

ROLE AND REMIT: ON SC APPOINTING PANEL TO PROBE ADANI CASE

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It is difficult to welcome unequivocally the Supreme Court order forming a committee to look into possible regulatory failure in dealing with the allegations that the Adani Group companies flouted norms in the securities market. The Court has done well to make it clear that the committee's constitution will not divest the Securities and Exchange Board of India (SEBI) of its powers and responsibilities in continuing with its probe. In addition, it has said SEBI should also investigate the charge that the companies failed to maintain the minimum public shareholding or disclose transactions involving related parties. To the extent that it holds the regulator to its claim that it is already seized of the matter, as well as expands its remit to address squarely the allegation that funds controlled by related parties were used to manipulate stock prices, the order is quite welcome. However, a relevant question is whether a committee headed by a former Supreme Court judge is needed at all. SEBI has been asked to share its findings with the panel, but it is doubtful if the committee can avoid going into the charges on its own before it can confirm or rule out regulatory failure. The cause may have been better served if the Court had chosen to monitor SEBI's inquiry by seeking progress reports. And it may have taken the help of experts, if necessary, to assess the final outcome. The other aspect of the panel's work — suggesting measures to strengthen the regulatory framework — could have been left to the legislature. Also, that the Court has asked for the panel's report in a sealed cover is disappointing. The fate of similar committees, the one on Pegasus, for instance, does not inspire confidence about the outcome.

The order also asks the committee to ascertain the causal factors that led to volatility in the market. The severe losses suffered by retail investors following the Hindenburg revelations should not become a red herring to divert attention from the conduct of the companies. Investor protection is one of SEBI's functions, but it is equally true that no measure can be a guarantee against market forces reacting sensitively to developments. There is an inherent and perpetual risk in stock market investments, and it is addressed from a regulatory viewpoint by various means — prescribing norms and mandating disclosures to setting upper and lower limits on daily price movement. It may be expedient for the Adani Group — and the government, which also wants this controversy to blow over soon — to highlight investor losses so that a quick exoneration is ensured by putting the blame on an alleged plot against the country and its corporate champions by an inimical short-seller; but the Court's focus should be on SEBI's conduct and independent functioning, preserving which alone can protect investors from market manipulators.

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