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*Analysis*

# The Adani Indictment: Untangling the Legal Web of Potential Violations in India

## Key Takeaways

- Allegations in the Adani indictment, if true, raise several questions about the company's potential violations under Indian securities laws
- Critically, questions around the timing of disclosures and accuracy of statements made – are there lessons to be learnt?
- Were disclosures required even if the search/investigation was not under Indian law?
- Should notices to a director be deemed to be notices to the company or merely notices in their individual capacity?
- How should independent directors conduct themselves and what remedial steps should ideally be taken?
- Should SEBI probe further irrespective of what transpires in the US?
- Unlike Hindenburg the indictment does not clearly set out the bribery scheme, leaving Adanis with an uphill battle to defend their reputation and stock

Enough has been written about the Adani indictment. The Adani Group has of course rubbished the claims, calling them "baseless", "defamatory" and "malicious". On their part, till early this year, Adani Green maintained that they are neither aware of any investigations against members of the Adani group, nor are they aware of any misconduct. Several such statements were made by Adani's legal counsels, and the company itself, in response to a Bloomberg article published in March 2024 titled ***"US Probing Indian Billionaire Gautam Adani and His Group Over Potential Bribery."*** which provided a detailed account of the entire Azure-Adani saga.

The Bloomberg report brought Adani entities into the spotlight. According to the indictment, despite Gautam and Sagar Adani's awareness of ongoing investigations and their orchestration of a bribery scheme, the Adani Group publicly stated in the Bloomberg article that, *"We are not aware of any investigation against our Chairman [Gautam S. Adani]."* In July 2024, the indictment notes that an employee of Adani Green, in response to investor inquiries, "falsely asserted that: (i) no entity or individual within the Conglomerate had been contacted by U.S. authorities regarding any investigation; (ii) the Conglomerate was not aware of any investigation; (iii) the Conglomerate was not aware of any misconduct; and (iv) the 2024 news article was 'behind them'."

Azure, a U.S.-domiciled company, appeared to be a weak link. In response to an SEC notice, Azure ordered an audit and subsequently also relinquished its only remaining 650-megawatt power purchase agreement (PPA) to distance itself from the bribery scheme. Employees of Azure's investors, CDPQ, a Canadian pension fund, were alleged, under the indictment, to be aware of the bribery arrangement involving Azure and the Adani representatives.

The essence of the indictment is as follows. An Indian energy company (presumably Adani Green) and another US issuer[1] (presumably Azure) secured manufacturing-linked solar tenders from the Solar Energy Corporation of India (SECI) to supply 8 GW and 4 GW of energy, respectively. SECI was tasked with finding buyers—state distribution companies (DISCOMs) but struggled to do so. Adani Green and its directors allegedly conspired to execute a bribery scheme to prompt the DISCOMs to enter into power supply agreements (PSAs) with SECI. Separately, of the 4 GW allocated to Azure, SECI managed to secure buyers for 2.3 GW (the Andhra Pradesh government) and 650 MW (from other states). The indictment alleges that to satisfy its share of the bribery scheme, Azure relinquished 2.3 GW to SECI, with the latter reallocating Azure's forfeited obligation to Adani Green without a new bidding process.

Unlike the Hindenburg report, which laid out the entire alleged scheme in detail (whether accurate or not), the indictment shies away from specifying the exact bribery scheme and does not present evidence of a clear money trail. The closest the indictment comes to asserting that bribes were paid is in paragraph 103, where it refers to search warrants served to Sagar Adani, mentioning evidence related to "the payment of or an offer to pay, bribes, kickbacks, or provide any other thing of value to Indian government officials to obtain or retain business advantages." From an Adani perspective, they seem to be facing an uphill battle defending their reputation and stock price and having to prove their innocence without any well substantiated claims that money changed hands (or so it appears from public domain).

[1] The DOJ indictment refers to the entities as the 'Indian Energy Company' and the 'US Issuer' and does not mention them by name, hence our presumption. However, the SEC's complaint (2024-181) does name both entities as Adani Green and Azure Power.

The questions that some of our clients and the public in general are asking are as follows:

**1. What is the role of SECI?**

SECI acts as an intermediary between power producers and DISCOMS to address concerns among the former about dealing with the latter, which have historically struggled to make timely payments. To mitigate counterparty risk, SECI directly contracts with DISCOMs to supply power (within 3-6 months generally as the indictment notes), purchases electricity from power producers and provides stronger payment guarantees to producers through mechanisms like payment security funds and tripartite agreements involving the Reserve Bank of India (RBI).

In this case, three key questions have been raised: (a) did SECI allow power producers to directly negotiate with DISCOMs; (b) why didn't SECI terminate the tender despite its inability to sign power supply agreements with DISCOMs for over 12+ months; (c) why did SECI approve Azure Power's withdrawal from a 2.3 GW supply obligation and subsequently reallocate the same to Adani Green without issuing fresh bids. While it is not uncommon for regulatory bodies to reallocate projects to other bidders from the same tender to expedite project implementation, some stakeholders have questioned the transparency of this process. The indictment, in paragraph 70, alleges that SECI was "secretly influenced" to complete the reallocation to Adani Green.

**2. Can Adani Green say that (a) "no entity or individual within the Conglomerate had been approached by any United States authority in connection with any investigation into the Conglomerate or its affiliates;" and that (b) "the Conglomerate was not aware of any such investigation" as per paragraph 122 of the indictment?**

If the indictment is proven to be true, it is hard to see how it can be claimed that the Adani entities did not receive any notices from American law enforcement. The indictment claims that Adani executives were subject to investigation long before the Bloomberg article of March 2024. As per paragraph 103, Sagar Adani's phone is alleged to have been confiscated pursuant to a judicially authorized search warrant in March 2023, and a grand jury subpoena was also apparently served simultaneously. Gautam Adani, as per paragraph 105 of the indictment, is supposed to have been made aware of this development and retained such knowledge when several statements were made to lenders, investors, and the public, denying the allegations.

Perhaps Adani Green's argument is that all the investigations and notices were served to executives in their individual capacities. And while this may be technically correct, it does not absolve Adani entities of the obligation to disclose the same as material events (which extends to directors and key managerial personnel as explained below) under Indian securities laws, if these events had, in fact, occurred.

**3. Should Adani Green have notified SEBI when Sagar Adani's phone was confiscated?**

Under Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR), listed companies are obligated to disclose material events or information that could significantly affect the company's performance, or influence investor perception. The regulation specifically mandates disclosure of the following:

*"Actions initiated or orders issued by any regulatory, statutory, enforcement authority, or judicial body against the listed entity or its directors, key managerial personnel, senior management, promoters, or subsidiaries, in connection with the listed entity, specifically regarding:*

*(a) Search or seizure."*

If Sagar Adani was being investigated as claimed in the indictment, a strong argument exists that Adani Green (of which Sagar Adani was a director) should have disclosed this to the stock exchanges. One of the defences which Adani Green may be taking is that the confiscation of Sagar's phone occurred in his personal capacity, and not as a director. It may also be argued that this provision does not extend to actions initiated outside India. However, given SEBI's insistence on spirit-based compliance, a strong argument can be made by the regulator that a disclosure should have been made, if the indictment is true, considering the group's claims of ethical practices and standards of governance.

The penalties for non-disclosure under Regulation 98 of the LODR are detailed below:

*"The listed entity or any other person thereof who contravenes any of the provisions of these regulations, shall, in addition to liability for action in terms of the securities laws, be liable for the following actions by the respective stock exchange(s), in the manner specified in circulars or guidelines issued by the Board:*

*a. imposition of fines;*
*b. suspension of trading;*
*c. freezing of promoter/promoter group holding of designated securities, as may be applicable, in coordination with depositories.*
*d. any other action as may be specified by the Board from time to time"*

Even if other securities law provisions apply to this case, we believe the above regulation should stand triggered, assuming the allegations are true.

**4. If the allegations in the indictment are true, is there any other impact on the Adani companies under Indian laws?**

If the allegations levelled in the indictment are true and Gautam Adani was indeed in receipt of the search warrant issued by the U.S. authorities, the SEBI Prohibition of Fraudulent and Unfair Trade Practices (PFUTP) Regulations could also come into play. This is in the context of disclosures made by the Adani entities in further offerings post the issuance of such warrant. The PFUTP Regulations prohibit dealing in securities in a fraudulent manner and engaging in manipulative, fraudulent and unfair trade practices. A few key definitions under Regulation 2 are as provided below –

*"(b) "Dealing in securities" includes...*

*(ii) such acts which may be knowingly designed to influence the decision of investors in securities...*

*(c) "fraud" includes any act, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include –*

*1. a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;*

*2. a suggestion as to a fact which is not true by one who does not believe it to be true;*

*3. an active concealment of a fact by a person having knowledge or belief of the fact"*

Given how broadly the above terms are defined, and if Gautam Adani (being a director on several Adani companies that raised funds from Indian capital markets) was indeed served with a notice, SEBI could argue that the Adani companies were liable for making misleading disclosures, violating the PFUTP regulations. Penalties under the PFUTP Regulations may extend up to 25 crore or three times the profits made from such practices, whichever higher. SEBI also has the broad power to restrain persons from accessing capital markets, in the interest of investors or the securities market.

## 5. What should Independent Directors do now?

Amidst the turmoil, an important question arises: What is the role of independent directors in Adani Green. The Companies Act, through Schedule IV, imposes several obligations on independent directors (listed in Annexure I). First and foremost, independent directors are dutybound to report unethical behaviour and suspected fraud. Their duty is towards the company and its shareholders, not towards the management.

To fulfil these duties, independent directors at Adani Green could consider retaining separate legal counsel, as sometimes done in similar situations. They should then assess the merits of the case on a standalone basis, evaluate the impact of the indictment on the company and decide on the best course of action for the company and independent directors themselves. The independent directors could then consider disclosing their analyses appropriately

## Conclusion

The allegations against the Adani conglomerate, if substantiated, raise serious questions about the company's governance, transparency, and ethical practices. The responses from Adani executives, the alleged orchestration of bribery schemes, and the handling of material disclosures have placed a spotlight on the corporate governance framework within the group. Adani's denial of being charged under the FCPA has also evoked some degree of support for Adani Green's stock.

Moving forward, it is imperative for independent directors, regulators, and stakeholders to ensure that these allegations are thoroughly investigated and that appropriate accountability

measures are enforced. Restoring investor confidence will require more than public statements; it will necessitate genuine transparency, adherence to compliance norms, and a commitment to ethical practices that prioritize the interests of shareholders and the broader community.

While the U.S. investigation is pursuant to several fundraises from American financial markets, the key question now is whether SEBI will take a leaf out of the American book and investigate the allegations in India.

We will analyse the U.S. implications of the indictment as well as its impact on private credit contracts in the next part of this article.

*- Resolut's Public M&A team*

## Annexure I

Schedule IV of the Companies Act, 2013 lists out the duties of independent directors as follows:

**The independent Directors shall –**

1. undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company;

2. seek appropriate clarification or amplification of information and, where necessary, take and follow appropriate professional advice and opinion of outside experts at the expense of the company;

3. strive to attend all meetings of the Board of Directors and of the Board committees of which he is a member;

4. participate constructively and actively in the committees of the Board in which they are chairpersons or members;

5. strive to attend the general meetings of the company;

6. where they have concerns about the running of the company or a proposed action, ensure that these are addressed by the Board and, to the extent that they are not resolved, insist that their concerns are recorded in the minutes of the Board meeting;

7. keep themselves well informed about the company and the external environment in which it operates;

8. not to unfairly obstruct the functioning of an otherwise proper Board or committee of the Board;

9. pay sufficient attention and ensure that adequate deliberations are held before approving related party transactions and assure themselves that the same are in the interest of the company;

10. ascertain and ensure that the company has an adequate and functional vigil mechanism and to ensure that the interests of a person who uses such mechanism are not prejudicially affected on account of such use;

11. report concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy;

12. assist in protecting the legitimate interests of the company, shareholders and its employees;

13. not disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans, unpublished price sensitive information, unless such disclosure is expressly approved by the Board or required by law.

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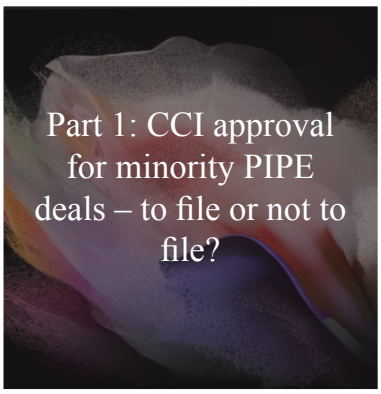








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