SEBI okay with regulated short selling, probing Hindenburg allegations against Adani, Hindustan Times, Feb 14 2023, A2.

⁵⁴ Krishnadas Rajagopal, No objection to SC setting up panel in Hindenburg- Adani case: Centre, SEBI, The Hindu, Feb 13 2023, A4.

⁵⁵ Indu Bhan, Hindenburg-Adani probe: SEBI asks SC for six months more, The Economic Times, April 30, 2023, A1.

securities and stock-market manipulations, India is yet to make stringent regulations and especially make provisions for adopting a more cohesive, pro-active and streamline approach in preventing such issues and building investor trust. Therefore, in light of the prevalent circumstances and situation prevailing therein, it is inherently essential that the report that has been published by Hindenburg is given due attention and a cohesive investigation is undertaken in order to bring about the hidden truths in the instant matter at hand and in the wake of the prevailing circumstances bring about necessary and requisite reforms as essential so as to ensure effectiveness and build the good faith and trust of the investors upon the regime of the security markets in India.