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The DHFL Sale: Transparency Is Dead; Long Live Transparency!

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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.



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The prime minister had made gallant promises in order to attract foreign investment into India for its Aatma Nirbhar dream and the essential part of it was the transparency that India would provide in comparison with neighbouring countries. Some of the foreign 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 in the long run,

That was when the last week's Adani Group disruptive bidding happened against foreign bidders in the Dewan Housing Finance Limited (DHFL) assets sales process, Rumoured to be the closest supporter of the prime minister and the recipient of special benefits from policy makers and lenders alike, the group bowled a googly, which deeply shook the foundation of my argument for investing in India. I just hope it would not demolish my foundation supporting Modi for the greater good.

In mid-2019, as per forensic audits conducted by Grand Thornton, the DHFL promoters were found to have siphoned off over Rs 14000 Cr and the company got into a bankruptcy mess. Public funds are getting abused 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 (CoC) is putting the spanner in 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 last week? And in the revised bidding, the Adani Group went ahead and put the highest bid for all asset classes at Rs 31250 Cr, defying the rules of IBC that a bidder cannot bid for another asset class than the one initially bid for. Adani initially wanted only the wholesale books and not the entire assets. 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 and transparency with a possible illicit collusion with the accused bidder. It was also alleged (by Piramals) that one of the advisors to CoC had a relationship with the Adani Group, which could have led to leaking of their confidential information in the bid. 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.

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, 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. Remember also that they are rumoured to have submitted their bid six days post the deadline, which should have disqualified them but was not done for obvious reasons, according to rivals.

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

Further, the entry of global investors in this area can strengthen 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 stressed assets and that shows transparency could be a major hindrance to more capital inflow.

Both IBC norms and RBI rulings are ever-evolving with multiple amendments showing clearly that India is still struggling to find solutions to its unique problems as there is no copy-paste possibility as yet in existence.

The Adani googly is significant from this perspective. The CoC is possibly alienating current bidders and future foreign investors in general. SC Lowy has already asked for their Rs 100 Cr EMD back and has decided to quit the process. Oaktre may also follow suit. Piramal might plan litigation for breach of confidentiality of their terms in the bid or likely to strike a deal with Adani and plan joint bid for all asset classes. This essentially will result in an Indian collusion against foreign investors, creating a bad precedence. That does not augur well for the stakeholders and the public funds, and it will affect future foreign capital inflow into the stressed assets here.

More worrying is what Adani Group is up to with mounting debt and diversification into disparate areas without any obvious 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 loans are being used to repay other loans. When will the bubble burst? Wouldn't CoC be concerned about the financial viability of the winning bidder in the long run?

If the Adani bubble bursts, and it is highly likely, a lot of lenders can go down and, with them, a large number of small investors, depositors and public funds that could have been utilised for developmental 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 to 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 time for the Finance Ministry to step in to ensure that the PM's premises are not breached.

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.

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