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What Mr Ambani did not tell High Court

Aditi Roy Ghatak

The rationale for the merger of Reliance Public Utility Private Limited with Reliance Power, as stated in the Scheme of Amalgamation, was: "RPUPL has put in considerable efforts in acquiring necessary technical and manpower skills, which are ancillary to the business of Reliance Power Limited. Reliance Power Limited can take benefits of this specialised skill sets and technology available with RPUPL to undertake mega power projects and implement them more efficiently and successfully". How economical with the truth was the company? Until 31 July 2007, RPUPL was a company with a paid-up capital at Rs 1,00,000 and not very much to show in terms of activity. Yet there was this grandiloquent claim made on its behalf that it had put in considerable efforts in acquiring necessary technical and manpower skills to set up and implement mega power projects. In fact, the correct position was absolutely to the contrary. It is Reliance Energy Limited (formerly BSES) that is one of the largest power companies in India and is now a shareholder of Reliance Power Limited. In fact Reliance Power Limited has used and relied upon the technical experience of Reliance Energy Limited to qualify and to comply with the eligibility criteria for setting up mega power projects. Yet, it was on the basis of these "considerable efforts" put in by RPUPL that the High Court was approached to "sanction the Scheme of Amalgamation of Reliance Power Limited and Reliance Public Utility Private Limited." It was on the basis of this presentation of facts that the High Court of Bombay approved the merger on 27 September 2007. The order was filed with the Registrar of Companies on 29 September 2007, making the merger of RPUPL with Reliance Power Limited effective from that date. The next day, on 30 September 2007, Reliance Power Limited allotted 1,000 million shares at Rs 10 to Reliance Energy and AAA Project (500 million each). On the same day, these equity shares of Rs 10 were further sub-divided into equity shares of Rs 2 each by way of a special resolution of the shareholders.

From the draft red herring prospectus

It is apparent that the High Court was not told of the motives behind the merger of a RPUPL into Reliance Power and sanctioned the merger on the basis of the facts put before it and since the shareholders of both RPUPL and Reliance Power Limited would have approved the merger. The shareholders of both Reliance Power and RPUPL are exclusively Anil Ambani's investment companies and Reliance Energy. Reliance Energy owns 50 per cent of Reliance Power. This merger proposal has never been taken to the shareholders of REL (they include the institutional investors), who may have asked the relevant questions around the need to merge a shell company into Reliance Power Limited.

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The most important question, however, is what kind of conviction does RPL carry in its promise to build 12 mighty power plants across the country simultaneously - something that no company in the private or public sector has been able to do so far. The company will have to spend an estimated Rs 955,910 million on them. Thanks to Sebi requirements, the company's declaration of the risk factors virtually admits that there is a big, big question mark against it being able to achieve these grand targets. As far as its human resource needs are concerned, the draft red herring prospectus admits that: "All of our key management personnel are deputed to us and the prospect that their engagements at Reliance Power may be temporary may cause them to be presented with a more serious conflict of interest in considering affiliate transactions than if they were permanently employed by us".

'HC had all material facts'

KOLKATA, Oct. 25: The Statesman sent questions to Mr Anil Ambani on the merger approved by the High Court of Bombay and the risks inherent in putting up 12 power projects at the same time. Here are the questions, and the answers received from a spokesperson of Reliance Power Limited.

Q: Was the High Court told that the intent of the merger would be to go for an IPO when you sought its approval for the amalgamation of RPUPL and RPL in July 2007?

A: The order sanctioning the amalgamation was passed by the Honourable High Court after all the material facts into consideration for the purposes of passing such an order.

Q: The ADA Group has embarked on 12 power projects but there seem to be no firm commitments for access to coal or gas or fuel for these projects. Is this not a major impediment to successful project implementation?

A: The statement that there seem to be no firm commitments for access to coal or gas as fuel all 12 projects (sic) is based on incorrect premise. Kindly refer project wise details of fuel supply arrangements commencing on page 69 of DRHP. You will also note that four out of the said 12 projects are Hydro Projects.

Tomorrow: A tale of risk factors

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