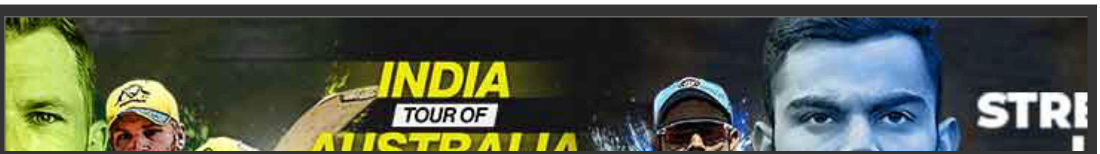

Modi's promise of transparency and how Adani's DHFL googly might derail It

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Prime Minister Modi made big promises to attract foreign investment to India for its self reliance programme and the most important part of it was the transparency India will offer in comparison with neighbouring China. Many leading investors I spoke to were skeptical of this promise given the lack of transparency in governance in India today and it took me some quality arguments to show why India was definitely a better choice over China in the long run,

And then last week the Adani Group, rumoured to be the closest supporter of the prime minister and the recipient of special benefits from policy makers and lenders alike, bowled a googly in the scam-hit DHFL assets sale bidding process, which deeply shook the foundation of my argument for investing in India. I hope it would not demolish my foundation for batting for Modi in this case.

In mid-2019, as per forensic audits conducted by Grand Thornton, the DHFL promoters were found to have misused around Rs 14000Cr for personal use and the company got into a bankruptcy mess. Public money is getting wasted in every such scam and nothing seems to be getting done. What is perplexing in this case is that we have some interested foreign investors for the stressed assets of DHFL but the Committee of Creditors are playing putting the spanner into the promises of the PM.

In February 2020 when the Expression of Interest (EoI) was floated for DHFL assets sale, 24 entities had evinced interest but eventually only four companies (Oaktree, Piramal, Adani and SC Lowy) submitted the financial bids in October 2020. Why did the CoC seek revised bids from all the four? And in the revised bidding, Adani Group went ahead and put the highest bid for all asset classes defying the rules of IBC that a bidder cannot bid for another asset class than the one initially bid for. The other three bidders have now threatened to withdraw from the bidding process and file legal cases against the CoC for alleged breach of trust, transparency and possible illicit connections of it with the accused bidder. It was also alleged by Piramal that one of the advisors to CoC has a relationship with the Adani Group, which could have led to leaking of confidential information of rival bids to it. There is a merit in this accusation and it should thoroughly be investigated given that the creditors are representing public funds and not their personal wealth. Besides, the transparency that was offered to foreign investors must start with this.

Now with the backlash in media, and the embarrassment mounting, the CoC went ahead and appointed another advisor who wanted to start the bidding process all over again without any restrictions on initial bidding or selection of asset classes. Definitely something is stinking here given that this is paving way for Adani to seal the deal by not breaking any rules. They had also submitted their bid six days post the deadline, which should have disqualified them but was not done for obvious reasons, according to rivals.

Given that Indian stressed assets market is close to USD 150 billion and growing with a

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series of high profile promoters losing control from Yes Bank to LVB, and given that most of the Indian groups like the Adani are already stretched their leverage on debt, India will have to seek foreign investors to bail out.

Foreign investors can capitalize on this big opportunity through multiple routes including the Insolvency and Bankruptcy Code. Indian lenders are facing capital constraints such as the one we have seen with DHFL and LVB, and the increased scrutiny of RBI on asset quality, any capital flow like the DBS one to LVB is desirable.

Indeed, the entry of global investors in this area can help strengthening the process, as they will bring in global best practices. As of 2019, only about USD 7 billion has been committed by foreign firms for this market and that shows transparency could be a major hindrance for more capital inflow. Both IBC norms and RBI rulings are ever-evolving with multiple amendments showing clearly that India is still grappling to find solutions to its unique problems as there is no copy-paste possibility as yet.

The DHFL saga and Adani googly is significant from this perspective. The CoC is trying hard to derail the transparent process of assets sales by letting Adani bid six days post the deadline, allowing it to break the rules of IBC by letting is bid for another asset class than primary bidding, and now getting Sagar Associates as external advisor to make all these illegalities legal and allow all the four bidders to bid without restrictions to asset classes will result in possible alienation of current bidders and future foreign investors in general. SC Lowy has already asked for their Rs 100 Cr EMD back and quitting the process. Oaktre may also follow suit with Piramal debating litigation for breach of confidentiality of their terms in the bid. This essentially will result in a failed bidding process with only one player, Adani. That does not augur well for the stakeholders and the public funds and it will affect future foreign capital inflow into stressed assets here.

More worrying is what Adani Group is up to with mounting debts and diversification into disparate areas without any strategic alignment. Adani is highly leveraged, likely to get more and more leveraged as it madly extends its footprint across newer and newer sectors. Banks are obviously lending and bank loans are being used to repay other loans. When will the bubble burst? Wouldn't CoC be concerned about the financial viability of this bidder in the long run?

If the Adani bubble bursts, and it is very much a possibility, a lot of lenders can go down and, with them, a large number of small investors, depositors and public funds that could be used for development and poverty alleviation programmes.

Government as a stakeholder must examine if this whole process mitigates its own interest in attracting foreign investment and whether the process has dented the promise of Prime Minister's assurances of fairness and transparency for foreign investors.

Can the government get the accused bidder to pledge its shares in an escrow account with a ruling to liquidate the same in order to ensure zero malpractice? In the immediate short term it is in the best interest of all stakeholders to re-examine the potential conflict of interest between the committee members, advisors and the bidders. And, instead of the new advisor, CoC should consider bringing in an international mediator of repute, to ensure things are above board and transparent. It is the least the Finance Ministry can do to ensure that the PM's premises are kept.

In a true capitalistic society the investors know how to deal with the risks of investments. However, it is critical for governments to set regulations so that the honest investors are protected from unscrupulous operators. The time is now for the PM to walk the talk, as the DHFL saga will be a tipping point in more ways than one at this critical state of our economy.

and may not stand the test of judicial scrutiny

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