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How Over-Invoicing of Imported Coal has Increased Power Tariffs

A Rs 29,000 crore Scam

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Forty of India's biggest energy companies are being investigated by a wing of the Union Ministry of Finance for over-invoicing of imported coal. The artificially higher prices of coal have been passed on to electricity consumers across the country. The scam is conservatively estimated by government officials at no less than Rs 29,000 crore, a third of which is in the form of higher power tariffs. Big names from the corporate sector, notably the Adani group and ADAG, are being probed for their alleged involvement in the scandal. An exclusive report.

On the last day of March, the Directorate of Revenue Intelligence (DRI), which comes under the Union Ministry of Finance, issued a "general alert" to fifty-odd customs establishments all over India highlighting the modus operandi of over-invoicing of imports of coal from Indonesia. The DRI has claimed that money was being "siphoned" outside the country and that electricity generating companies were availing of "higher tariff compensation based on (the) artificially inflated cost of the imported coal.”

The authors have learnt that for over a year and a half, the DRI has been probing this scandal relating to imports of coal by a host of well known companies in the private sector as well as the public sector, including companies owned by state governments.

Companies under Scrutiny

Among the private companies being investigated, the best known names include at least six firms belonging to the Adani group—Adani Enterprises Ltd, Adani Power Ltd, Adani Power Rajasthan Ltd, Adani Power Maharashtra Ltd, Adani Wilmar Ltd and Vyom Trade Link. The Adani group is headed by Gautam Adani who is known to be close to Prime Minister Narendra Modi. The group has supplied coal to various power generation and distribution companies, including Tamil Nadu Electricity Board, Gujarat State Electricity Corporation, Haryana Power Generation Corporation and Jhajjar Power Ltd.

Economic&PoliticalWEEKLY

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Ennore Thermal Power Plant, Tamil Nadu operated by TANGEDCO, a subsidiary of Tamil Nadu Electricity Board. (Courtesy: VtTN, Wikimedia Commons)

Other privately-controlled companies in the list of firms being probed by the DRI include Reliance Infrastructure Ltd and Rosa Power Supply Co Ltd, both of which are part of Anil Dhirubhai Ambani Group (ADAG) led by Anil Ambani; two companies in the Essar group promoted by the Ruia family, Essar Oil Ltd and Essar Power Gujarat Ltd; JSW Steel Ltd headed by Sajjan Jindal; four companies in the Hyderabad-based NSL group (NSL Sugar, NSL Krishnaveni Sugar, NSL Sugar Tungabhadra and NSL Textiles) promoted by M Venkataramaiah and M Prabhakar Rao; India Cements Ltd led by former International Cricket Council chairman N Srinivasan; and Uttam Galwa Steels Ltd led by Rajinder Miglani.

The list also includes Gupta Coal India Ltd; MBG Commodities Pvt Ltd; Knowledge Infrastructure Systems Pvt Ltd; three companies in the Bhatia group, Bhatia Global Trading, Bhatia International (Asia Natural Resource), Bhatia Industry and Infrastructure (Hemang Resources); two companies in the Gandhar group, Gandhar Oil and Refinery India Ltd and Gandhar Coal and Mines; Coastal Energy Ltd; Aggarwal Coal Ltd; Suryadev Alloys and Power Pvt Ltd; Laxmi Organic Industries Ltd; Phoenix Comtrade Pvt Ltd; and Simhapuri Energy Ltd.

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Government-owned companies being investigated include the country's largest power producer NTPC Ltd (formerly National Thermal Power Corporation Limited), MMTC Ltd (formerly Metals and Minerals Trading Corporation Limited), MSTC Ltd (formerly Metal Scrap Trading Corporation Limited) and Karnataka Power Corporation Limited.

The DRI has monitored the details of coal imports of these companies till 31 March 2016, information accessed by the authors suggests.

Web of Scams

This revelation comes weeks after the DRI secured the first arrest of an accused person who was allegedly involved in over-invoicing of coal imported from Indonesia. On 27 February 2016, the DRI arrested Manoj Kumar Garg, a Hong Kong based Indian national who had allegedly opened a front company in Dubai responsible for over-valuing imported coal to the tune of Rs 280 crore. The coal was meant for the state electricity boards in Tamil Nadu and Karnataka.

Garg is reportedly a mastermind in two other scams, one related to the Bank of Baroda (BoB) and the other related to allegedly illegal exports of basmati rice. In the first case, money was allegedly remitted to Hong Kong in an unauthorised manner in August 2014, purportedly for importing dry fruits, rice and pulses. In October 2015, after an internal probe was conducted by the management of the BoB, it was revealed that there were over 8,000 foreign exchange transactions from new accounts in a specific branch of the bank in Ashok Vihar, Delhi, to companies in Hong Kong. The bank had not reported these transactions and the subsequent internal investigation failed to clarify how such large transactions took place without the system detecting fraud and generating alerts. The transactions were apparently conducted by splitting large transactions into smaller ones, each below $100,000, a phenomenon known as "structuring" or "smurfing" in banking circles (Chauhan and Shetty 2015).

The BoB forex scandal running into Rs 6,500 crore is currently being investigated by the Supreme Court appointed Special Investigation Team (SIT) comprising Justices MB Shah and Arijit Pasayat. (Disclaimer: the lead author of this article is a petitioner in a public interest litigation in this particular case pending in the Supreme Court.)

On 13 October 2015, BoB's assistant general manager SK Garg and the head of the bank's foreign exchange division Jainish Dubey, were arrested by the Central Bureau of Investigation (CBI) under provisions of the Prevention of Corruption Act on grounds of their alleged involvement in illegal remittances worth Rs 6,000 crore (PTI 2015).

A more-recent scam relates to illegal exports of an estimated 200,000 tonnes of basmati rice valued at over Rs 1,000 crore that were illegally offloaded in Dubai instead of at Bandar Abbas port in Iran (PTI 2016).

Economic&PoliticalWEEKLY

ISSN (Online) - 2349-8846

The SIT, which is also inquiring into the basmati rice export scam, is responsible for investigating cases of black money stashed abroad by coordinating the activities of various government agencies such as the Reserve Bank of India (RBI), the Intelligence Bureau (IB), the Enforcement Directorate (ED), the CBI, the Financial Intelligence Unit in the Ministry of Finance, the Research and Analysis Wing (RAW) in the Cabinet Secretariat and the DRI.

Over 25 big exporters of basmati rice from Haryana and Punjab are under the scanner of the DRI and the ED. The rice would typically be taken to Gujarat's Kandla Port, and shipping bills or documents detailing the value and volume of goods to be exported, the names of the consignor and consignee would be filed with the customs authorities. The consignments, instead of reaching Iranian shores, would be diverted mid-sea to Dubai in connivance with ship operators. Still, in official documents it would be shown that payments had been made from Iran to India. While the governments of both countries would be deprived of revenue, the goods would be diverted and the funds so obtained could be used for illegal purposes, including possibly the funding of terror activities, claimed a government official speaking on condition of anonymity to one of the authors.

Cracking the Modus Operandi

As far as Manoj Kumar Garg's arrest is concerned, according to the remand application filed by the DRI before the magistrate's court, Esplanade, Mumbai, Garg is a partner in two companies, Glints Global General Trading LLC, Dubai (GGGTL) and Glints Global Limited, Hong Kong (GGL), which are trading companies. These two companies had supplied coal to MBG Commodities Pvt Ltd, which, in turn had supplied it to MSTC Ltd, a public sector undertaking, which finally supplied it to power generators.

The remand application says that a number of coal based power plants in India are overvaluing their imports of Indonesian steam coal to charge higher tariff and to siphon off the money abroad. In December 2014, the DRI had carried out series of search-and-seizure raids across 80 locations in Delhi, Tamil Nadu, Gujarat, Karnataka, Andhra Pradesh, Maharashtra, West Bengal, Kerala and Odisha. The raids were carried out on coal importing companies, shippers, intermediaries and laboratories.

According to the remand application, the modus operandi adopted was to create layers of invoicing between Indonesia and India. Intermediary firms, based in Singapore, Hong Kong, Dubai and other locations, were deployed to inflate the prices of coal in official billing documents. While cost, insurance and freight (CIF) prices or the landed prices per metric tonne of coal imported from any port in Indonesia to India were roughly around US$ 50 (at the time of writing in early-April 2016), the declared prices in India were inflated to over US$ 82 per tonne which was remitted out of India through banking channels. The investigations of over-invoicing of coal imports took place between 2010 and 2015 and the prices mentioned are approximate averages.

Economic&PoliticalWEEKLY

ISSN (Online) - 2349-8846

The DRI's remand application says that while the original coal price was remitted to the shipper in Indonesia by the intermediary, the overvalued component was parked abroad. The intermediary invoicing to the Indian entity is either related or a front company operating on a commission basis. Steam coal, used by power plants typically attracts duty at the rate of two per cent of the basic customs duty and a countervailing duty of another two per cent.

A Preferential Trade Agreement between several countries, including Indonesia and India, however, provides for concessional duties. Steam coal imported from Indonesia attracts no basic duty. To avail of this concession the importer has to produce a country of origin certificate issued by the supplier country.

Saga of Imported Coal

Power tariff fixation by electricity generating and distribution companies is regulated by the Central Electricity Regulatory Commission (CERC) and the various state regulatory commissions. The tariff typically comprises two components—capacity charges, for the recovery of annual fixed charges and energy charges, for the recovery of primary fuel cost.

The energy charges are recovered by power generating units from distribution companies based on the cost of fuel consumed. Thus, by artificially enhancing the price of imported coal, electricity generators are able to obtain a higher tariff fixation, to the detriment of consumers.

Due to over-invoicing, an ordinary consumer of electricity may be ending up paying around Rs 1.50 per unit or kilowatt hour (kwh) extra. So if a household consumes, say, 1,000 units and pays, say, Rs 3 per unit, the household would be paying an extra Rs 1,500 per month on the electricity bill or twice the amount that should have been actually charged had imported coal not been over-invoiced.

The uncertainty in domestic coal production and the periodic bans on coal mining due to judicial pronouncements have compelled power generators to rely more on imported coal. Electricity producers in India are mainly importing low quality coal with a GAR (an acronym for "gross as received," a technical phrase to measure the calorific value of the coal) of between 3,800 and 4,200 for coal imported from Indonesia.

The freight on board (FOB) prices of these qualities of coal in Indonesia in 2014 varied between $30 and $37 per tonne. The freight charges during this period for deliveries on the west and east coast of India ranged between $10 and $12 per tonne. Thus, the CIF prices should have been in the range $ 40–50 per tonne against the actual average import prices of over $ 82 per tonne, the DRI has claimed.

Incidentally, the DRI's remand application also indicates that a number of power generators, including those in the public sector, were overvaluing imported coal for power

Economic&PoliticalWEEKLY

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generation. Interestingly, in 2014, two major power producers, Tata Power and Adani group companies, which supply power to more than one state electricity board and which have independent power purchase agreements with distribution companies, were allowed to recover compensatory tariffs from five state distribution companies or discoms. These firms claimed and received a compensation of Rs 1,160 crore—this was approved by the CERC ostensibly on the ground that the prices of coal in Indonesia had gone up. The discoms claimed that the state government utilities buying power needed to pay for escalating costs of production on account of higher input costs. The Supreme Court, however, stayed this order of the CERC in November 2014 (BS Reporter 2014).

The way imports of coal from Indonesia took place was that the consignments were shipped directly in a vessel from Indonesia to India. A Hyderabad-based company called MBG Commodities responded to a number of notices inviting tenders floated by the TNEB and was awarded contracts to import coal. MBG then undertook "high sea sales" (that is, sales of commodities that take place before a ship has berthed in a particular port) and the bills of entry (or documents filed before the proper officer of customs) were filed by the TNEB after the high sea sale purchase.

The TNEB purchased coal through Glintz Global, a partnership company based in Dubai with two partners Manoj Kumar Garg and a Dubai national (as is mandated by Dubai laws and who acts as a sleeping partner who signs papers on payment of a commission). What is interesting is that Glintz Global has no history of trading in coal and, in effect, acts as a front company. This was stated by a source in the Union Ministry of Coal who spoke to one of the authors of this article on condition of anonymity.

Glintz Global got the coal from a company called "B" based in Singapore, which owns a mine in Indonesia. So how are the dots connected? Company B sells coal at, say, $45 a tonne to Glintz Global. With absolutely no value addition (because coal is being shipped directly), Glintz Global gets an invoice for $85 per tonne, which is the rate at which it is purchased by MBG Commodities which then sells the coal to TNEB at a slightly higher rate of $87 per tonne. Now, TNEB pays $87 per tonne to MBG Commodities which pays $85 to Glintz Global which, in turn, pays $45 per tonne to Company B and retains the rest of the amount. The silent partner in Dubai is happy with a paltry commission and is an invisible non-entity.

The DRI's investigations indicate that coal from Indonesia was shipped directly to India but the invoices were routed through one or more invoicing agents located in different countries which is typical of money laundering through "layered" transactions. While statutory forms for availing of duty exemption under the ASEAN (Association of South East Asian Nations)-India Free Trade Area rules were filled up, an examination of these forms with documents submitted to Indian customs authorities suggested "huge over-valuation" to the extent of between 50% and 100%.

The DRI note added: "The inflated invoices received in India were found to have been issued

Economic&PoliticalWEEKLY

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by intermediary invoicing agents based in Singapore, Dubai, Hong Kong, British Virgin Islands (UK) etc. These intermediary firms appear to be either subsidiary companies of Indian importers (of coal) or their front companies."

The story does not end there. In a "significant" number of cases, two sets of reports—"certificate of sampling and analysis"—were issued by two different testing agencies for the same consignments of coal, one showing a lower gross calorific value (GCV) and the other a higher GCV. The price of coal is determined on the basis of two factors—ash content and GCV. The higher the GCV, the more expensive is the value of the coal. The GCV also has a direct impact on the quality of the electricity generated and on atmospheric pollution. Thus, when the coal price is artificially increased using forged documents and without any value addition, the GCV is also automatically manipulated.

Violation of a Different Magnitude

The scam is, therefore, not just about the overvaluation of price of coal but also about the misdeclaration of the GCV that impacts electricity generation. Thus, there is a two-fold impact on electricity tariffs because the artificial and illegal overvaluation is passed on to the end user who ends paying a higher tariff for electricity produced using inferior quality coal. Thus, not only is the end user paying, say, Rs 1.50 per unit of electricity consumed, the exchequer also suffers a loss because electricity is subsidised for many categories of consumers.

As already stated, the Rs 29,000 crore amount mentioned is conservative and possibly an underestimate. If criminal proceedings are launched and followed through, violations of a number of statutes are likely to be detected as a result of which the penalties levied could add substantially to the total scam amount. Those who have allegedly over-invoiced imports of coal have possibly violated the provisions of not just the Customs Act, but other statutes as well such as the Income Tax Act, the Foreign Exchange Management Act and the Prevention of Money Laundering Act.

India imported 212.11 million tonnes of coal worth Rs 1,04,524.1 crore in 2014–15, according to provisional figures provided by the Union Minister for Energy Piyush Goyal in a written reply to a question raised in the Rajya Sabha on 20 December. Coal imports had risen by 27.1% in 2014–15.

The corresponding figures for the three previous years—in 2013–14, the country imported 166.860 million tonnes of coal worth Rs 92,329.2 crore; in 2012-13, 145.785 million tonnes of coal valued at Rs 86,845.5 crore were imported, while in 2011–12, coal imports stood at 102.853 million tonnes valued at Rs 78,837.6 crore, the minister said.

Replying to another part of the question as to whether it was a fact that the DRI was investigating over-invoicing of coal imports, Goyal's reply was incomplete and partial. He said that the "DRI has informed that it is investigating cases related to misdeclaration of

Economic&PoliticalWEEKLY

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value (over invoicing) of coal imported from Indonesia and supplied to power plants of NTPC."

Curiously, the minister did not mention the names of the private companies that were being investigated by the DRI, notably the companies of the Adani group and the ones in ADAG.

A question remains as to whether the government will expeditiously investigate these cases of over-invoicing and initiate prosecution proceedings against the concerned companies, their promoters and directors. The question acquires significance since some of these individuals are known to be politically influential.

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