

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: October 03, 2023***Pronounced on: December 19, 2023*****+ W.P.(C) 8136/2017****CENTRE FOR PUBLIC INTEREST LITIGATION
AND ANR.**

.... Petitioners

Through: Mr. Prashant Bhushan, Senior
Advocate with Ms. Neha Rathi &
Ms. Kajal Giri, Advocates**Versus****UNION OF INDIA AND ORS.**

.... Respondents

Through: Mr. Farman Ali & Ms. Usha Jamnal,
Advocates for Mr. Ravi
Prakash, CGSC for respondent No.1-
UOI
Mr. Aditya Singla, Senior Standing
Counsel with Ms. Charu Sharma &
Mr. S.A.Rabde, Advocates for
respondent No.2- DRI with Assistant
Director,DRI, Mumbai
Mr. Nikhil Goel, Special Public
Prosecutor with Ms. Siddhi Gupta &
Mr. Adithya Koshy Roy, Advocates
for respondent No.3- CBI with
Mr. M.K. Singh, DSP, CBI**+ W.P.(C) 8401/2017****HARSH MANDER**

..... Petitioner

Through: Mr. Sarim Naved, Mr. Saurabh Sagar
& Mr. Harsh Kumar, Advocates**Versus****UNION OF INDIA AND ORS.**

.... Respondents

Through: Mr. Farman Ali & Ms. Usha Jamnal,
Advocates for Mr. Ravi Prakash,
CGSC for respondent No.1-UOI



Mr. Aditya Singla, Senior Standing Counsel with Ms. Charu Sharma & Mr. S.A.Rabde, Advocates for respondent No.2-DRI with Assistant Director, DRI-Mumbai

Mr. Nikhil Goel, Senior Public Prosecutor with Ms.Siddhi Gupta & Mr. Adithya Koshy Roy, Advocates for respondent No.4- CBI with Mr.M.K. Singh, DSP, CBI

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT

SURESH KUMAR KAIT, J

1. In the above captioned first petition [W.P.(C) 8136/2017], petitioner No.1- Centre for Public Interest Litigation, claims to be a registered Society formed for the purpose of taking up causes of grave public interest and conducting Public Interest Litigation (PIL) and petitioner No.2 - Common Cause, also claims to be a registered Society for the purpose of ventilating the common problems of the people and securing their resolutions.

2. The petitioners have preferred W.P.(C) 8136/2017 under Article 226 of the Constitution of India seeking probe by Special Investigating Agency (SIT) into reports of Directorate of Revenue Intelligence (DRI) against various private power generating companies for over invoicing carried out by them.

3. The above caption second petition [W.P.(C) 8401/2017] under Article



226 of the Constitution of India has been preferred by the petitioner- Harsh Mander as a Public Interest Litigation (PIL), seeking a direction to respondent No.3-Central Bureau of Investigation to investigate cases in respect of over invoicing in power projects, as reported by the Directorate of Revenue Intelligence (DRI) OR to set up a Special Investigating Team (SIT) under a retired Judge of the Supreme Court of India to probe into the over invoicing. In addition, a direction is also sought to respondents No.1 & 2 i.e. Department of Revenue and Ministry of Power, to make declaration of international market price a mandatory part of the bill of lading/ shipping at the time of presentation of the documents to Customs Authority of India (CAI) and to direct respondent No.5- Reserve Bank of India (RBI) to make it mandatory for Banks to require declaration of international market price while granting credit/discount facilities on any bill of lading/ invoice for import in India.

4. As common issues have been raised in these petitions, therefore, with the consent of learned counsel for the parties, these petitions were heard together and are being disposed of by this common judgment.

5. The petitioners in the above captioned first petition claim to be concerned about the increasing trend of over invoicing by the private companies in the private sector with huge public interest ramifications. According to petitioners, the *modus operandi* adopted is that though the coal or equipments are shipped directly to India, however, the invoicing has been routed through a different company incorporated abroad, which is directly owned and controlled by the promoters of the project in India. The petitioners have classified the over-invoicing of cases as under:-



- A. Over invoicing of coal imports by several companies
- B. Over invoicing of equipment by several companies belonging to Adani Group
- C. Over invoicing of equipment by Essar Group

A. OVER INVOICING OF COAL IMPORTS

6. The petitioners have relied upon DRI alert dated 30/31.03.2016 in respect of investigation scrutinizing coal imports and recovered two sets of test reports issued at the load port by two different testing agencies, one, showing lower Gross Calorific Value (GCV) and the other higher GCV. The one with lower GCV were in conformity with the contracts between subsidiary companies/ intermediary agents of Indian importers and Indonesian suppliers, reflecting the actual value of the coal. The reports with higher GCV submitted to the Indian Customs at the time of import was in line with the supply of contracts between subsidiary companies/ intermediary agents of the Indian importers and the power generation companies, reflecting the inflated value of the coal. The said DRI alert dated 30.03.2016, which names 40 companies is as under:-

***“Directorate of Revenue Intelligence
7th Floor, D Block, Indraprastha Bhawan, Indraprastha
Estate,
New Delhi-110002
Telefax: 91-11-23378058, 23370437***

DRI F. No.DRI/HQ-CI/50D/Misc-33/2016-CI Dated: 30/31.03.16

To,

***All the Principal Chief Commissioner of Customs
All the Principal Chief Commissioner of Customs & Central
Excise
All the Chief Commissioner of Customs,
All the Chief Commissioner of Customs & Central Excise***



*All the Principal Commissioner of Customs
All the Principal Commissioner of Customs & Central Excise
All the Commissioner of Customs
All the Commissioner of Customs & Central Excise
All Principal ADG/ADG of DRI Zonal Units.*

Sir/Madam,

Modus-Operandi/General Alert Circular
No.11/2016-CII

Sub: Import of Coal from Indonesia by resorting to
Over-valuation

Intelligence developed by the Directorate of Revenue Intelligence, indicated that certain importers of Indonesia Coal were artificially inflating its import as compared to the actual value. This modus-operandi of inflating the procurement price of imported coal was adopted by power generating companies and traders who supplied the imported goods to power generating companies. The objective of the overvaluation appears to be two fold (i) siphoning –off money abroad and (ii) to avail higher power tariff compensation based on artificially inflated cost of the imported Coal. The intelligence further indicated that while Indonesia Coal was directly shipped from Indonesian ports to the importers in India, the import invoices were routed through one or more intermediaries based in Singapore, Dubai, Hong Kong, British Virgin Islands (U.K.) etc for the purpose of artificially inflating its value.

2. From the investigation conducted so far, it appears that;

(i) Indonesian Coal was shipped directly from Indonesian ports to India whereas supplier's invoices are routed through one or more intermediary invoicing agents based in a third country, for the sole purpose of creating layers



(typical of Trade Based Money Laundering) and artificially inflating its landed value;

(ii) Export value of Indonesian Coal (on FOB basis) is duly mentioned in the Form A-I prescribed under the ASEAN-India Free Trade Area (AIFTA) Rules, notified vide Notification No.189/2009-Cus (N.T) dated 31.12.2009 as a statutory Country of Origin document required for availing duty exemption.

(iii) Comparison of Form A-I values with tire values declared before Indian Customs at the time of import, at same level of Incoterms (GIF = FOB + Actual Freight and Insurance), in the cases under examination suggest huge over-valuation to the extent of about 50% to 100%.

(iv) The inflated invoices received in India were found to have been issued by intermediary invoicing agents based in Singapore, Dubai, Hong Kong, British Virgin Islands (U.K) etc. These intermediary firms appear to be either subsidiary companies of Indian Importers or their front companies.

(v) In a significant number of cases, two sets of Test Reports (certificate of Sampling and Analysis) issued at the Load Port by two different testing agencies for the same consignment of Coal have been recovered - one showing lower Gross Calorific Value (GCV) and the other higher GCV. The test report with lower GCV appears in conformity with the contract between subsidiary company or intermediary agent of Indian importer and Indonesian suppliers, reflecting the actual value of the Coal. The test report with higher GCV, which was submitted before Indian Customs at the time of import, appears to be in conformity with the supply contract between the power generation companies/ Indian importers and subsidiary company or intermediary agent of the Indian importers, reflecting the inflated value of the coal.



(vi) *Prices of various grades of Coal in International market ex-Indonesia are reported on a weekly basis in reputed trade journals such as Argus, Platts, Indonesian Coal Index etc. These prices more or less match with the prices mentioned in the Form A-I as well as invoices raised by Indonesian suppliers which may be referred for scrutiny of declared value.*

(vii) *As per the provisions of AIFTA, Form A-I shall comprise of one original and three copies. The Original shall be submitted to the Customs authority at the port of importation. Duplicate shall be retained by the Issuing authority of the exporting country. Triplicate shall be retained by the Importer and the Quadruplicate shall be retained by the Exporter. It has been observed that the importers are submitting the Xerox copies of Form A-I instead of Original copy which has to be mandatorily submitted to Indian Customs. In some cases, the FOB value in Form A-I submitted before Indian Customs was found to have been masked/obliterated in order to avoid detection/conceal the actual price. In some cases, the duty exemption under AIFTA, although eligible, was not claimed CO avoid submission of Form A-I and hence to avoid detection of the actual FOB value.*

3. Details of the major 40 importers currently being investigated by DRI are enclosed in Annexure. The investigation by DRI in these cases shall cover imports till 31st March 2016. Imports subsequent to this date may be scrutinized from the angle of over-valuation by the field formations and a decision be taken on merit, without referring the matter to this office. The officers under your jurisdiction may also be sensitized to follow the procedure prescribed for drawal and testing of samples and to scrutinize and verify the documents submitted by the importer with due care and diligence.



Encl: As above.”

7. The petitioners have relied upon an Article dated 26.08.2017 published in The Indian Express to submit that against the action of DRI seeking certain information in respect of subsidiaries of the Adani group from Singaporean authorities, the Adani group has moved High Court of Singapore to submit that information asked by DRI should not be supplied. The petitioners have also relied upon order dated 23.12.2016 passed by DRI, Mumbai/ i.e. the Appellate Authority

“5.5.5 In view of the above discussion and findings, it is established beyond doubt that the Noticee perpetrated a fraud with careful planning which included purchasing inferior coal from M/s IMR Metallurgical Resources AG, Switzerland through its own subsidiary M/s Knowledge International Strategy Systems Pte. Ltd., Singapore. On the other hand, as per the modus operandi devised, M/s Knowledge International Strategy Systems Pte. Ltd., Singapore simultaneously entered into sham contracts with intermediaries viz. M/s Rescom Minerals Trading Ltd. and M/s Spring Traders Limited, and aligned the specifications of the coal in the contract to suit the requirements of MAHAGENCO. M/s Knowledge International Strategy Systems Pte. Ltd., Singapore obtained COSA reports which portrayed the specifications of the coal to be within the range required by MAHAGENCO. Thereafter, M/s Knowledge International Strategy Systems Pte. Ltd., Singapore raised invoices through the intermediaries to show sale of coal which was already under the control of their own subsidiary. Thereafter, coal was re-insured even though the same was already insured till the discharge port by M/s IMR Metallurgical



Resources AG, Switzerland. As per the modus operandi, the second sets of documents created ensured that documents pertaining to the original M/s IMR Metallurgical Resources AG, Switzerland - M/s Knowledge International Strategy Systems Pte. Ltd., Singapore contract, the M/s IMR Metallurgical Resources AG, Switzerland invoice, the 1st COSA, the actual insurance papers and the Form AI were no longer required to be submitted to the Customs. On the other hand, declarations were presented before the Customs on the basis of the Noticee and M/s Rescom Minerals Trading Ltd./M/s Spring Traders Limited contracts along with the 2nd COSA, the invoice issued by the two intermediaries and the fresh Insurance documents. Noticee also paid the appropriate Customs duty by foregoing the duty benefit available on import of Coal of Indonesian Origin. This voluntary act of duty payment was not a loss to the Noticee, since as per contract with MAHAGENCO the duty payment was reimbursable to the Noticee. However, as discussed and found above, by adopting the modus operandi the total invoice values between M/s IMR Metallurgical Resources AG, Switzerland and M/s Knowledge international Strategy Systems Pte. Ltd., Singapore increased from US \$ 15686186.25 to US \$ 18256222 i.e. the invoice values between M/s Springs Trade Limited/ M/s Rescom Mineral Trading Limited and Noticee. The said ® artificial inflation value in actual terms between the two sets of invoice values works out to us \$ 2570035.75 and in percentage terms same works out to approx. 16.384% in respect of all the six consignments. I find that as discussed and found above, Noticee procured inferior quality coal by adopting the modus operandi and in the course of the transactions, manipulated the actual quality parameters of Coal thereby managing to artificially



inflate the value of the coal. The Noticee by adopting the modus operandi made unscrupulous gains. The above discussion and findings categorically establish that the Noticee mis-declared the correct coal parameters including the vital component of GCV of coal by suppressing the actual GCV of coal recorded in the 1st COSA and presenting incorrect and wrong 2nd COSA to the Customs authorities as part of their declarations and thus had mis-declared the value of the imported coal in the Bills of Entry. I find that this mis-declarations culminated in contravention of various provisions of the Customs Act, 1962. Noticee violated the provisions of sub-section 4 of section 46 of the Customs Act, 1962 by mis-declaring the value and quality of the goods in the Bills of Entry even though they were aware that the same were not true. I find that since the actual value and quality/ grade/ parameters of the imported coal were not true and correct and also did not correspond to the entries made under the provisions of the Customs Act, 1962, the impugned consignments of Coal are liable for confiscation under the provisions of section 111 (m) of the Customs Act, 1962. Since the said acts of commission and omissions of the Noticee, Shri Rahul Bhandare and Shri Vipin Mahajan, rendered the impugned goods liable for confiscation under section 111(m) of the Customs Act, 1962, Noticee themselves, Shri Rahul Bhandare and Shri Vipin Mahajan are also liable for penalty under the provisions of section 112 (a) of the Customs Act, 1962. Since the consignments of coal had been imported on the basis of false and incorrect declarations, statements and documents, the Noticee themselves and both Shri Rahul Bhandare and Shri Vipin Mahajan are also liable for penalty under the provisions of section 114 AA of the Customs Act, 1962.



5.5.6 Therefore, in view of the above discussion and findings, I pass the following order.

ORDER

6.1 I hold that the declared GIF value of the goods under the Bills of Entry and the quality parameters declared by the Noticee in terms of the provisions of Rule 11 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 are mis-declared and hence I reject the declared GIF value under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007. I order the re-determination of the value of the goods covered under the respective Bills of Entry in terms of Rule 9 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 from Rs. 112,23,21,671/- to Rs. 99,65,57,483/-;

6.2 I order that the goods covered under the respective Bills of Entry are liable to confiscation under Section 111(m) of the Customs Act, 1962. Since the goods neither available for confiscation nor covered under any bond. I refrain from imposing redemption fine under Section 125 of the Customs Act 1962, however the Noticee M/s Knowledge Infrastructure Systems Pvt. Ltd. are liable for penalty;

6.3 I impose penalty of Rs. 12,50,00,000/- (Rupees Twelve Crore Fifty Lakh only) under Section 112 (a) read with Section 112(iii) of the Customs Act, 1962 on the Noticee M/s Knowledge Infrastructure Systems Pvt. Ltd.;

6.4 I also impose penalty of Rs. 5,00,00,000/- (Rupees Five Crore only) under Section 114AA of the Customs Act, 1962 on the Noticee M/s Knowledge Infrastructure Systems Pvt. Ltd.;

6.6 I impose penalty of Rs. 1,00,00,000/-



(Rupees One Crore only) under Section 112 (a) read with Section 112(iii) and Rs. 25,00,000/- (Rupees Twenty Five Lakh only) under Section 114AA of the Customs Act, 1962 on Shri Rahul Bhandare; and

6.6 *I impose penalty of Rs. 20,00,000/- (Rupees Twenty Lakh only) under Section 112 (a) read with Section 112(iii) and Rs. 5,00,000/- (Rupees Five Lakh only) under Section 114AA of the Customs Act, 1962 on Shri Vipin Mahajan.*

B. OVER INVOICING OF EQUIPEMENT BY ADANI GROUP

8. The petitioners have claimed that DRI investigated three projects of equipment imports by Adani Group, one relating to Transmission Line Projects and second, Power Plan Projects.

9. **The Transmission Line Project** relates to setting up of two 765 KV S/C transmission lines in the corridor of Tiroda-Koradi III-Akola II-Aurangabad, along with associated Sub Stations and Bays. In the year 2010, the Maharashtra Electricity Regulatory Commission Mumbai issued license to Maharashtra Easter Grid Power Transmission Company Ltd., which is wholly owned subsidiary of Adani Enterprises. The Maharashtra Easter Grid Power Transmission Company Ltd. (subsidiary of Adani Enterprise) further awarded the contract to PMC Projects India Pvt. Ltd. DRI later found that Maharashtra Easter Grid Power Transmission Company Ltd. (subsidiary of Adani Enterprise) was the de-facto importer even though they had engaged PMC as contractor for filing bills of entry and clearing of goods in India. PMC in turn had further awarded this Contract to ABB Ltd. Bangalore and even one more contract was awarded by PMC to Electrogen Infra FZE (EIF), a UAE based company of Adani Group, who had procured equipment



for the project from Hyundai Heavy Industries Company Ltd., South Korea. However, DRI found that for the same goods, the contract value between PMC and EIF was almost four times higher than the value of the contract between Electrogen Infra FZE EIF and Hyundai Heavy Industries Company Ltd. Though Maharashtra Electricity Regulatory Commission Mumbai claimed that the contract was awarded through a bidding process, but DRI report disbelieved it in the absence of any sound evidence. Accordingly, DRI issued Show Cause Notice dated 15.05.2014, relevant portion whereof reads as under:-

“F.No.DRI/MZU/CI-224 (PMC)/2013 Date: 15-05-2014

Subject: Gross over-valuation in the import of goods by M/s Maharashtra Eastern Grid Power Transmission Company Limited (MEGPTCL), a wholly owned subsidiary of M/s ADANI Enterprises Limited (AEL) through the contractor M/s PMC Projects (India) Private Limited - Show Cause Notice under Section 124 of the Customs Act, 1962 –reg..

1.1 Intelligence developed by Mumbai Zonal Unit (MZU) of Directorate of Revenue Intelligence (DRI) indicated that various entities of Adani group were indulging in gross over-valuation of imported goods (zero or low duty rated) to siphon off money abroad from public listed companies. The modus-operandi followed was that for power sector imports (Power generation:- Zero % duty and Power transmission:- 5% Basic Custom Duty), while the goods from various vendors (mostly South Korean & Chinese) are sent directly to India, the documents



are routed through an intermediary entity created by them in the UAE, viz. M/s. Electrogen Infra FZE, who raised inflated invoices (inflating the values in original invoices of OEM several times) on the Indian company, against which money is remitted to UAE. The activities of M/s Electrogen Infra FZE, UAE are apparently controlled and managed by the Adani Group through one or more of its representative firms and/or personnel. Intelligence further suggested that from UAE, while the actual invoice value is remitted to respective OEMs, the extra amount is routed to the Mauritius account of the parent company of M/s Electrogen Infra FZE i.e. M/s Electrogen Infra Holding Pvt. Ltd.

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4.3.11 Since the name of M/s PMC Projects (India) Private Limited appeared under the column 'Notify Party' invariably in each of above listed bills of lading pertaining to individual shipments by the respective OEMs, efforts were made to identify the import particulars for each such consignment i.e to ascertain the bill of entry no. & date and port of import, from the particulars available on individual bill of lading. Examination revealed that the aforesaid bills of lading were the bills of lading pertaining to 25 consignments (Sr.No. 1 to 25 of Table-3A) imported and cleared by PMC Projects (India) Private Limited, as evident from the same bill of lading numbers featuring in the table-3A, which provides details of consignments imported and cleared by M/s PMC Projects (India) Private Limited as per the EDI data base.

4.3.12 It, therefore, appears that while the importer utilized the above-listed bills of lading for customs clearance purpose in India, the value for



the purpose of assessment appears to have been declared on the basis of back-to-back invoices raised separately by EIF on M/s PMC Projects (India) Private Limited. The respective OEM invoices and packing lists do not appear to be part of the documents produced by PMC to the jurisdictional customs authorities in India, on the strength of which cargo appears to have been assessed and cleared, as was also the case with procurements by EIF from M/s Hyundai Heavy Industries Co. Ltd.

4.3.13 It, therefore, prima-facie appears to emerge in the case of these transactions also that for each shipment imported by M/s PMC Projects (India) Private Limited where EIF is the intermediary invoicing agent and one of three OEMs is the shipper, there are two sets of invoices;-

i) OEM sale invoices of the three OEM firms (Copies of the sale invoices raised by each of the three OEMs viz. M/s Dalian Insulator Group Co. Ltd., M/s Sediver Insulators (Shanghai) Co. Ltd. and Suzhou Furukawa Power Optic Cable Co. Ltd., China, on EIF along-with corresponding packing lists;

ii) Intermediary invoices of EIF, UAE (Copies of the back-to-back intermediary invoices/packing lists raised by EIF on M/s PMC Projects India Private Limited)-Invoices raised for supplies made in pursuance of Agreement dated 05-10-2010

4.3.15 From the figures shown in Table-10 above, it appears that the price charged by EIF in the invoices raised by it on M/s PMC Projects (India) Private Limited is substantially higher than the price for corresponding shipments charged by these OEMs. The invoice price of the respective OEMs



appears to have been grossly inflated in the back-to-back invoice raised by EIF on M/s PMC Projects (India) Private Limited. It, therefore, appears that consignments shipped by the respective OEMs and imported into India by M/s PMC Projects (India) Private Limited on the strength of grossly inflated invoices raised by EIF had been cleared by resorting to gross over-valuation. It is apparent that while the goods were shipped from the respective OEMs to PMC in India directly, the invoices were routed through EIF, who merely acted as an intermediary invoicing agent for facilitating invoice inflation....

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15.4 Thus, the declared values in the impugned 57 bills of entry in total amounting to Rs. 1887,06,49,088/-(CIF) declared on the basis of inflated invoice prices of the intermediary invoicing agent EIF, do not represent actual value of the goods as has been brought out by the investigation, as set out above, and the said declared assessable value is required to be rejected under the provisions of Rule 12 of the CVR, 2007 and re-determined under the provisions of Rule 4 of the CVR-2007 read with Section 14 of the Customs Act, 1962, on the basis of price available in the back-to-back OEM invoices raised on the intermediary invoicing agent i.e. EIF. Accordingly, the aggregate re-determined CIF value of the goods imported against the 57 bills of entry works out to Rs. 393,21,76,604/-(CIF) as worked out in columns K of Annexure A, on the basis of prices in OEM invoices as against the declared CIF of Rs. 1887,06,49,088/-(CIF). The quantum of over-valuation arising out of the back-



to-back inflated invoicing by the intermediary-EIF on PMC, is shown in column N of Annexure A, which works out to Rs.1493,84,72,484/-(Rupees One thousand four hundred and ninety three crores, eight four lakhs, seventy two thousand four hundred eight four only which appears to have been siphoned off out of India by MEGTPCL through PMC to their overseas intermediary invoicing agent and related entity EIF, on account of invoice inflation, in the guise of outward remittances as consideration for the imports.

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16.6.3 In this case, value of the imported goods has been over-stated by the importer for the purpose of siphoning off money from India to their related entities overseas. The importer and owner of the imported goods has thus declared value which to the best of their knowledge and belief was incorrect and was over-stated, as brought out here-in-above. They have also subscribed a declaration of the truth regarding the statement of value which declaration appears to be false due to over-valuation of the goods. Also, the importer has made, signed and used and/or caused to be made, signed and used the declaration, statement and invoices of EIF for the purpose of importing the goods knowing or having reasons to believe that such declarations, statement and invoice were false in respect of the value stated therein. Further, the importer has employed corrupt or fraudulent practice of over-valuation for the purpose of importing the impugned goods.

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20.1 Now therefore, M/s Adani Power Maharashtra Limited; Adani Power Rajasthan Limited;



Electrogen Infra FZE, UAE; Shri Vinod Shantilal Adani @Vinod Shantilal Shah; Shri Jatin Shah & Shri Moreshwar Vasant Rabade - both Directors/Employees/Representatives of M/s Electrogen Infra FZE, with respect to goods imported by APML (301 consignments) through NhavaSheva;ACC, Sahar and Mumbai Sea Port; are hereby called upon to show cause to the Commissioner of Customs (Import), Nhava Sheva having his office at Jawaharlal Nehru Custom House, NhavaSheva, Taluka-Uran, Dist. Raigad, Maharashtra -400 707;-

(A) With respect to goods imported through Mundra Port (i.e 55 consignments - Sr.No. 1 to 44, Sr.No. 46 and Sr.Nos. 48 to 57) to the Commissioner of Customs, Custom House, Kandia, having his office near Balaji Temple, Kandla-370210

(I) M/s PMC Projects (India) Private Limited, the importer on record (as per Bills of Entry); and MEGPTCL who are the owner of imported goods and who have held themselves out as importer, are required to show cause as to why:-

i) the declared value (transaction value based on sham transaction between EIF and PMC) in respect of equipments & machinery imported under 55 bills of entry having cumulative declared value of Rs. 1867,24,06,746/- (CIF) (individual bill of entry-wise CIF value shown under column E of Annexure A) should not be rejected under Rule 12 of the Customs Valuation (Determination of Prices of Imported Goods) Rules, 2007 read with Section 14 of the Customs Act, 1962.

ii) the declared value in respect of equipments & machinery imported under 55 bills of entry listed, at Annexure A, should not be re-



determined cumulative as Rs. 390,15,34,182/- (CIF)(individual bill of entry-wise GIF value shown under column K of Annexure A) on the basis of actual Transaction Value available in the OEM invoice prices shown at column J thereof, in terms of Rule 4 of the CVR, 2007 read with Section 14 of the Customs Act, 1962.

iii) Goods covered by 55 bills of entry, having aggregate declared value of Rs. 1867,24,06,746/-(CIF),as detailed at Annexure A to this notice, imported & cleared in pursuance of Agreement No. 415703 dated 01-10-2010 by PMC, for and on behalf of the owner M/s MEGPTCL, seized under Order dated 14-05-2014 issued under proviso to Section 110(1) of the Customs Act, 1962 should not be confiscated under 111(d) and Section 111(m) of Customs Act, 1962.

iv) Penalty under Section 112 (a) & (b) of the Customs Act, 1962 should not be imposed on each one of them in relation to the above goods.

v) Penalty under Section 114AA of the Customs Act, 1962 should not be imposed on them.

II) M/s Electrogen Infra FZE, UAE; Shri Vinod Shantilal Adani @Vinod Shantilal Shah and Shri Jatin Shah, Shri Mitesh Dani and Shri Mehul Jani, all employees of M/s Electrogen Infra FZE, UAE are required to show cause to the adjudicating authority as to why penalty under Section 112 (a) & (b) and Section 114 AA of the Customs Act, 1962 should not be imposed on each one of them in relation to the goods imported under the 55 Bills of entry.

III) Shri Jaydev Mishra, Associate General Manager, and Shri Dharmesh Parekh, Senior



Manager, both employees of M/s PMC Projects (India) Private Limited, are required to show cause to the adjudicating authority as to why penalty under Section 112 (a) & (b) and Section 114AA of the Customs Act, 1962 should not be imposed on each one of them in relation to above goods imported under 55 Bills of entry.

(B) With respect to goods imported through Nhava Sheva Port, (i.e two consignments - Sr.No. 45 and 47 of Annexure A) to the Commissioner of Customs, Commissioner of Customs, (Port Import), Jawahar Lai Nehru Custom House, having his office at Nhava Sheva, Taluka Uran, District Raigad, Maharashtra-400707

(I) M/s PMC Projects (India) Private Limited, the importer on record (as per Bills of Entry); and MEGPTCL who are the owner of imported goods and who have held themselves out as importer are required to show cause as to why ;-

i) the declared value (Transaction Value based on sham transaction between EIF and PMC) in respect of equipments & machinery imported under the two bills of entry (Sr.No. 45 & 47 of Annexure A) having cumulative declared value of Rs. 19,82,42,342/-(respective bill of entry-wise value shown at sr.No. 45 & 47 of column E of Annexure A),should not be rejected under the provisions of Rule 12 of the CVR, 2007 read with Section 14 of the Customs Act, 1962.

ii) the declared value in respect of equipments & machinery imported under two bills of entry (Sr.No. 45 and 47 of Annexure A) should not be redetermined cumulatively as Rs.3,06,42,423/- CIF (respective bill of entry wise value as shown at Sr.Nos. 45 and 47 of column K) on the basis of actual transaction value available



in the OEM invoice price shown at column J thereof, in terms of Rule 4 of the CVR-2007 read with Section 14 of the Customs Act, 1962.

iii) Goods covered by two bills of entry, having aggregate declared value of Rs. 19,82,42,342/- (CIF) as detailed at Sr.No. 45 & 47 of Annexure A to this notice, imported & cleared in pursuance of Agreement No. 415703 dated 01-10-2010 by M/s PMC Projects (India) Private Limited for and on behalf of the owner MEGPTCL, seized under Order dated 14-05-2014 issued under proviso to Section 110(1) of the Customs Act, 1962 should not be confiscated under 111(d) and Section 111(m) of Customs Act, 1962.

iv) Penalty under Section 112 (a) & (b) of the Customs Act, 1962 should not be imposed on each one of them in relation to goods imported under the two bills of entry.

v) Penalty under Section 114AA of the Customs Act, 1962 should not be imposed on them.

II) M/s Electrogen Infra FZE, UAE, Shri Vinod Shantilal Adani @ Vinod Shantilal Shah, Shri Jatin Shah, Shri Mitesh Dani, Shri Mehul Jani, all employees of M/s Electrogen Infra FZE, UAE are required to show cause to the adjudicating authority as to why penalty under Section 112 (a) & (b) and Section 114AA of the Customs Act, 1962 should not be imposed on each one of them in relation to the goods imported under the two bills of entry.

III) Shri Jaydev Mishra, Associate General Manager, and Shri Dharmesh Parekh, Senior Manager - both employees of M/s PMC Projects (India) Private Limited, are required to show cause to the adjudicating authority as to why penalty



under Section 112 (a) & (b) and Section 114AA of the Customs Act, 1962 should not be imposed on each one of them in relation to above goods imported under the two bills of entry.

22.0 Each of the above noticee, is required to submit a written reply to the Adjudicating Authority within 30 days from the date of receipt of this notice. In their written reply, the noticees may also indicate as to whether they would like to be heard in person. In case no reply is received within the time limit stipulated above or any further time which may be granted and/or if nobody appears for personal hearing, when the case is posted for the same, the case will be decided ex-parte on the basis of evidence on record and without any further reference to the noticees.”

10. In respect of **The Power Plant Projects of Adani Group**, the petitioners have averred that two subsidiary companies of Adani Power Ltd., namely, Adani Power Maharashtra Ltd. (APML) and Adani Power Rajasthan Ltd. (APRL), were awarded projects for setting up 3,300 (5 x 660) MW coal based power plant at Tiroda in Maharashtra and 1,320 (2 x 660) MW project at Kawai in Rajasthan. Both these companies further awarded the project to Adani's own company namely, Electrogen Infra FZE, UAE (EIF), who procured the equipments mostly from Chinese and South Korean companies. The petitioners claim that the invoices between OEM and EIF were at genuine rates, whereas invoices between EIF and APML & APRL were inflated. Attention of this Court has been sought to following portion of the Show Cause Notice dated 15.04.2014 issued by the DRI :-

“17.0 SUMMARY OF INVESTIGATION

17.1 From the investigations, as brought out in the



foregoing paragraphs, MEGPTCL; EIF; PMC; Shri Vinod Shatilal Adani; Shri Jatin Shah, Shri Mitesh Dani, Shri Mehul Janiof EIF and Shri Dharmesh Parekh & Shri Jaydev Mishra of PMC, appear to have hatched a conspiracy to siphon off money abroad by way of indulging in over valuation in imports for projects subject to low or nil rate of Customs duty, so that the incidence/burden of duty on the over-valued amount i.e cost of fund transfer is minimal.

17.2 *On the overseas front, MEGPTCL appears to have engaged the services of a closely related party EIF to arrange for procurement from various OEMs for eventual supply to M/s PMC Projects (India) Private, another firm managed and controlled by the Adani Group. M/s Electrogen Infra FZE, UAE acting as a front for PMC and MEGPTCL, appears to have acted as an intermediary invoicing agent to inflate the invoice value in procurement of equipments and machinery required for installation in the transmission line system from respective South Korean and Chinese OEMs. As a part of the modus-operandi, though the goods were shipped directly to PMC/MEGPTCL in India by the overseas suppliers who were OEMs, but for enabling inflation of invoices, it was made to appear on paper as if the goods are being supplied by EIF. Accordingly, back-to-back contracts were signed between PMC (the contractor for MEGPTCL) and EIF, UAE in one hand and EIF, UAE and the four OEMs in the other. But the facts that the back-to-back contracts of EIF with OEMs were signed in India, that too by Shri Dharmesh Parekh, an employee of PMC, clearly shows that the said supply contracts were planned, conceived and executed in India by same set of persons and that it was a sham transaction.*

17.3 *The value inflation over the contract price of one of the OEM M/s Hyundai Heavy Industries Co. Ltd., South Korea with Electrogen Infra FZE, UAE in the back-to-back supply agreement executed by*



Electrogen Infra FZE, UAE with PMC Projects (India) Private Limited, clearly shows the contract level variation of about 400% as depicted in Table-5, supra, which is reproduced below:-

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17.4 In so far as the scope of supplies of Auto Transformers, Shunt Reactors and spares thereof is concerned (excluding Disc Insulators and OPGW), two of the employees of the Adani Group viz. Shri Mayur Shah, ex-employee of PMC and Vice President of M/s Adani Ports 86 SEZ Limited and Shri Jaydev Mishra, Associate General Manager of PMC have admitted to the identical scope of supply in both the above agreements, during course of their statements recorded under Section 108 of the Customs Act, 1962 on 17-02-2014, thereby lending direct credence to the corresponding values depicted in the Table above and the back-to-back nature of the two contracts. EIF proceeded to raise inflated invoices from time to time on PMC under the contract no. 415703 dated 01-10-2010 inflation being to the tune of about 400% of OEM value.

17.5 In so far as supply of Disc Insulators and OPGW fiber, hardware and accessories are concerned, investigations have clearly brought out the back-to-back nature of the sale contracts as narrated in above. The overall contract level over valuation is depicted in the Table-14 supra, which is reproduced below:-

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17.6 Investigations have clearly brought out that for every procurement invoice raised on M/s Pectrogen Infra FZE, UAE by the respective OEM, M/s Electrogen Infra FZE in turn have arranged to raise and issue a back-to-back invoice on M/s PMC Projects (India) Private Limited, wherein they have



inflated the OEM price commensurate with the average contract level value inflation and invoiced the goods at inflated prices. M/s PMC Projects (India) Private Limited arranged for the importation and clearance of the goods on the strength of the inflated invoices, showing prices which did not represent the actual value of the goods. As per arrangement, the goods were directly shipped from the load ports in South Korea and China, to ports in India, from they were eventually cleared by M/s PMC Projects (India) Private Limited for use in the project. Since the goods have been directly shipped from the load ports in South Korea & China and utilised directly for the purpose of installation in the transmission system, there appears to have been no value-addition to the goods at any point of time from the time of their shipment from the overseas load ports till their installation in India. Therefore, value addition in the form of value inflation of about 400% (average) towards the supply of goods procured from Hyundai Heavy Industries Co. Ltd. and about 800% (average) in the case of supply of goods procured from other GEMs viz. M/s Dalian Insulator Group Co. Ltd., M/s Sediver Insulators (Shanghai) Co. Ltd. and M/s Suzhou Furukawa Power Optic Cable Co. Ltd. appears arbitrary and unrealistic. MEGTPCL appears to have arranged for remittances to M/s Electrogen Infra FZE, UAE towards the inflated prices in invoices raised by it, thereby enabling extra remittances to their related entity M/s Electrogen Infra FZE.

17.7 The manner in which Consortium Agreement and the Supply Agreements for and on behalf of EIF, UAE were signed by employees of PMC obliterates the distinction between PMC & EIF and establishes commonality of their interest. They appear to have acted as per a planned modus-operandi to siphon off money from India by inflating invoices.

17.08 MEGTPCL, being a wholly owned subsidiary of



Adani Enterprises Limited, the listed flagship company of the Adani Group, through PMC appears to have made extra remittances to the extent of the inflated amounts to the tune of nearly Rs. 1493,84,72,484/- which appears to have been siphoned off abroad to and for the benefit of their related party M/s Electrogen Infra FZE, UAE, in the guise of import remittances by resorting to gross over-valuation of the imported goods. M/s Electrogen Infra FZE on its part, therefore, appears to have actively connived with MEGTPCL and PMC by arranging to raise invoices with inflated prices, being fully aware that the price charged in its invoices had been grossly over-valued and did not represent actual value of the goods at any point of time.

17.9 At the time of clearance of goods imported under 57 Bills of entry mentioned in Annexure A, MEGTPCL, through PMC, arranged for presentation of the inflated invoices of EIF to the customs authorities, on the basis of which they declared value of the goods. The importer held out that the value declared therein represented the Transaction Value paid or payable for the goods imported, being fully aware that the value declared by them on the strength of inflated invoices raised by EIF did not represent the actual value of the goods. Investigations have clearly brought out that EIF has all along only acted as front for inflating the invoice value as part of the modus-operandi. The admitted fact that an employee of PMC (Shri Dharmesh Parkeh) signed agreements between EIF and the OEM, for and behalf of the overseas entity EIF fortifies the allegation that EIF is only a front created by the Adani Group for intermediary invoicing. Scanned image of relevant portions of the three contracts executed between EIF and the three OEMs showing the signature of Dharmesh Parekh on behalf of EIF is given below:-

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11. The petitioners have averred that premised upon the aforesaid Show Cause Notice dated 15.05.2014, the CBI registered an enquiry and to their knowledge, Adani group had taken credit facilities from different Public Sector Banks for the over-invoiced imports, however, the investigation was closed without even registration of the FIR. Thereafter, even DRI absolved the Adani Group of companies of all the charges laid in the Show Cause Notice dated 15.04.2014 and the Appellate Authority also ruled against the DRI and in favour of Adani Group of companies.

12. The petitioners have alleged that in the order passed by the learned Appellate Authority, there is no indication of process of international bidding for the global tender and it seems to have assumed that Electrogen Infra FZE, UAE (EIF) is an engineering, procurement and construction (EPC) contractor for a routine trunk project for setting up a power plant, however, there is no evidence to show that Electrogen Infra FZE, UAE (EIF) has provided any such service, beyond invoicing of supply of goods and even the goods were delivered directly to India from the manufacturers. It is averred by the petitioners that the order of the Appellate Authority justifies over-invoicing because of any extended warranty and EPC services for an extended period of 10 years but still the over invoicing to the tune of 220 per cent is not justified.

13. The petitioners have further averred that the contract between EIF and Adani Group companies is a mere paper work to cover the mega scam, as the DRI had found that for every consignment there were two set of invoices, one raised by the actual supplier and the other raised by Electrogen Infra FZE, UAE (EIF) on APML and APRL and both the invoices had same



number but the different values of the cost of equipment. The allegation of petitioners is that the order of Appellate Authority ignores the corporate fraud and rather, a formal attempt has been made to cover up the connections between different companies in the entire transaction chain.

14. The petitioners have alleged that EIF is 100 per cent owned by EIFI, Mauritius. EIFI is in turn 100 per cent owned by Asankhya Resources Pvt. Ltd (AR), incorporated in the Cayman Islands, a jurisdiction which is notorious for tax evasion through shell companies. Further, Asankhya Resources Pvt. Ltd is owned by Eagie Holding Ltd, which is a nominee shareholder in Asankhya Resources Family Trust, for which, Vinod Shanti Lal Adani, brother of Gautam Adani, and a promoter of the group holding company, Adani Enterprises Ltd, is the controlling authority of the trust. Also averred that within mere two months after signing of the agreement between Adani group and EIF, Mr Vinod Adani became a Director of EIH, which is the holding company of Electrogen Infra FZE, UAE (EIF) and the clear intention was that the contract would be among the companies owned and controlled by the Adani group. The agreement was signed a few months prior to the takeover of ownership by Adani allegedly to hoodwink the Indian authorities. Though Mr Vinod Adani claims that he was never involved in the day to day functioning of EIF, a wholly owned subsidiary of EIH, however, on 19.05.2011 the Board of Electrogen Infra FZE, UAE (EIF) authorized him to sign documents and thereby his connections with Electrogen Infra FZE, were not revealed. Also averred that two individuals who were employees suddenly resigned to join SME (as EIF was then known), at the time of signing of the agreement which makes it dear that the



Adani group was sending personnel to EIF prior to its takeover by Vinod Adani himself. Moreover, the shares of Adani Power Ltd and/or Adani Enterprises Ltd were pledged to ICICI for the purpose of obtaining a loan for EIF. This establishes a strong relationship between the two entities.

C. OVER INVOICING OF EQUIPMENT BY ESSAR GROUP

15. With regard to over invoicing of equipment by Essar Group, the petitioners have sought to draw attention of this Court to the following paragraphs of Show Cause Notice dated 11.03.2015 issued by DRI:-

“31.10 In the instant case contracts with inflated consideration amounts were signed between GSF and each of the four entities EPGL, EPMPL, EOL & EPIL when they were related entities. It appears from the investigation that GSF was a creation of the Essar Group to act as an intermediary invoicing agent for facilitating invoice inflation. With the contracts signed and consideration thereof sealed, GSF merely raised inflated invoices from time to time on the concerned Essar entities for the proportionate value of goods being shipped in piecemeal commensurate with Contract level inflation while the goods were shipped directly by the OEMs to India. GSF appears to have received remittances towards value of invoices raised on the Essar Group entities in India, which included the over-valued portion of the price- the money siphoned off in the guise of import remittances.

31.11 Therefore, the foundation for siphoning off foreign exchange appear to have been by the Essar Group by having its entities viz. EPGL, EPMPL, EOL and EPIL enter into contracts with inflated consideration amounts with its related entity GSF. That the inflated contracts were signed at a point of time when the Essar Group held either absolute



control or majority stake in GSF not only appears to show that it was done with the intent of siphoning off, but also that it was done to ensure that the Essar Group continues to be the sole beneficiary of the siphoned off amount in the foreign exchange, given the fact that goods were to be shipped in piecemeal and invoices were to be issued for partial shipment of goods spread over a period of time.

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31.23 Even looking at the above case, from the perspective of normal commercial prudence and due diligence, payment of such huge amounts running into several hundred million US Dollars over and above the actual value of the goods appears to be unusual and highly irregular. When the OEM/actual supplier is selling the goods at a much lower value, no prudent business entity would pay so much more than the actual value of goods to an intermediary with no known bona fide value addition. In the instant case, the goods have been shipped directly to India, by the OEMs/Actual Suppliers, only Invoices were routed through GSF. That, EPGL, EPMP, EOL and EPIL/Matix knowing fully well who the actual suppliers were and where the goods are coming from (as the goods were shipped directly to them), have chosen to pay such an inflated value and that too on such a large scale, appears to be contrary to all commercial prudence and due diligence. It appears that no prudent business firm/entity can be expected to be paying such overvalued amounts for goods much more than their actual value (running into hundreds of millions US Dollars) except by collusion with fraudulent intent, which is apparent from the overall facts of the case as discussed above. It appears that EPGL, EPMP, EOL and EPIL/Matix have colluded with GSF and have been



aided and abetted by various persons (as discussed elsewhere) to import impugned goods by over-valuation following a well-planned modus operandi of Trade Based money laundering.

31.24 It appears that GSF is not an independent supplier, per-se, but merely an intermediary dummy agent for invoice, inflation for enabling siphoning off of money abroad as a part of the modus-operandi.”

16. Attention of this was drawn to the following paragraphs of Show Cause Notice dated 22.08.2017 issued by DRI:-

“31.25 It also appears that in the guise of import of equipments and machinery for setting up power projects, oil refinery and fertilizer plant, EPGL, EPM/PL, EOL and EPIL/Matix the entities of the Essar Group, appear to have indulged in over-valuation of impugned imported goods. The actual value of the imported goods is Rs. 6698,44,56,910/- CIF, whereas the same have been invoiced at Rs. 9299,32,25,110/- CIF thus leading to an over-valuation Rs.2600,87,68,200/- at the GIF level which appears to. have been siphoned off abroad through GSF, an "intermediary in the UAE, which was controlled and managed by the Ruia family through EG.L/EGFL, the ultimate holding company of the Essar Group.”

17. The petitioners has averred that rampant and excessive over-invoicing committed by power companies has a direct impact on power tariff which is being paid by millions of consumers. Besides this siphoning of money amounts to cheat the shareholders and the tax authorities as well.

18. The petitioner in above captioned second petition [W.P.(C)]



8401/2017] have also relied upon news reported titled “Power Equipment Imports Huge Sources of Black money: SIT”; Second Report of the Special Investigating Team (SIT) on Black Money issued by the Press Information Bureau dated 12.12.2014; an article titled “CBI Registers preliminary probe against Adani Group” dated 25.07.2021 to submit that the coal based power generating units in India are over valuing their imports of steaming coal with the objective of higher tariff fixation/ compensation and siphoning money abroad. It is averred that the Gross Calorific Value (the bench mark pricing of coal) is also being mis-declared in the Bill of Entry by manipulating / forging the documents. This process affects the quality of coal and in turn affects the power generation process.

19. It is averred by petitioner that the DRI developed intelligence and issued Circular F. No. DRI/HQ-CI/50D/misc- 33/2016-CJ dated 30.03.2016, titled “Import of coal from Indonesia by resorting to Over-Valuation”. According to petitioner, the *modus operandi* adopted is to create multiple layers of invoicing between the country of origin (mostly Indonesia and in some cases South Africa and Australia) and India. The intermediary firms based in other countries including Singapore, Hong Kong, Dubai etc inflate the prices of coal in their billing and declare inflated price in their billing to the Indian Firms.

20. According to petitioner, the quality parameters of coal including the moisture, sulphur and the Gross Calorific Value, are subject to sampling test and certification. Petitioner has averred that the coal syndicate is obtaining manipulated certificates from different laboratories in the country of origin, showing inferior quality of coal, which is then



corroborated by a similar manipulated certificate from the Indian Laboratories. When inferior quality of coal is being shipped by mis-declaring the GCV, the value is also accordingly over invoiced and the over-valued component is being siphoned abroad.

21. The petitioner has claimed that the tariff order issued by the Central Electricity Regulatory Commission takes into consideration various factors, such like, import cost of coal, when it is used in generation of electricity and is not domestically manufactured and when the coal is overvalued/ priced, its ramification pass to the end user, who have to pay more for every unit consumed by them.

22. In view of the above, the petitioner has relied upon Show Cause Notice dated 15.05.2014 regarding M/s Maharashtra Eastern Grid Power Transmission Company Limited and Show Cause Notice dated 11.03.2015 in respect of four Essar Group of Companies issued by the DRI indicating that corporate entities namely, Adani Group and Essar Group are indulging in gross over valuation of imported goods to siphon off money abroad.

23. According to petitioner, the *modus operandi* followed by both these corporate houses is identical. Power and infrastructure projects which are subject to zero or low rate of duty (5% or less), are being imported by inflating the value on paper. While the goods from various Original Equipment Manufacturers/ vendors (mostly Chinese & Korean) are being shipped directly to India, however, the documents are routed through intermediary entities created by them at Dubai, who raise inflated invoices on the Indian company, against which the money is remitted from India, from where the actual invoice value is remitted to respective supplier and



the inflated extra amount is sent to the accounts held in subsidiary/holding company of these corporate Houses.

24. Petitioner has averred that even the Appellate Authority, despite having a clear finding of fraud, has made no such reference in the order dated 23.12.2016. Also submitted that *prima facie* offence committed by these corporate companies, are cognizable offences under the Indian Penal Code, Prevention of Corruption Act and Prevention of Money Laundering Act. However, the investigation carried out by CBI in the year 2014 has produced no results and so, direction be issued to carry out investigation by Special Investigating Team, monitored by this Court.

25. The petitioner has relied upon Hinderburg Research Report dated 24.01.2023 and OCCRP report of January, 2023 to submit that the promoters of Adani Group were engaged in manipulation of stock prices of their listed companies through one Global Opportunities Fund (Emerging India Focus Fund (EIFF) and EM Resurgent Fund (EMRF), which were managed by close associates of Vinod Adani.

26. The petitioner has also relied upon another article, titled as *Adani family's partners used 'opaque' funds to invest in its stocks-media group*, dated 31.08.2023 published in the Reuters and another article titled as *Secret paper trail reveals hidden Adani investors* dated 31.08.2023 published in *The Big Read* in support of above submissions.

27. Learned counsel appearing on behalf of petitioners in the captioned petitions submitted that these unfair practices were observed by the DRI, accordingly vide letter dated 31.01.2014 to the then SEBI Chief and thereafter, an alert was issued that there may be stock market manipulations



being committed by Adani Group of companies and that more documents be obtained from Mumbai Zonal Unit of DRI. However, SEBI suppressed and concealed this vital information and never conducted the investigation based upon the DRI alert.

28. The stand of respondent – DRI is that due to large number of parties and number of intermediaries, especially those located overseas and also due to complex nature of the transactions; the investigation was divided into multiple cases. During the investigation, Show Cause Notices were issued against certain companies and Letters Rogatory through jurisdictional courts to the Foreign Courts seeking retrieval of information. The respondent – DRI, in its affidavit dated 01.11.2019 placed on record the status of five cases mentioned in these petitions, which is as under:-

Annexure-A Status of Cases mentioned in the PIL

S. No.	SCN No. & Date	Name of the Importer	Product	Adjudication Status	Appeal in CESTAT	Next date of hearing	Present Status
1.	DRI/MZU/CINT-21/2015 dated 31.08.2016	1. Knowledge Infrastructure Systems Pvt. Ltd. 2. Rahul Bhandare, MD 3. Vipin Mahajan, Director	Indonesian Coal	Adjudication Complete on 23.12.2016 vide order in original No. 05/KVSS (05) ADG (ADJ.)/DRI, MUMBAI/2016-17 @ Page 52	1) Appeal filed by M/s Knowledge Infrastructure Systems Pvt. Ltd. vide appeal no. C 85235/17 on 14.02.2017 2) Appeal filed by Rahul Bhandare vide appeal no C 85236 on 14.02.2017 3) Appeal filed by Vipin	Appeal filed by the Notices was allowed by CESTAT vide order Dt. 31.05.2018 by setting aside the Order-in Original dt. 23-12-2016	Appeal by DRI against CESTAT order was disposed by the Bombay High Court vide order dated 18.06.2019 on the grounds that the same was not maintainable with Hon'ble court. Department filed Civil Appeal



					Mahajan vide appeal no C 85234 on 14.02.2017		1666/2020 and vide order dated 24.01.2023 the appeal was withdrawn but the question of law is left open by the Supreme Court.
2.	DRI/MZU/CI- 224(PMC)/20 13 Dated 15.05.2014	1. M/s Maharashtra Eastern Grid Power Transmission Co. Pvt. Ltd. 2. M/s PMC Projects (INDIA) Pvt. Ltd.	Capital Good for Power transmissi on	Adjudication completed vide order No. 18/KVSS (18) ADJ/DRI/Mum bai/2017 Dated 17.10.2017	Appeal No. C/85476/18 dated 12-02- 2018 filed in CESTAT	Next date of hearing not given The CESTAT at Mumbai vide order dated 11.08.2022 dismissed department's appeal	Case currently in CESTAT Civil Appeal 1999/2023 filed before Supreme Court was dismissed vide order dated 27.03.2023 and the department is in the process of filing review petition.
3.	DRI/ MZU/CI- 224(APML/A PRL)/2013 Dated 15.05.2014 @ Page 200	1. M/s Adani Power Maharashtra Ltd. 2. Adani Power Rajasthan Ltd.	Capital Goods for Power Generatio n Plant	Adjudication Complete on 22.08.2017 vide order in original No. 12/KVSS (12) ADG (ADJ.)/DRI, MUMBAI/2017 Dated 22.08.2017 @ Page 313	Appeal No. C/87758/17 dated 28-11- 2017 filed in CESTAT	Next date of hearing not given	Case currently in CESTAT.
4.	DRI/MZU/CI- 11/2013-14/ Dated 11.03.2015 @ Page 357	1. M/s Essar Power Gujrat Ltd. 2. M/s Essar M.P. Ltd. 3. M/s Essar Oil Ltd. 4. M/s Essar Projects (India) Ltd. 5. Matix Fertilizers & Chemicals Ltd.	Capital good for thermal power plant Capital Goods for Crude oil	Pending adjudication as the case stands transferred to Call Book.			The SCN is pending Adjudicatio n with Adjudicatin g Authority.



			refinery				
			Capital Goods for setting up of Urea Fertilizer Plant				

29. Besides afore-mentioned companies, as have been mentioned in these petitions, the respondent-DRI also issued Show Cause Notice to other importers in related investigations. Their status has been given as under:-

Annexure B- Status of Additional Cases in which SCNs have been issued

S. No.	SCN No. & Date	Name of the Importer	Product	Adjudication Status	Appeal in CESTAT	Next date of hearing	Present Status
1.	DRI/MZUF/INT/154/2014 dated 31.08.2016	M/s Reliance Infrastructure and M/s Rosa Power	Indonesia n Coal	Pending adjudication as the case stands transferred to Call Book	-	-	The SCN is pending Adjudication with Adjudicating Authority
2.	DRI/MZUF/Int-160/2014 Dated 14.02.2017	M/s Coastal Energy Pvt. Ltd	Indonesia n Coal	Pending adjudication as the case stands transferred to Call Book	-	-	The SCN is pending Adjudication with Adjudicating Authority
3.	DRI/MZU/CI-224/(Others)/2013/dated 31-08-2016	1. Adani Enterprises Ltd. 2. Adani Renewable Energy 3. Adani Hazira Port Private Ltd. 4. Adani International Container Terminal (P) Ltd. & Adani Ports and Special Economic Zone Ltd. 5. Adani Vizag Coal Terminal Pvt. Ltd.	Thin film solar modules & solar inverters for solar power plant Capital equipment for Long term port Development Equipmen t for Coal Handling Terminal	Pending adjudication as the case stands transferred to Call Book	-	-	The SCN is pending Adjudication with Adjudicating Authority
4.	DRI/MZU/CI-11/2013-14 (Part-II)/dated 31-08-2016	Vadinar Power Company Ltd. & -----Terminal	Capital goods for Captive Co-	Pending adjudication as the case stands transferred to Call	-	-	The SCN is pending Adjudication with Adjudicating Authority



		Salaya	Generation Plant Capital goods for Setting up a Marine material handling Facility	Book			
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30. Learned Senior Standing Counsel of Central Government appearing on behalf of DRI submitted that due to voluminous nature of cases, involving several stages and multiple countries, the process of investigation is extremely time consuming and complicated, however, respondent-DRI is taking all steps for necessary expeditious completion of the same.

31. Further submitted that a Call Book is maintained by the department and those cases wherein no action is required; or have reached the stage that no further action is required; or no action is required for next six months; or have been directed to be kept in abeyance. Meaning thereby, the Call Book contains details of such cases wherein no action is required immediately. Further, Central Board of Indirect Taxes and Customs (Board) (erstwhile known as Central Board of Excise and Customs) vide Circular dated 14.12.1995, read with Circular dated 26.12.2014 and dated 08.04.2016, have specified the categories of cases which can be transferred to the Call Book, which are as under:-

- (i) Cases in which the department has gone in appeal to the appropriate authority;
- (ii) Cases pending before the Settlement Commission;
- (iii) Cases where audit objections are contested;
- (iv) Cases where the Board has specifically ordered the same to be kept pending and to be entered into the call book



32. Learned Senior Standing Counsel submitted that cases are transferred to the Call Book subject to the outcome of the legal proceedings /appeals to avoid multiplicity of proceedings and ensure proper adjudication of cases.

33. In respect of averments made by the petitioners in second captioned petition [W.P.(C) 8401/2017], the stand of DRI in its affidavit is that Show Cause Notices have been issued in all cases of imports of capital goods/ power equipment wherein investigation was carried out and also that some cases are pending adjudication and in some cases appeals have been filed. Letters Rogatory to Overseas Courts in Singapore, Dubai, Hong Kong, Switzerland & Indonesia to gather evidence and documents have been issued, however, since the process is time consuming and multiple countries are involved, all necessary steps have been taken by the DRI for expeditious completion of the same.

34. The stand of respondent- Central Bureau of Investigation (CBI) is that on the basis of source information, a preliminary enquiry against M/s Maharashtra Eastern Grid Power Transmission Company Ltd., M/s PMC Project India Pvt. Ltd., M/s Adani Enterprises Ltd., M/s Maharashtra State Electricity Transmission Co. Ltd. And unknown officials of Public Sector Bank (SBI, PNB, Vijaya Bank, OBC, SBM & Canara Bank) to enquire into the allegations of availing various credit facilities for the purpose of procurement of power generation and power transmission equipments/ machineries from various vendors of South Korea, China etc. through UAE based intermediary M/S Electrogen Infra FZE, Dubai (an Adani Group Company), which were allegedly imported by gross over-valuation/ over invoicing; commenced on 12.06.2016. The preliminary enquiry also looked



into the effect of exaggeration of project cost on fixation of tariff and excess availing of finance from the bank to fulfil the requirement of margin money without infusion of own capital. However, the transmission network was within Maharashtra State i.e. Intra State Transmission System and was thus, a project under the Government of Maharashtra and so, the enquiry could not progress and was closed on 15.07.2015 on jurisdiction issue.

35. The CBI has further averred that another enquiry commenced on 25.10.2017 to investigate the allegations raised in a written complaint that during investigation of case relating to import of Indonesian Coal imported by KISPL from firms in Hong Kong and Singapore, which was infact procured from KISPL's Singapore wholly owned subsidiary and much lower prices than what was declared at the time of import. KISPL was required to supply coal to Maharashtra State Power Generation Co. Ltd. and thereby, KISPL's subsidiary had contracted the coal from overseas suppliers for delivery at the designated ports in India and entered into sham contracts with firms in Hong Kong and Singapore pretending purchase of coal of higher grade / parameters and later on the basis of those sham contracts, inflated invoices, much higher than actual value, were raised. The KISPL had also deliberately refrained from availing substantial Custom Duty Exemption admissible on submission of Form-AI- Certificate of Country of Origin issued by the Indonesian Government Agencies. The sole intention of KISPL was to conceal the actual value and the grade of the consignments of coal. Even though availment of Customs Duty Concession by KISPL and passing it to the Maharashtra State Power Generation Co. Ltd. was a mandatory condition of the Supply Agreement, but despite that KISPL did



not avail it and thus failed to comply with the said condition, however, the coal supply was accepted. The complaint also alleged that artificial inflation of the value of the imported coal had not only cloaked the actual margins made by KISPL but had also facilitated in siphoning / shifting of a substantial portion of the otherwise taxable funds in the form of out flowing import remittances to overseas intermediaries / conduits. The CBI collected the documents and commenced the enquiry.

36. The CBI has also averred that on the basis of source information, another investigation commenced on 22.01.2018 against M/s Coastal Energy Pvt. Ltd., National Thermal Power Corporation, Metals and Minerals Trading Corporation and Aravali Power Company Ltd. The allegation was that M/s Coastal Energy Pvt. Ltd. imported coal of inferior specifications and Gross Calorific Value and passed it off as coal of superior specification and higher value to NTPC, MMTC and M/s Aravali Power Company Limited. This resulted in supply of inferior coal as coal of higher grade with criminal association of public servant of NTPC, APCPL and MMTC. The CBI claims to have seized 47 files from NTPC and M/s Aravali Power Company Limited pertaining to the assessment of coal requirement, tender documents, invoices, load port test report of Indonesian coal and documents showing quantity and quality of coal. Similarly, collection of evidence like the original coal supplier from Indonesia, testing agencies, who had issued Test Reports of the coal etc. from foreign parties was also initiated.

37. The stand of Ministry of Power in these petitions is that the contention of petitioners that inflated cost of imported equipment has impact



on tariff between 50 paise per unit to Rs.2 per unit, but no detail has been given. Reliance is placed upon the provisions of Electricity Act, 2003 to aver that two ways are provided to determine the tariff of electricity, one, the tariff is governed by Tariff Regulations under Section 61 of the Act, which is based upon performance based service for generation, transmission and distribution as well as cost of project. Second, the cost is determined through transparent process of bidding under the guidelines of the Central Government, and thus, there is no question of companies earning any benefit in terms of tariff by inflating the capital cost.

38. The respondent- Ministry of Power has further averred that amendment in the Electricity Act and Tariff Policy is governed from time to time, as and when need arises. The plea of petitioners to make provision for declaration of international market price of power equipment and coal in the bills of lading/ shipping at the time of presentation of such document to the customs is not in the purview of Ministry of Power.

39. The submissions advanced by learned counsel representing both the sides were substantially heard and the material placed on record has been carefully perused by this Court.

40. The case of the petitioners in these petitions is premised upon Show Cause Notice dated 15.05.2014 and dated 31.03.2016 issued by DRI promulgating that the intelligence has indicated that various entities of Adani group and Essar Group were indulging in gross over-valuation of imported goods (zero or low duty rated) to siphon off money abroad from Public Listed Companies.

41. In support of their case, petitioners have relied upon different



publications / articles of different dates to submit that the *modus operandi* and the manner in which these companies raise inflated invoices, in respect of coal and equipments which are directly shipped to India but the invoices are routed through a different companies, which is directly owned and controlled by their promoters in India and also their quality is compromised by obtaining manipulated certificates. This Court has gone through the copies of these publications to find out what has been averred therein.

42. The article published in the newspaper 'The Indian Express' reads as under:-

"From: The Indian Express

Adani firm moves Singapore court in attempt to block information to DRI

The website of the Singapore court shows that a case filed by Adani Global against the Attorney General and others was listed for hearing on August 21. Emails and phone calls to the Adani Group for comments did not elicit any response.

***Written by Khushboo Narayan]Mumbai
Updated: August 26, 2017***

Adani Global Private Ltd, a Singapore-based company of the Adani Group, has moved the high court of Singapore seeking a stay on a demand to produce documents pertaining to Indonesian coal imports from Adani's subsidiaries, a few shipping companies and banks by a lower court of Singapore, said sources. Over the last two months, the lower court of Singapore has asked for these documents after it received a Letter Rogatory (LR) from the Directorate of Revenue Intelligence (DRI), which is currently probing a few Adani Group firms for



alleged overvaluation of such coal imports. An LR is a formal request seeking judicial assistance in investigating a foreign entity.

The website of the Singapore court shows that a case filed by Adani Global against the Attorney General and others was listed for hearing on August 21. Emails and phone calls to the Adani Group for comments did not elicit any response.

The DRI is probing at least 40 companies including six firms of Adani Group, two companies of the Anil Dhirubhai Ambani Group (ADAG) and two Essar Group firms for alleged overvaluation of coal imports from Indonesia pegged at Rs 29,000 crore between 2011 and 2015.

The Indian Express reported on June 20, 2016 that three state-owned banks declined to provide to the DRI information lying with their overseas branches regarding transactions by leading power companies in connection with the coal imports case. The banks had cited confidentiality norms which prompted Revenue Secretary Hasmukh Adhia to write to these lenders to cooperate with the ongoing investigation. Subsequently, the DRI issued LRs to Singapore, Dubai and Hong Kong - seeking help from them to access documents lying with the overseas branches of the state-owned banks relating to transactions by top power companies that were under probe.

Since a bulk of these documents were with Singapore branches of banks, last year a team of DRI officials visited Singapore to expedite the LRs. Singapore laws allow any entity to challenge the orders of a lower court in a higher court.

In March 2016, the DRI issued a general alert to its field formations across India, outlining the modus operandi of over-invoicing of coal imports from Indonesia. The DRI alleged that money was being



“siphoned” outside the country and the electricity-generating firms were availing of “higher tariff compensation based” on artificially inflated cost of the imported coal”.

The DRI alleged that Indonesian coal was directly imported from ports in that country to India while import invoices were routed through one or more intermediaries based in Singapore, Hong Kong, Dubai and British Virgin Islands to artificially inflate its value.

The agency, according to sources, found that inflated invoices received in India were issued by intermediaries, allegedly subsidiary companies of Indian importers or their fronts. The DRI alleged that in certain cases, the import value of Indonesian coal was artificially inflated by about 50 to ICQ per cent by changing test reports which measure the calorific value of coal.

The DRI also raided over 80 shipping companies, labs and intermediaries including many in Maharashtra, Delhi, Gujarat, Karnataka, Odisha, West Bengal, Andhra Pradesh and Kerala to obtain documents that show the real value of imports. So far the DRI has issued show-cause notices to four firms —Knowledge Infrastructure Systems Pvt Ltd, Coastal Energy Pvt Ltd and two ADAG firms Reliance Infrastructure and Rosa Power Supply Go Ltd-for alleged overvaluation of coal imports to the tune of Rs 16 crore, Rs 589 crore and Rs 398 crore respectively.

These firms have denied overvaluation of coal imports from Indonesia. Most power companies currently under the DRI scanner, including Adani, too have denied such overvaluation. Typically in



India, power tariff is regulated based on costing data provided by the power generator. According to regulations, the tariff comprises of capacity charges and energy charges. The capacity charges are fixed annually based on various factors. The energy charges are the cost of primary and secondary fuel used to generate power.

Artificial inflation of value of the imported coal increases the landed cost of coal which is a primary fuel in coal fired thermal power plants. The higher tariff dispensed by the regulator to the power generator enhances the cost of purchase of the power distributor which in turn factors this artificially enhanced cost in its billing to consumers.

<http://indianexpress.com/article/business/companies/adani-firm-movessingapore-court-in-attempt-to-block-information-to-dri-4813988/>”

43. Another published Article relied upon by petitioners reads as under:-

“Adani Group under CBI scanner in Rs.2300 crore alleged invoice scam

DNA CORRESPONDENT | Updated: Jul 25, 2014

The Central Bureau of Investigation (CBI) has registered a preliminary inquiry against unknown officials of Adani Group, owned by Gautam Adani, and is probing an alleged over-invoicing fraud of Rs. 2,300 crore.

The CBI registered the inquiry last month in the wake of allegations that the Group availed various credit facilities from public sector banks for procuring power generation and transmission



equipment for vendors in China and South Korea through a UAE-based intermediary by overvaluing the original price.

“The documents were routed through Electrogen Infra, the UAE intermediary. While actual worth of the equipment was remitted to the supplier, the inflated extra amount was siphoned off,” said a senior CBI official.

According to the CBI, the Adani Group has availed credit facilities from State Bank of India, Punjab National Bank, Vijaya Bank, Oriental Bank of Commerce, Canara Bank and State Bank of Maharashtra.

“We are probing the matter as public sector banks are involved. The DRI (Dept of Revenue Intelligence) has assessed the total over-valuation for 2011-13 to be around Rs.2,300 crore,” said a senior CBI official. The DRI complaint is the basis of the CBI inquiry.

Adani Group had allegedly availed huge loan facilities from public sector banks by showing inflated invoices. The CBI is also probing the involvement of bank officials.

Earlier this year, the DRI had issued a show-cause notice to Adani group companies alleging that the total declared value of goods imported under power and infrastructure heads was inflated.

Apart from the role of bank officials in the alleged fraud, which is under the scanner, the CBI is looking into allegations by DRI in its notice.

The agency may soon start questioning company



officials and banks involved to probe it there was a criminal conspiracy and loss to the exchequer. The CBI is also likely to seek documents of the financial transactions between the banks and the companies.

The three group companies are Adani Power Maharashtra, Adani Power Rajasthan and Maharashtra Eastern Grid Power Transmission.

The CBI move follows a recent approval for an Adani group company by the government. The environmental clearances legalized its 8,481-hectare special economic zone (SEZ) in Mundra.

The SEZ had been in limbo since January when the Gujarat High Court declared it illegal and ordered the companies that had set up factories there to stop work.

The grant of environmental and coastal regulator zone (CRZ) clearances has resolved all pending issues till now, and it will lead to the construction of a desalination plant and an effluent treatment plant in the SEZ. Companies that had been restricted by the High Court from operating inside the SEZ are now expected to return.

<http://www.dnaindia.com/india/report-adani-group-under-cbi-scanner-in-rs-2300-crore-alleged-invoice-scam-2005101>.”

44. Relevantly, the afore-noted publications rely upon the alerts issued by the DRI and consequent investigation undertaken by the CBI against the Adani and Essar Group of Companies as well as other Companies. The petitioners have also placed on record a tabulated chart documenting the loss



caused to the public ex-chequer on the basis of purchase order issued by the Tamil Nadu Generation & Distribution Corporation Ltd. from ports of Tamil Nadu since the year 2016. No other material has been relied upon to substantiate the allegations levelled against the alleged erring companies.

45. So far as allegation of petitioners in respect of over invoicing with exaggerated rates is concerned, from the material placed before this Court, we find that on 15.05.2014, DRI had issued Show Cause Notices to (i) Adani Power Maharashtra Ltd. (ii) Adani Power Rajasthan Ltd. (iii) Maharashtra Eastern Grid Power Transmission Co. Pvt. Ltd. and (iv) PMC Projects (India) Pvt. Ltd.. Subsequently, Show Cause Notice dated 31.08.2016 were also issued to (i) Adani Enterprises Ltd. (ii) Adani Renewable Energy (iii) Adani Hazaria Port Private Ltd. (iv) Adani International Container Terminal (P) Ltd. & Adani Ports and Special Economic Zone Ltd. and (v) Adani Vizag Coal Terminal Pvt. Ltd.

46. At the time of final hearing, learned counsel appearing on behalf of respondent –DRI presented before this Court certain documents to show the present status of complaints/cases not only pending against various companies under Adani and Essar Group, but certain other companies as well, which is as under:-

S No.	Show Cause Notice dated	Name of Importer	Adjudication status	Appeal in CESTAT	Status of order in CESTAT	Present status
1	15.05.2014	M/S Adani Power Maharashtra Ltd. Adani Power	Completed on 22.08.2017 (quashed)	Appeal filed on 28.11.2017 by DRI	CESTAT dismissed DRI appeal and quashed Show	Civil appeal dismissed by the Supreme Court vide order dated 27.03.2023,



		Rajasthan Ltd.			Cause Notice	Filing of Review Petition under consideration as on 25.04.2023
2.	15.05.2014	Maharashtra Eastern Grid Power Transmission Co. Pvt. Ltd. PMC Projects (India) Pvt. Ltd.	Completed on 17.10.2017 (quashed)	Appeal filed on 12.02.2018 by DRI	CESTAT dismissed DRI appeal and quashed Show Cause Notice vide order dated 11.08.2022	Civil appeal dismissed by the Supreme Court vide order dated 27.03.2023, Filing of Review Petition under consideration as on 25.04.2023
3.	11.03.2015	M/s Essar Power Gujrat Ltd. M/s Essar M.P. Ltd. M/s Essar Projects (I) Ltd. Matrix Fertilizers & Chemicals Ltd.	Order-in-original Principal Commissioner of Customs, Mumbai has dropped the charges against all the notices vide order dated 18.05.2023			The customs authority is in the process of filing appeal against the order dated 18.05.2023
3.	31.08.2016	Adani Enterprises Ltd Adani Renewable Energy	Removed from Call Book And pending			Pending adjudication



		Adani Hazaria Port Private Ltd. Adani International Container Terminal (P) Ltd. & Adani Ports and Special Economic Zone Ltd. a Adani Vizag Coal Terminal Pvt. Ltd.				
4.	31.08.2016	M/s Reliance Infrastructure and M/S Rosa Power	Pending			Pending
5.	31.08.2016	Vadinar Power Company Ltd. Essar Bulk Terminal Salaya Ltd.	Order in original Principal Commissioner dropped charges vide order dated 24.05.2023	Appeals filed before CESTAT on 12.09.2023		Pending
6.	14.02.2017	M/s Coastal Energy Pvt. Ltd.	Pending			Pending

47. The DRI also placed before this Court the status of complaints against these companies wherein Letters Rogatory have been issued. Their status is as under:-

S No.	Name of Importer	Status Letters Rogatory	Status Letters Rogatory	Status Letters Rogatory	Status Letters Rogatory	Status Letters Rogatory
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		forwarded to Singapore	forwarded UAE	forwarded to Indonesia	forwarded to Hong Kong	forwarded to Switzerland
1	M/S Adani Power Maharashtra Ltd. Adani Power Rajasthan Ltd Adani Power Rajasthan Ltd. Adani Power Maharashtra Ltd. Adani Wilmar Ltd.	On 03.08.2016. Vacation of stay rejected by Singapore Court. Application for early hearing filed on 13.07.2021 pending before Supreme Court	14.09.2016, 27.09.2022, 10.03.2022 and 28.06.2023 sent to MHA to expedite LR	On 26.10.2020, 31.05.2022, 10.11.2022 and 10.03.2023 requested the HQ to expedite the LR	On 27.09.2021 with translation and subsequent follow up	
2.	Knowledge Infra Systems Pvt. Ltd.	Dated 06.02.2017, continuation of stay by Singapore Court	NA	21.10.2019, 31.05.2022, 1-0.11.2022 and 10.03.2022 requested the HQ to expedite LR	Forwarded to MHA vide letter dated 27.04.2017 for payment of 20,000 HKD	Documents received on 04.03.2021 from Swiss Authorities being analysed

48. Besides above, the Letters Rogatory have also been issued against other companies i.e. Tamil Nadu Electricity Board, Gujrat State Electricity Corporation Ltd., Jhajar Power Ltd., Haryana Power Generation Corporation Ltd. where Adani Group is the supplier. Meaning thereby, the respondents have already initiated process of law under the appropriate provisions before the competent forum..

49. As far as allegation of petitioners with regard to inflated rates of tariff



of electricity is concerned, the provisions of the Electricity Act, 2003 read as under:-

“61. Tariff Regulations

The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely: -

- (a) the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees;*
- (b) the generation, transmission, distribution and supply of electricity are conducted on commercial principles;*
- (c) the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;*
- (d) safeguarding of consumers 'interest and at the same time, recovery of the cost of electricity in a reasonable manner”*

50. The aforesaid provisions make it clear that under Section 61 of the Act, it is the Tariff Regulatory, which govern the tariff based upon service for generation, transmission and distribution as well as cost of project, which is determined through transparent process of bidding under the guidelines of the Central Government. Hence, on this count no interference is required.

51. So far as the petitioners are invariably dissatisfied with the manner in



which investigation of different cases has been carried out by the respondents and have thus, approached this Court seeking setting up of a Special Investigating Team (SIT) under a retired Judge of the Supreme Court of India, this Court finds that these petitions were filed in the year 2017 seeking SIT probe in public interest, as they were aggrieved of inaction on the part of respondents. As per status report, as noted herein above in Paras-28 & 29 of this judgment, multiple proceedings are pending before CESTAT and other Forums. The respondent No.2-CBVI has informed that two cases i.e. PE-BD 2014/E/0001 and RC-221/2018/E/0003 were registered against the erring companies and in the first case PE has been concluded and in both the cases investigation is in progress.

52. In the peculiar facts of these cases, this Court finds it appropriate to direct the respondents to meticulously and expeditiously look into the allegations of the petitioners to unearth actual factual position and take appropriate actions against the erring companies, if any, as per law.

53. With directions as aforesaid, these petitions are accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 19, 2023

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