

# The Adani Brief Update

The Adani Group's environmental and human rights record

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# About Environmental Justice Australia

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Environmental Justice Australia (formerly the Environment Defenders Office, Victoria) is a not-for-profit public interest legal practice. Funded by donations and independent of government and corporate funding, our legal team combines a passion for justice with technical expertise and a practical understanding of the legal system to protect our environment.

We act as advisers and legal representatives to the environment movement, pursuing court cases to protect our shared environment. We work with community-based environment groups, regional and state environmental organisations, and larger environmental NGOs. We also provide strategic and legal support to their campaigns to address climate change, protect nature and defend the rights of communities to a healthy environment.

While we seek to give the community a powerful voice in court, we also recognise that court cases alone will not be enough. That's why we campaign to improve our legal system. We defend existing, hard-won environmental protections from attack. At the same time, we pursue new and innovative solutions to fill the gaps and fix the failures in our legal system to clear a path for a more just and sustainable world.

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# Introduction and Summary

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On February 15, 2017, Environmental Justice Australia (EJA) published 'The Adani Brief,' which documented allegations of conduct by the Adani Group and its associated entities, including allegedly illegal dealings and corruption, current and past court cases filed against Adani in Indian courts, and failures to comply with environmental laws.<sup>1</sup>

We summarised the material documented in our 2017 report as follows:

*'The evidence set out in this research briefing raises very serious concerns about the compliance record of some entities in the Adani Group. This is problematic for governments and private stakeholders in the Carmichael Coal Mine and Abbot Point Port projects because:*

- 1. entities in the Adani Group have a concerning history of failures to comply with environmental laws in foreign jurisdictions;*
- 2. entities in the Adani Group have a concerning history of failures to comply with regulatory and disclosure requirements in foreign jurisdictions; and*
- 3. there has been insufficient scrutiny of the compliance record of entities within the Adani Group prior to the Australian government issuing environmental approvals to these projects.'*

Our report found that:

*'This research briefing suggests that governments and private stakeholders should give serious consideration to:*

- the Adani Group's global legal compliance record which demonstrates numerous serious breaches with adverse consequences for the environment and local people; and*
- the possibility that if this track record continues in Australia, then supporting the Adani Group's Carmichael Mine and the Abbot Point Port may expose governments and private stakeholders to reputational and financial risks.'*

This document updates information in *The Adani Brief*, and introduces new developments relating to companies within the Adani Group. Our research reinforces the views expressed in our previous reports and once again suggests that governments, decision-makers and private stakeholders involved in the project need to seriously consider the risks involved in allowing the mine and associated port expansion to proceed.

This report documents the following.

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## 1 Alleged forced removal of local indigenous people from site of coal plant that will burn Carmichael coal and reportedly will exacerbate energy poverty in Bangladesh

A company within the Adani Group, Adani Power (Jharkhand) Ltd, is building a large coal-fired power plant in India to supply electricity to neighbouring Bangladesh. This plant will burn coal from the Carmichael Mine. Reports indicate that local indigenous people are being forcibly removed from their land to make way for the plant, and that the potential environmental and health threats of the plant have not been adequately assessed. Furthermore, economists have concluded that the electricity produced from this plant would be among the most expensive sources of new generation for Bangladesh, far outweighing the costs of renewable energy.

## 2 Alleged unsafe labour practices leading to deaths and serious injuries

The Adani Group has a history of alleged unsafe and unfair labour practices, including fatalities and injuries at Adani Group facilities, unhealthy living conditions for workers, use of child labour, and failure to pay or underpaying workers.

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<sup>1</sup> Environmental Justice Australia ('EJA'), *The Adani Brief – What governments and financiers need to know about the Adani Group's record overseas ('The Adani Brief')* (15 Feb 2017), pp. 10–11, [https://www.envirojustice.org.au/sites/default/files/files/Submissions%20and%20reports/The\\_Adani\\_Brief\\_by\\_Environmental\\_Justice\\_Australia.pdf](https://www.envirojustice.org.au/sites/default/files/files/Submissions%20and%20reports/The_Adani_Brief_by_Environmental_Justice_Australia.pdf).

### 3 Illegal destruction of land within wildlife sanctuary

In March 2018, the Comptroller and Auditor General of India ('CAG') – an Indian government authority established by the Constitution of India – found that Adani Power Limited had violated both the Forest Conservation Act and the Wildlife Protection Act by laying a high-voltage transmission line through a protected wildlife area without approval. The CAG also found that Adani Power Limited had failed to implement required mitigation measures to prevent bird deaths.

### 4 Alleged illegal inflation of the value of imported coal and of the cost of electricity for Indian consumers

India's Directorate of Revenue Intelligence has been investigating five Adani Group companies in India, including Adani Enterprises Ltd, for inflating the quality, and hence the value, of coal imported from Indonesia, which would have allowed the companies to remove funds from India and charge consumers higher energy rates. On September 2018, the High Court of Bombay temporarily restrained the Directorate of Revenue Intelligence's investigation due to procedural shortcomings.

### 5 Alleged illegal over-valuation of capital equipment imports

Three companies within the Adani Group have been under investigation by the Indian Directorate of Revenue Intelligence for over-valuing the price of capital equipment imports. This alleged over-valuation would have allowed the Adani Group to siphon more than AU\$1.041 billion into offshore tax havens and to increase the electricity tariff rates paid by the public. Although the Directorate of Revenue Intelligence dismissed charges against all three Adani companies in late 2017, India's customs department has appealed the dismissal and the case is currently pending. Separately, public interest litigators have filed a writ in the High Court of Delhi seeking a special investigation into the same three Adani companies for the same alleged illegal over-valuations.

### 6 Pollution of the Great Barrier Reef and possible alteration of laboratory reports

The Queensland Department of Environment and Heritage Protection (DEHP) is currently prosecuting Abbot Point Bulkcoal Pty Ltd, an Adani subsidiary, for a substantial exceedance of a license to pollute the Great Barrier Reef World Heritage Area with coal dust when Cyclone Debbie made landfall in 2017, even though the license was granted specifically to account for possibly increased emissions resulting from the cyclone. During the course of this prosecution, the DEHP discovered that Abbot Point Bulkcoal Pty Ltd may have submitted an altered laboratory report showing reduced levels of pollution.

### 7 Endangering sacred springs and the associated freshwater ecosystem

Adani Mining Pty Ltd allegedly drilled bores at the site of the Carmichael Mine without required environmental approvals. Extracting water for the Carmichael Mine threatens a nearby spring ecosystem, the Doongmabulla Springs, which are deeply significant to the Wangan and Jagalingou People and are home to 11 endangered or vulnerable species. The company admitted that it failed to disclose to the government that it had begun drilling and clearing sites, even though it had signed, under oath, a statement that no such disturbances had taken place.

### 8 Attempts to silence critics through the inappropriate use of defamation law

Corporations within the Adani Group have filed unsuccessful civil and criminal defamation cases against journalists who have published investigations into the Group's dealings.

# 1. Alleged forced removal of local indigenous people from site of coal plant that reportedly will exacerbate energy poverty in Bangladesh

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In January 2018, Adani Power (Jharkhand) Ltd, a company within the Adani Group, commenced construction of a 1,496 megawatt coal-fired power plant in the Godda district of Jharkhand state in India to supply electricity to Bangladesh for a 25-year period.<sup>2</sup> In January 2018, Adani announced that the Carmichael Mine in Australia will supply the coal to the Godda plant.<sup>3</sup>

There have been allegations that Adani has acquired land in the Godda area through force. Several local villagers reported that on 31 August 2018 Adani personnel, with the help of local police, attempted a 'violent acquisition' of land when the police allowed earthmovers to uproot valuable palm trees and paddy stalks to clear the site for the power plant.<sup>4</sup> One low-caste farmer alleged that 'Adani personnel forcibly acquired his land in February, 2018' when 'Adani's officials pushed [him], uttering a casteist slur' and making the threat that 'if you don't give your land, we will bury you alive in it.'<sup>5</sup> The farmer filed a complaint under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act; his claim has not yet been adjudicated.<sup>6</sup>

A fact-finding report by various local non-governmental organisations<sup>7</sup> concluded that 'Adani group's functionaries' engaged in 'forceful land acquisition, intimidation and' encouraged 'police brutality' to secure land for the company's Godda power plant.<sup>8</sup> This fact-finding team reported that, in an 'attempt to forcefully acquire land, the company has damaged standing crops, trees and even burial grounds...with the help of police.'<sup>9</sup> Dissenting villagers reportedly were not allowed to enter meetings where decisions about their land were being made.<sup>10</sup> When villagers protested, the police reportedly baton-charged and teargassed them.<sup>11</sup>

Bimal Yadav, an aged sharecropper among them, started to weep. "Adani babu, please leave our land," he pleaded. "We might get by on the money you are giving us for it, but what will our future generations live on? We beg you, please do not take our land." In addition to forceful land acquisition, the State of Jharkhand has reportedly denied landowners compensation under an alarming interpretation of the *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013* ('LARR Act'). Under the LARR Act, people are entitled to 2.5 acres of land, in addition to any monetary compensation, when they belong to a scheduled caste or tribe and lose their land as a result of certain qualifying events.<sup>12</sup> Local people report having received monetary compensation but not this land-for-land compensation required by the LARR Act as a result of being displaced by the Godda plant.<sup>13</sup> In 2017, the State of Jharkhand director of land reforms interpreted the LARR Act to apply only to 'irrigation projects' and not coal plants.<sup>14</sup>

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2 Institute for Energy Economics and Financial Analysis, ('IEEFA'), *Adani Godda Power Project Too Expensive, Too Late, and Too Risky for Bangladesh*, (Apr 2018) ('IEEFA 2018 Report'), p 3, 11, [http://ieefa.org/wp-content/uploads/2018/04/Adani-Godda-Power-Project-April\\_2018.pdf](http://ieefa.org/wp-content/uploads/2018/04/Adani-Godda-Power-Project-April_2018.pdf). But see, B. Smeed & M. Salafi, *The Guardian*, *Adani builds coal-fired power plant in India to send energy to Bangladesh* (25 Apr 2018), <https://www.theguardian.com/business/2018/apr/26/adani-builds-coal-fired-power-plant-in-india-to-send-energy-to-bangladesh> (Adani stated that the IEEFA 'report is based on certain assumptions and inferences, which are inconsistent with the factual aspects of this initiative between the two nations. Its authors/activists have not consulted us to check the facts').

3 Newsclick, 'Adani Power: Australian Coal to Produce Power in Jharkhand and Sell to Bangladesh', (12 Jun 2018), <https://www.newsclick.in/adani-power-australian-coal-produce-power-jharkhand-and-sell-bangladesh>.

4 C. Choudhury, *IndiaSpend*, 'Taking Over Fertile Land For Adani Group From Protesting Farmers, Jharkhand Government Manipulates New Law Meant To Protect Them' (Dec. 1, 2018), <https://www.indiaspend.com/taking-over-fertile-land-for-adani-group-from-protesting-farmers-jharkhand-government-manipulates-new-law-meant-to-protect-them/>.

5 *Id.*

6 *Id.*

7 *Fraud Report on Land Acquisition of Adani Thermal Power Point (Godda) Jharkhand Jnanikar General Assembly* (Oct. 16-17, 2018), <https://cdn.downtoearth.org.in/pdf/Godda-report.pdf> (listing the non-governmental organizations involved in making reports to the government). See also, Gita Niyogi, *DownToEarth*, 'Land acquired forcefully for Adani's Godda power plant' (2 Nov 2018), <https://www.downtoearth.org.in/news/governance/land-acquired-forcefully-for-adani-s-godda-power-plant-62014>.

8 D. Gita Niyogi, *DownToEarth*, 'Land acquired forcefully for Adani's Godda power plant', above n 7.

9 *Id.*

10 *Id.*

11 Choudhury, 'Taking Over Fertile Land For Adani Group From Protesting Farmers, Jharkhand Government Manipulates New Law Meant To Protect Them', above n 4.

12 *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013*, Schedule Two, Clause 2.

13 Choudhury, 'Taking Over Fertile Land For Adani Group From Protesting Farmers, Jharkhand Government Manipulates New Law Meant To Protect Them', above n 4 (quoting land rights expert Usha Ramanathan, who stated 'The Jharkhand government's decision to deny land-for-land compensation to Scheduled Castes and Scheduled Tribes "violates Article 14 of the Constitution"').

14 Choudhury, 'Taking Over Fertile Land For Adani Group From Protesting Farmers, Jharkhand Government Manipulates New Law Meant To Protect Them', above n 4.

At least one land rights expert has criticised this interpretation as violating people’s constitutional rights to equality before the law.<sup>15</sup>

Adani framed the Godda coal-fired power plant as a humanitarian venture to help Bangladesh overcome its acute power shortage.<sup>16</sup> To the contrary, an expert analysis by the Institute for Energy Economics and Financial Analysis concludes that this coal-fired power plant will ‘deepen poverty’ and will be ‘too expensive and a poor strategic fit for Bangladesh’.<sup>17</sup> The plant is a poor fit for Bangladesh for several reasons.

First, the construction and operation of the Adani Godda plant threatens the health and agricultural lands of local indigenous villagers. In a suit in India’s National Green Tribunal against the Indian government, people living near the site of the plant have argued that site is too close to valuable agricultural land heavily used<sup>18</sup> by 10 villages, three of which are predominantly populated by Santhal indigenous people.<sup>19</sup>

Despite the plant’s proximity to people and agricultural lands, there has reportedly not been a proper analysis of its environmental impacts.<sup>20</sup> The plaintiffs in the National Green Tribunal allege that details crucial to understanding Godda’s coal ash ponds and the risk they pose to the public have not been made public or considered as part of the environmental analysis.<sup>21</sup> If not properly constructed and managed, the plant’s coal ash storage system could spill toxic chemicals into the area.<sup>22</sup> According to the plaintiffs, ‘this absence of information and requirements is potentially life-threatening to people living near the ash pond and harmful to the environment in the event of a breach of the ash dyke.’<sup>23</sup>

Second, reports indicate that the Adani Godda electricity tariff will deepen financial poverty, rather than alleviate it, by making electricity very expensive for the Bangladeshi people. Bangladesh will expect to pay Rs6.65/kWh (AU\$0.13) for energy from the Godda plant,<sup>24</sup> making it among the most expensive sources of new generation capacity for Bangladesh.<sup>25</sup> Solar generation plants are supplying electricity to Bangladesh for a cheaper price.<sup>26</sup> The Godda plant will lock Bangladesh into this unjust arrangement for 25 years,<sup>27</sup> which will make it difficult for the country to benefit from future reductions in renewable energy tariffs.<sup>28</sup> In sum, according to a report from the Institute for Energy Economics and Financial Analysis, ‘[d]espite what Adani claims, the project will not only fail to alleviate poverty in Bangladesh, it will actually deepen it,’ because it ‘will produce high-cost power whilst cheaper, deflationary clean energy production is currently transforming India’s electricity system.’<sup>29</sup>

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15 *Id.*

16 B. Smeed & M. Salafi, *The Guardian*, above n 2.

17 IEEFA, above n 2, p 2.

18 Appeal, *In the matter of R. Sreedhar v. Union of India & ORS*, Appeal No. 47 of 2018 Before the Hon’ble National Green Tribunal, Principal Bench, Delhi (Previously Appeal No. 11 of 2017 before EZ Bench) (*In the matter of R. Sreedhar*) (on file with authors), para. 95.K.

19 *Id.* See also, News Click, ‘Adani Power: Land Grab in Jharkhand to Supply Power to Bangladesh’ (13 Jun 2018), <https://www.newsclick.in/adani-power-land-grab-jharkhand-supply-power-bangladesh>.

20 *In the matter of R. Sreedhar*, above n 18, para. 95.

21 *Id.* at para. 95.G.

22 *Id.*

23 *Id.* at para.95 (emphasis added); *But see*, Counter affidavit on behalf of the Respondent No. 1 (Ministry of Environment, Forest & Climate Change) (May 24, 2018), para. 11 (‘remaining ash will be disposed in ash pond for which an area of 200 acres has been kept which is separate from the area kept for development of greenbelt and in the ash disposal area, a water cover over the deposited ash in the entire ash pond will be maintained to effectively check the fugitive emission’).

24 IEEFA, above n 2, p 2.

25 *Id.*

26 *Id.* at p 12.

27 *Id.* at p 3.

28 See *id.* at p 15.

29 *Id.* at p 2.

## 2. Alleged unsafe labour practices leading to deaths and serious injuries

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The Adani Group has a history of alleged unsafe and unfair labour practices,<sup>30</sup> including fatalities and injuries at Adani Group facilities and accusations of failing to pay or underpaying wages.

As Vaishali Patil, who has worked with Indian communities harmed by actions of the Adani Group, has said, 'The damage that [the Adani Group] has done to our people can't be overstated. Behind [the Adani Group] is a dark and disturbing history of environmental and human rights abuses.'<sup>31</sup> Following are some recent examples of harm allegedly resulting from such practices.

On approximately 15 August 2017, three labourers reportedly died of asphyxiation and three others were injured when a coal heap fell in a stack yard operated by an Adani Group company called Dhamra Port Company Limited.<sup>32</sup> On 20 April 2016, Adani Power Limited reported that hot water from a tank at its coal-fired power plant in Mundra spilled, severely injuring 13 workers – eight of whom later died from their injuries – and causing minor injuries to another eight workers.<sup>33</sup> News reports indicate that in 2017 three officers of Adani Power Limited were charged with criminal negligence under the Indian Penal Code in relation to the incident.<sup>34</sup>

The Adani family has been accused of providing unsanitary living conditions for workers on a luxury housing project it reportedly owns in Gujarat.<sup>35</sup> In 2014, the Chief District Health Officer told Fairfax Media that living quarters provided by the Adani Group were inadequate, with makeshift houses with dirt floors and no running water, and contributed to multiple cholera outbreaks.<sup>36</sup>

The Adani Group has also been accused of using child labour and failing to pay or underpaying workers. Workers on the housing project reported that they felt unable to return to their families because they had not been paid. 'We are arguing and fighting to be paid, but they keep saying they dispute what they owe us, and they never pay us except to buy food,' said one worker who worked 10 to 12 hour days, six days a week.<sup>37</sup> Another worker said, 'I have been here 10 months, and sometimes we are paid at the end of the month, but sometimes we are not. I know of many workers who are not paid at all.'<sup>38</sup>

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30 See, for example, V. Patil, *The Saturday Paper*, 'Exposing Adani's environmental and labour abuses' (8 Apr 2017), <https://www.thesaturdaypaper.com.au/opinion/topic/2017/04/08/exposing-adanis-environmental-and-labour-abuses/14915736004470>; J. Koutsoukis and D. Flitton, *The Sydney Morning Herald*, 'Concerns at Barrier Reef contractor's humanitarian, environment record' (5 Sep 2014), <https://www.smh.com.au/politics/federal/concerns-at-barrier-reef-contractors-humanitarian-environment-record-20140904-10cgxk.html>.

31 *Id.*

32 D. Mohanty, *Hindustan Times*, 'Three labourers killed in coal cave-in at Odisha's Dhamra port, violence erupts' (Aug. 15, 2017), <https://www.hindustantimes.com/india-news/odisha-3-killed-as-coal-heap-caves-in-violence-at-dhamra-in-bhadrak/story-Uh95Ybi5wVjll96nHvSjdl.html>; *First Post*, 'Odisha: 3 labourers killed, 3 injured in accident at Adani Group-managed Dhamra Port; workers' protest turns violent' (16 Aug 2017), <https://www.firstpost.com/india/odisha-3-labourers-killed-3-injured-in-accident-at-adani-group-managed-dhamra-port-workers-protest-turns-violent-3935829.html>; H. Pradhan, *The Times of India*, 'Dhamra tense after death of three labourers' (16 Aug 2017), <https://timesofindia.indiatimes.com/city/bhubaneswar/dhamra-tense-after-death-of-three-labourers/articleshow/60090178.cms>; Reuters, *India's Dhamra shut after worker death sparks violence* (15 Aug 2017), <https://www.reuters.com/article/us-india-ports-idUSKCN1AV1K0>. Dhamra Port Company Limited is a 100% subsidiary of Adani Ports and Special Economic Zone Limited. See Adani Ports, *Dhamra Port*, <https://www.adaniports.com/dhamra-port>.

33 *Business Today*, '21 workers injured in accident at Adani Power's Mundra plant' (21 Apr 2016), <https://www.businesstoday.in/current/corporate/21-workers-injured-in-accident-at-adani-power-mundra-plant/story/231294.html>; *The Hindu Business Line*, 'Adani Power Mundra plant accident death toll mounts to 7' (28 Apr 2016), <https://www.thehindubusinessline.com/companies/adani-power-mundra-plant-accident-death-toll-mounts-to-7/article8532551.ece>; *The Indian Express*, 'Three Adani Power officers booked for death of eight labourers in Mundra mishap' (Oct. 5, 2017), <https://indianexpress.com/article/cities/ahmedabad/three-adani-power-officers-booked-for-death-of-eight-labourers-in-mundra-mishap-4874971/>.

34 *The Indian Express*, 'Three Adani Power officers booked for death of eight labourers in Mundra mishap', above n 33.

35 Koutsoukis and Flitton, 'Concerns at Barrier Reef contractor's humanitarian, environment record', above n 30.

36 *Id.*

37 *Id.*

38 *Id.*

### 3. Illegal destruction of land within a wildlife sanctuary

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In March 2018, the Comptroller and Auditor General of India ('CAG') found that Adani Power Limited ('APL') had violated both the Forest Conservation Act and the Wildlife Protection Act by laying a high-voltage transmission line through a protected wildlife area without approval.<sup>39</sup> APL had applied for Forest Conservation Act approval in January 2009, and had begun laying the line in March 2009, without having obtained the requisite approval.<sup>40</sup> Although the company halted work following a government inspection, it recommenced in July 2009 after receiving an in-principle approval from the relevant federal department and again commissioned work on the transmission line in July 2009.<sup>41</sup>

The company was also required to obtain approval under the Wildlife Protection Act to lay the transmission line over the wildlife sanctuary. It applied for this approval in May 2009, but did not receive approval until September 2010 – over a year after it started work on the transmission line.<sup>42</sup> The CAG concluded that 'APL laid [the] transmission line in violation of provisions of [the Wildlife Protection Act and the Forest Conservation Act]'.<sup>43</sup>

The CAG also found that APL had failed to implement required mitigation measures to prevent bird deaths. The high-voltage transmission line crossed a nesting ground and migration stopover area for flamingos, which are prone to collision with and electrocution by transmission lines.<sup>44</sup> As such, the Indian Ministry of Environment, Forest and Climate Change required mitigation measures, such as installation of reflectors and use of insulated cables.<sup>45</sup> However, because APL failed to implement the mitigation measures, the CAG noted that the 'life of flamingos as well as other birds was at threat while flying through these areas'.<sup>46</sup>

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<sup>39</sup> *Report of the Comptroller and Auditor General of India on Economic Sector for the year ended 31 March 2017* (Report No. 1 of 2018) ('CAG Report'), p 49, [https://cag.gov.in/sites/default/files/audit\\_report\\_files/Report\\_No1\\_of\\_2018\\_Economic\\_Sector\\_Government\\_of\\_Gujarat.pdf](https://cag.gov.in/sites/default/files/audit_report_files/Report_No1_of_2018_Economic_Sector_Government_of_Gujarat.pdf), p 49.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at p 50. See also, *NewsClick*, 'CAG reveals Adani Power violations in Gujarat' (May 5, 2018), <https://www.newsclick.in/cag-reveals-adani-power-violations-gujarat>; H Upadhyaya, *DownToEarth*, 'Adani Power violates wildlife protection norms, says CAG report' (30 April 2018), <https://www.downtoearth.org.in/news/adani-power-violates-wildlife-protection-norms-says-cag-report-60362>.

<sup>44</sup> *CAG report*, above n 40, p 51.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

## 4. Alleged illegal inflation of the value of imported coal and of the cost of electricity for Indian consumers

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The Adani Brief reported that the Directorate of Revenue Intelligence ('DRI'), a branch of India's Ministry of Finance, has been investigating five Adani Group companies in India, including Carmichael Mine proponent Adani Mining's ultimate holding company Adani Enterprises Ltd,<sup>47</sup> for inflating the quality, and hence the value, of coal Adani Group companies imported from Indonesia.<sup>48</sup> This scheme allegedly allowed the companies to siphon funds out of India and to claim higher power tariff compensation from regulators – resulting in higher power prices for consumers.<sup>49</sup> The DRI stated that:

Indonesian coal was shipped directly from Indonesian ports to India whereas supplier's [*sic*] 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 value [and that] the import invoices were routed through one or more intermediaries based in Singapore, Dubai, Hong Kong, [and the] British Virgin Islands (U.K.).<sup>50</sup>

If this alleged scheme took place, it would have allowed the Adani Group to move money into offshore bank accounts, which are difficult for Indian authorities to track without foreign assistance.<sup>51</sup> As part of its investigation, therefore, the DRI issued formal requests – known as 'letters rogatory' – to authorities in Singapore, Dubai, Hong Kong, Switzerland, and Indonesia, seeking assistance in obtaining access to information, such as overseas bank records, in relation to the Adani Group's coal imports from Indonesia.<sup>52</sup>

The Adani Group challenged the DRI's request for information in a Singaporean court. Media reports indicate that the court rejected the challenge and served 24 production orders to Adani Group companies.<sup>53</sup> The Adani Group appealed the lower court's order to the High Court of Singapore, which rejected the appeal and upheld the decision of the lower court.<sup>54</sup>

In approximately August 2018, Adani Enterprises Ltd filed a request in the Bombay High Court to quash the DRI's letters rogatory on the ground that the DRI had not formally registered the investigation as required by criminal procedural rules.<sup>55</sup> In September 2018, the Bombay High Court restrained the DRI from acting on the letters rogatory.<sup>56</sup> This had the effect of temporarily restraining the DRI from acting upon or giving effect to its requests for overseas information. Nothing in the High Court's order placed into question the facts that led DRI to undertake the investigation.<sup>57</sup>

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47 Adani Enterprises Ltd, Statement of Consolidated Audited Financial Results for the Quarter and Year Ended 31<sup>st</sup> March, 2017, <http://www.adanienterprises.com/docs/download/042017>.

48 *Id.* See also, EJA, *The Adani Brief*, pp 10–11, above n 1 pp. 10–11.

49 EJA, *The Adani Brief*, p 10, above n 1, citing p Guha Thakurta, *Economic & Political Weekly*, 'Power Tariff Scam Gets Bigger at Rs 50,000 crore' (May 14, 2016), <https://www.epw.in/journal/2016/20/web-exclusives/power-tariff-scam-gets-bigger-rs-50000-crore.html>. See also, DRI, *Modus-Operandi / General Alert Circular No. 11 / 2016-CI*, [https://www.epw.in/system/files/pdf/2016\\_51/14/Coal%20Alert\\_1%20PGT.pdf](https://www.epw.in/system/files/pdf/2016_51/14/Coal%20Alert_1%20PGT.pdf) ('The objective of the over-valuation 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.'). M. Safi, *The Guardian*, 'Adani Group files plea in India high court to stall fraud investigation' (Aug. 29, 2018), <https://www.theguardian.com/business/2018/aug/29/adani-group-india-dri-investigation-plea>.

50 DRI, *Modus-Operandi / General Alert Circular No. 11 / 2016-CI*, above n 49.

51 Safi, *Adani Group files plea in India high court to stall fraud investigation*, above n 49.

52 M. Safi, *The Guardian*, 'Adani Group files plea in India high court to stall fraud investigation', above n 50; *First Post*, 'Coal import scam: Bombay High Court grants interim relief to Adani Group from DRI' (20 Sep 2018), <https://www.firstpost.com/business/coal-import-scam-bombay-high-court-grants-interim-relief-to-adani-group-from-dri-5220981.html>; n Mohammad, *The Wire*, 'DRI Writes to Five Countries on Alleged Over Invoicing by Big Corporates' (18 Mar 2018), <https://thewire.in/business/dri-to-pursue-cases-of-alleged-over-invoicing-by-big-corporate-groups>.

53 *The Wire*, 'After Singapore Setback, Adani Firm Asks Bombay HC To Stall DRI Probe' (29 Aug 2018), <https://thewire.in/business/adani-coal-import-indonesia-dri-letters-rogatory>. See also, Safi, 'Adani Group files plea in India high court to stall fraud investigation', above n 49.

54 *Id.* See also, K. Narayan, *The Indian Express*, 'Adani loses case in Singapore, goes to Bombay High Court to stall DRI probe into it' (29 Aug 2018), <https://indianexpress.com/article/business/companies/adani-loses-case-in-singapore-goes-to-bombay-high-court-to-stall-dri-probe-into-it-5329994/>.

55 *Id.* See also, K. Narayan, *Indian Express*, 'DRI probe into alleged over-valuation illegal, invalid: Adani Enterprises petition in Bombay HC' (6 Sep 2018), <https://indianexpress.com/article/cities/mumbai/dri-probe-into-alleged-over-valuation-illegal-invalid-adani-enterprises-petition-in-bombay-hc-5342258/>.

56 *The Wire*, 'In Setback to Adani Group Probe, Bombay HC Restrains DRI from Acting on Letters Rogatory' (Sep. 20, 2018), <https://thewire.in/business/in-setback-to-adani-group-probe-bombay-hc-restrains-dri-from-acting-on-letters-rogatory>; *The Times of India*, *Adani gets Bombay high court relief in coal imports case* (Sep. 20, 2018), <https://timesofindia.indiatimes.com/city/mumbai/adani-gets-hc-relief-in-coal-imports-case/articleshow/65878793.cms>.

57 Adani Enterprises Limited and Anr vs. Union of India and Ors, High Court of Bombay, Criminal Appellate Jurisdiction, Writ Petition No. 3818 of 2018 (19 Sep 2018), <https://indiankanoon.org/doc/183221274/>.

## 5. Alleged illegal over-valuation of capital equipment imports

In February 2017, The Adani Brief reported that the DRI was investigating the Adani Group for allegedly over-valuing the price of its capital equipment imports.<sup>58</sup> The DRI targeted three Adani companies – Adani Power Maharashtra Ltd (APML), Adani Power Rajasthan Ltd (APRL), and Maharashtra Eastern Grid Power Transmission Company Ltd (MEGPTC).<sup>59</sup> The Adani Group allegedly derived two benefits from over-valuing its imports: it reduced its tax burden in India by unlawfully siphoning the money it paid for the equipment – more than Rs 54 billion (\$1.041 billion AUD)<sup>60</sup> – into offshore accounts under its control;<sup>61</sup> and it was able to charge the public higher rates for electricity, as utility regulators based tariffs in part on the inflated cost of the equipment imports.<sup>62</sup>

Since *The Adani Brief* was published, the DRI has dropped the charges against APML and APRL for allegedly inflating capital equipment imports, concluding that the transactions at issue were undertaken at arm's length and the declared value of the imports were correct.<sup>63</sup> It has also dropped charges against MEGPTC, concluding that the transactions at issue were conducted at arms-length<sup>64</sup>

However, in November 2017, India's Customs Department appealed the DRI's dismissal of the charges against APML and APRL to the Customs, Excise & Service Tax Appellate Tribunal, arguing that the DRI's order was 'erroneous, illegal and improper not only in law but also on facts' and suffered from 'several contradictions which indicate either total non-application of mind or recklessness in passing of the order'.<sup>65</sup> Further, the appeal is reported to state that 'the manner in which the adjudicating authority has gone on to describe an otherwise dubious contract process in glowing terms as transparent, independent and good corporate governance practice...only points at eagerness and bias on the part of adjudicating authority to justify over-valuation ignoring facts to the contrary'.<sup>66</sup> On February 12, 2018, the Customs Department filed a separate appeal challenging the DRI's decision to drop charges against MEGPTC 'on identical grounds as the one filed in the case of Adani Power Maharashtra Ltd (APML) and Adani Power Rajasthan Ltd (APRL) because the modus-operandi in both cases are identical'.<sup>67</sup>

In a separate development, in September 2017, two non-governmental organisations, the Centre for Public Interest Litigation and Common Cause, filed a writ petition in the High Court of Delhi petitioning the government to establish a special investigation team to investigate the Adani Group's alleged over-invoicing of imports.<sup>68</sup> The suit described the alleged over-invoicing as a scheme that is cheating consumers who pay for electricity, cheating shareholders by siphoning money from publicly listed companies, cheating the public exchequer of revenue by showing reduced profits, and cheating banks who have given loans to the corporations.<sup>69</sup> The court held hearings on 4 July 2018 and the case is ongoing.<sup>70</sup>

58 EJA, *The Adani Brief*, above n 1, pp. 12–13. The Adani Brief reported that the DRI was investigating Adani Transmission Ltd via its subsidiary, Maharashtra Eastern Grid Power Transmission Company Ltd (MEGPTC).

59 DRI, *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.* (F.No. DRI/MZU/CI-224 (PMC)/2013) (May 15, 2014) ('MEGPTC Show Cause Notice'), <https://thefiles.in/uploads/PMC.pdf>; DRI, *Gross over-valuation in the import of goods by M/s Adani Power Maharashtra Limited (APML) and M/s Adani Power Rajasthan Limited (APRL), subsidiary companies of Adani Power Limited in connivance with intermediary invoicing entity M/s Electrogen Infra FZE, UAE - Show Cause Notice under Section 124 of the Customs Act, 1962 – reg.* (F.No.DRI/MZU/CI-224/APML/APRL/2013) (May 15, 2014) ('APML and APRL Show Cause Notice'), <https://thefiles.in/uploads/APML-APRL.pdf>

60 DRI, *MEGPTC Show Cause Notice*, above n 59, para. 17.08; DRI, *APML and APRL Show Cause Notice*, above n 59, para. 17.10.

61 DRI, *MEGPTC Show Cause Notice*, above n 59, para. 17.1 ('MEGPTCL [and others] appear to have hatched a conspiracy to siphon off money abroad ... so that the incidence/burden of duty on the over-valued amount i.e. cost of fund transfer is minimal.' (Emphasis added.)). See also, Safi, *The Guardian*, 'Mining giant Adani cleared in second case over allegations of financial fraud' (25 Aug 2017), <https://www.theguardian.com/world/2017/aug/25/mining-giant-adani-cleared-in-second-case-over-allegations-of-financial> ('The effect of the now-dismissed scheme would have been to move vast sums of money from the Adani Group's domestic accounts into offshore bank accounts where it could no longer be taxed or accounted for.' [Emphasis added])

62 'Because tariffs for using electricity transmission networks are determined partly by what they cost to build, if the DRI's accusations are correct, the overvaluation of capital goods would have been likely to have led to higher power prices for Indian consumers.' M. Safi, *The Guardian*, 'Adani mining giant faces financial fraud claims as it bids for Australian coal loan' (15 Aug 2017), <https://www.theguardian.com/world/2017/aug/16/adani-mining-giant-faces-financial-claims-as-it-bids-for-australian-coal-loan>; P. Guha Thakurta, *Economic & Political Weekly*, 'Power tariff scam gets bigger at Rs 50,000 crore' (14 May 2016), <https://www.epw.in/journal/2016/20/web-exclusives/power-tariff-scam-gets-bigger-rs-50000-crore.html>.

63 K. Narayan, *The Indian Express*, 'DRI authority's clean hit to Adani firms is illegal: Customs appeal' (12 Feb 2018), <https://indianexpress.com/article/india/gautam-adani-dri-authoritys-clean-hit-to-firms-is-illegal-customs-appeal-5060183/>.

64 K. Narayan, *The Indian Express*, 'Inflating imports: DRI adjudicating authority drops second case against Adani' (28 Oct 2017), <https://indianexpress.com/article/business/companies/inflating-imports-dri-drops-second-case-against-adani-4909999/>; *The Wire*, 'Second inflated imports case against Adani struck down' (28 Oct 2017), <https://thewire.in/business/second-inflated-imports-case-adani-struck>.

65 K. Narayan, 'DRI authority's clean hit to Adani firms is illegal: Customs appeal', above n 63.

66 *Id.*

67 K. Narayan, *The Indian Express*, 'Customs appeals DRI adjudicating authority's clean hit to Adani power firms on value of imports' (Feb. 20, 2018), <https://indianexpress.com/article/business/companies/customs-appeals-dris-clean-hit-to-adani-power-firms-on-value-of-imports-5070538/>.

68 K. Narayan, *The Indian Express*, "'Over-invoicing by power companies': PIL in Delhi HC seeks SIT probe against firms' (14 Sep 2017), <https://indianexpress.com/article/business/companies/over-invoicing-by-power-companies-pil-in-delhi-hc-seeks-sit-probe-against-firms-4842567/>.

69 *Writ Petition (Civil) In the Matter of Public Interest Litigation* (Sep 2017), paras 8, 41, <http://www.commoncause.in/uploadimage/case/1881524205WRIT%20%20over%20invoicing.pdf>.

70 P. Guha Thakurta, *News Click*, 'Customs tribunal rejects revenue intelligence over-invoicing claims; appeal pending: where does the 50,000 crore power tariff scam go from here?' (14 Aug 2018), <https://www.newsclick.in/customs-tribunal-rejects-revenue-intelligence-over-invoicing-claims-appeal-pending-where-does>.

## 6. Pollution of the Great Barrier Reef and possible alteration of laboratory reports

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Abbot Point Bulkcoal Pty Ltd ('APBP'), an Adani subsidiary,<sup>71</sup> operates the Abbot Point coal terminal on the coast of Queensland. In March 2017, as Cyclone Debbie approached Queensland and threatened to cause the terminal to spill water contaminated with coal dust, APBP secured a temporary license to release more storm water sediment into the surrounding Caley Valley Wetlands<sup>72</sup> and the Great Barrier Reef World Heritage Area.<sup>73</sup> After the cyclone passed, APBP reported that sediment suspended in the waters of the World Heritage Area was more eight times the limit allowed by the temporary permit.<sup>74</sup> Conservationists say that, before the cyclone hit, APBP and the Queensland government 'were fully aware there was a high concentration of pollutants in the water that would be released.'<sup>75</sup>

The Queensland Department of Environment and Heritage Protection ('DEHP') fined APBP just over \$12,000 for these releases.<sup>76</sup> During the course of APBP's appeal of this fine, the DEHP reportedly discovered that APBP may have submitted an altered laboratory report showing reduced levels of pollution.<sup>77</sup>

In addition to the \$12,000 fine, the Department of Environment and Science charged<sup>78</sup> Adani under a statute that carries a maximum \$2.7 million fine for polluting the Great Barrier Reef World Heritage Area.<sup>79</sup> On October 10, 2018, Adani filed an application for legal costs against the department, arguing that the investigation was frivolous or vexatious.<sup>80</sup>

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- 71 Abbot Point Bulkcoal Pty Ltd is a subsidiary of Adani Ports and Special Economic Zone Ltd., Bloomberg, *Company Overview of Abbot Point Operations Pty Ltd* (29 Nov 2018), <https://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapId=401971144>.
- 72 Department of Environment and Heritage Protection, Temporary emissions license 223431 ('License to Pollute Caley Valley Wetlands') (27 Mar 2017), [https://d3n8a8pro7vhm.cloudfront.net/edoqld/pages/340/attachments/original/1507691827/170327\\_APBC\\_TEL.pdf?1507691827](https://d3n8a8pro7vhm.cloudfront.net/edoqld/pages/340/attachments/original/1507691827/170327_APBC_TEL.pdf?1507691827).
- 73 Department of Environment and Heritage Protection, Temporary emissions license 223431 ('License to Pollute the Great Barrier Reef') (March 28, 2017), [https://d3n8a8pro7vhm.cloudfront.net/edoqld/pages/340/attachments/original/1507691801/170328\\_APBC\\_Amended\\_TEL.pdf?1507691801](https://d3n8a8pro7vhm.cloudfront.net/edoqld/pages/340/attachments/original/1507691801/170328_APBC_Amended_TEL.pdf?1507691801).
- 74 P. McCallum, Mackay Conservation Group, 'RTI docs show Adani & Qld govt knew Reef Pollution at Abbot PT likely' (10 Aug 2018), [https://www.mackayconservationgroup.org.au/rti\\_docs\\_show\\_adani\\_qld\\_govt\\_knew\\_reef\\_pollution\\_at\\_abbot\\_pt\\_likely](https://www.mackayconservationgroup.org.au/rti_docs_show_adani_qld_govt_knew_reef_pollution_at_abbot_pt_likely); Department of Environment and Heritage Protection, *Abbot Point investigation update* (3 May 2017), <https://web.archive.org/web/20170511110522/www.ehp.qld.gov.au/mediareleases/2017-05-03-abbot-point-investigation-update.html>
- 75 L. Cox, *The Guardian*, 'Adani knew of Abbot Point pollution risk before spill, conservationists say' (10 Aug 2018), <https://www.theguardian.com/business/2018/aug/10/adani-knew-of-abbot-point-pollution-risk-before-cyclone-spill-conservationists>.
- 76 L. Rebgetz, ABC, 'Adani avoids multi-million-dollar fine over Abbot Point sediment water discharge' (10 Aug 2017), <https://www.abc.net.au/news/2017-08-11/adani-avoids-multi-million-dollar-fine-over-sediment-water/8796178>.
- 77 T. Swanston, ABC, 'Adani mining giant to fight \$12k fine for environmental breach' (24 Aug 2017), <https://www.abc.net.au/news/2017-08-24/adani-will-fight-fine-over-sediment-discharge-at-abbot-point/8840560>; A. Remeikis & M. Slezak, *The Guardian*, 'Suspicions Adani altered lab report while appealing fine for Abbot Point coal spill' (1 Feb 2018), <https://www.theguardian.com/business/2018/feb/02/suspicions-adani-altered-lab-report-while-appealing-fine-for-abbot-point-coal-spill>.
- 78 Department of Environment and Science, *Abbot Point Bulkcoal charged over Abbot Point sediment water discharge* (5 Sep 2018), <https://www.des.qld.gov.au/mediareleases/2018-09-05-abbot-point-bulkcoal-charged-over-abbot-point-sediment-water-discharge.html>.
- 79 A. Horn, ABC, 'Adani prosecuted over release of coal-laden water near Great Barrier Reef' (Sep. 5, 2018), <https://www.abc.net.au/news/2018-09-05/adani-prosecuted-over-release-of-sediment-near-barrier-reef/10204374>.
- 80 *Abbot Point Bulkcoal Pty Ltd v. Chief Executive*, No 4641/17 In the Planning and Environment Court, Brisbane, Application for costs (2 Nov 2018), <http://apps.courts.qld.gov.au/esearching/EDoc.aspx?Location=BRISB&Court=DISTR&FileNumber=4641%2f17&edocsno=88399>.

## 7. Endangering sacred springs and the associated freshwater ecosystem

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The Carmichael Coal mine lease is adjacent to the Doongmabulla Springs, which are the spiritual home of the Wangan and Jagalingou people and support 11 threatened species.<sup>81</sup> Developing the mine would reduce water pressure in the aquifer containing the coal. Experts, including those retained by Adani Mining Pty Ltd, agree that if coal mining depletes the aquifers feeding Doongmabulla Springs, the springs will die.<sup>82</sup>

The Queensland Government placed environmental conditions on Carmichael Mine requiring Adani Mining to obtain approval of its Groundwater Dependent Ecosystems Management Plan before it begins any 'site clearance,' 'new access roads,' or 'dewatering operations.'<sup>83</sup> The environmental conditions also require the company to identify the source of water for the Doongmabulla Springs before beginning any dewatering operations in the area.<sup>84</sup>

In an apparent breach of these conditions,<sup>85</sup> Adani Mining drilled what appeared to be 'six dewatering bores,' according to imagery obtained by a local group called Coast and Country.<sup>86</sup> A representative of Coast and Country stated that this action had 'put at risk our groundwater particularly at a time when half the country's in drought'.<sup>87</sup> The company denied any wrongdoing, stating that the activity was related to geological samples and water monitoring, which the company says were permitted.<sup>88</sup>

Adani Mining had stated under oath that it had not disturbed any of the environment within the site for the Carmichael Mine.<sup>89</sup> However, after Coast and Country released incriminating images, the company admitted that its sworn statements were incorrect.<sup>90</sup> As a result, Adani Mining may have violated a law that makes it an offence to provide the government with a document containing information that the submitter knows, or reasonably ought to have known, is false.<sup>91</sup>

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<sup>81</sup> Queensland Government, *Doongmabulla Springs DIWA nationally important wetland*, <https://wetlandinfo.des.qld.gov.au/wetlands/facts-maps/diwa-wetland-doongmabulla-springs/>.

<sup>82</sup> In a court proceeding, an expert for Adani Mining admitted that a drawdown of only 5 cm would cause at least some of the Springs to go dry. See Queensland Land Court in *Adani Mining Pty Ltd v Land Services of Coast and Country Inc.* [2015] QLC 48, para. 242. Another expert in the same case opined that a drawdown of about 20 cm would cause a number of the springs to go dry, although he could not say how many and which ones. See Australian Conservation Foundation and EDOs of Australia, *Licence to Kill: Commonwealth environmental approval for Adani's Carmichael Coal Mine project*, p 9. [http://www.edoq.org.au/documents/ACF\\_ANEDO\\_CarmichaelFederalConditionsReport\\_201609.pdf](http://www.edoq.org.au/documents/ACF_ANEDO_CarmichaelFederalConditionsReport_201609.pdf).

<sup>83</sup> Department of Environment and Heritage Protection, *Permit Environmental Authority EPML01470513* (5 Jun 2017), <https://apps.des.qld.gov.au/env-authorities/pdf/epml01470513.pdf>.

<sup>84</sup> Department of the Environment, *Approval – Carmichael Coal Mine and Rail Infrastructure Project, Queensland (EPBC 2010/5736)*, 14 Oct 2015, [http://epbcnotices.environment.gov.au/\\_entity/annotation/0b3953c8-e472-e511-a947-005056ba00a8/a71d58ad-4cba-48b6-8dab-f3091fc31cd5?i=1477410176624](http://epbcnotices.environment.gov.au/_entity/annotation/0b3953c8-e472-e511-a947-005056ba00a8/a71d58ad-4cba-48b6-8dab-f3091fc31cd5?i=1477410176624), conditions 25–28 (Federal Environmental Approval).

<sup>85</sup> Environmental Defenders Office Queensland, *New evidence indicates Adani has breached approvals* (Sep. 12, 2018), [https://www.edoqld.org.au/new\\_evidence\\_indicates\\_adani\\_has\\_breached\\_environmental\\_authority](https://www.edoqld.org.au/new_evidence_indicates_adani_has_breached_environmental_authority).

<sup>86</sup> M. Willacy, ABC Investigations, 'Adani groundwater bores investigated amid claims they were sunk without approval' (Sep. 11, 2018), <https://www.abc.net.au/news/2018-09-12/adani-groundwater-bores-investigated-by-queensland-department/10231752>. See also, *id.* ('Dewatering bores are used in mining operations to depressurise the coal seam and to lower groundwater levels for open cut and underground operations.').

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> Environmental Defenders Office Queensland, *New evidence indicates Adani has breached approvals*, above n 87 (citing Adani's 'Annual Return' for the period 3/4/17 – 2/4/18, page 4).

<sup>90</sup> T. Moore, *Brisbane Times*, 'Adani admits it failed to report land clearing to Queensland government' (18 Sep 2018), <https://www.brisbanetimes.com.au/national/queensland/adani-admits-it-failed-to-report-land-clearing-to-queensland-government-20180918-p504k5.html>.

<sup>91</sup> *Environmental Protection Act 1994* (Qld) (EPA) s 480.

## 8. Attempts to silence critics through the inappropriate use of defamation law

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Corporations within the Adani Group have filed unsuccessful civil and criminal defamation cases against journalists who have published investigations into the Group's dealings. Journalists targeted by these cases as a form of 'strategic litigation against public participation,' also known as SLAPP suits, where a 'deep-pocketed corporation, developer or government official files a lawsuit whose real purpose is to silence a critic, punish a whistleblower or win a commercial dispute'.<sup>92</sup> Indeed, a recent defamation lawsuit by the Adani Group against a veteran Indian journalist has 'highlighted the use of India's defamation laws by rich businessmen to silence criticism by the media'.<sup>93</sup>

In the first of two civil defamation suits, in June and July 2017, Adani Power Limited served civil defamation notices against Indian news outlets *Economics and Political Weekly* and *The Wire*<sup>94</sup> for the publication and republication, respectively, of an article by well-known Indian journalist Paranjoy Guha Thakurta and others, entitled 'Modi Government's Rs 500-Crore Bonanza to the Adani Group'.<sup>95</sup> This article reported that, among other things, the Indian government changed the rules relating to special economic zones 'to specifically provide Adani Power Limited (APL) an opportunity to claim refunds on customs duty to the tune of Rs 500 crore...it appears at face value that...the department of commerce is allowing APL to claim refunds on duty that has never been paid by it in the first place'.<sup>96</sup>

The trustees of *Economics and Political Weekly* decided to retract the article.<sup>97</sup> This reportedly motivated the outlet's editor to resign in protest,<sup>98</sup> which 'led to furious criticism of [Gautam Adani, chairman of the Adani Group] in media circles for allegedly using his deep pockets to silence the criticism of [a] veteran journalist'.<sup>99</sup>

*The Wire* did not retract the article, but proceeded to defend the publication in court. On 16 November 2017, the Civil Court for Bhuj, Kutch,<sup>100</sup> rejected APL's case, ordering some minor modifications to the article<sup>101</sup> but finding that there was no prima facie case of defamation.<sup>102</sup>

In a second civil defamation suit, on approximately 5 January 2018, the Adani Group is reported to have filed a Rs 100 crore (AU\$19.3 million) civil defamation lawsuit against *The Wire* for an article published on 16 November 2017, entitled, 'Does It Make Economic Sense for IOC and Gail India to Invest in Adani's LNG Terminals?'.<sup>103</sup> In response, the founding editor of *The Wire* said, 'We feel this civil suit has all the characteristics of SLAPP....The Rs 100 crore civil suit by [the Adani Group] seeks an injunction against raising such questions in regard to the project. The idea seems to be to scare us into submission. That is the objective of SLAPP'.<sup>104</sup> It is not clear from media reports whether this suit has been adjudicated.

The Adani Group also filed a criminal defamation case against *The Wire* in early 2018 concerning the same article about

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92 P. Philipose, *The Wire*, 'Backstory: watch out for that SLAPP' (22 Jul 2017), <https://thewire.in/rights/backstory-slapp-adani-epw-defamation>. See also, A. Dhillon, *The Sydney Morning Herald*, 'More than 100 scholars back journalist in Adani "crony capitalism" row' (Jul. 25, 2017), <https://www.smh.com.au/world/more-than-100-scholars-denounce-adani-crony-capitalism-furore-20170725-gxhxr.html>; *The Wire*, 'Adani Group "SLAPP" pushes EPW editor out of his job' (18 Jul 2017), <https://thewire.in/media/adani-group-slapps-epw-editor-job>.

93 Dhillon, 'More than 100 scholars back journalist in Adani "crony capitalism" row', above n 94.

94 *Caravan News*, 'Adanis lose defamation case against *The Wire*, senior journalist Paranjoy Guha Thakurta' (31 Dec 2017), <https://caravandaily.com/portal/adanis-lose-defamation-case-against-the-wire-senior-journalist-paranjoy-guha-thakurta/>.

95 See P. Guha Thakurta et al, *Economics and Political Weekly*, 'Modi government's Rs 500-crore bonanza to the Adani Group' (17 Jun 2017), <https://www.epw.in/journal/2017/24/web-exclusives/modi-governments-%25E2%2582%25B9500-crore-bonanza-adani-group-company.html>; republished in *The Wire* (19 Jun 2017), <https://thewire.in/business/modi-government-adani-group>.

96 *Id.*

97 *The Wire*, 'EPW Trustees Say They Were Denied Evidence on Adani Article; Not True, Says Ex-Editor' (Aug. 4, 2017), <https://thewire.in/media/epw-trustees-paranjoy-guha-thakurta-adani>.

98 H. Singh Bal, *The Caravan*, "'Truth is your Best defense": Paranjoy Guha Thakurta on his resignation from the EPW, the Sameeksha Trust and the Adani story' (Jul. 26, 2017), <http://www.caravanmagazine.in/vantage/paranjoy-guha-thakurta-resignation-epw-sameeksha-trust-adani-story>.

99 Dhillon, 'More than 100 scholars back journalist in Adani "crony capitalism" row', above n 94.

100 Special Civil Suit No. 58 of 2017, *In the Court of Principal Senior Civil Judge, Bhuj-Kachchh*, Order (Nov. 16, 2017), [https://services.ecourts.gov.in/ecourtindia/cases/display\\_pdf.php?filename=/orders/2017/20310000582017\\_1.pdf&caseno=SPCS/58/2017&cCode=2&appFlag=web&normal\\_v=1](https://services.ecourts.gov.in/ecourtindia/cases/display_pdf.php?filename=/orders/2017/20310000582017_1.pdf&caseno=SPCS/58/2017&cCode=2&appFlag=web&normal_v=1).

101 The judge ordered the publishers to remove one sentence and an adverb from the article regarding whether the 'high court was misled' and whether it was 'surprising' that Adani Power Limited allegedly did not present any evidence regarding whether it paid a customs duty. *Id.*, p 31.

102 *Caravan News*, 'Adanis lose defamation case against *The Wire*', above n 96.

103 *News Laundry*, 'Adani Group files Rs 100-crore defamation suit against *The Wire*' (5 Jan 2018), <https://www.newslandry.com/shorts/adani-group-100-crore-defamation-suit-the-wire>.

104 *Id.*

LNG terminals.<sup>105</sup> In that case, the Adani Group alleged that *The Wire* published the article ‘with the sole intention of harming the reputation’ of Adani Power Maharashtra Ltd.<sup>106</sup> In July 2018, after hearing arguments and testimony from several witnesses,<sup>107</sup> the court set aside the complaint, finding that the article was not defamatory.<sup>108</sup>

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105 *Scroll*, ‘Ahmedabad court issues summons to The Wire journalist, editors in Adani Group defamation case’ (11 Apr 2018), <https://scroll.in/latest/875336/ahmedabad-court-issues-summons-to-the-wire-journalist-editors-in-adani-group-defamation-case>; *The Times of India*, ‘Adani Group files defamation case against news portal’ (19 Jan 2018), <https://timesofindia.indiatimes.com/city/ahmedabad/adani-files-defamation-case-against-news-portal/articleshow/62561359.cms>.

106 *Scroll*, ‘Ahmedabad court issues summons to The Wire journalist, editors in Adani Group defamation case’, above n 107.

107 *Id.*

108 *Scroll*, ‘Gujarat: Court sets aside criminal defamation complaint against The Wire filed by Adani Group’ (28 Jul 2018), <https://scroll.in/latest/888291/gujarat-court-sets-aside-criminal-defamation-complaint-against-the-wire-filed-by-adani-group>; *Molitics*, ‘Gujarat court sets aside Adani’s criminal defamation complaint against *The Wire*’ (28 Jul 2018), <https://www.molitics.in/news/76718/Gujarat-Court-Sets-Aside-Adani’s-Criminal-Defamation-Complaint-Against-The-Wire>; *The Wire*, ‘Gujarat court sets aside Adani’s criminal defamation complaint against The Wire’ (27 Jul 2018), [https://twitter.com/thewire\\_in/status/1022859975893438464](https://twitter.com/thewire_in/status/1022859975893438464).

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