

SHORT SELLING: A CHAOS THAT REQUIRES A SOLUTION?

Parth Bindal

4th year BBA LLB Student, School of Law, UPES, email: bindalparth4@gmail.com, ORCID ID: 0009-0009-0016-2935

Abstract

Short selling is the sale of securities that are acquired in principle which the seller is not the owner of at the time they are sold. The seller sells the securities at a high price and afterwards purchases them again at a lower cost, profiting from of the price gap. Scholars believe, on the one hand, that short-seller reports encourage the finding of negative information that enhances market pricing & market efficiency. Many argue, on the other hand, that short-seller reports are malicious tools used among short-sellers to drive the share price of their targets & financial gains from short positions. Despite the opposing viewpoints, capital market regulatory authorities for most nations, and particularly in all advanced capital markets, acknowledge short selling as a lawful investment activity. These nations additionally have a booming market for equity derivatives, including stock futures. Some countries even acknowledge the utility of naked short sales in only certain circumstances, & rather than banning them, regulatory authorities have allowed them to work inside a regulatory mechanism. The IOSCO has also assessed short selling across marketplaces and it has suggested transparency instead of prohibition of short selling. The position of short selling in India has been critically examined in this paper. The paper's main arguments revolve around the prohibition of negative short-seller information on publicly traded companies that have the potential and are only intended to entice investors to trade in the stock. The author contends that short-seller reports must be handled as fraudulent underneath the SEBI PFUTP Regulations while they create irresponsible interpretations about a corporation, regardless of whether accurate or otherwise, in order to persuade stakeholders to sell the target stock, causing artificial movements with in targets stock price. The author also attempts to highlight some regulations in place in other jurisdictions.

Keywords: Short selling, SEBI, Stock Price Manipulation, Fraudulent, Adani, Hindenburg.

Introduction

Many instances of short-selling reports have occurred in globe over the last few decades like

Muddy Waters' report on Huishan Dairy¹ & Muddy Waters' report on Sino Fores², are some of the instances which led to the price of the stock of the company against which such report was published, to plummet to an unprecedented level. The India too is not protected with such practice as the most recent in the box is the Hindenburg report on Adani Group, which accused the latter of alleged discrepancies in its operations, resulting in the erasure of approximately Rs 11 lakh crore or \$132 billion from the market cap of Adani Group entities³.

In the case of 'Anukaran Commercial Enterprises Limited,' the SEBI observed a strange motion in the value of the scrip of a company known as 'Anukaran Commercial Enterprises Limited.' (the Company). SEBI conducted a probe into the trading operations in order to determine if the unexpected price shift was routine or if it was a consequence of fraudulent acts that might have caused manipulation of the cost of the company's scrip⁴.

These instances of stock price manipulation and short-selling of stock-in-trade triggered by unauthorised sources call for a more stringent mechanism under Indian securities law, as the same causes artificial movements in the stock-in-trade of the targeted company, and thus the shareholders' interest suffers a significant blow, creating an atmosphere of uncertainty in the minds of potential investors regarding the company's goodwill, as created in the case of Adani Group as well.

In this paper the author conducted an in-depth investigation of short selling as well as how it's regulated in India. Short selling is the practice of selling stocks that you do not own at the point of the sale. The study's goal is to lay the groundwork for a deeper comprehension of such practices, both good and bad. It looks at its potential for positive market pricing effectiveness in addition to its possible for cruel use, such as price manipulation, & thus the necessity of regulating it. It makes a bid to give an equal as well as unbiased viewpoint.

Considering the inadequate level of the administration of short-selling in India alongside an atmosphere rife with exuberant speculation, as well as the lack of a solid procedure related to the publication of a report describing everything a short-seller believes is false with the

¹ China's Huishan Dairy says missed payments, denies forged invoices, available at <<<https://www.reuters.com/article/huishan-stocks-idINL3N1H51A0>>>, dated 28th March 2017.

² Sino-Forest: Red Flags Flapping in the Wind Since 2008, available at <<<https://www.forbes.com/sites/paulhodgson/2012/04/11/sino-forest-red-flags-flapping-in-the-wind-since-2008/?sh=3963e38c39fd>>>, April 11th April 2012.

³ Data available on BSE website dated 7th April 2017.

⁴ IN THE MATTER OF ANUKARAN COMMERCIAL ENTERPRISES LIMITED M/SM/IVD/ID2/10082/2020-, available at <<https://www.sebi.gov.in/enforcement/orders/jan-2021/order-in-the-matter-of-anukaran-commercial-enterprises-limited_48706.html>>, 21 dated 8th Jan 2021.

business, and imploring investors to part with its own stakes is an essential regulatory gap in the framework for market regulation, according to the author. This paper does not advocate for an overall prohibition on reports criticizing the operations of publicly traded companies. Criticism is a vital instrument for promoting asymmetry of information & improving market price discovery. But mainly for short-seller reports that sensationalize negative details in order to entice investors to trade the stock.

Analysis of Current Short Selling Set-Up in India:

Background

Short selling by retail investors is currently not prohibited. Short selling is specifically forbidden under the relevant regulations or statutes for "institutional investors," namely FIIs & mutual funds registered with SEBI, financial institutions, & insurance companies, and they have a duty to settle on the basis of deliveries of securities possessed and controlled by them. The institutional investors' transactions were not subject to a margin because they needed to be settled by delivery. Regulation 15(3) (a) of the SEBI FII Regulations, 1995, for example, states that ***"the FII must deal operations solely on the basis of takings & deliveries of securities that are purchased or sold & shall not participate in securities short selling"***⁵.

The topic of short sales was initially addressed by SEBI in 1996 when it formed a committee chaired by Shri B D Shah⁶. The discussion of short sales should start with an explanation of the term. As a result, the Committee defined short sale as ***"selling shares with no having physical control of the shares until the sale is for squaring-up of a prior purchase in the same settlement of the exact same stock exchange or to counter ongoing deliveries from the similar stock exchange related to prior settlements"***⁷. All member brokers of stock exchanges had to provide their scrip-wise net short sale position to the exchange at the conclusion of each day of trading in regard to the 60 actively exchanged scrips, in accordance with the committee's recommendation. Following that, disclosure was expanded to incorporate net positions in stocks as well⁸.

⁵ See Regulation 15(3) (a) of the SEBI FII Regulations, 1995.

⁶ Discussion paper on Short Selling and Securities Lending and Borrowing. Available at <<https://www.sebi.gov.in/sebi_data/commondocs/rep40_p.pdf>>, page 3, para 3.5.

⁷ Discussion paper on Short Selling and Securities Lending and Borrowing. Available at <<https://www.sebi.gov.in/sebi_data/commondocs/rep40_p.pdf>>, page 3, para 3.4.

⁸ Discussion paper on Short Selling and Securities Lending and Borrowing. Available at <<https://www.sebi.gov.in/sebi_data/commondocs/rep40_p.pdf>>, page 3, para 3.4.

Current Position- Allowing room for unauthorised short-selling reports?

SEBI enabled every category of investors to short-sell in December 2007, following proposals from the Secondary Market Advisory Committee, which makes recommendations to SEBI for enhancing market security, effectiveness, & openness.⁹ The efficiency of current set-up to curb the unauthorised short-selling report can be seen from the example of 2012.¹⁰ Veritas Investment, a Canadian firm, released a study analysis of Indiabulls called *Bilking India* in August 2012.

The study accused the company of poor corporate governance. According to Business Standard, it was released on the basis of the public filings of Indiabulls Financial Services, Indiabulls Real Estate, and other group firms. Indiabulls replied by filing a criminal complaint towards the report's two authors, while one of them was arrested¹¹. But it didn't last for longer period as Hon'ble Delhi High Court turn down the arrest and held that *"such legal action might also deter real investigators from producing pieces that are not in the best interests of the investing public."*¹²

This is not the first instant as the ongoing saga between Adani Group and Hindenburg shows how ineffective the current mechanism is to provide an immediate clarity on the chaos going on between Adani Group and Hindenburg post the report of latter on former.¹³ The short-selling happened in the stocks of Adani Group post that report by Hindenburg still unanswered whether that findings were actual or were made with an attempt to create to persuade stakeholders to sell the Adani stock, causing artificial movements with in Adani stocks so that the short-seller can earn huge profit. There was no doubt that there was a flaw in the current system because, despite the passage of approximately two and a half months¹⁴, the Indian capital market regulator SEBI was unable to provide a clear picture pertaining to the same

⁹ Discussion paper on Short Selling and Securities Lending and Borrowing. Available at <<https://www.sebi.gov.in/sebi_data/commondocs/rep40_p.pdf>>, page 3, para 3.10.

¹⁰ The Economic Times Report titled as, "Delhi High Court calls out Indiabulls for "harassment" of equity analysts". Available at <<https://economictimes.indiatimes.com/prime/corporate-governance/delhi-high-court-calls-out-indiabulls-for-harassment-of-equity-analysts/primearticleshow/69209873.cms?from=mdr>>>.

¹¹ The Economic Times Report titled as, "Delhi High Court calls out Indiabulls for "harassment" of equity analysts". Available at <<https://economictimes.indiatimes.com/prime/corporate-governance/delhi-high-court-calls-out-indiabulls-for-harassment-of-equity-analysts/primearticleshow/69209873.cms?from=mdr>>>.

¹² Indiabulls Housing Finance ... vs Veritas Investment Research ... on 12 October, 2021, available at <<<https://indiankanoon.org/doc/123434425/>>>, Delhi High Court.

¹³ Report titled, "Adani Group: How The World's 3rd Richest Man Is Pulling The Largest Con In Corporate History", published by Hindenburg, available on <<<https://hindenburesearch.com/adani/>>>, dated 24th Jan 2023.

¹⁴ Report titled, "Adani Group: How The World's 3rd Richest Man Is Pulling The Largest Con In Corporate History", published by Hindenburg, available on <<<https://hindenburesearch.com/adani/>>>, dated 24th Jan 2023.

when nearly Rs 11 lakh crore or \$132 billion from the market cap of Adani Group entities had been wiped out, which was not Adani money but general investor money¹⁵.

Another point to note is that SEBI decided to investigate the matter promptly only after the Hon'ble Supreme Court of India asked that it do so¹⁶. Further hon'ble Supreme Court observed that current rules and regulations in the financial sector have to be reviewed and solidified as needed. These rules and regulations must be sufficiently robust to safeguard Indian investors from the kind of volatility that has occurred recently. The regulatory structure, pertinent causal variables, as well as processes required for the continued functioning and growth in the market for securities must all be evaluated.¹⁷

Analysis of current short selling set-up in international jurisdictions:

Set-Up in UK

Short sales were widely discussed in the United Kingdom. The FSA issued the discussion Paper No. 17 on the subject of "Short Selling" in October 2002 that expressed the FSA's perceptions on the matter. Concerning "the utility of short selling," the FSA believes that permitting it could help the stock market by "speeding up price modifications in overpriced stocks or accommodating unusual demand which might normally over expand the security's price." The FSA believes that this role will become additionally more vital in a market that's that is dominated by large, long-term investors & index funds.¹⁸

According to the FSA, "short selling helps the stock market as a means of support or trade that rectifies prices anomalies." Without the ability for arbitrageurs to lock in a profit by shorting the 'overvalued' instrument while longing the 'undervalued' instrument, the effectiveness of the price-fixing procedure is accordingly reduced." "A third, more realistic advantage of short selling is the fact that market making & an intermediary liquidity provision have historically served an important part in the United Kingdom's market structure.¹⁹

The FSA also acknowledges "that short selling may pose certain possible dangers. This is the

¹⁵ Data available on BSE website dated 7th April 2023.

¹⁶ Vishal Tiwari vs Union of India W.P. (C) No. 162/2023, Manohar Lal Sharma vs Union of India W.P.(Crl.) No. 39/2023.

¹⁷ See para 3 of Vishal Tiwari vs Union of India W.P.(C) No. 162/2023, Manohar Lal Sharma vs Union of India W.P.(Crl.) No. 39/2023.

¹⁸ Discussion paper on Short Selling and Securities Lending and Borrowing. Available at <<https://www.sebi.gov.in/sebi_data/commondocs/rep40_p.pdf>>, page 4, para 4.1.1 & 4.1.2.

¹⁹ Discussion paper on Short Selling and Securities Lending and Borrowing. Available at <<https://www.sebi.gov.in/sebi_data/commondocs/rep40_p.pdf>>, page 5, para 4.1.3 & 4.1.4.

reason why in their particular setting & situations, a no. of nations think it needed to put different restrictions on short selling." In general, the FSA has evaluated "the possible hazards associated with short selling" in the following manner: -²⁰

- ***"First, there's a number of financial threats which result from how short selling add weight to the market's demand for long sale orders."*** This is not guaranteed to end in unruly or fraudulent trading, but it does increase the possibility of both. Short selling can additionally raise the volatility of prices for stocks in the short term. An additional market risk could be a disruption in settlement for 'naked' shorts and the resulting inability to fulfill orders.
- **Secondly**, risks are connected with the short selling process. These are related to both the settlement procedure as well as a successful risk control in the securities lending market."

In the end, the FSA acknowledges that short selling is a valid form of investment that serves a crucial part in promoting competitive markets, and therefore major modifications to the present rules and regulations weren't necessary. ***"It recognized, nevertheless, that greater openness related to short selling could be beneficial, so long as the data stipulated serves a purpose & the advantages surpass the drawbacks, i.e., it ought to be beneficial; shouldn't be excessively difficult to generate; & must not excessively violate commercial privacy."***²¹

The FSA preferred the release by CREST Co of statistics on settlement unsuccessful attempts for individual securities that the FSA believes will provide useful market data that will suggest settlement tensions developing in specific securities."²²

This discussion helps out to draw one basic idea that sometimes too much regulations on place won't help in tackling any issue. Even though there is no proper safeguard provided under UK securities law regarding the issue of short-selling but the activism played by FSA there in keeping an close eye on the such is itself a lesson for Indian capital market regulator SEBI. Because lack of monitoring from SEBI on Adani Group activities and even no activism post publication of report by Hindenburg raises a serious concern about the present set-up in India pertaining to short-selling.

²⁰ Ibid page 6, para 4.1.7.

²¹ Discussion paper on Short Selling and Securities Lending and Borrowing. Available at <<https://www.sebi.gov.in/sebi_data/commondocs/rep40_p.pdf>>, page 5, para 4.1.18 & 4.1.19.

²² Discussion paper on Short Selling and Securities Lending and Borrowing. Available at <<https://www.sebi.gov.in/sebi_data/commondocs/rep40_p.pdf>>, page 5, para 4.1.18 & 4.1.19.

A further thing to take into account involves the LSE's²³ meticulous approach regarding its fortnightly settlement system. There have been no recurring market crises, as occurred in India. The speculation overdoses on both the buying and selling sides were kept under regulate almost automatically by participants in the exchange adhering to the standard business principles of prudential behavior.²⁴ Another thing to note is that concerning "**market manipulation**," *even the FSA acknowledged there was a "powerful understanding in certain circles that short selling constitutes basically manipulative action, mainly employed for bringing down prices of the stock-in-trade."*²⁵

Set-up in USA

In the United States, the SEC did away from the traditional downtick rule, which was initially implemented by the SEC in 1938, & placed into effect the Regulation SHO, which sets a pair of standards titled "**locate**"²⁶ & "**close-out**"²⁷ to deal with issues related to difficulties to deliver, like possibly unlawful "naked" short selling, since January 2005. Prior to making a short sale request in any equity security, a broker-dealer has to have adequate reason for believing that the security can be borrowed to ensure it will be delivered on the scheduled date.²⁸ This "locate" has to be created as well as recorded before completing the short sale, whereas the "close-out" demand places extra delivery obligations on broker-dealers for securities with a fairly substantial amount of expanded delivery failures at an enrolled clearing agency, ("Threshold securities").²⁹ ***"Prior to taking procedure as per SHO, the SEC acknowledges an acceptable degree for unsettled trades for 5 successive settlements."***³⁰

The SEC believes that, while plenty of short-selling transactions are legal, abusive short-sale practices are not. For instance, it is illegal for anyone to take part in a chain of transactions with the goal to generate real or obvious active trading in a security or to reduce the value of a security in order to induce other people to buy or sell the security in question. Short sales employed to influence the market value of a stock are consequently forbidden.

From the standpoint of its implementation in India, the following are the most appealing

²³ London Stock Exchange.

²⁴ NSE research initiative paper no.: 12 short selling and its regulation in India in international perspective, available at <<<https://archives.nseindia.com/content/research/Paper58.pdf>>>, page no. 12.

²⁵ Ibid page 6, para 4.1.10.

²⁶ Rule 203(b)(1) and (2) "locate", available at <<<https://www.sec.gov/investor/pubs/regsho.htm>>>.

²⁷ Rule 204 "close-out", available at <<<https://www.sec.gov/investor/pubs/regsho.htm>>>.

²⁸ Ibid page 10, para 4.2.1.

²⁹ Discussion paper on Short Selling and Securities Lending and Borrowing. Available at <<https://www.sebi.gov.in/sebi_data/commondocs/rep40_p.pdf>>, page 10, para 4.2.1.

³⁰ See SHO regulations for detail understanding.

features of the USA SHO regulations:³¹

- First, despite the fact that it was created specially to target abuse, the regulator does not have to demonstrate the short seller's desire or reason. In India, we have numerous anti-frauds as well as anti-manipulation provisions in SEBI regulations that are meant to deal with abusive use of short selling, yet they're inefficient since they need evidence of intention, which remains challenging to prove. For instant under regulation 15(3) (a) of the SEBI FII Regulations, 1995, which states that *"the FII must deal operations solely on the basis of takings & deliveries of securities that are purchased or sold & shall not participate in securities short selling"*³², is one of the glimpses for the same.
- Second, the limitations on short selling are so clearly stated following taking an extended perspective that administrative discretion in enforcing the regulation is altogether excluded, and no frequent modifications are required. In contrast, in India, with each changing event in the security market, the SEBI would issue a new regulation rather than utilizing the prior set-up in an efficient and effective manner, casting doubt on their method of monitoring stock market events.

Recommendation

Short-Seller Reports Should be treated as Fraudulent under SEBI PFUTP Regulations

SEBI PFUTP Regulations define fraud as,³³ *"any act, expression, omission, or concealment committed while dealing in securities, whether deceptively or not, with the goal to persuade another individual to engage in securities."* The standard for determining whether or not an assertion originated with malicious intent isn't, if the assertion caused other people to engage in securities. The 2017 case³⁴ is a significant SC decision in this respect. The apex court acknowledged the challenges of combating stock market fraud since the standard term for fraud is unsuitable for recording the creative frauds that take place in the security markets.

As a result, the Supreme Court, depending on worldwide legal studies, held in paragraphs 25 to 29 that the meaning of "fraud" under the PFUTP Regulations must provide a comprehensive

³¹ NSE research initiative paper no.: 12 short selling and its regulation in India in international perspective, available at <<<https://archives.nseindia.com/content/research/Paper58.pdf>>>, page no. 16.

³² See Regulation 15(3) (a) of the SEBI FII Regulations, 1995.

³³ See Regulation no. 2(1)(c) of SEBI PFUTP Regulations.

³⁴ SEBI Vs Shri Kanaiyalal Baldevbhai Patel and other connected matters CIVIL APPEAL NO.2595 OF 2013, available at << https://www.sebi.gov.in/enforcement/orders/sep-2017/order-of-the-hon-ble-supreme-court-of-india-in-the-matter-of-sebi-vs-shri-kanaiyalal-baldevbhai-patel-and-other-connected-matters_36000.html>>.

term with a broad scope capable of governing any act or absence, regardless of whether it isn't deceptive, if its conduct has an impact on causing a third party to engage in securities. The apex court went on to say that the emphasis is upon the "act of inducement," rather than if the statements, acts, or absences were driven by malicious intent. For example, if a journalist goes on the air & recommends a stock as an investment that is profitable, & this recommendation leads to a large number of investors purchasing the stock, the suggestion is considered a fraudulent depiction under the said regulations.³⁵

This is because the statement had an impact on causing potential buyers of the stock to make trades in the shares thus, irrespective of whether the journalist truly thought the security was an investment that was worthwhile, regardless of the accused's intention. This principle has been repeated in numerous SEBI & SAT orders. In one case³⁶, SEBI determined that any deformed depiction of information with the possibility of impacting the investment choices made by others constituted fraud under the PFUTP Regulations. In another case³⁷, the SAT ruled that any information that confuses the choice of an investor makes up fraud under said regulations.

“All of the case laws emphasize a single point in common: any information, regardless of whether it's true with no malicious intent, which causes investors to make trades in shares is fraud pursuant to the said Regulations. The goal of having a low fraud threshold is to establish markets that are stable as well as enable the securities regulator to crack down on participants that use novel methods to trigger significant swings in share of the target Company and gain from such unfair trades.”

The recent short-selling into the shares of Adani Group post Hindenburg report is one of the best set-ups to test this principle as following the unveiling of the Hindenburg report the stock-in-trade of the Adani group lost or \$132 billion in market value³⁸. Short-seller reports have an economically acknowledged effect on the value of stocks, as there are numerous situations of funds agreeing to share their profits with research firms in exchange for the agency's publishing

³⁵ See para 25-29 of SEBI Vs Shri Kanaiyalal Baldevbhai Patel and other connected matters CIVIL APPEAL NO.2595 OF 2013, available at << https://www.sebi.gov.in/enforcement/orders/sep-2017/order-of-the-hon-ble-supreme-court-of-india-in-the-matter-of-sebi-vs-shri-kanaiyalal-baldevbhai-patel-and-other-connected-matters_36000.html>>.

³⁶ Netvision Web Technologies Limited & its directors WTM/RKA/IVD/15/2012, available at << https://www.sebi.gov.in/enforcement/orders/apr-2012/order-in-the-matter-of-netvision-web-technologies-limited_22628.html>>.

³⁷ V.Natarajan V. SEBI AppealNo.104 of 2011, available at << https://www.sebi.gov.in/enforcement/orders/jun-2011/in-the-matter-of-v-natarajan_20113.html>>.

³⁸ Data available on BSE website dated 7th April 2023.

its findings in a way that optimizes the return on the fund's short positions. These examples demonstrate the power of short-seller reports in rapidly driving down stock prices by inducing shareholders to part with their shares. This fulfills the "inducement" component of the PFUTP Regulations' definition of "fraud," regardless of if the assertions made in the short-seller reports are genuine or not³⁹ after relying on the decisions of the apex court, SAT & SEBI in their respective cases.

One could contend that the drop in the market value of a company's stock is a natural consequence of a report describing flaws in the way it operates. As a result, there's nothing unacceptable regarding the effect which short-seller reports had on share prices. The claim is based on the presumption that the claims made in the reports are correct, so a decline in prices is a valid price modification. This presumption, nevertheless, is occasionally correct.

In one instance, the Viceroy charged Ebix of being under investigation by the IRS & paying a US\$20.8m settlement in the report it published regarding Ebix⁴⁰. In reaction, Ebix filed a complaint for defamation toward Viceroy in the High Court of Delhi & got an injunction prohibiting the report from being published on any of the social networking sites. In addition, the ruling by the High Court necessitates Google and Twitter to remove the report entirely as the claims contained therein had been untrue⁴¹.

Therefore, in light of the same the SEBI can proceed and take action against Hindenburg if the allegations of the Hindenburg in its report against Adani Group found to be fraudulent one because hon'ble apex court ruled in one of the case⁴² before it that SEBI has the authority to prosecute individuals who are not physically present in India. In the event that their actions jeopardize the interests of Indian investors. This suggests that the safeguarding of Indian investors is enough for SEBI to start actions regardless of whether the actual act occurs elsewhere than India.

Need to establish a test to see if the odd price movement in the company's scrip was usual or if this was brought about by fraudulent acts that resulted in any potential manipulation of the price of the company's scrip-

³⁹ See Regulation no. 2(1)(c) of SEBI PFUTP Regulations.

⁴⁰ Ebix – Goodwill Hunting The alchemy of creating profits Viceroy Research Group by Fraser Perring, Gabriel Bernarde & Aidan Lau, available at << <https://viceroyresearch.files.wordpress.com/2018/12/ebix-presentation-2018-12-03.pdf>>>, dated 3rd December 2018.

⁴¹ EBIXCASH WORLD MONEY LTD & ORS.V. FRASER PERRING & ORS CS(OS) 249/2019, available at<<http://164.100.69.66/jupload/dhc/MUG/judgement/17-03-2020/MUG05032020S2492019_144313.pdf>>.

⁴² Securities And Exchange Board Of ... vs Pan Asia Advisors Ltd. on 6 July, 2015, available at << [58](https://indiankanoon.org/doc/130310136/>>.</p></div><div data-bbox=)

It is generally accepted that when an unbiased individual asserts to gain something from a company's scrip prior to other people do, such an individual would inevitably purchase shares & patiently wait for their value to go up, that will occur if the scrip grows a hit & then offer the shares in order to make a profit. Essentially never will an individual who expects the stock to get popular engage in an infrequent sell of such shares. The practice of short selling thus conveys the underlying belief that one is anticipating the scrip's price to fall.

The norm of evidence for a quasi-judicial proceeding is the preponderance of likelihood. The evidence of an accusation made toward an individual can come presented by way of firsthand evidence of substance or, as in numerous instances, such evidence could have been concluded by an orderly method of logic from the totality of the attending information and events encompassing the allegations/charges rendered or leveled. Although actual proof is a more certain means of reaching an answer, the judicial system cannot be weakened in their lack of it.

Keeping in mind the same it is difficult to prove intention in many cases for such short-selling practices as even we have seen in the USA set-up pertaining to the same that there capital market regulator has focused more on establishing the same rather than relying on this intention or motive test. To move beyond this intention or motive test following things can be undertaken by the SEBI to determine the reason for which such short-selling reports are been published by the individual or a company which are as follows:

- The purpose of the short-selling report,
- If there's an actual shift of the beneficial ownership post that short-selling report,
- The market conditions at the time of releasing of such short-selling report.

These above factors constitute a few of the variables that demonstrate the action of the individual or a company to be made liable to prosecute under Indian securities law set-up for causing artificial price movement into the stock of the target company. Because of the specifics of the situation, this set of variables is not exhaustive. Any single variable can either be or not be vital, & a conclusion must be attracted based on their combined impact of them.

Therefore, in light of the same the SEBI can proceed and take action against anyone if the allegations in the report published by any individual or a company found to be fulfilling any of the factor discussed above because hon'ble apex court ruled in one of the case⁴³ before it that

⁴³ Securities And Exchange Board Of ... vs Pan Asia Advisors Ltd. on 6 July, 2015, available at <<

SEBI has the authority to prosecute individuals who are not physically present in India. In the event that their actions jeopardize the interests of Indian investors. This suggests that the safeguarding of Indian investors is enough for SEBI to start actions regardless of whether the actual act occurs elsewhere than India.

Conclusion & Way Forward

In the whole discussion the author put emphasis on putting in place an effective mechanism which can help in putting “check & control” on short-selling reports which are meant to entice investors to trade in the stock so that during that particular period the individual or company as the case may be who published the said report can trade in that particular targeted company and book profit from such short-selling of stock-in -trade. The most common method applied for inducing such kind of practice is the publication of a report outlining all that the short-seller belief is false with the company, imploring the market to unload with their respective shareholdings.

To put a “check & control” mechanism on place for these practices the author outlines the practices in place in the jurisdictions like USA & UK respectively, where the mechanism is well-equipped to deal with these kinds of instances. While in UK the fortnightly settlement system is taking care to put a “check & control” on such practices, in USA, "locate" & "close-out" test is in place for such practices. But in terms of India there is no robust mechanism for the same is available because of the failure and lack of activism on the part of SEBI in dealing with the Adani Group and Hindenburg saga.

Even hon'ble apex court during the hearing of the petition filed in Adani Group short-selling case post publication of report by Hindenburg, pointed out that current rules and regulations in the financial sector have to be reviewed and solidified as needed. These rules and regulations must be sufficiently robust to safeguard Indian investors from the kind of volatility that has occurred recently. The regulatory structure, pertinent causal variables, as well as processes required for the continued functioning and growth in the market for securities must all be evaluated.

The crucial development in the coming days pertaining to our issue would be to see how the Hon'ble Apex Court deals with the Adani Group - Hindenburg saga in the petition filed before it as the Hon'ble Court is also concerned about the current state of affairs, which resulted in the formation of an expert committee by the Hon'ble Court which would investigate the matter and

will also suggest the court about potential regulatory framework (if any) which led to this crisis and would also, suggest regulatory changes (if any) to the current framework governing short-selling under Indian securities laws.

“In light of the foregoing discussion, the author would like to conclude by stating that the ongoing Adani Group-Hindenburg saga is a wakeup call for all concerned stakeholders to take all necessary steps to prevent such crises from occurring in the future, as when these types of events occur, no one suffers as much as a normal investor who invests his valuable earnings in the stock market with the expectation of receiving a potential expected return from the company because of the trust and goodwill he had on that particular company.”