



# The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2024

Editor-in-Chief – Prof. (Dr.) Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

---

## A CLASH OF TITANS: ADANI-HINDENBURG SAGA!

The Indian business landscape was shaken in January 2023 when Hindenburg Research, a short-selling firm based in the United States, released a damaging report. The report accused the Adani Group, of "*stock manipulation and accounting fraud schemes over decades,*" setting off shockwaves through the Indian economy and beyond.

Gautam Adani, one of India's largest multinational conglomerates who until recently was the richest Indian in the world, has now slipped to 22nd spot in the Forbes billionaire list 2023 in the wake of Hindenburg Research's report.<sup>1</sup>

### **THE ALLEGATIONS UNFOLD:**

**Stock Manipulation:** Hindenburg alleged the Adani Group inflated stock prices through artificial demand and related-party transactions. This raises questions about compliance with Section 188 of CA 2013, which prohibits manipulating the price of securities.

**Accounting fraud:** According to the report, the Adani Group overstated its profits and assets. This could violate Sections 129 and 134, which require companies to keep proper accounting records and provide fair and accurate financial statements.

**Offshore Entities:** Hindenburg highlighted the use of Mauritius-based entities, suspected of being shell companies. While not illegal per se, such structures raise concerns about potential violations

---

<sup>1</sup> Express Web Desk, *The Adani-Hindenburg saga: A complete guide to what's happened so far*, (2023), The Indian Express, [The Adani-Hindenburg saga: A complete guide to what's happened so far | Business News - The Indian Express](#).

of Sections 192 and 193 of CA 2013 regarding related-party transactions and disclosure of significant interests.

### **WHAT IS HINDENBURG RESEARCH?**

Hindenburg is a “short-seller” that specializes in forensic financial research, founded in 2017 by Nathan Anderson. It is a forensic financial research firm which analyses equity, credit and derivatives.

Hindenburg won its reputation as a bloodhound for financial malfeasance in 2020, when it accused electric vehicle maker Nikola of lying to investors about its truck’s capabilities. Nikola’s founder was eventually convicted of fraud.<sup>2</sup>

*“Today we reveal the findings of our 2-year investigation, presenting evidence that the INR 17.8 trillion (U.S. \$218 billion) Indian conglomerate Adani Group has engaged in a brazen stock manipulation and accounting fraud scheme over the course of decades.”<sup>3</sup>*

### **WHAT IS SHORT SELLING?**

"Short selling" is defined as selling stock that the seller does not own at the time of trade." Short-selling occurs when an investor sells borrowed shares in the market in the hopes of repurchasing them at a lower price. To sell shares of a particular company, an investor does not need to own them. Instead, they can borrow the company's shares/assets from any brokerage or dealer.

### **ADANI’S REFUTING REBUTTAL:**

Adani Group, an Indian multinational conglomerate, founded by Gautam Adani, is headquartered in Ahmedabad, Gujarat. It was established in 1988 as a commodity trading business (mining and trading of coal and iron ore), with its flagship company.

It has footholds in various industries like ports, energy, mining, real estate, defense etc. With operations in Indonesia, Australia and other nations the corporation has worldwide presence. The

---

<sup>2</sup> Allison Morrow, *Analysis on: Why a tiny American firm is taking aim at an Indian conglomerate*, (2023), CNN, Why a tiny American firm is taking aim at an Indian conglomerate | CNN Business.

<sup>3</sup> The Hindenburg Research, *Adani Group: How The World’s 3rd Richest Man Is Pulling The Largest Con In Corporate History*, (Jan 24 2023), Adani Group: How The World’s 3rd Richest Man Is Pulling The Largest Con In Corporate History – Hindenburg Research.

Adani's vehemently denied all the accusations made through the report with a 400-page response calling the report to be "baseless and malicious."

#### **SEBI'S PROPOSALS TO THE DISCLOSURE FRAMEWORK:<sup>4</sup>**

The Securities and Exchange Board of India ("SEBI") proposed modifications and additions to the present disclosure regime under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as "the LODR Regulations") in its Consultation Paper dated 12-11-2022. The LODR Regulations are applicable on all listed entities and were formulated to ensure uniformity with regard to disclosure requirements.

Regulation 30 of the current disclosure framework proposed mandatory obligation on top 250 listed entities to "necessarily confirm or deny any event or information reported in mainstream media, whether in print or digital mode, which may have a material effect on the listed entity under this regulation". At present, there is a discretion on this matter.

#### *Adani-Hindenburg row*

On 24-1-2023, a short-selling firm released "Hindenburg Report" alleging the Adani group of stock manipulation and accounting fraud. On the next day, Adani group denied the report calling it baseless on Twitter.<sup>5</sup> Even after the verification, Adani stocks kept crashing and the group lost over 10 lakh crores.<sup>6</sup>

#### **CAN SEBI PROCEED AGAINST HINDENBURG IF THE ALLEGATIONS ARE FOUND TO BE MISLEADING?**

---

<sup>4</sup> Samiksha Maskara, *Analysing SEBI's Proposals to the Disclosure Framework*, 2023 SCC OnLine Blog OpEd 89

<sup>5</sup> "Counterstatement. Selective Misinformation and Baseless Allegations to Damage FPO : Adani Group on Hindenburg Report", The Hindu (26-1-2023) <https://www.thehindubusinessline.com/companies/selective-misinformation-and-baseless-allegations-to-damage-fpo-adani-group-on-hindenburg-report/article66431584.ece>.

<sup>6</sup> Debayan Roy, "Hindenburg Report on Adani: Loss of Investors Several Lakh Crores, says Supreme Court; Asks SEBI for Framework to Protect Indian Investors", Bar and Bench (10-2-2023) <https://www.barandbench.com/news/litigation/hindenburg-report-adani-loss-of-investors-several-lakh-crores-supreme-court-asks-sebi-protect-indian-investors#:~:text=it%20is%20said%2010%20lakh%20crores>.

The question arises whether SEBI has the extraterritorial jurisdiction to initiate proceedings against Hindenburg if the allegations are found to be misleading and how the order will be enforced, considering Hindenburg is based in the U.S.

In the case of *Pan Asia Advisor v. SEBI*, the SC held that SEBI has the mandate to proceed against persons who are not corporally present within India. In case, the acts committed by them affect the interest of Indian investors. This indicates that the protection of Indian investors amounts to sufficient nexus for SEBI to initiate proceedings even when the underlying act takes place outside India.

Thus, SEBI has jurisdiction to initiate proceedings against Hindenburg, even if it is based in the U.S., if the allegations against Adani are found to be misleading.

The other question concerns how the order will be enforced. It is important to note that both India and the United States are members of the International Organization for Securities Commission ("IOSCO"), an international organization that brings together all securities regulators and establishes standards for the securities industry. In May 2002, IOSCO signatories signed a Multilateral Memorandum of Understanding for mutual assistance and information exchange between their authorities for the purpose of enforcing and ensuring compliance with respective laws and regulations within their jurisdictions. Despite an appropriate framework, the practical enforcement of SEBI's order remains open due to a conflict of domestic laws and other impediments.<sup>7</sup>

#### **THE SUPREME COURT VERDICT:**

The Supreme Court's three-judge bench ruled in favor of the Adani group and SEBI, rejecting the probe's transfer to other investigative bodies such as SIT or CBI. The court ruled that the authority to transfer an investigation must be exercised in exceptional circumstances and not in the absence of compelling justifications.

---

<sup>7</sup> Ravishekhhar Pandey, *Analysis of Hindenburg Fiasco concerning Adani from the Perspective of Securities Law in India*, (2023), Bar and Bench, Analysis of Hindenburg Fiasco concerning Adani from the Perspective of Securities Law in India (barandbench.com)

The Court deemed the Hindenburg report untrustworthy and intended to influence the market through selective and distorted information. It also completely rejected the Organized Crime and Corruption Reporting Project's (OCCRP) report. As a third-party report without verification.

While upholding SEBI's integrity, the Court directed that SEBI's investigation be expedited within three months.<sup>8</sup>

---

<sup>8</sup> *Vishal Tiwari (Adani Group Investigation) v Union of India* (2023) 4 SCC 332