

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

**(EXTRAORDINARY CIVIL JURISDICTION)**

**WRIT PETITION (CIVIL) No. .... Of 2017**

A WRIT PETITION IN PUBLIC INTEREST UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA SEEKING A THOROUGH SIT INVESTIGATION INTO THE OVER-INVOICING OF POWER EQUIPMENT AND FUEL PURCHASED BY POWER GENERATING COMPANIES IN ORDER TO CHEAT THE PEOPLE AND TO SIPHON OFF FUNDS FROM PUBLIC COMPANIES

**MEMO OF PARTIES**

**IN THE MATTER OF PUBLIC INTEREST LITIGATION:**

1. CENTRE FOR PUBLIC INTEREST LITIGATION  
(A REGISTERED SOCIETY)  
THROUGH ITS GENERAL SECRETARY  
MS. KAMINI JAISWAL  
43, LAWYERS CHAMBERS  
SUPREME COURT OF INDIA  
NEW DELHI-110001

...PETITIONER No. 1

2. COMMON CAUSE  
(A REGISTERED SOCIETY)  
THROUGH ITS DIRECTOR  
MR. VIPUL MUDGAL  
5, INSTITUTIONAL AREA  
NELSON MANDELA ROAD  
VASANT KUNJ, NEW DELHI-110070

...PETITIONER No. 2

**VERSUS**

1. UNION OF INDIA  
THROUGH ITS CABINET SECRETARY  
GOVERNMENT OF INDIA  
CABINET SECRETARIAT  
NEW DELHI-110001

... RESPONDENT No. 1

2. DIRECTORATE OF REVENUE INTELLIGENCE  
THROUGH ITS DIRECTOR GENERAL  
7<sup>TH</sup> FLOOR, D-BLOCK, I.P. BHAWAN  
I.P. ESTATE, NEW DELHI

... RESPONDENT No. 2

3. CENTRAL BUREAU OF INVESTIGATION  
THROUGH ITS DIRECTOR  
PLOT No. 5-B, 6TH FLOOR  
CGO COMPLEX, LODHI ROAD  
NEW DELHI-110003

... RESPONDENT No. 3

**NEW DELHI  
DATED:**

**(PRASHANT BHUSHAN)  
ADVOCATE FOR THE PETITIONER  
301, NEW LAWYERS CHAMBERS  
SUPREME COURT OF INDIA  
NEW DELHI-110001**

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**WRIT PETITION (CIVIL) No. .... OF 2017**

**IN THE MATTER OF PUBLIC INTEREST LITIGATION:**

CENTRE FOR PUBLIC INTEREST LITIGATION & ANR ...PETITIONERS

**VERSUS**

UNION OF INDIA & ORS ... RESPONDENTS

A WRIT PETITION IN PUBLIC INTEREST UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA SEEKING A THOROUGH SIT INVESTIGATION INTO THE OVER-INVOICING OF POWER EQUIPMENT AND FUEL PURCHASED BY POWER GENERATING COMPANIES IN ORDER TO CHEAT THE PEOPLE AND TO SIPHON OFF FUNDS FROM PUBLIC COMPANIES

To,

**THE HON'BLE CHIEF JUSTICE OF DELHI AND HIS COMPANION  
JUDGES OF THE HON'BLE HIGH COURT OF DELHI**

The Humble Petition of the  
Petitioners above-named

**MOST RESPECTFULLY SHOWETH: -**

1. That the Petitioners are filing the instant writ petition in public interest. The Petitioners have no personal interest in the litigation and the petition is not guided by self-gain or for gain of any other person / institution / body and that there is no motive other than of public interest in filing the writ petition.
2. That the Petitioners have based the instant writ petition on official documents, orders which are part of official record and which are in public domain and also newspaper reports.

3. That the petition, if allowed, would benefit the public exchequer and which in turn would benefit the citizens of this country. Since these persons are too numerous and have no direct personal interest in the matter, they are unlikely to approach this Hon'ble Court on this issue. Hence the Petitioners herein are preferring this PIL.

4. That the Petitioners are aggrieved by the inaction of the Respondents against over-invoking in power sector. To the best of the knowledge of the Petitioners, no other persons / bodies / institutions are likely to be affected by the orders sought in the writ petition since no relief is sought against them.

5. The petitioners have not made any representations to the respondent in this regard because the DRI has itself unearthed this mega illegality and despite that no action has been taken.

6. That the Petitioner No. 1 is Centre for Public Interest Litigation, a registered society formed for the purpose of taking up causes of grave public interest and conducting public interest litigation in an organized manner. Its founder President was the late Shri V.M. Tarkunde and founder members consisted of several senior advocates including Shri Fali S. Nariman, Shri Shanti Bhushan, Shri Anil Divan, Shri Rajinder Sachar, Shri Colin Gonsalves among others. Ms. Kamini Jaiswal is the General Secretary of the petitioner and is authorized to institute petitions on behalf of the petitioner.

Petitioner No. 2 is Common Cause which is a registered society, founded in 1980 by late Shri H.D. Shourie for the express purpose of ventilating the common problems of the people and securing their resolution. It has brought before the Hon’ble Supreme Court and this Hon’ble Court various Constitutional and other important issues and has established its reputation as a *bona fide* public interest organization fighting for an accountable, transparent and corruption-free system. Mr. Kamal Kant Jaswal, President of Common Cause, is authorized to file this PIL.

The petitioners have means to pay if any cost is imposed by the Hon’ble Court.

7. That the Petitioners have established its credentials through various PILs in this Hon’ble Court and in the Hon’ble Supreme Court, as shown in the following table: -

**Petitioner No. 1:**

In the Hon’ble Supreme Court

| S. No. | Case No.                            | Status  | Outcome                                |
|--------|-------------------------------------|---------|--|
| 1      | CA 10660/2010<br>(2G spectrum case) | Allowed | SC is monitoring the 2G investigations |
| 2      | WPC 423/2010<br>(2G spectrum case)  | Allowed | SC cancelled all the 2G licenses       |

|   |   |              |   |
|---|---|--------------|---|
| 4 | WPC 180/2004<br>(Rights of SCs from minority communities) | Pending      | SC has posted the matter for final hearing                                      |
| 5 | WPC 464/2011<br>(Use of nuclear energy)                   | Pending      | SC has admitted the petition  |
| 6 | WPC 348/2010<br>(CVC appointment)                         | Disposed off | SC quashed the appointment of CVC`  |
| 7 | WPC 505/2012<br>(Accountability of intelligence agencies) | Pending      | SC has admitted the petition and also has issued notice to the Attorney General |

In this Hon'ble Court

| S. No. | Case No.   | Status       | Outcome  |
|--------|--|--------------|--|
| 2      | WPC 11550/2009<br>(Kandla port land scam)                  | Pending      | This Hon'ble Court directed CBI investigation, eviction and auction of fresh leases              |
| 6      | WPC 8780/2009<br>(Mismanagement of Prasar Bharti)          | Disposed off | This Hon'ble Court passed several directions to ensure smooth functioning of Prasar Bharti Board |
| 7      | WPC 3320/2011<br>(Challenging minority status to JMI Univ) | Pending      | Matter has been admitted   |

**Petitioner No. 2:**

In the Hon'ble Supreme Court

| S.N. | Case No.  | Status   | Outcome  |
|------|---|----------|--|
| 1    | WP (C) No. 463/2012<br>(Coal Block Allocation Case)   | Allowed  | SC is monitoring the investigations  |
| 2    | WP (C) No. 215/2005<br>(Living Will, respecting patients wish to deny vegetative existence with life support)                         | Pending  | Referred to the Constitution Bench   |
| 3    | WP (C) No. 536/2011<br>(Petition seeking appropriate directions for combating the criminalization of politics)                        | Pending  | Referred to the Constitution Bench   |
| 4    | WP (C) No. 464/2011<br>(Large Scale Advertisements: Full page government advertisements in newspapers at the expense of public money) | Disposed | Hon'ble Court directed the Government to refrain from wasting public money and recommendations of the Court appointed Committee's guidelines on government advertisements implemented. |
| 5    | WP (C) No. 348/2010<br>(Constitutional validity of Sec 66A, 69A, & 80 of IT Act)  | Disposed | Declared Section 66A of the IT Act as unconstitutional   |
| 6    | WP (C) No. 245/2014<br>(Challenging the Lokpal Search Committee Rules)  | Disposed | Directed the UOI to immediately implement the  |

|   |  |          |  |
|---|--|----------|--|
|   |  |          | Lokpal & Lokayukta Act of 2014   |
| 7 | WP (C) No. 683/2016<br>(Challenging the misuse and misapplication of Section 124 A, IPC on sedition) | Disposed | SC has admitted the petition and also has issued notice to the Attorney General of India |
| 8 | WP (C) No. 114/2014<br>(Challenging rampant illegal mining in the State of Orissa)                   | Disposed | Suspended mining lease and directed the State to recover hundred percent compensation    |

In this Hon’ble Court

| S. No. | Case No.  | Status   | Outcome   |
|--------|---|----------|---|
| 1.     | WP (C) No. 3791/2000<br>(Removal of cattle from streets of Delhi) | Disposed | Directions to the authorities concerned given for removal of dairies from the city.   |
| 2.     | WP (C) No. 5765/2014<br>(Electrocution by live wires)             | Disposed | This Hon’ble Court directed the Electricity Regulatory Commission to oversee strict implementation and compliance of safety measures and DISCOMs to pay compensation in cases of electrocution, among other directions. |



|    |   |          |   |
|----|---|----------|---|
| 3  | WP (C) No. 4771/1993<br>(Unauthorized colonies in Delhi)  | Disposed | Directions to the Ministries concerned were given.  |
| 4  | WP (C) No. 524/2010<br>(Plight of construction workers in project related to Commonwealth Games 2010) | Disposed | This Hon'ble Court suggested registration of workers, payment of minimum wages, maternity benefits, financial assistance for education of children and requisite safety measures and pensions.  |
| 5. | WPC 8363/2010<br>(Misuse of BSP reserved symbol)  | Disposed | HC directed the EC to issue guidelines preventing political parties from using public places and funds for propagating their election symbols to ensure free, fair and peaceful election and to safeguard the interest of the general public and the electorate in future |

### **THE CASE IN BRIEF**

8. That the petitioner is filing the instant writ petition in public interest for upholding the rule of law and for enforcement of the rights of the

citizens under Articles 14 and 21 of the Constitution of India. This petition seeks a thorough investigation by an SIT into the over-invoicing carried out by various private power generating companies as reported by Directorate of Revenue Intelligence (DRI) in its various investigation reports. The said scam unearthed by DRI discloses several private companies have siphoned away several thousand crores of rupees abroad. Most of these over-invoicing instances have been reported from the power sector, the impact of which is felt by the millions of electricity consumers in the form of higher tariff.

9. Ever since the government opened up the power sector to the private companies, many private companies had started setting up power plants from the year 2006 / 2007 onwards. Barring nuclear power plants, the private companies are allowed to set up thermal power plants based on any fuel (coal, gas, lignite, etc) or power plants based on renewable energy (solar, wind, hydro, bio-gas, etc). The transmission of power through transmission lines was also simultaneously opened for the private sector. To encourage participation of private companies in the power sector, the government had given multiple options to all the companies to recover their costs and make profits based on their business models. Also, in the case of thermal power projects, about 20 per cent equity is brought in by the promoters of the project and the balance is funded through loans. The government also had put in place Electricity Regulators in every state and also at the Central level (Central Electricity Regulatory Commission or CERC). As per the government's policy guidelines, CERC issues escalation / de-escalation index twice in a year

(six monthly) for different parameters such as foreign exchange fluctuation, change in fuel price, change in labour cost, which become the basis for increase / decrease in tariff of the companies if they have quoted flexible tariff during the bidding stage when the distribution companies in the state invite bids to meet the power requirement of their respective states.

10. The electricity tariff is primarily divided into two separate categories: (i) Capacity Charge and (ii) Energy Charge. In case the bidder has quoted Capacity Charges as flexible in its bid, it can get the advantage of foreign exchange fluctuation. In such a situation, the exchange rate at the time of bid-closing or any milestone stated in the tender becomes the reference rate. Since the rollout of the project takes about 3 to 4 years, and by that time if the currency escalates (which generally is the past trend), the bidders get the advantage by CERC indexing. In other words, charging for the correct price of the equipment is the key for determining tariff. The same is the case for fuel. If it is imported, and the bidder has quoted a flexible tariff, the coal import price becomes pass-through for determination of tariff to the end-consumers. Even in the case of domestic coal, this is the practice. Therefore, any inflated invoice for import has direct impact on the consumers of electricity. Similarly, the cost of laying transmission lines for transmission of power is also important for correct determination of tariff as the same is a pass-through charge and recovered from the consumers. If there is any over-invoicing, it has direct impact on tariff. Besides this, the siphoning of money amounts to cheating the shareholders and the tax authorities, in addition to cheating the

consumers. The same may also be in violation of various laws like Customs Act, Foreign Exchange Management Act, Prevention of Money Laundering Act, etc.

11. The Petitioner is concerned about the increasing trend of over-invoicing by the private companies in the power sector with huge public interest ramifications. In the last three or four years, several major instances of such over-invoicing have been unearthed by Directorate of Revenue Intelligence (DRI) in which several prominent and influential companies are involved. The modus operandi is identical in all these cases. The coal or power equipment even though is shipped directly to India, but its invoicing is routed through a different company incorporated abroad which is directly owned and controlled by the promoters of the project in India. For example, the Original equipment Manufacturer (OEM) of power equipment is located in China, but it raises invoice in the name of a company located in say UAE, and that UAE based company raises its own invoice by inflating the value on the Indian company. But, Chinese OEM ships the equipment directly to India. These cases of over-invoicing detected by DRI in its various investigations have been broadly classified in this petition as follows: -

- 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

These cases are being given only by way of illustration where the petitioner has accessed documentary evidence and the same no way indicates that such conduct is limited to these companies alone.

### **Over Valuation of Coal Imports by 40 companies**

12. On March 31, 2016, the Directorate of Revenue Intelligence (DRI) issued a nationwide alert to its offices and customs formations to scrutinize coal imports for over-valuation. During an investigation, it had recovered two sets of test reports issued at load port by two different testing agencies for the same consignment of coal - one showing lower Gross Calorific Value (GCV) and the other higher GCV. DRI investigation found that the test reports with lower GCV appeared to be in conformity with the contracts between subsidiary companies or intermediary agents of Indian importers and Indonesian suppliers, reflecting the actual value of the coal. The test reports with higher GCV, submitted to Indian customs at the time of import, is in line with the supply contracts between the subsidiary companies or intermediary agents of the Indian importers and the power generation companies / Indian importers, reflecting the inflated value of the coal.

13. DRI in its alert issued to various authorities had stated that this was being done for “(i) *siphoning-off money abroad and (ii) to avail higher power tariff compensation based on artificially inflated cost of the imported coal.*” DRI noted that “*while Indonesian Coal was directly shipped from Indonesian ports to the importers in India, the import invoices were routed through one of more intermediaries based in Singapore, Dubai, Hong*

*Kong, British Virgin Islands (U.K.) etc for the purpose of artificially inflating its value.”*

14. DRI found that the companies had been shipping coal directly from Indonesian ports but *“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... The inflated invoices received in India were found to have been issued by the 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.”* A copy of the said DRI alert dated 30.03.2017 which names 40 companies is annexed as **Annexure P1.**

15. However, since then more than one and a half year has passed, but DRI has not taken any concrete step. In this matter, DRI had apparently issued a letter rogatory (LR) to the Singaporean authorities for getting access to certain information pertaining to subsidiaries of Adani Group, a few shipping companies and banks. However, Adani Group has moved the High Court in Singapore to seek a direction that information asked by the DRI should not be supplied by the Singaporean authorities. This information sought pertains to the subsidiaries of Adani. In this regard, a news published in The Indian Express dated 26.08.2017 is annexed as **Annexure P2.**

16. **Knowledge Infrastructure:** In another matter, the Appellate Authority in its Order dated 23.12.2016 had found the above stated findings of the investigation by DRI to be true and levied penalties and confiscation of coal in question. This case related to a tender invited by Maharashtra State Power General Company Ltd (MAHAGENCO), a Maharashtra Government owned company, for supply of steam coal for use in its Thermal Power Stations (TPSs) at Bhusawal and Chandrapur way back in 2013. A Delhi based company called Knowledge Infrastructure Systems Pvt Ltd (**KISPL**) emerged as the successful bidder. They entered into Contract Agreements dated 30.08.2013, for supply of 11,48,000 MT and 25.10.2013 for supply of 9,56,500 MT steam coal for the two plants (Total 21,04,500 MT). These contracts had specific condition that Coal having GCV (As-Received-Basis or ARB) below 4000 Kcal/Kg and Total Moisture (ARB) above 30% would be categorised as being “off-specification (Off-spec)”. Further, in case of receipt and consumption of off-spec Coal at the plants, only inland transportation cost from port of entry to destination was to be reimbursed with the cost of Coal as One Rupee per MT.

17. The DRI investigation revealed that the Coal was routed through five companies. The original Coal was purchased by IMR Metallurgical Resources AG (Company-1), Switzerland from the Indonesia miner and sold the same to Singapore based Knowledge International Strategy Systems Pte Ltd (Company-2), a wholly owned subsidiary company of KISPL. The same coal was then sold to other intermediary firms such as Springs Trader Ltd (STL) (Company-3) and Rescom Mineral Trading Ltd (Company-4), who then invoiced the coal to KISPL (Company-5). Six

consignments for just 3,36,487 MT (16% of the total ordered quantity) was found to have been overvalued to the extent of Rs 12.58 crore.

| SL | Invoice      | Q'ty (MT)      | GCV-1 | Moitsure-1<br>(in %) | GCV-2 | Moitsure-2<br>(in %) |
|----|--------------|----------------|-------|----------------------|-------|----------------------|
| 1  | 04.11.2013   | 55,000         | 3,851 | 38.13                | 4,654 | 26.70                |
| 2  | 17.12.2013   | 54,150         | 3,861 | 40.70                | 4,670 | 26.60                |
| 3  | 10.01.2014   | 56,397         | 3,804 | 39.75                | 4,686 | 26.45                |
| 4  | 29.04.2014   | 57,190         | 3,637 | 40.56                | 4,653 | 27.30                |
| 5  | 13.05.2014   | 58,550         | 3,758 | 39.19                | 4,663 | 26.70                |
| 6  | 26.05.2014   | 55,200         | 3,730 | 39.91                | 4,663 | 27.30                |
|    | <b>Total</b> | <b>336,487</b> |       |                      |       |                      |

18. Moreover, since as per the terms of contracts between MAHAGENCO and KISPL, the above coal falls under the category of 'off-spec' coal and no amount should have been paid to the company. Needless to say, the company Directors should have been booked treating such matters as cheating and criminal acts.

19. The Appellate Authority agreed with the findings of the DRI investigation and just levied penalty and confiscation of coal. The relevant part of the order is reproduced below: -



5.1.12.9 I find that the above two tables viz. Table-H and Table-I represent the differences between the Gross Calorific Value (GCV) and consequently the price between the two deals as discussed in details in preceding paras. I find that the Gross Calorific Value (GCV) and the Price has escalated significantly in the case of subsequent sets of documents of Rescom Mineral Trading limited, Hong Kong (One consignment) and Springs Trader Limited, Hong Kong (Five consignments) to MIs Knowledge Infrastructure Systems Pvt. Ltd., New Delhi as compared to sets of documents related to IMR Metallurgical Resources AG, Switzerland and Knowledge International Strategy Systems Pte. Ltd., Singapore. The Gross Calorific Value (GCV) escalation ranges from 800 KCAL/KG to 1016 KCAL/KG and consequently the price escalation is US \$2,570,035. I find the said escalations pertaining to the same consignments of coal are illogical, irrational, unscientific and unexplained and the said escalations form the crux of the allegations levied in the show cause notice.

6.1 I hold that the declared CIF 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 eIF 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 Knowledge Infrastructure Systems Pvt Ltd are liable for penalty;*

6.3 *I impose penalty of Rs 12,50,00,000/- under Section 112 (a) read with Section 112(iii) of the Customs Act, 1962 on the Noticee Knowledge Infrastructure Systems Pvt Ltd;*

6.4 *I also impose penalty of Rs 5,00,00,000 under Section 114M of the Customs Act, 1962 on the Noticee Knowledge Infrastructure Systems Pvt. Ltd;*

6.5 *I impose penalty of Rs 1,00,00,000 under Section 112 (a) read with Section 112(iii) and Rs. 25,00,000 under Section 114AA of the Customs Act, 1962 on Shri Rahul Bhandare; and*

6.6 *I impose penalty of Rs 20,00,000 under Section 112 (a) read with Section 11 2(iii) and Rs 5,00,000 under Section 114AA of the Customs Act, 1962 on Shri Vipin Mahajan.*

A copy of the above relevant pages of the Order dated 23.12.2016 is annexed as **Annexure P3**.

20. Thus it is clear that such companies have much to hide in the way they have indulged in huge over-invoicing of coal imported from Indonesia in order to siphon off money from India to cheat the consumers and the

shareholders. The said case is a clear criminal offence and needs a thorough investigation by an SIT.

### **Over invoicing of equipment by Adani Group**

21. DRI has investigated three projects of equipment imports by Adani Group. DRI has covered these projects in two reports and has issued Show Cause Notices (SCN) dated 15.05.2014 to the Adani group in both the cases. These cases are: (i) Transmission Line Projects, and (ii) Power Plant Projects.

#### **Transmission Line project of Adani Group**

22. On 14.09.2010 Maharashtra Electricity Regulatory Commission, Mumbai (MERC) issued a license to Maharashtra Eastern Grid Power Transmission Company Ltd (MEGPTCL), a wholly owned subsidiary of Adani Enterprises Ltd (AEL) for setting intra-state transmission network in eastern part of the State of Maharashtra. The project involved setting up of two 765 KV S/C transmission lines in the corridor of Tiroda– Koradi III – Akola II – Aurangabad, alongwith associated sub-stations and bays.

23. On 27.09.2010, MEGPTCL awarded the contract to PMC Projects (India) Pvt Ltd for Rs 1,440 crore, which was revised to Rs 1,693.94 crore on 05.07.2011. MEGPTCL claimed that it had awarded the contract through a bidding process but DRI report disbelieved this in the absence of any sound evidence. From various evidence collected by DRI, it found that MEGPTCL is the de-facto importer even though they had engaged PMC as contractor for filing bills of entry and clearing of goods in India. The relevant part of the SCN dated 15.05.2014 is reproduced below: -

**14.4**        *From the documents submitted by M/s PMC Projects (India) Private Limited under its letter dated 12-03-2013, it appears evident that based on the Transmission Licence granted to it by MERC, MEGPTCL from time to time applied to the Principal Secretary, Energy Department, Government of Maharashtra, Mantralaya Main Building, Mumbai, requesting for issuance of essentiality certificates for import of Auto-Transformers with accessories & Shunt Reactors with accessories for sub-stations at Tiroda, Koradi-III and Akola and Shunt Reactors at Aurangabad. It also appears that the Principal Secretary (Energy), acceding to the request of MEGPTCL, granted them the essentiality certificates, by way of endorsing the list of goods eligible for essentiality certificate and conveying such certifications directly to the jurisdictional Commissioner of Customs i.e Commissioner of Customs, Kandla Custom House, recommending grant of concessional rate of duty under the Project Import Regulations, 1986 for the certified goods. Through each such letter addressed to the Commissioner of Customs, Kandla, as well as to the Principal Secretary (Energy), MEGPTCL have themselves stated that they proposed to import goods from M/s Electrogen Infra FZE, UAE through M/s PMC Projects (India) Private Limited. From this, it becomes clear that M/s MEGPTCL is the de-facto importer even though they have engaged the contractor M/s PMC Projects (India) Private Limited for filing bills of entry and clearing goods. It is also not in dispute that M/s MEGPTCL is the sole and ultimate owner of the transmission line set up with the aid of imported equipment & machinery and*

*consequently of the imported equipments & machinery installed as part of the facility.*

24. PMC in turn on 20.09.2010 awarded the contract to ABB Ltd, Bangalore for Rs 189 crore (Rs 166 cr onshore + Rs 21 cr offshore + Rs 2 cr others).

25. Further, on 01.10.2010, PMC awarded one more contract to M/s Electrogen Infra FZE (EIF), a UAE based company of Adani Group for USD 376,195,652, which was reduced to USD 376,077,628 vide an amendment dated 30.09.2011. EIF in turn procured a major part of the equipment for the project from Hyundai Heavy Industries Company Ltd (HHIPL), South Korea, for USD 260,269,798. DRI has done back-to-back contract pricing which is shown in the table given below: -

| SI | Particulars   | Amt. in US \$             |
|----|---|---------------------------|
| 1. | Value as per agreement dated 01.10.2010 between EIF and PMC   | 260,269,798               |
| 2. | Value as per agreement dated 05.10.2010 between HHIPL and EIF | 65,328,309                |
|    | <b>Over-invoicing</b>   | <b>194,941,489 (398%)</b> |

DRI has found that for the same goods, the contract value between PMC and EIF (the intermediary invoicing agent) is nearly four times (398%) of the contract value between EIF and HHICL, the actual

overseas supplier which appears to be abnormal and gross inflation, contrary to ordinary economic logic or prudence. The relevant part of the SCN is reproduced below: -

*4.1.8 It appears that for the same goods, the contract value between PMC and EIF (the intermediary invoicing agent) is nearly four times (398%) of the contract value between EIF and OEM (HHICL) the actual overseas supplier which appears to be abnormal and gross inflation, contrary to ordinary economic logic or prudence. The purpose and cause of entering into agreement bearing No. 700003 dated 05.10.2010 by EIF with HHICL appears to stem from the Agreement no. 415703 dated 01-10-2010 and covered at Sr. No. A and B of Schedule 1. Contents of para (b) of the Agreement No. 700003 dated 05-10-2010, which contains a specific reference to Purchase Order dated 27-09-2010 (Order placed on PMC by MEGTPCL) as well as to Agreement dated 01-10-2010 (Agreement bearing No. 415703 dated 01-10-2010) make it abundantly clear that it is back-to-back procurement contract entered into by EIF with M/s Hyundai Heavy Industries Co. Ltd.(HHICL), for actual of supply the goods to PMC in terms of agreement no. 415703 dated 01-10-2010 entered between EIF with PMC.*

A copy of the DRI show-cause notice dated 15.05.2014 issued to a total of nine entities including individuals involved in this deal is attached herewith and filed as **Annexure P4**.

Power Plant projects of Adani Group

26. Through competitive biddings, Adani Power Maharashtra Ltd (**APML**) and Adani Power Rajasthan Ltd (**APRL**), subsidiary companies of Adani Power Ltd won two projects. APML got 3,085 MW project from Maharashtra Government for setting up 3,300 (5 x 660) MW coal based power plant at Tiroda in Maharashtra. APRL got 1,200 MW contract from the Rajasthan government for setting up 1,320 (2 x 660) MW project at Kawai in Rajasthan.

27. Both these companies awarded the project to its own group company called Electrogen Infra FZE, UAE (EIF). EIF in turn procured the equipment mostly from Chinese and South Korean companies. The invoice between OEM and EIF were at genuine rates, whereas invoices between EIF and APML & APRL were inflated. DRI in its SCN dated 15.04.2014 has stated,

*“17.1 APML, APRL & EIF, various related entities of Adani Group; Shri Vinod Shatilal Adani; Shri Jatin Shah & Shri Moreshwar Vasant Rabade of EIF and others have conspired between themselves to execute the planned conspiracy of siphoning off foreign exchange abroad to and for the benefit of their related entity. APML and APRL appear to have indulged in Trade Based Money Laundering by trade mis-pricing by routing invoice through an intermediary invoicing agent (EIF) in the UAE - a front company of the Adani Group run and controlled by one of the Adani brothers and assisted by ex-employees of the Adani Group. EIF in UAE appears to have been created as a front for siphoning off of money under the guise of outward remittances for over-valued imports, by indulging in invoice inflation.....*

17.3 The relationship between EIF and APML and APRL has been established during the investigation. EIF is owned and controlled by Shri Vinod Shantilal Adani @ Vinod Shantilal Shah through M/s Electrogen Infra Holding Pvt. Ltd., Mauritius. Shri Vinod Adani is shareholder in flagship company of Adani Group viz. Adani Enterprises Limited (AEL). AEL owns and controls APML and APRL through its subsidiary company M/s Adani Power Limited.

17.7 Thus, the declared values in the impugned 301 & 262 consignments imported by APML & APRL respectively totally amounting to Rs 3469,07,79,940/-CIF and Rs 3692,65,37,178/- CIF respectively, declared on the basis of inflated invoice prices in invoices of the intermediary EIF, do not represent the actual value of the goods as has been brought out by the investigation. The overall overvaluation to the extent of Rs 3974,12,13,183/- CIF is summarised in Table below:-

**Over-valuation between APML & APRL (Figures in Rs.)**

| <b>Sl.</b> | <b>Name of the importer</b> | <b>Declared CIF in Rs. based on EIF invoices raised on APML &amp; APRL</b> | <b>Remittances made by EIF to OEMs (RS)</b> | <b>Difference in Rs. (C-D)</b> |
|------------|-----------------------------|--|---|--------------------------------|
| <b>A</b>   | <b>B</b>                    | <b>C</b>   | <b>D</b>                                    | <b>E</b>                       |
| 1          | APML                        | 3469,07,79,941   | 1557,44,21,785                              | 1911,63,58,156                 |
| 2          | APRL                        | 3692,65,37,178   | 1630,16,82,151                              | 2062,48,55,027                 |
|            | <b>TOTAL</b>                | <b>7161,73,17,119</b>  | <b>3187,61,03,936</b>                       | <b>3974,12,13,183</b>          |



A copy of the Show Cause Notice dated 15.05.2014 issued to APML and APRIL is annexed as **Annexure P5**.

28. The DRI investigation had therefore found:

- That the relation and transactions between APML, APRL and the intermediary EIF are not legitimate.
- That EIF was nothing more than a front company to allegedly inflate invoices.
- That EIF's links with Vinod Shantilal Adani, elder brother of Gautam Adani, who had earlier served on the board of directors of Electrogen Infra Holdings (EIH) Pvt Ltd, Mauritius, (holding company of EIF, UAE), and the Adani group in India, through various shell companies based in tax havens, were beyond doubt.
- That EIF, UAE, invoiced the goods to APML and APRL at a substantial premium, inflated beyond prudent business acumen, whereas the boiler-turbine-generator (BTG) and other equipment were directly received by Adani group from original equipment manufacturers (OEM) suppliers in China and South Korea.

29. The petitioners have learnt that the CBI had registered a Preliminary Enquiry (PE) based on the DRI show-cause notice to Adani, since it had come to light that Adani had taken credit facilities from various public sector banks for these over-invoiced imports. A copy of the news report published in newspaper DNA dated 25.07.2014 is annexed as **Annexure P6**. However, the petitioner has learnt that the CBI apparently closed the

PE without even registering a FIR during the tenure of then CBI Director Mr. Ranjit Sinha. It is to be noted that Mr. Sinha now himself facing an investigation by SIT headed by current CBI Director constituted by Supreme Court for subverting CBI investigations against various accused.

30. Shockingly, on 22.08.2017, the adjudicating authority in the Directorate of Revenue Intelligence (DRI) absolved two Adani group companies, APML and APRL, of all charges laid out in a show cause notice (SCN) issued by the DRI. The order of the Adjudicating Authority (Additional Director General, Adjudication, DRI, Mr K.V.S. Singh) ruled against the DRI in favour of the Adani group companies. Apart from the reasoning, the timing of the order itself is very curious. The UK-based international publication, *The Guardian* had made public for the first time, on 15.08.2017, the other SCN alleging evasion of Rs1,526 crore, and the opposition party, the Indian National Congress had demanded a Supreme Court-monitored probe into the allegations, in a press conference on 18.08.2017.

31. The order, without any basis, justifies the alleged fraud by stating that the “global tender followed international competitive bidding process”. There is no indication in the order about the details of the process. The adjudicating authority proceeds on the assumption that EIF is an engineering, procurement, and construction (EPC) contractor for a routine turnkey project for setting up a power plant. There is no evidence which shows that EIF has provided any EPC service whatsoever beyond the invoicing of supplying of goods from OEM suppliers. Even in that case, the goods were delivered directly to India from the manufacturers.

32. The order justifies the over-invoicing because of an extended warranty and EPC services. It is claimed that the OEM suppliers offered a limited warranty of between 10 months and 24 months. According to the response to the SCN by the noticee, EIF offered an extended warranty for 10 years. This business practice is justified by the company on the basis of the supposed extra risk taken upon by EIF. The petitioner submits that even if this claim is taken at face value, then also an over-invoicing to the tune of 220 per cent cannot be justified.

33. The adjudicating officer compares the contract between EIF and OEM and the Adani group companies and EIF. He comes to a strange conclusion that because some clauses in the latter contract are more stringent than corresponding clauses in the contract between EIF and OEM, the contract must be genuine. Firstly, it is submitted that contract between EIF and Adani Group companies is a mere paper work to cover up mega scam. Moreover, the DRI investigation had found that for every consignment there were two set of invoices, one raised by the actual supplier (OEM) and the other raised by EIF on APML and APRL. Both the invoices have the same number but different values of the cost of equipment. This crucial evidence has been dealt with in a casual manner in the order.

34. The order has apparently ignored how a corporate fraud is carried out. The fact is that there has been a formal attempt to cover up the connections between different companies in the entire transaction chain. EIF is 100 per cent owned by EIH, Mauritius. EIH 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, AR is owned by Eagle Holding Ltd, which is a nominee shareholder in Asankhya Resources Family Trust, for which, Vinod Shantilal Adani, brother of Gautam Adani, and a promoter of the group holding company, Adani Enterprises Ltd, is the controlling authority of the trust.

35. It is indisputable 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 EIF. Clearly, the intention always was that the contract would be among 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.

36. Interestingly, Mr Vinod Adani claims 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 EIF authorized him to sign documents for and on behalf of EIF. This proves Vinod Adani was perhaps not revealing the full truth about his connections with EIF which were not only formal but also that he was one of the key controlling persons in the company.

37. Similarly, two individuals who were employees suddenly resigned to join SME (as EIF was then known). This also happened at the time of signing of the agreement which makes it clear that the Adani group was sending personnel to EIF prior to its takeover by Vinod Adani himself.

Moreover, the Adani group was the guarantor for the loan from the ICICI Bank to EIF. Essentially, 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.

38. This is a clear instance of related companies pretending to be unrelated. Common ownership and control of all these companies is beyond dispute and in fact, the transfer of shareholding and the appointment of directors and officers seems to have been staggered only to present a *prima facie* defence that these are not related companies. A copy of the relevant pages of the order dated 22.08.2017 are annexed as **Annexure P7**.

#### **Over invoicing of equipment by Essar Group**

39. DRI also carried out investigation in the following four projects of Essar group in which it found gross over-invoicing in imports:

- (i) A 1,200 MW coal based thermal power plant set up by Essar Power Gujarat Ltd (**EPGL**) at Salya in Gujarat.
- (ii) A 1,200 MW coal based thermal power plant set up by Essar Power Madhya Pradesh Ltd (**EPMPL**) at Mahan in Madhya Pradesh.
- (iii) Expansions of refinery set up by Essar Oil Ltd (**EOL**) at Jamnagar in Gujarat from (i) 10.5 MTPA to 16 MTPA, and (ii) from 16 MTPA to 20 MTPA
- (iv) Setting up of a Fertilizer Plant at Panagarh in West Bengal by Essar Projects (India) Ltd (**EPIL**) for production of Ammonia and Urea for Matix Fertilizers and Chemicals Ltd

40. DRI has found over-valuation in all these projects as shown in the following table: -

| SI | Name of Imported | No. of CS  | Declared Value        | CIF | Value proposed to be re-determined | Difference            |
|----|------------------|------------|-----------------------|-----|------------------------------------|-----------------------|
| 1  | EPGL             | 222        | 2514,52,94,423        |     | 1876,81,27,973                     | 637,71,66,450         |
| 2  | EPMPL            | 226        | 2428,55,15,153        |     | 1871,61,75,614                     | 556,93,39,539         |
| 3  | EOL              | 350        | 2845,64,92,111        |     | 2189,97,10,661                     | 655,67,81,450         |
| 4  | EPIL             | 92         | 1510,59,23,423        |     | 760,04,42,662                      | 750,54,80,761         |
|    | <b>Total</b>     | <b>890</b> | <b>9299,32,25,110</b> |     | <b>6698,44,56,910</b>              | <b>2600,87,68,200</b> |

The relevant concluding part of the SCN is reproduced below:

*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, EPMPL, 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 invoked at Rs. 9299,32,25,110/- CIF thus leading to an over-valuation Rs*

*2600,87,68,200/- at the CIF 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 EGL/ EGFL, the ultimate holding company of the Essar Group.*

A copy of the relevant pages of the Show Cause Notice dated 11.03.2015 is filed herein and marked as **Annexure P8**.

41. The Petitioners have not filed any other petition, suit or application in any manner regarding the matter of dispute in this Hon'ble Court, or any other High Court or before Hon'ble Supreme Court or any other Court throughout the territory of India. The Petitioners have no other better remedy available.

### **GROUND**

- A. That the above stated private companies have been hugely inflating the cost of power equipments and fuel they purchase from abroad by committing enormous over-invoicing, in order to a) cheat the consumers who pay for electricity, b) cheat the share-holders by siphoning of money from their public listed companies, c) cheat the public exchequer of revenue by showing reduced profits, and d) cheat the banks who have given huge loans and credit facilities to them.
- B. That in the last few years, several major instances of over-invoicing have been unearthed by Directorate of Revenue Intelligence (DRI) in which several prominent and influential companies are involved. The modus operandi is identical in all these cases. The coal or power equipment even though is shipped directly to India, but its

invoicing is routed through a different company incorporated abroad which is directly owned and controlled by the promoters of the project in India.

- C. That the rampant and excessive over-invoicing committed by power companies has a direct impact on power tariff which is paid by millions of consumers. Besides this siphoning of money amounts to cheating the shareholders and the tax authorities, in addition to cheating the consumers. The same may also violate various laws like Customs Act, Foreign Exchange Management Act, Prevention of Money Laundering Act, etc.
- D. That the DRI had found that various power producers were indulging in huge over-invoicing of coal imported from Indonesia which is used as a fuel in their power plants. DRI in its alert dated 30.03.2016 issued to various authorities had stated that this was being done for “(i) *siphoning-off money abroad and (ii) to avail higher power tariff compensation based on artificially inflated cost of the imported coal.*” DRI noted that “*while Indonesian Coal was directly shipped from Indonesian ports to the importers in India, the import invoices were routed through one of more intermediaries based in Singapore, Dubai, Hong Kong, British Virgin Islands (U.K.) etc for the purpose of artificially inflating its value.*”
- E. That the DRI had found that various power companies like Adani & Essar had set-up their own related companies to indulge in huge over-invoicing in the purchase of power-equipment in order to siphon out money from the companies to their own entities registered in tax havens and also to cheat their millions of consumers by getting high electricity tariff.



F. That the rampant corruption and crime in high places in the country, and the manifest unwillingness of the executive to take requisite action in order to ensure that the culprits are punished, gravely impairs the right of the people to live in a corruption and crime free society. This violates Articles 14 and 21 of the Constitution. The right to life guaranteed to the people also includes in its fold the right to live in a society that is free from crime and corruption and upholds the rule of law.

### **PRAYERS**

In view of the facts & circumstances stated above, it is most respectfully prayed that this Hon'ble Court may in public interest be pleased to: -

- a. Issue a writ of mandamus or any other appropriate writ directing a thorough SIT investigation into the over-invoicing committed by companies/entities engaged in power sector in order to cheat the consumers, the share-holders, the tax authorities and also committed in violation of various laws.
- b. Issue or pass any writ, direction or order, which this Hon'ble court may deem fit and proper under the facts and circumstances of the case.

THROUGH:

**PRASHANT BHUSHAN**  
COUNSEL FOR THE PETITIONERS

DRAWN BY: PRANAV SACHDEVA & AASTHA SHAH  
DRAWN & FILED ON: SEPTEMBER 2017  
NEW DELHI