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Legal experts see no knee-jerk response from Sebi on US indictment of Adani

Indian market regulator has taken stringent measures when it comes to misstatements and non-disclosures in the domestic market, say lawyers



Khushboo Tiwari | Mumbai

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The Securities and Exchange Board of India (Sebi) may not be in a haste to take any action on the charges levelled by the US prosecutors on Adani group executives, according to legal experts.

Billionaire businessman Gautam Adani, his nephew Sagar Adani, and six others have been indicted by the United States Securities and Exchange Commission (SEC) in an alleged multi-million dollar bribery and fraud scheme related to a solar energy project in India.

The US market regulator SEC can seek information if it wants but it has carried out an independent probe, regulatory experts said, adding that the matter is not in Sebi's jurisdiction.

“Under the Multilateral Memorandum of Understanding (MMoU) of the International Organization of Securities Commissions (IOSCO), SEC can ask for information on such matters while Sebi can also seek information from offshore regulators. However, as the matter is not in Sebi's jurisdiction, it may not immediately respond to it,” said a former Sebi official.

According to experts, while Sebi has carried out a probe earlier into the Hindenburg allegations, the situation is more “grave” this time.

Shweta Sahu, Lead of cross-border enforcement and tech litigation at Nishith Desai Associates, said when MNCs were charged with such allegations by foreign regulators in the past, complaints were filed in India.

“Indian courts took cognisance of such complaints and directed probe into such allegations under Indian penal and anti-corruption laws,” Sahu said.

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“It is not mandatorily required for Sebi to initiate a fresh investigation into the concerns raised by the SEC. However, the SEC’s charges introduce new elements that warrant scrutiny. Sebi’s mandate to protect investor interests and ensure market integrity recommends a thorough examination of these serious allegations in their ongoing investigations,” added Sangeeta Jhunjunwala, Partner, Khaitan Legal Associates.

Queries sent to Sebi on any possible probe into the fresh charges or the status of the order on previous investigations carried out in the wake of the US short-seller Hindenburg’s allegations did not elicit any response till the time of going to press.

Along with the charges of bribery on the Adani group, the US prosecutors have also pointed out alleged misstatements by the group in the fundraising process.

Legal experts said that Sebi has historically been stringent on domestic companies on misstatements and violation of disclosure norms by penalising them with monetary fines, debarment from securities markets, and in severe cases, criminal prosecution.

“Sebi has previously taken action against companies for fraudulent misstatements in financial statements, categorising them as misrepresentation and unfair trade practices under Regulation 4(2) of the SEBI PFUTP Regulations, 2003,” said Alay Razvi, Managing Partner, Accord Juris.

Advocate Vishal Tiwari, the petitioner in the Adani-Hindenburg matter in the Supreme Court, said the market regulator had not submitted any conclusive report to the apex court on its findings. Filed in August this year, the plea seeking a conclusive report from Sebi is scheduled to be heard on December 13, he added.

Sebi had earlier submitted to the Supreme Court that it had completed 22 of the 24 investigations. The market regulator had also issued show-cause notices to Hindenburg and a group entity of Adani. However, any order on the matter has not been issued yet.

“One expects that Sebi would have been able to find it if there were any issues. The market regulator could have detailed in its investigation report what is under its jurisdiction and what is not. Currently, there is no information on who was investigated, what aspects were investigated, and if even the previous allegations had any merit,” said an expert on regulatory matters and corporate governance on the condition of anonymity.

An expert on corporate governance with nearly five decades of experience said Sebi had the power to take suo moto action but it will step in at the opportune time.

“It is too early at the moment. The impact needs to be seen - if the company defaults on its obligations. It would be speculative to say anything at the moment as the matter will go further with global regulators. We should hold our

horses for now and see if this is jus



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,” the expert said.

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