

VISHAL TIWARI

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v.

UNION OF INDIA & ORS.

(Writ Petition (C) No. 162 of 2023)

MARCH 02, 2023

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**[DR DHANANJAYA Y CHANDRACHUD, CJI,
PAMIDIGHANTAM SRI NARASIMHA AND
J. B. PARDIWALA, JJ.]**

Securities Contracts (Regulation) Rules, 1957 – r. 19A – Loss of the investor wealth in securities market – The Hindenburg Report – Investigation – The batch of petition in the instant case are regarding the loss of investor wealth in the securities market because of the steep decline in the share of the Adani Group of Companies because of the report published by one Hindenburg Research in which it was alleged that the Adani Group of Companies has manipulated its share prices and also has failed to disclose the transaction with related parties in contravention of the regulations framed by SEBI – The report alleges that company has violated other provision of securities laws – Hindenburg Research has taken a short position in the Adani Group companies through US traded bonds and non-Indian traded derivative instruments – SEBI had started the investigation, the Court directed it to extend the scope of its investigation which should include investigation as to any violation of r. 19A, and also that whether there has been any failure to disclose transaction with related parties along with other relevant information and also that whether there was any manipulation of stock prices in contravention of existing laws – Further, the Court ordered the appointment of an Expert Committee for the assessment of the extant of regulatory framework and for the recommendation to strengthen and also to suggest the measures to strengthen investor awareness – Also, for effective working of Expert Committee, the Court directed SEBI to provide requisite information relevant for the purpose and also directed other agencies of the Union Government to cooperate with the committee.

ORIGINAL CIVIL/CRIMINAL JURISDICTION: Writ Petition (C) No. 162 of 2023.

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A Under Article 32 of The Constitution of India.

With

Writ Petition (Crl.) No. 39 of 2023, Writ Petition (C) No. 201 of 2023 and Writ Petition (Crl.) No. 57 of 2023.

B Prashant Bhushan, Ms. Neha Rathi, Ramesh Kumar Mishra, Kamal Kishore, V.V. Gotam, Varun Thakur, Varinder Kumar Sharma, Advs. for the Petitioner.

Tushar Mehta, SG, Jaideep Gupta, Sr. Adv., Akhil Abraham Roy, Ms. Surekha Raman, Abhishek Anand, M/s KJ John & Co., Kanu

C Agarwal, Rajat Nair, Arvind Kumar Sharma, Ramesh Babu MR, Ms. Manisha Singh, Ms. Nisha Sharma, Ms. Jagriti Bharti, Ms. Tanya Chowdhary, Rohan Srivastava, Advs. for the Respondents.

Vishal Tiwari, Manohar Lal Sharma, Petitioner-in-Person.

The following Order of the Court was passed:

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Q R D E R

1. Notice.

2. The present batch of petitions concerns the loss of investor wealth in the securities market over the last few weeks because of a

E steep decline in the share price of the Adani Group of companies. The decline in the share price was precipitated by a report published by Hindenburg Research on 24 January 2023. This report *inter alia* alleges that the Adani Group of companies has manipulated its share prices; failed to disclose transactions with related parties and other relevant information concerning related parties in contravention of the regulations

F framed by SEBI; and violated other provisions of securities laws. The report also states that Hindenburg Research has taken a short position in the Adani Group companies through US traded bonds and non-Indian traded derivative instruments. It is in this background that the present batch of petitions came to be filed.

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3. A brief overview of the petitions follows:

a. WP(C) No. 162 of 2023 states that public money amounting to thousands of crores is at risk because public institutions like the State Bank of India¹ and the Life Insurance

H ¹“SBI”

Corporation of India² are exposed to the Adani Group. It *inter alia* seeks the issuance of directions to the Union of India and the Union Ministry of Home Affairs to constitute a committee headed by a retired judge of the Supreme Court to investigate the contents of the report published by Hindenburg Research;

b. WP(Crl) No. 39 of 2023 is for the issuance of directions to the Union Ministry of Home Affairs to register an FIR against Mr. Nathan Anderson (founder of Hindenburg Research) and his associates for short selling, and for directions to recover the profits yielded by the short selling to compensate investors;

c. WP(C) No. 201 of 2023 *inter alia* states that “*the Adani Group has been in flagrant violation of ... Rule 19A of the Securities Contracts (Regulation) Rules by surreptitiously controlling more than 75% of the shares of public listed Adani group companies, thereby manipulating the price of its shares in the market.*” It *inter alia* seeks a court monitored investigation by a Special Investigation Team or by the Central Bureau of Investigation into the allegations of fraud and the role played by top officials of leading public sector banks and other lender institutions; and

d. WP(Crl) 57 of 2023 is for directions to any investigative authority to: (i) investigate the Adani Group companies under the supervision of a sitting judge of this Court; and (ii) investigate the role of LIC and SBI in these transactions.

4. In its order dated 10 February 2023, this Court noted that there was a need to review existing regulatory mechanisms in the financial sector to ensure that they are strengthened with a view to protect Indian investors from volatilities in the market. Accordingly, it was suggested to the Solicitor General that he may seek instructions from the Union of India on the constitution and remit of an expert committee.

5. We have heard Mr. Prashant Bhushan, learned senior counsel appearing for the petitioners and Mr. Tushar Mehta, learned Solicitor General appearing for the Union of India. Both of them have also placed

² “LIC”

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- A on record brief notes indicating their suggestions for the remit of the expert committee to be constituted. Further, SEBI has placed on record a brief note on the factual and legal aspects describing the existing statutory regime, regulatory mechanisms and frameworks in place for the protection of investors. It has also laid out the regulatory framework governing short selling. Mr Vishal Tiwari and Mr Manohar Lal Sharma
B have appeared in person.

6. SEBI has submitted in its note that:

- C a. It has adopted a disclosure based regulatory regime for both issuance of and trading in securities. This is in line with the discontinuation of pricing control for capital issues in favour of the principle of free discovery by the markets based on demand and supply from informed investors; and
- b. It is “strongly and adequately empowered to put in place regulatory frameworks for effecting stable operations and development of the securities markets including protection of investors.” It has also detailed the extant framework governing investor protection in the context of the subject matter at hand. It has stated that the key pillars of investor protection are:
- E “11.1 Mandatory disclosures by listed companies to facilitate free and fair price discovery and to ensure that all investors have equal access to material information for them to be able to take informed investment decisions;
- F 11.2 Market systems to ensure seamless trading and settlement including volatility management;
- G 11.3 Enforcement action in the event of misconduct in the market including fraud or violations of SEBI regulations.”

7. In **Prakash Gupta v. SEBI**,³ a two Judge Bench of this Court, of which one of us (D.Y. Chandrachud, J) was a part discussed the specialized regulatory role of SEBI and noted that:

“99. The provisions of the SEBI Act, as analyzed earlier in this judgment, would indicate the importance of the role which has been ascribed to it as a regulatory, adjudicatory and prosecuting

agency. SEBI has vital functions to discharge in the context of maintaining an orderly and stable securities' market so as to protect the interests of investors.”

8. On the subject matter of these petitions, SEBI has stated that:

“21.1 SEBI is already enquiring into both, the allegations made in the Hindenburg report as well as the market activity immediately preceding and post the publication of the report, to identify violations of SEBI Regulations including but not limited to SEBI (Prohibition of Fraudulent and Unfair Trade Practices I relating to Securities Market) Regulations 2003, SEBI (Prohibition of Insider Trading) Regulations 2015, SEBI (Foreign Portfolio Investors) Regulations 2019, Offshore Derivative Instruments (ODI) norms, short selling norms, if any. As the matter is in early stages of examination, it may not be appropriate to list details about the ongoing proceedings at this stage.”

9. In view of the above statement, it appears that SEBI is seized of the investigation into the allegations made against the Adani Group companies. SEBI has not expressly referred to an investigation into the alleged violation of the Securities Contracts (Regulation) Rules 1957 which provide for the maintenance of minimum public shareholding in a public limited company. Similarly, there may be various other allegations that SEBI must include in its investigation.

10. As a part of its ongoing investigation, SEBI shall also investigate the following aspects of the issues raised in the present batch of petitions:

- a. Whether there has been a violation of Rule 19A of the Securities Contracts (Regulation) Rules 1957;
- b. Whether there has been a failure to disclose transactions with related parties and other relevant information which concerns related parties to SEBI, in accordance with law; and
- c. Whether there was any manipulation of stock prices in contravention of existing laws.

11. The above directions shall not be construed to limit the contours of the ongoing investigation. SEBI shall expeditiously conclude the investigation within two months and file a status report.

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A 12. Further, SEBI shall apprise the expert committee (constituted in paragraph 14 of this order) of the action that it has taken in furtherance of the directions of this Court as well as the steps that it has taken in furtherance of its ongoing investigation. The constitution of the expert committee does not divest SEBI of its powers or responsibilities in continuing with its investigation into the recent volatility in the securities market.

B 13. In **Prakash Gupta** (*supra*), we took note of the developing nature of the regulations pertaining to the securities market. This Court noted that:

C “101. Therefore, the SEBI Act and the rules, regulations and circulars made or issued under the legislation, are constantly evolving with a concerted aim to enforce order in the securities market and promote its healthy growth while protecting investor wealth.”

D 14. In order to protect Indian investors against volatility of the kind which has been witnessed in the recent past, we are of the view that it is appropriate to constitute an Expert Committee for the assessment of the extant regulatory framework and for making recommendations to strengthen it. We hereby constitute a committee consisting of the following members:

E a. Mr. O P Bhatt;
b. Justice J P Devadhar (retired)

F c. Mr. KV Kamath;
d. Mr. Nandan Nilekani; and
e. Mr. Somashekhar Sundaresan.

The Expert Committee shall be headed by Justice Abhay Manohar Sapre, a former judge of the Supreme Court of India.

G 15. The remit of the Committee shall be as follows:

a. To provide an overall assessment of the situation including the relevant causal factors which have led to the volatility in the securities market in the recent past;
b. To suggest measures to strengthen investor awareness;

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- c. To investigate whether there has been regulatory failure in dealing with the alleged contravention of laws pertaining to the securities market in relation to the Adani Group or other companies; and A
 - d. To suggest measures to (i) strengthen the statutory and/or regulatory framework; and (ii) secure compliance with the existing framework for the protection of investors. B
16. The Chairperson of the Securities and Exchange Board of India is requested to ensure that all requisite information is provided to the Committee. All agencies of the Union Government including agencies connected with financial regulation, fiscal agencies and law enforcement agencies shall co-operate with the Committee. The Committee is at liberty to seek recourse to external experts in its work. C
17. The honorarium payable to the members of the Committee shall be fixed by the Chairperson and shall be borne by the Union Government. The Secretary, Ministry of Finance shall nominate a senior officer who will act as a nodal officer to provide logistical assistance to the Committee. All the expenses incurred in connection with the work of the Committee shall be defrayed by the Union Government. D
18. The Committee is requested to furnish its report in sealed cover to this Court within two months. E

Ankit Gyan
(Assisted by : Mahendra Yadav, LCRA)

Directions issued.