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Dated 31.08.2016

SHOW CAUSE NOTICE UNDER THE PROVISIONS OF THE CUSTOMS ACT, 1962

Subject: *Import of Coal from Indonesia by mis-declaring the value and the quality parameters thereof by M/s Knowledge Infrastructure Systems Pvt. Ltd., New Delhi - Reg.,*

1.0 Intelligence:

1.1 Intelligence developed by the Directorate of Revenue Intelligence (DRI), Mumbai Zonal Unit (MZU), Mumbai indicated that certain firms in India were importing Indonesian Coal by artificially inflating the value thereof; that though the Coal was being shipped directly from Indonesia to Indian Ports, the invoices were being routed through related/un-related overseas firms; that the Coal so imported was mainly being supplied to public sector thermal power generation companies; and that the remittances corresponding to the artificially inflated import price were being transferred from India to the intermediary firms based abroad. Intelligence also suggested that in spite of the fact that the Coal of Indonesian Origin qualified for duty exemption under ASEAN India Free Trade Area (AIFTA) Agreement, the importers were not claiming the said exemption.

1.2 The value of Coal depends on its specifications like Gross Calorific Value (GCV), Volatile Matter, Sulphur Content, Ash Content, Total Moisture (TM) & Inherent Moisture (IM) and in order to determine the actual specifications of the Coal and thereby its value, samples from the consignments of Coal were invariably being tested at the load port by independent testing agencies mutually agreed upon by the seller and the buyer. Based on the specifications of the Coal as determined by an independent testing agency at the load port, the Indian importers either directly or through their intermediary firms based overseas, remitted the actual price to the suppliers/ sellers of Indonesian Coal. The intelligence indicated that the Indian importers, through their intermediary firms had also managed to obtain invoices which showed artificially inflated value of the Coal based on manipulated test reports showing higher specifications of Coal and the same were submitted during Customs clearance of the consignments; and that the substantial difference between the actual purchase value of the Coal and the fraudulently inflated invoice values had resulted in siphoning of huge amounts out of India and shifting of profits to overseas intermediaries, located in low tax jurisdictions/ tax havens.

2.0 General specifications of Coal:

2.1. Coal is classified broadly into four types depending on its heat content and moisture viz. Anthracite, Bituminous Coal, sub-bituminous Coal and Lignite Coal. In commercial applications, Coal with higher heat content and lower moisture, other parameters remaining same, fetches a better price.

2.2 Analysis of Coal is an elaborate procedure and a number of tests are required to ascertain its specifications. Coal evaluation methods have been standardised over the years. One of the popular standards used by Coal trade and industry is the American Society for Testing and Materials (ASTM).

2.3 Certain parameters of Coal in ASTM standard generally used in international trade and relevant to this investigation are explained below:-

- (a) **Gross Calorific Value (GCV):** It is the amount of heat liberated during laboratory testing when Coal is combusted under standard conditions, with the temperature of starting materials and products being approximately 25 degree Celsius. GCV is the most commonly used measure for purchasing energy used for producing steam for driving turbines. GCV of a Coal sample is determined on 'Air Dried Basis ADB' or 'As Received Basis ARB'. ADB refers to the GCV of a sample after subjecting it to air-drying at room temperature. ARB refers to the GCV of a sample on receipt in the laboratory, without subjecting it to air-drying. GCV ARB and GCV ADB are also known as GAR and GAD, respectively. Unit of CV is expressed as KCal/Kg (kilocalories per kg) or MJ/Kg (Mega Joules per Kg.) or Btu/lb (British thermal unit per Pound).
- (b) **Total Moisture (TM):** It is the moisture in the Coal as sampled and removable under standard conditions. Therefore, TM is determined always on ARB basis as a percentage of the weight of the sample.
- (c) **Inherent Moisture (IM):** Moisture content inherent in the Coal sample after subjecting it to air-drying is the IM. Therefore, IM is determined always on ADB basis as a percentage of weight of the sample.
- (d) **Ash Content:** Ash content is non-combustible material remaining after moisture, volatile matter and carbon are removed or burnt away. It is an impurity that will not burn. Typical range is 5 to 40%. It reduces burning capacity and increases handling cost. It affects combustion efficiency and boiler efficiency. It is determined on ADB (mostly) or ARB basis as a percentage of weight of the sample.
- (e) **Total Sulphur:** Sulphur content is combustible portion of total sulphur released when Coal is burnt. Typical range is 0.5 to 0.8% normally. It is determined always on ADB (mostly) or ARB basis as a percentage of weight of the sample.

2.4. ASTM D-3180 and BS-1016 standards prescribe various conversion formulae (for reporting of the analysed values) facilitating conversion from GCV ADB to GCV ARB and vice-versa as under:-

$$\begin{aligned} \text{GCV ADB} &= \text{GCV ARB} * \{(100 - \text{IM})/(100 - \text{TM})\} \\ \text{GCV ARB} &= \text{GCV ADB} * \{(100 - \text{TM})/(100 - \text{IM})\} \end{aligned}$$

The following illustration explains the above formulae :
Assumed – GCV ARB 4500, TM- 30% and IM- 15%.

$$\text{GCV ADB} = 4500 * (100 - 15)/(100 - 30) = 5464.28$$

$$\text{GCV ARB} = 5464.28 * (100 - 30)/(100 - 15) = 4500$$

3.0 Concessional Rate of Customs Duty on Import of Coal of Indonesian Origin:

3.1 India is a signatory to the Agreement on Trade in Goods under the Framework on the Comprehensive Economic Co-operation between the Republic of India and the Association of South East Asian Nations (ASEAN) – also known as the ‘ASEAN – India Free Trade Area (AIFTA)’. The Agreement was operationalized by India by issue of Notification No. 153/2009-Cus. dated 31.12.2009, providing for concessional rate of duty, among others, to Steam (non-coking) or Thermal Coal classifiable under sub-heading 270119 and tariff item 27011920 of the First Schedule to the Customs Tariff Act, 1975. The said notification covering imports from Malaysia, Singapore & Thailand was subsequently amended vide Notification No. 103/2010-Cus. dated 01.10.2010 to include imports from the Republic of Indonesia. Eventually, the Notification No.153/2009-Cus. dated 31.12.2009 was superseded by Notification No. 46/2011- Cus. dated 01.06.2011.

3.2 Goods of Indonesian origin eligible for concession in India and exported from Indonesia, meeting the criteria laid down in the Rules of Origin were eligible for issuance of ‘**Form-AI**’ by Indonesian authorities, so as to enable the importers in India to claim concessional rate of Customs Duty.

3.3 Intelligence suggested that the importers of Coal were not claiming AIFTA benefit of concessional rate of Customs Duty, as the same would require submission of ‘**Form-AI**’ to the Customs, which in turn would have revealed the abnormal difference between the FOB value of the Coal declared by the exporter in ‘**Form-AI**’ and the value of the Coal declared by the Indian importers.

4.0 A number of acronyms and abbreviations have been used in this Show Cause Notice to avoid repetition of long forms. These acronyms and abbreviations are explained below:-

‘Table-1’

Sr. No.	Acronym / Abbreviation	Full form of the Acronym / Abbreviation
1	COSA	Certificate of Sampling and Analysis of Coal.
2	1 st COSA	Certificate of Sampling and Analysis of Coal issued by Independent Inspection Agency on the basis of which payments were made by the Knowledge Group to the Actual suppliers.
3	2 nd COSA	Certificate of Sampling and Analysis of Coal procured at the behest of the Knowledge Group for the purpose of being produced before the Customs.
4	ADB	Air Dried Basis
5	AIFTA	ASEAN India Free Trade Area
6	ARB	As Received Basis
7	ASTM	American Society for Testing and Materials
8	COO	Country of Origin
9	CV	Calorific Value
10	GCV	Gross Calorific Value
11	IM	Inherent Moisture
12	PT.	Prefix used for Limited Liability Companies incorporated in Indonesia
13	Pte	Suffix used for Limited Liability Companies incorporated in Singapore
14	TM	Total Moisture
15	TPS	Thermal Power Station
16	KISPL	M/s. Knowledge Infrastructure Systems Pvt. Ltd., New Delhi
17	KISSPL	M/s Knowledge International Strategy Systems Pte. Ltd., Singapore
18	STL	Springs Trader Ltd., Hong Kong (Previously also based in Singapore)
19	IMR	IMR Metallurgical Resources AG, Switzerland
20	MAHAGENCO	Maharashtra State Power Generation Co. Ltd.
21	RMTL	Rescom Mineral Trading Ltd., Hong Kong.
22	CVR 2007	Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

5.0 Investigation relating to Knowledge Infrastructure Systems Pvt. Ltd.:

5.1 The intelligence indicated that M/s Knowledge Infrastructure Systems Pvt. Ltd., New Delhi (here-in-after referred to as ‘KISPL’), a company incorporated in India under the Companies Act, 1956 with registered office at G-02, Salcon Aurum Complex, 4 Commercial Centre, Jasola, New Delhi-110025, was one of the importers procuring Steam Coal of Indonesian Origin through intermediary firms based in Singapore and Hong Kong.

5.2 Accordingly, documents pertaining to the import of Indonesian Coal by KISPL such as Sale and Purchase Contracts, Certificates of Sampling and Analysis, Invoices, Bills of Lading, Bills of Entry, Insurance Certificates, Certificates of Country of Origin in ‘Form-A1’ etc. were called for and taken up for scrutiny.

5.3 Scrutiny of the documents so received from KISPL indicated that:

- a. The imported Coal was of Indonesian Origin, however, in most imports made by KISPL, the AIFTA benefit of concessional rate of Customs Duty was not claimed;
- b. The Coal had been shipped from Indonesian Ports, whereas the invoices submitted by KISPL for import of the said shipments in many cases were issued by firms such as

M/s. Knowledge International Strategy Systems Pte. Ltd., Singapore and M/s. Springs Trader Ltd., Hong Kong;

- c. The Coal imported by KISPL was supplied, inter-alia, to Thermal Power Stations of Maharashtra State Power Generation Co. Ltd. (MAHAGENCO) located at Bhusawal and Chandrapur; and
- d. In some consignments where the invoices had been issued by firms based in Singapore and Hong Kong, the shipper in the Bills of Lading was mentioned as M/s IMR Metallurgical Resources AG, Switzerland.

5.4 Knowledge International Strategy Systems Pte. Ltd., Singapore appeared to be a company which was associated with KISPL. Accordingly, documents in this regard were called for from KISPL. Scrutiny of the relevant documents revealed information pertaining to KISPL and KISSPL as under -

- a) **KISPL** - As per Memorandum & Articles of Association, KISPL was incorporated as a Limited Company in India on 20.11.2003 under the Companies Act, 1956. One of the objects of the company was to trade in commodities, products and services and to establish trading platforms and exchanges in such commodities, products and services. Shri Rahul Bhandare and Smt. Namita Bhandare were the founders of the said Company. In terms of the Directors Report dated 30.06.2011, the management of the Board of the said Company was vested on Mr. Rahul Bhandare (Managing Director) and Mr. Vipin Mahajan (Director). The other employees of the Company included Mr. Arvind Ahuja (CFO), Mr. Jayesh Doshi (Head-Strategy) and Mr. Rajesh Mahajan (Business Head-Power Trading). Further, (i) Knowledge International Strategy Systems Pte. Ltd., Singapore, (ii) Fit Infra-trade development Co. Pvt. Ltd. and (iii) Knowledge Realty Systems Pvt. Ltd. were 100% subsidiary Companies of KISPL. According to the list of shareholders for FY 2011, 2012, 2013, 2014 and 2015 Mr. Rahul Bhandarc held 99.50% of the total shares of KISPL.
- b) **KISSPL** - As per Memorandum & Articles of Association, Knowledge International Strategy Systems Pte. Ltd., Singapore was incorporated on 06.09.2010 in the Republic of Singapore. The objects for which the Company was established, inter-alia, included the business of mining, mining activities, trading more specifically and not limited to trading in all types of Coal, Carbon, Power etc. The first Directors of the Company were Mr. Rahul Bhandare, Mr. Arvind Ahuja, Ms Justo Fortune Maluyo and Ms Lim Chiew Yen. Further, as per the Directors Report and audited financial statements of KISSPL dated 31.03.2015, KISPL was the ultimate holding Company for KISSPL.

5.4.1 From the above, it is apparent that KISSPL, Singapore is a wholly owned subsidiary of KISPL, New Delhi; that Mr. Rahul Bhandare held 99.5% shares in KISPL and is a Director in both KISPL and its overseas subsidiary KISSPL; and that KISPL & KISSPL were thereby related parties/ persons in terms of the provisions of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007.

5.4.2 KISPL being the holding Company of KISSPL, documents relating to purchases of Indonesian Coal made by KISSPL were persistently requisitioned from KISPL, vide letters/Summons dated 09.11.2015, 23.11.2015, 22.12.2015 & 24.06.2016 issued under the provisions of section 108 of the Customs Act, 1962. However, no documents were submitted by either by KISPL or KISSPL in this regard.

5.5 Springs Trader Ltd., Hong Kong was the other intermediary firm which had raised several invoices on KISPL in connection with the import of Indonesian Coal. Invoices pertaining to certain shipments also indicated that in the initial stages the said firm was located in Singapore. The invoices raised by Springs Trader Ltd., Hong Kong indicated that the remittances against the import of Coal were to be sent to its account in HSBC Hong Kong. Accordingly, enquiries were made with HSBC, Mumbai to obtain details and documents relating to the transactions made by Springs Trader Ltd., Hong Kong. However, no relevant documents or information was received from HSBC, Mumbai in this regard.

5.6 Scrutiny of the documents pertaining to KISPL's supply of Coal to Public Sector Undertakings, inter-alia, indicated that KISPL had bid for supply of Coal to MAHAGENCO and had subsequently entered in to Contract Agreements for the same. Some of the relevant details of the Contract Agreements between KISPL and MAHAGENCO for supply of Coal to TPS at Bhusaval and Chandrapur are as under-

'Table-2'

S. No.	Bid Specification No.	Contract Agreement date / Quantity	TPS to be supplied	Price of the Coal to be supplied	Port of discharge	Duration of delivery at TPS	GCV Kcal/ Kg (ARB)	Total Moisture (ARB)
1	MAHAGENCO / CE/FMC/ IMP.COAL/2013-14/T-01	30.08.2013/ 11,48,000 MT	Bhusaval TPS	USD 70.20/ MT CIF	Haji Bunder/ Mumbai	September 2013 to June 2014	4400 - 4800 (off spec. below 4000)	Max 28% (off spec. above 30%)
2	MAHAGENCO /CE/FMC/IMP. COAL/2013-14/T-01	25.10.2013/ 9,56,500 MT	Chandrapur TPS	USD 65.55/ MT CIF	Kakinada	October 2013 to June 2014		

5.6.1 As per the aforesaid Contract Agreements entered between KISPL and MAHAGENCO, the Coal having GCV (ARB) below 4000 Kcal/Kg and TM (ARB) above 30% was categorised as being 'off-specification (Off-spec)'. Further, the Contract had also stated that in case of receipt of off-spec Coal and consumption of off-spec Coal at TPS, only inland transportation cost from port of entry to destination TPS, was to be reimbursed with the cost of Coal as One Rupee per MT. Further, liabilities, such as demurrage charges, supervision charges, liquidated damages etc. for supply of off-spec Coal was to be recovered from the supplier.

5.7 The documents submitted by KISPL appear to indicate, that the import of Coal by KISPL from firms such as Springs Trader Ltd., Hong Kong, (STL) had been made to fulfil KISPL's obligation of supplying Coal to MAHAGENCO.

5.8 In the case of consignments which were shipped by M/s IMR Metallurgical Resources AG, Switzerland, enquiries were caused with the firm's office in New Delhi and consequently vide letter dated 30.11.2015, requisite documents pertaining to few consignments of Coal imported by KISPL were received from IMR, Switzerland.

5.8.1 The documents, received from IMR, Switzerland however indicated that in certain cases, where the Coal appeared to have been supplied to KISPL by intermediary firms such as Springs Trader Ltd., it was actually KISSPL (the Singapore based wholly owned subsidiary of KISPL) who had initially procured the Coal from IMR, Switzerland. In other words after KISSPL had procured the said consignments of Coal from IMR, the very same consignments had been invoiced to KISPL by intermediary firms such as Springs Trader Ltd (STL). Further, the price at which the Coal had been invoiced to KISPL, appeared to be substantially higher than the price at which the consignments had been procured by KISSPL.

5.8.2 It further appears that the payments for the Coal has been made to the supplier (IMR, Switzerland) on the basis of the 1st COSA, however, the said COSA has not been submitted by KISPL at the time of import of the Coal and instead another set of COSA (i.e. 2nd COSA) certifying a different set of parameters and implying a higher quality for the very same consignment of Coal, were presented before the Indian Customs.

5.8.3 It was also observed that in all such cases, where the 1st COSA appeared to have been suppressed, the consignments of Coal had invariably been supplied to Public Sector Power generating companies, such as MAHAGENCO. In fact, in the case of such consignments, it appears that, the parameters of Coal in the '2nd COSA' and the range of parameters depicted in the Contracts submitted to the Customs, were as per the range of specifications prescribed in MAHAGENCO's bid document.

6.0 Statements recorded during the course of the investigation:

6.1 The statements of Shri Rahul Bhandare, Chairman of KISPL & Director of KISSPL and Shri Vipin Mahajan, Director of KISPL were recorded on 01.08.2016 and 02.08.2016, respectively under the provisions of section 108 of the Customs Act, 1962.

6.2 In his statement dated 01.08.2016, Shri Rahul Bhandare, stated, inter alia, that Knowledge Infrastructure Systems Pvt. Ltd. was promoted by him in the year 2003 which mainly dealt with import of Coal; that in and around 2008, Public Sector Trading Corporations such as MMTC floated tenders for supply of imported Coal by way of International competitive bidding and Indian companies could not bid as suppliers were to be paid in foreign exchange; that Indian Companies by law could not receive forex from other Indian corporates; that due the said reasons, Knowledge International Strategy Systems Pte. Ltd., (KISSPL) was established in Singapore in the year 2010 as a 100% subsidiary of Knowledge Infrastructure Systems Pvt. Ltd. (KISPL); that since the beginning, he was a Director in KISSPL; that the other Directors in KISSPL were Mr. Arvind Ahuja, Mr. Ravi Dabral (Administrative Manager) and Mr. Vincent Goh; that Mr. Vincent Goh was in-charge

of operations in KISSPL and had recently left the firm; that as regards the team in India (KISPL), the same was being headed by Mr. Vipin Mahajan, who was a Director and CEO of the Company; that along with Mr. Vipin Mahajan he also was a Director in KISPL and Mr. Vipin Mahajan was assisted by a team of around 35-40 people; that due to multiple major surgeries and associated illness since late 2008 onwards, he did not involve himself with day-to-day operations of either KISSPL or KISPL; that he was aware of IMR Metallurgical Resources AG, Switzerland and the fact that the Company dealt in Coal; that KISPL may have also imported some consignments of Coal from the said firm; that Springs Trader Ltd., Hong Kong (STL), was being run by Mr. Wayne Ledwidge, who was an expert in Coal and had worked in the past with such companies as Rio Tinto, Vale etc.; that he had met Mr. Ledwidge when Mr. Ledwidge was working for Rio Tinto and they were trying to sell Coal to India in 1997; that KISPL had not claimed AIFTA (Asean- India Free Trade Area) import duty exemption benefit on certain consignments as it may have been more efficient to bear the higher Customs Duty in India than to waste much valued energy and time in Indonesia; that another reason for not claiming the said exemption could have been non-provision of the required documents by the suppliers; that KISPL did not purchase the Coal directly from IMR as possibly other companies (including KISSPL, STL etc.) having contracts of IMR Coal, had offered rates more competitive than IMR; that the clause in agreements pertaining to 'establishment of LC (Letter of Credit) in the name of third party' meant that when a Seller requested a negotiable instrument be made in favour of another party such request would be acceded to by the buyer and the buyer would then draw the negotiable instrument in favour of such third party; that if required by the seller (KISSPL), KISPL would have established an LC in the name of a third party either for the full or part amount payable for the shipment; that regardless of the quality contracted, payment was usually made on the basis of the load port COSA done by an Independent Agency and only invoices made on the basis of load port COSA were accepted; that KISPL and KISSPL ran independent operations and KISPL would not be privy to the conditions of the contract between KISSPL and IMR; that since generally AI Forms were not easy to get from suppliers the same would not have been a requirement in KISPL's inquiry to buy Coal and; that even in case AI Forms had been provided by IMR to KISSPL, the same may have not been forwarded by KISSPL to KISPL as it was not a requirement in the Contract between KISSPL and KISPL.

6.3 In his statement dated 02.08.2016, Shri Vipin Mahajan, stated, inter-alia, that he was appointed as Director in KISPL in September 2006; that the said company had been promoted by Shri Rahul Bhandare who was the Chairman and Director of KISPL and also held around 99% shares in KISPL; that KISPL basically dealt in Coal supply and Power Trading and had a present strength of around 80 people; that Shri Arvind Ahuja (Head-Finance), Shri Rajesh Mahajan (Head-Power Trading), Ankur Poddar (Head-Coal Business) & Shri Parveen Kumar (Head-HR & Admn.) reported to him; that Knowledge International Strategy Systems Pte. Ltd., (KISSPL) was incorporated in Singapore in the year 2010 as a wholly owned subsidiary of KISPL; that during the stage of loading, Coal samples were collected and subsequently the specifications of the Coal were tested; that based on the Certificates of Sampling and Analysis

issued by Independent Inspection Agencies, the Invoices were issued by the seller and payment was made to the sellers; that he was aware about IMR Metallurgical Resources AG, Switzerland and its promoter, Mr. Anirudh Mishra; that IMR dealt in multi commodities mainly related to steel industry including steam Coal and KISPL had at least on one occasion purchased part shipment of Coal from the said Company; that KISPL may not have purchased the Coal directly from IMR, as IMR could have sold their Coal to the other firms who would have position (right to sell) on that Coal as well as the right to sell the Coal to KISPL; that it could also be possible that IMR may not have offered credit or that KISPL may not have approached IMR for the Coal; that it was a standard practice in the Industry and 'positions' were taken by International traders to gain from time arbitrage and the volatility in the Coal market; that KISPL being an Indian Company could not do merchant trade and had to necessarily bring the Coal to India for payment of USD out of India; that KISPL only bought Coal when it had a confirmed Customer order and did not create open positions for selling Coal; that the firm Springs Trader Ltd., (STL) was a commodity trading Company based in Hong Kong and was being run by Mr. Wayne Ledwidge, who was an industry veteran in commodities; that he had met Mr. Wayne Ledwidge in one of the Coal conferences; that Mr. Rahul Bhandare and Mr. Ledwidge were old acquaintances and Mr Rahul Bhandare had introduced Mr. Ledwidge to him and; that in the case of third party LC requests from sellers, if KISPL accepted the sellers' request then funds would have flowed out of the accounts of KISPL's bank.

7.0 Analysis of the evidence collated during the course of the investigation:

7.1 The scrutiny of data/ evidence collated in the course of investigation so far appears to indicate that in the case of consignments of Coal shipped vide the following six vessels, the Coal had been procured by KISPL's subsidiary – KISSPL, at prices and grades substantially lower than what had been declared to Indian Customs by KISPL at the time of import:-

'Table-3'

Sr. No.	Name of Vessel (M.V.)	Bill of Lading No.	Bill of Lading date (dd/mm/yy)	Port/ Custom House	Total Quantity (in MT)	Supplier as per Import invoice	Bill of Entry No.	Bill of Entry date
1	CAPITAL	BPRIMR 09 01 & 09 02/13	06-12-13	Kakinada	54,150.00	STL	4073483	13-12-13
2	MAPLE OPAL	BPRIMR 10 01 & 02	06-01-14	Mumbai	56,397.00	STL	11	17-01-14
3	MARIA	BJM INDIA 04-14A & 14B	05-05-14	Mumbai	58,550.00	STL	5533650	19-05-14
4	OWL	PCNIMR 01&02 1/16	19-04-14	Mumbai	57,190.00	STL	5365703	01-05-14
5	RHODOS	PCNIMR 01/18 A & B	22-05-14	Kakinada	55,200.00	STL	5656757	30-05-14
6	WORLD	BPRIMR 05 01 13	30-10-13	Mumbai	55,000.00	Rescom Mineral Trading Ltd.	3782085	12-11-13

7.2 For the sake of clarity and convenience, the analysis of the documents pertaining to one of the above mentioned consignments of Coal shipped per vessel 'M.V. Maria', and imported vide Bill of Entry No. 5533650 dated 19.05.2014, through Mumbai Port, is discussed in the following paras:-

I. Declared value (CIF i.e. Cost, Freight & Insurance):

- (i) On arrival of the said vessel at Mumbai Port, KISPL filed Bill of Entry containing, inter-alia, the following details:

'Table-4'

Sr. No.	Bill of Entry No. & date	Quantity (MT)	Declared C&F Value (US\$)	Exchange rate (Rs. / US\$)	Insurance (INR)	Declared CIF value (INR)
1	5533650/ 19.05.2014	58550	3132425	60.10	132084	188390826.5

- (ii) The above consignment was invoiced to KISPL by Springs Trader Ltd., Hong Kong (STL) vide Commercial Invoice No. 201405-006 dated 16.05.14 issued in terms of Contract No. KISPL/STL/CFR/14-15/07 dated 10.04.14. As per the said Invoice, the price of the Steam Coal was USD 3132425 @ USD 53.50/MT CFR Mumbai Port, Haji Bunder.
- (iii) In terms of Contract No. KISPL/STL/CFR/14-15/07 dated 10.04.14 made between STL and KISPL, 55,000 MT +/- 10% of Indonesian steam Coal, having inter-alia, TM (ARB) 26% and GCV (ARB) 4600 Kcal/Kg was to be supplied to KISPL at a price of **USD 53.50/MT CFR** any port in West Coast of India. The Contract further specified that if the actual GCV (ARB) at the loading port was below 4600 Kcal/Kg as stated in the COSA issued by the Inspection Agency at the Load port, then the CFR price would be decreased as under –

$$\text{Adjusted CFR price (USD/MT)} = \text{Base CFR price} \times \frac{\text{Actual GCV(ARB) at Load Port}}{4600 \text{ Kcal/Kg}}$$

Further, it was also specified that no premium was payable above GCV (ARB) of 4600 Kcal/Kg.

- (iv) The Certificate of Sampling and Analysis dated 14.05.14 issued by Pt. Proteknika Jasapratama, Indonesia, inter-alia, indicated the GCV (ARB) as 4663 Kcal/Kg and the TM (ARB) as 26.70%.
- (v) Since the GCV (ARB) of the Coal had been reported as being above 4600 Kcal/Kg, and no premium was payable for the Coal with GCV (ARB) in excess of 4600 Kcal/Kg in

terms of the above Contract dated 10.04.14, the Coal was invoiced to KISPL at the contracted price of USD **53.50**/MT CFR vide the aforesaid invoice dated 16.05.14.

- (vi) As per Specific Marine Policy dated 16.05.14 issued by Tata AIG General Insurance, KISPL had insured the said Coal from Taboneo, Indonesia to MAHAGENCO's Bhusawal TPS via Mumbai (Haji Bunder) Port for a total premium of INR 1,32,084.
- (vii) The Coal under the subject Bill of Entry was assessed to duty @ 2% BCD + 2% CVD plus Cess, as applicable and AIFTA benefit under Notification No. 46/2011- Cus dated 01.06.2011 has not been claimed by KISPL.

II. Actual CIF Value:

- (i) The said shipment of 58550 MT of Coal was shipped per vessel 'M.V. Maria' under Bills of Lading No. BJM-INDIA 04-14A & 14B dated 05.05.14. As per the said BLs, the 'Shipper' for the said consignment was **IMR Metallurgical Resources AG, Switzerland** and the 'parties to be notified' were KISPL, New Delhi and STL.
- (ii) Investigation revealed that the said consignment of Coal shipped per 'M.V. Maria', and invoiced by STL to KISPL, had actually been sold by IMR to KISSPL vide Commercial Invoice No. IMR-2014-15/3902 dated 13.05.2014 for a consideration of USD 2649387.50 CIF Mumbai Port (Haji Bunder) @ USD 45.25 PMT. The Contract No. in the said invoice had been mentioned as IMR/KISSPL/CFR/09042014 dated 09.04.2014 and the LC No. was mentioned as 957012078611-C dated 24.04.14.
- (iii) Perusal of Contract No. IMR/KISSPL/CFR/09042014 dated 09.04.2014 indicates that IMR Metallurgical Resources AG, Switzerland (seller) and KISSPL, Singapore (Buyer) had entered into the said Contract for sale and purchase of 55,000 MT +/- 10% of Indonesian Steam Coal at **USD 45.25 PMT CFR Haji Bunder Anchorage Mumbai Port, India basis 3800 GAR Kcal/Kg**. The Coal to be supplied was to have specifications as under –

'Table-5'

Sr. No.	Specifications	Range	Rejection
1	Total Moisture (ARB)	39%	Above 41%
2	Inherent Moisture (ADB)	12-15%	-
3	Ash (ADB)	6%	Above 8%
4	Sulphur (ADB)	0.50%	Above 0.70%
5	Volatile Matter (ADB)	39-43%	-
6	Fixed carbon (ADB)	By difference	-
7	GCV (ARB)	3800 Kcal/Kg	Below 3600 Kcal/Kg
8	HGI	60 Approx.	-
9	Size	0-50MM 90%	-

As per clause 5 of the said contract, if the actual GCV (ARB) at the loading port was above or below 3800 Kcal/Kg as stated in the certificate of sampling and analysis issued

by the Inspection Agency at the Load port, then the CFR price would be increased or decreased as under –

$$\text{Adjusted CFR price (USD/MT)} = \text{Base CFR price} \times \frac{\text{Actual GCV(ARB) at Load Port}}{3800 \text{ Kcal/Kg}}$$

Further, it was also specified that no premium was payable for GCV (ARB) in excess of 4000 Kcal/Kg.

As per clause 7 of the said Contract, the seller (IMR) would appoint and pay for the Independent Inspection Agency (IIA) at the loading port to carry out sampling and analysis. The IIA would issue a COSA, the result of which would be final and binding on both parties for payment settlement under the said contract. The Buyer also had the option to appoint another IIA for conducting quality determination to verify the report prepared by the seller's IIA. One Umpire sample would be retained by the IIA until 50 calendar days from the date of the BL. In the event that either party wished to challenge the COSA, the Umpire sample retained by the IIA would be sent to an Independent International Inspection Agency for analysis. In the event the result of the Umpire sample were within the tolerance level recognised under the relevant ASTM standards for 'reproducibility' on dry basis, such difference shall be disregarded for all purposes and the IIA COSA would be final, conclusive and binding on the parties. However, if the difference was outside the 'reproducibility', then the umpire COSA shall be deemed to be the final COSA for the purposes of the Cargo and shall be final, conclusive and binding on the parties.

As per clause 9 of the said Contract, the buyer (KISSPL) or its nominee was to open a workable, irrevocable LC for 100% of the value. Further, it was also specified that the seller would provide copies of Certificate of Origin, in 'Form-AI' issued by the relevant Indonesian Govt. Authority. Scanned copy of the COO was to be provided by the seller to the Buyer within 5 working days after the sailing of the vessel and the Original was to be sent by Courier to buyer at the address to be provided by the Buyer in due course of time.

As per clause 14 of the said contract, the seller (IMR) at their own expense would arrange for suitable insurance, covering at least **110% of the value** of the cargo from Loading Port up to discharge port.

Amendment No. 1 dated 23.04.14 to the above contract changed the unit price of the Coal to USD **45.25 PMT CIF** Haji Bunder Anchorage Mumbai basis 3800 GAR Kcal/kg.

- (iv) The Certificate of Sampling and Analysis dated 13.05.14 issued by Pt. SGS Indonesia for the said consignment inter-alia reported the GCV (ARB) as **3758 Kcal/Kg** and the Total Moisture (ARB) as **39.19%**.

- (v) Since the Invoice dated 13.05.14 issued by IMR had priced the Coal @ USD 45.25 CIF PMT basis 3800 Kcal/kg and the 1stCOSA dated 13.05.14 had reported the GCV (ARB) as 3758 Kcal/Kg i.e. below 3800 kcal/kg, the CIF price of the Coal had to be decreased to USD 44.75 CIF PMT in terms of the said contract dated 09.04.14. Accordingly, Debit Note No. DN-17/IMR/MV Maria dated 13.06.14 was issued by KISSPL to IMR for the differential amount of USD 29275 i.e. the difference between the total amount due (USD 2620112.50 @ 44.75 PMT) and the amount already paid through LC (USD 2649387.50 @ 45.25 PMT).
- (vi) It was also evident that Indonesian Governmental Authority had issued the AIFTA – COO, ‘Form-AI’ on 07.05.14 for the said consignment of 58550 MT of Coal shipped per ‘M.V. Maria’. The said ‘Form-AI’ had specified the consignees as STL and KISSPL and the FOB value of the Coal had been mentioned as USD 1873600 (i.e. USD 32 PMT).
- (vii) From the Specific Marine Policy dated 16.05.14 submitted by KISSPL at the time of import, it appears that the consignment of Coal was meant for supply to MAHAGENCO TPS at Bhusaval, Maharashtra. Enquiries had revealed that in terms of Bid Specification No. MAHAGENCO/CE/FMC/IMP.COAL/2013-14/T-01, MAHAGENCO had accepted the bid made by KISSPL. Subsequently, MAHAGENCO and KISSPL had entered into Contract Agreement dated 30.08.13 for supply of 11,48,000 MT of Non-Coking (Steam) Coal of foreign origin to Bhusaval TPS. As per ‘Schedule-B’ of the said Contract Agreement, the **CIF price of the Coal was USD 70.20/MT and the port of discharge was Haji Bunder, Mumbai.** As per ‘Schedule-C’ of the said Contract Agreement, the Coal was to be delivered at Bhusaval TPS between September 2013 to June 2014. As per clause 2.0, Section-III, ‘Schedule-D’ of the said Contract Agreement, the General specification of the Coal and the parameters of price basis are as under:

‘Table-6’

Parameters	Range	Off-spec level	Parameters for price basis
GCV Kcal/kg (ARB)	4400 to 4800	Below 4000 kcal/kg	4600 kcal/kg
Total Sulphur (ADB) % WT	Up to 0.9%	Above 0.9%	0.6%
Total Moisture (ARB) % WT	Max 28%	Above 30%	26%
Ash (ADB) % WT	Up to 12%	-	12%
Volatile Matter (ADB) % WT	25-35	Above 45%	
Size	0-50 mm	-	25% (< 2.36mm)

As per clause 3.0, Section-III, ‘Schedule-D’ of the said Contract Agreement, the landed price for the Coal having GCV below 4600 kcal/kg up to 4000 kcal/kg was to be adjusted on a prorata basis and the GCV (ARB) above 4600 kcal/kg was to be ignored.

As per clause 3 of ‘Schedule-A’ of the said Contract Agreement, in case of receipt of off-spec Coal and consumption of off-spec Coal at TPS, only inland transportation cost from

port of entry to destination TPS, was to be reimbursed and liabilities, such as demurrage charges, supervision charges, liquidated damages; etc. for supply of the off-spec Coal was to be recovered from the supplier.

(viii) As such it appears that –

- a. Consequent to Agreement dated 30.08.13 with MAHAGENCO, KISPL was required to supply Coal to TPS Bhusaval via **Haji Bunder, Mumbai Port**;
- b. On 09.04.14, KISSPL the wholly owned subsidiary of KISPL, entered into Coal sale and Purchase Contract with IMR for supply of Coal @ USD **45.25** CFR **Haji Bunder Anchorage, Mumbai Port**, basis 3800 GAR Kcal/kg (Subsequently the terms of the Contract were changed from CFR to CIF);
- c. As per the said Contract dated 09.04.14 the Coal, inter alia, was to have GCV (ARB) between 3600 – 3800 Kcal/kg and TM of 39-41%. However, in terms of MAHAGENCO's bid specifications, Coal of GCV (ARB) below 4000 Kcal/kg and TM (ARB) above 30% was 'Off-Spec'. Accordingly, on 10.04.2014, KISPL prepared an Agreement with Springs Trader Ltd., (A firm reportedly being run by Mr. Wayne Ledwidge, an acquaintance of Mr. Rahul Bhandare (Chairman / Director - KISPL & KISSPL) for Sale and Purchase of Coal having GCV (ARB) of 4600 Kcal/kg and TM (ARB) of 26% @ **CFR** price of **53.50** USD PMT. It appears that the specifications of Coal stated in the agreement between STL and KISPL was framed keeping in mind the specifications in MAHAGENCO's bid document;
- d. In terms of the Contract dated 09.04.14, LC No. 957012078611-C was opened on 24.04.14 in favour of IMR;
- e. Subsequently, 58550 MT of Coal was shipped per 'M.V. Maria' vide two BLs dated 05.05.14 and the 'Form-AI' issued by Indonesian Authorities indicated the FOB value of the Coal as USD 32 PMT. Further, the 'Form-AI' specified Pt. Senamas Energindo Mineral, Indonesia on behalf of IMR, Switzerland as the exporter and the consignees were mentioned as STL and KISPL;
- f. Invoice dated 13.05.14 raised by IMR had invoiced the Coal to KISSPL at the contracted rate of USD 45.25 CIF PMT. Since the 1st COSA dated 13.05.14 issued by the IIA reported the GCV (ARB) of the Coal as 3758 Kcal/kg and the TM (ARB) as 39.19%, KISSPL raised Debit Note dated 13.06.14 for the difference between the amount already paid by LC and the price adjusted on the basis of the parameters in 1st COSA dated 13.05.14;

g. From the parameters reported in the 1st COSA dated 13.05.14, it appears that in terms of MAHAGENCO's specifications, the Coal procured from IMR was 'off-spec'. Accordingly, another COSA, i.e. the 2nd COSA appears to have been managed from Pt. Proteknika Jasapratama, Indonesia on 14.05.14, wherein the GCV (ARB) was shown as 4663 Kcal/kg and the TM was shown as 26.70%, which were within acceptable range as far as the MAHAGENCO's Bid specifications, to whom the Coal was meant, were concerned. Further, on the basis of the 2nd COSA, an invoice was raised by STL on KISPL showing the CFR value of the Coal as USD 3132425 (53.50 PMT);

Image showing Parameters of Coal in the 1st COSA issued by
Pt. SGS Indonesia

Certificate N^o: 14051502B7

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CERTIFICATE OF SAMPLING AND ANALYSIS

ISSUED AT PORT OF LOADING

Client Reference	JK1420 0386/150714 01
Weight	38,550 MT
Vessel	MV MARIA
Commodity description	STEAM COAL OF INDOONESIAN ORIGIN IN BULK
Country of origin	LABONGO, INDONESIA
Port of destination	MUMBAI PORT (HAJI BUNDER), INDIA
Contract loading	27 APRIL 2014
Contract unloading	05 MAY 2014
Issue date	05 MAY 2014
Valid to expiry	27 APRIL 2014 UP TO 05 MAY 2014

SGS was EMPLOYED that in accordance with instructions received from our Principal, to observe the draft of sampling and sample preparation, performed by the Third Party and the analysis on the Buyer's behalf provided by Third Party, we hereby report the following

REMARKS: MANUAL SAMPLING FROM STATIC SURFACE OF FULLY LOADED or PARTIALLY LOADED Vessel / Barge - A THIRD PARTY OBSERVED BY SGS, performed based on ASTM D2234 Condition II-D-2 / D6883 Fixed mass increments were collected at random from a pre-defined sampling grid, from the freshly exposed material.

The sample(s) to which the findings recorded herein (the "FINDINGS") relate, was (were) drawn and / or provided by the Client or a third party acting on Client's directions. The Findings constitute no warranty of the sample's representativity of all the goods and strictly relate to the sample(s). The Company accepts no liability with regard to the origin or source from which the sample(s) is / are said to be extracted.

The composite sample was analyzed in accordance with ASTM standard methods, except as noted

Analysis on the following weighted average as per Laboratory Report No. SL 14-09152 dated 13 May 2014
2000 g (as received) (per ASTM Standards)

Moisture	(as received basis)	39.19	Pct
Proximate Moisture	(air dried basis)	16.46	Pct
Proximate Ash	(air dried basis)	6.00	Pct
Proximate Sulfur	(air dried basis)	40.36	Pct
Proximate Chlorine	(air dried basis)	0.09	Pct
Proximate Nitrogen		37.18	By Difference
Higher Heating Value	(as received basis)	3758	kcal/kg
Net Cal		53	

Image showing Parameters of Coal depicted in the 2ndCOSA issued by Pt.
Proteknika Jasapratama, Indonesia

Ref No: PJIGC 057/0014
Date: 14th May 2014

CERTIFICATE OF SAMPLING AND ANALYSIS

COMMODITY STEAM COAL OF INDONESIAN ORIGIN IN BULK
NAME OF VESSEL MV MARIA
QUANTITY 53.50 MT
PORT OF LOADING TABONEO, INDONESIA
LOADING DATES 01 APRIL 27th 2014 UP TO MAY 5th 2014

Gross sample drawn by us during loading at the load port, samples were prepared and analysed in accordance with ASTM Standard Methods and showed the following results:

QUALITY PARAMETER	BASIS	TESTED RESULTS
TOTAL MOISTURE	AS RECEIVED BASIS (ARB)	26.70 PCT
INHERENT MOISTURE	AIR DRIED BASIS (ADB)	10.80 PCT
ASH CONTENT	AIR DRIED BASIS (ADB)	4.20 PCT
VOLATILE MATTER	AIR DRIED BASIS (ADB)	41.40 PCT
FIXED CARBON	AIR DRIED BASIS (ADB)	43.60 PCT
TOTAL SULPHUR	AIR DRIED BASIS (ADB)	0.48 PCT
GROSS CALORIFIC VALUE	AIR DRIED BASIS (ADB)	5675 Kcal/Kg
GROSS CALORIFIC VALUE	AS RECEIVED BASIS (ARB)	4663 Kcal/kg
BRINDABILITY OF COAL ACCORDING TO HARD GROVE INDEX (HGI)		48
ASH FUSION TEMPERATURE AT 10°C Initial Deformation Temperature		1238 °C
SIZE OF COAL	0-50 MM	100 PCT

Issued without prejudice.

PT. PROTEKNIKA JASAPRATAMA



- h. Comparison of the Parameters in the MAHAGENCO's Bid Specification, the 1stCOSA, the 2ndCOSA and the invoices issued on the basis of the said COSAs is shown as under:

'Table-7'

Parameter (Units)	Parameters in MAHAGENCO's bid specification	Parameters in IMR-KISSPL's contract	Parameters in 1 st COSA dated 13.05.14	IMR's Invoice value (basis 1 st COSA)	Parameters in STL-KISPL's contract	Parameters in 2 nd COSA dated 14.05.14	STL's Invoice value (basis 2 nd COSA)
GCV (ARB) Kcal/Kg	4400 - 4800	3600 - 3800	3758	--	4200 - 4600	4663	--
GCV Rejection Kcal/Kg	Below 4000	Below 3600	--	--	Below 4200	--	--
TM (ARB) %	Max 28	39-41	39.19	--	26	26.70	--
TM Rejection %	Above 30	Above 41	--	--	--	--	--
Price PMT (USD)	70.20 CIF Haji Bunder, Mumbai.	45.25 CIF Haji Bunder, Mumbai	--	2620112.50 (44.75/MT-CIF) Haji Bunder, Mumbai	53.50 CFR any port on West Coast of India	--	3132425 (53.50/MT CFR) Haji Bunder, Mumbai

- i. The Coal had been contracted from IMR on a CIF basis and in terms of the contract, IMR had insured the Coal from the load port to the discharge port to the extent of 110% of the value. The invoice raised by IMR for the sale of the Coal was also on a CIF basis. However, as IMR's Insurance documents would have indicated the actual price of the Coal, KISPL suppressed the same from the knowledge of Indian Customs. Accordingly, the Contract between STL and KISPL was prepared on CFR basis and the Coal was re-insured by KISPL for an amount of INR 132084;
- j. The BCD in case of import of Coal was 2%, and in case the importer availed AIFTA duty exemption benefit, the BCD at the relevant time was charged at nil rate. As such, had KISPL availed said duty exemption benefit under AIFTA, they would not have been required to pay BCD of Rs. 40,77,518/- for the said consignment of Coal. In terms of clause 9 of the IMR-KISSPL Contract, the seller (IMR) was to provide copy of the COO –'Form-AI', to the buyer (KISSPL). Accordingly, had KISPL availed the said Duty exemption benefit, it was obvious that the same would have resulted in levy of a substantially lower amount of duty. However, in spite of the above arrangement, KISPL appears to have chosen not to claim the said duty exemption benefit under AIFTA as it would require submission of 'Form-AI' to the Customs authorities at the time of import, which in turn would have revealed the actual FOB value of the Coal and the huge difference between the FOB and the declared CIF value;
- k. Subsequent to the import, the substandard Coal was passed onto MAHAGENCO as a superior quality Coal meeting their bid specifications and amounts corresponding to the artificially inflated import invoices, which included the abnormal profits made by KISPL by way of the fraudulent transaction, were shifted to Hong Kong/ Singapore as import remittances; and
- l. From the above, it appears that KISPL, at the time of the import, declared the Coal having GCV (ARB) of 3758 Kcal/Kg and TM (ARB) of 39.19%, procured by KISSPL for USD 2620112.50 CIF, as the Coal having GCV (ARB) of 4663 Kcal/Kg and TM (ARB) of 26.70%, costing USD 3132425 CFR. Thus, it appears that KISPL knowingly and wilfully mis-declared the quality parameters and the value of the Coal in violation of the provisions of the Customs Act, 1962 and other laws.

III. Difference in Values:

The difference in KISSPL's CIF value and the CIF value declared by KISPL in the import documents for the said consignment is worked out as under:

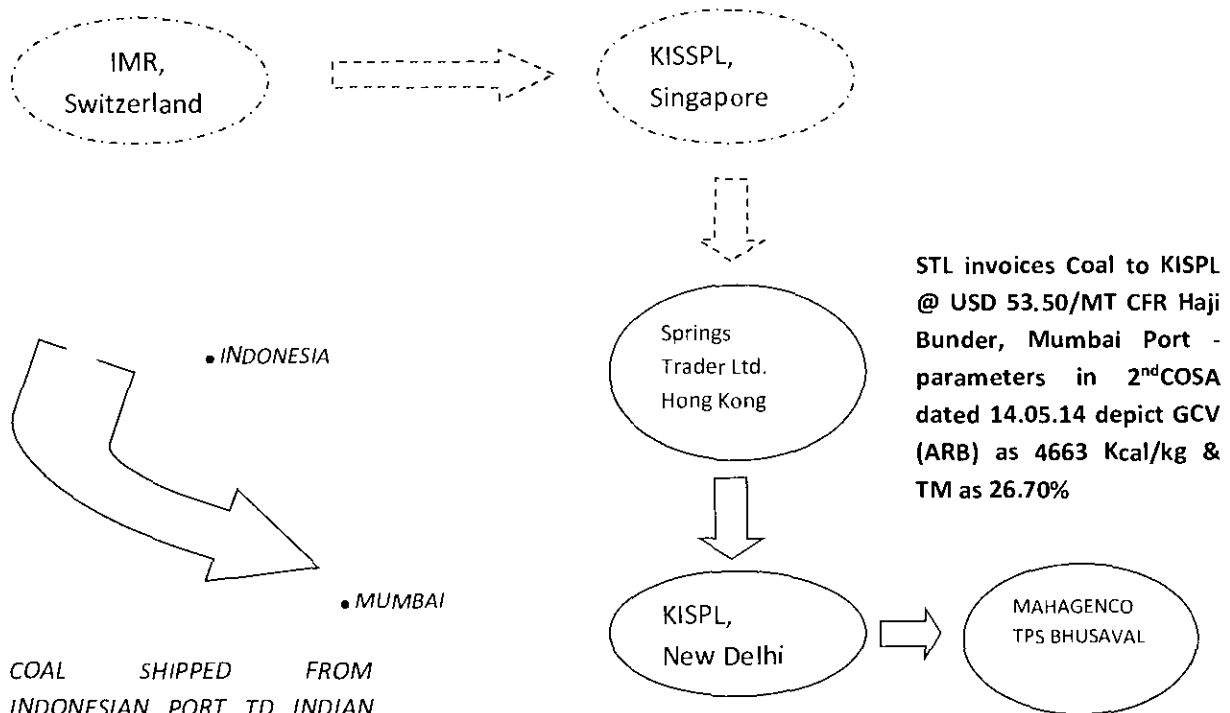
‘Table-8’

Declared value (CFR) (Exchange rate Rs 60.10/ USD) by KISPL		Declared insurance by KISPL	Declared CIF value (Rs.) by KISPL	CIF value for KISSPL		Difference between declared CIF value and KISSPL’s CIF value (Rs.)	Percentage increase over KISSPL’s CIF
US \$	Rs.	Rs.	Rs.	US \$	Rs.	Rs.	
1	2	3	4 (2+3)	5	6	7 (4-6)	8 (7*100/6)
31,32,425.00	18,82,58,742.50	1,32,084	18,83,90,826.50	26,20,112.50	15,74,68,761.25	3,09,22,065.25	19.63%

IV. Pictorial representation of the transaction pertaining to Coal shipped per ‘M.V. Maria’

—

On the basis of 1stCOSA dated 13.05.14, reporting GCV (ARB) as 3758 Kcal/kg & TM as 39.19%, IMR sells Coal to KISSPL, @ USD 44.75/MT CIF Haji Bunder, Mumbai Port



On the basis of the 2nd COSA and artificially inflated invoice, KISPL supplies the said Coal to MAHAGENCO’s TPS Bhusaval through Haji Bunder Port, Mumbai @ USD 70.20 CIF

7.3 Similar analysis of the documents pertaining to consignment of Coal imported per ‘M.V. Capital’, ‘M.V. Maple Opal’, ‘M.V. Owl’, ‘M.V. Rhodos’ and ‘M.V. World’ forms part of this Notice as ‘Annexure-A’ to ‘Annexure-E’. The details mentioned in the said ‘Annexures A-E’ and the details pertaining to the consignment of Coal imported per ‘M.V.

Maria', as explained in Para 7.2 above, indicates that the Coal under the said six consignments had been invoiced to KISPL at artificially inflated/ over-invoiced prices. The difference in KISSPL's CIF value and the CIF value declared by KISPL in the import documents for the said six consignments appears to be as under:-

'Table-9'

S. No.	Name of Vessel (Quantity of Coal in MT) & Port	Bill of Entry No. & Date	Declared CIF value by KISPL (Rs.)	CIF value for KISSPL (Rs.)	Difference between declared CIF value and KISSPL's CIF value (Rs.)	Percentage increase over KISSPL's CIF
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	MV CAPITAL (54,150) Kakinada	4073483/ 13.12.13	18,48,28,561.75	15,77,80,699.65	2,70,47,862.10	17.14
2	MV MAPLE OPAL (56,397) Mumbai	11/ 17.01.14	20,53,44,740.90	17,66,22,432.69	2,87,22,308.20	16.26
3	MV MARIA (58,550) Mumbai	5533650/ 19.05.14	18,83,90,826.50	15,74,68,761.25	3,09,22,065.25	19.64
4	MV OWL (57190) Mumbai	5365703/ 01.05.14	18,78,95,995.00	15,51,06,451.64	3,27,89,543.36	21.14
5	MV RHODOS (55200) Kakinada	5656757/ 30.05.14	17,18,03,247.00	13,86,05,985.60	3,31,97,261.40	23.95
6	MV WORLD (55000) Mumbai	3782085/ 12.11.13	18,40,58,300.00	17,72,73,140.00	67,85,160.00	3.83
	Total		112,23,21,671	96,28,57,471	15,94,64,200.00	16.56

7.4 The scrutiny of the relevant documents collated during the course of investigation also reveal, that in case of procurement of 29700 MT of Coal per '**M.V. Forever SW**', KISPL had purchased the Coal directly from IMR, Switzerland and had not resorted to the *modus* of routing invoices through intermediary firms such as STL/RMTL, as has been done in the case of the said six consignments of Coal. It also appears that in the case of the said shipment per '**M.V. Forever SW**', the actual quality parameters of the Coal had also not been manipulated/ suppressed and neither had KISPL supplied the said Coal to any Power Generating PSU. The documents pertaining to the said consignment form part of this Notice as '**Annexure-F**'. The documents pertaining to shipment per '**M.V. Forever SW**' indicate that the Coal shipped per '**M.V. Forever SW**' was sold without artificially inflating the price or manipulating the quality parameters of the Coal.

8.0 Relevant Legal Provisions

8.1 Some of the provisions with particular relevance to the instant case are discussed below:-

8.2 Section 2(41) of the Customs Act, 1962 defines "value", in relation to any goods, means the value thereof determined in accordance with the provisions of sub-section (1) or sub-section (2) of Section 14 of the Customs Act, 1962.

8.3 Section 14 of the Customs Act, 1962 - Valuation of goods. - (1) For the purposes of the Customs Tariff Act, 1975 (51 of 1975), or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, **the price actually paid or payable for the goods when sold for export to India for delivery at the time and place of importation**, or as the case may be, for export from India for delivery at the time and place of exportation, **where the buyer and seller of the goods are not related and price is the sole consideration for the sale** subject to such other conditions as may be specified in the rules made in this behalf :

Provided that such transaction value in the case of imported goods shall include, in addition to the price as aforesaid, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf:

Provided further that the rules made in this behalf may provide for,-

- (i) the circumstances in which the buyer and the seller shall be deemed to be related;
- (ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;
- (iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section.

8.4 Section 46 of the Customs Act, 1962 provides for filing of Bill of Entry upon importation of goods, which casts a responsibility on the importer to declare truthfully, all the contents in the Bill of Entry. Relevant portion of Section 46 i.e. sub-section (4) thereof is reproduced below for ease of reference:-

“(4) The importer while presenting a bill of entry shall at the foot thereof make and subscribe to a declaration as to the truth of the contents of such bill of entry and shall, in support of such declaration, produce to the proper officer the invoice, if any, relating to the imported goods

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

8.5 Provisions relating to Confiscation of Goods:-

any material particular, in the transaction of any business for the purposes of this Act, shall be liable to a penalty not exceeding five times the value of goods.

8.7 The Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, relevant to the instant case are as under –

- a. Rule 2 (1) (d): "**identical goods**" means imported goods - (i) which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of the goods; (ii) produced in the country in which the goods being valued were produced; and (iii) produced by the same person who produced the goods, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;
- b. Rule 2 (1) (f): "**similar goods**" means imported goods -(i) which although not alike in all respects, have like characteristics and like component materials which enable them to perform the same functions and to be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade mark; (ii) produced in the country in which the goods being valued were produced; and (iii) produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person, but shall not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods;
- c. Rule 2 (1) (g): "**Transaction value**" means the value referred to in sub-section (1) of **section 14** of the Customs Act, 1962.
- d. Rule 2 (2): Persons shall be deemed to be "**related**" only if –
 - (i) they are **officers or directors of one another's businesses**;
 - (ii) they are legally recognised partners in business;
 - (iii) they are **employer and employee**;
 - (iv) any person directly or indirectly owns, controls or holds **five per cent or more** of the outstanding voting stock or shares of both of them;
 - (v) one of them directly or indirectly controls the other;

- (vi) both of them are directly or indirectly controlled by a third person;
 - (vii) together they directly or indirectly control a third person; or they are **members of the same family**.
- e. **Rule 3 (1):** Subject to Rule 12, the value of imported goods shall be the **transaction value** adjusted in accordance with provisions of rule 10;
- f. Rule 3 (2) (d): Value of imported goods under sub-rule (1) shall be accepted provided the buyer and seller are not related, or where the buyer and seller are related, that transaction value is acceptable for customs purposes under the provisions of sub-rule (3) below.
- g. Rule 3 (3) (a): Where the buyer and seller are related, the transaction value shall be accepted provided that the examination of the circumstances of the sale of the imported goods indicate that the relationship did not influence the price.
- h. Rule 3 (3) (b): In a sale between related persons, the transaction value shall be accepted, whenever the importer demonstrates that the declared value of the goods being valued, closely approximates to one of the following values ascertained at or about the same time: (i) the transaction value of identical goods, or of similar goods, in sales to unrelated buyers in India; (ii) the deductive value for identical goods or similar goods; (iii) the computed value for identical goods or similar goods:
- i. **Rule 4:** Transaction value of identical goods - (a) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued; Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962. (b) In applying this rule, the transaction value of identical goods in a sale at the same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods. (c) Where no sale referred to in clause (b) of sub-rule (1), is found, the transaction value of identical goods sold at a different commercial level or in different quantities or both, adjusted to take account of the difference attributable to commercial level or to the quantity or both, shall be used, provided that such adjustments shall be made on the basis of demonstrated evidence which clearly establishes the reasonableness and accuracy of the adjustments, whether such adjustment leads to an increase or decrease in the value. (2) Where the costs and charges referred to in sub-rule (2) of rule 10 of these rules are included in

the transaction value of identical goods, an adjustment shall be made, if there are significant differences in such costs and charges between the goods being valued and the identical goods in question arising from differences in distances and means of transport.(3)In applying this rule, if more than one transaction value of identical goods is found, the lowest such value shall be used to determine the value of imported goods.

- j. **Rule 5:**Transaction value of similar goods - (1) Subject to the provisions of rule 3, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued: Provided that such transaction value shall not be the value of the goods provisionally assessed under section 18 of the Customs Act, 1962. (2) The provisions of clauses (b) and (c) of sub-rule (1), sub-rule (2) and sub-rule (3), of rule 4 shall, *mutatis mutandis*, also apply in respect of similar goods.
- k. **Rule 6:**Determination of value where value cannot be determined under rules 3, 4 and 5.- If the value of imported goods cannot be determined under the provisions of rules 3, 4 and 5, the value shall be determined under the provisions of rule 7 or, when the value cannot be determined under that rule, under rule 8. Provided that at the request of the importer, and with the approval of the proper officer, the order of application of rules 7 and 8 shall be reversed.
- l. **Rule 7:** Deductive value- (1) Subject to the provisions of rule 3, if the goods being valued or identical or similar imported goods are sold in India, in the condition as imported at or about the time at which the declaration for determination of value is presented, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India, subject to the following deductions : - (i) either the commission usually paid or agreed to be paid or the additions usually made for profits and general expenses in connection with sales in India of imported goods of the same class or kind; (ii) the usual costs of transport and insurance and associated costs incurred within India; (iii) the customs duties and other taxes payable in India by reason of importation or sale of the goods (2) If neither the imported goods nor identical nor similar imported goods are sold at or about the same time of importation of the goods being valued, the value of imported goods shall, subject otherwise to the provisions of sub-rule (1), be based on the unit price at which the imported goods or identical or similar imported goods are sold in India, at the earliest date after importation but before the expiry of ninety days after such importation. (3) (a) If neither the imported goods nor identical nor similar imported goods are sold in India in

the condition as imported, then, the value shall be based on the unit price at which the imported goods, after further processing, are sold in the greatest aggregate quantity to persons who are not related to the seller in India (b) In such determination, due allowance shall be made for the value added by processing and the deductions provided for in items (i) to (iii) of sub-rule (1).

- m. **Rule 8:** Computed value- Subject to the provisions of rule 3, the value of imported goods shall be based on a computed value, which shall consist of the sum of:- (a) the cost or value of materials and fabrication or other processing employed in producing the imported goods; (b) an amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India; (c) the cost or value of all other expenses under sub-rule (2) of rule 10.
- n. **Rule 9:** Residual method- (1) Subject to the provisions of rule 3, where the value of imported goods cannot be determined under the provisions of any of the preceding rules, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules and on the basis of data available in India; Provided that the value so determined shall not exceed the price at which such or like goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of international trade, when the seller or buyer has no interest in the business of other and price is the sole consideration for the sale or offer for sale. (2) No value shall be determined under the provisions of this rule on the basis of - (i) the selling price in India of the goods produced in India; (ii) a system which provides for the acceptance for customs purposes of the highest of the two alternative values; (iii) the price of the goods on the domestic market of the country of exportation; (iv) the cost of production other than computed values which have been determined for identical or similar goods in accordance with the provisions of rule 8; (v) the price of the goods for the export to a country other than India; (vi) minimum customs values; or (vii) arbitrary or fictitious values.
- o. **Rule 11:** Declaration by the importer. – (1) The importer or his agent shall furnish - (a) a declaration disclosing full and accurate details relating to the value of imported goods; and (b) any other statement, information or document including an invoice of the manufacturer or producer of the imported goods where the goods are imported from or through a person other than the manufacturer or producer, as considered necessary by the proper officer for determination of the value of imported goods under these rules. (2) Nothing contained in these rules shall be construed as restricting or calling into question

the right of the proper officer of customs to satisfy himself as to the truth or accuracy of any statement, information, document or declaration presented for valuation purposes. (3) The provisions of the Customs Act, 1962 (52 of 1962) relating to confiscation, penalty and prosecution shall apply to cases where **wrong declaration, information, statement or documents are furnished under these rules.**

- p. **Rule 12:** Rejection of Declared Value – (1) When the proper officer has **reason to doubt the truth or accuracy of the value declared** in relation to any imported goods, he may ask the importer of such goods to furnish further information including documents or other evidence and if, **after receiving such further information**, or in the absence of a response of such importer, **the proper officer still has reasonable doubt about the truth or accuracy of the value so declared**, it shall be deemed that the **transaction value of such imported goods cannot be determined** under the provisions of sub-rule (1) of rule 3.

9.0 Wrong declaration, documents furnished by Importer & Rejection of Declared Value:

9.1 In terms of Rule 11 of the CVR 2007, the importer was to furnish a declaration disclosing full and accurate details relating to the value of imported goods and the provisions of the Customs Act, 1962 (52 of 1962) relating to confiscation, penalty and prosecution were to apply to cases where **wrong declaration, information, statement or documents were furnished under the said rules.** Further, in terms of Rule 12 of the CVR 2007, the declared value could be rejected in cases where there is reasonable doubt that the declared value did not represent the transaction value.

9.1.1 The documents submitted by KISPL to the Customs at the time of import of Coal in the case of the said six consignments appeared to indicate that the Coal had been supplied by firms such as STL/ RMTL. Whereas, the documents received from IMR, Switzerland reveal that the **very same consignments**, which prima facie appeared to have been supplied to KISPL by firms such as STL/RMTL, had in fact been previously purchased by the wholly owned subsidiary of KISPL i.e. KISSPL, Singapore, that too at prices **way below the prices depicted** in the invoices presented before the Customs at the time of Import. The 1st COSA appears to contain the actual quality parameters of the Coal, as payments to IMR had been made on the basis of the parameters reported in the said COSA. The quality parameters portrayed in the 2nd COSA being in total contradiction to the 1st COSA, appear to **be manipulated and not the true parameters.** It also appears that the quality parameters in the 2nd COSA as well as the sham Contracts between KISPL and STL/RMTL **were aligned to suit the specifications** in MAIAGENCO's bid document. Since the prices were adjusted and payments were made from KISSPL to IMR on the basis of 1st COSA, it appears that the 2nd

COSA **did not project the actual quality** parameters of the consignment of Coal and hence were not genuine. Such manipulated 2nd COSA, showing higher than actual quality parameters, were submitted to Customs authorities at the time of import to substantiate the artificially inflated invoices of the intermediary firms. The comparison of the quality parameters reported in the 1st COSA and the 2nd COSA as under, appears to reveal the divergence therein:

'Table-10'

S. No.	Name of Vessel (Quantity of Coal in MT) & Port	Bill of Entry No. & Date	Declared Grade in 2 nd COSA	Actual Grade in 1 st COSA
(1)	(2)	(3)	(4)	(5)
1	MV CAPITAL (54,150) Kakinada	4073483/ 13.12.13	GCV 4670 Kcal/kg & TM 26.60%	GCV 3661 Kcal/kg & TM 40.70%
2	MV MAPLE OPAL (56,397) Mumbai	11/ 17.01.14	GCV 4686 Kcal/kg & TM 26.45%	GCV 3804 Kcal/kg & TM 39.75%
3	MV MARIA (58,550) Mumbai	5533650/ 19.05.14	GCV 4663 Kcal/kg & TM 26.70%	GCV 3758 Kcal/kg & TM 39.19%
4	MV OWL (57190) Mumbai	5365703/ 01.05.14	GCV 4653 Kcal/kg & TM 27.30%	GCV 3637 Kcal/kg & TM 40.56%
5	MV RHODOS (55200) Kakinada	5656757/ 30.05.14	GCV 4663 Kcal/kg & TM 27.30%	GCV 3730 Kcal/kg & TM 39.91%
6	MV WORLD (55000) Mumbai	3782085/ 12.11.13	GCV 4654 Kcal/kg & TM 26.70%	GCV 3851 Kcal/kg & TM 38.13%

KISSPL is a wholly owned subsidiary of KISPL and the two firms are under the control of Shri Rahul Bhandare. Similarly, STL was reportedly being run by an acquaintance of Shri Rahul Bhandare. STL/RMTL entered into contracts with KISPL and raised invoices depicting sale of Coal to KISPL. It appears that the Coal had been contracted/ invoiced through a series of transactions amongst the subsidiaries and firms known to KISPL, however the fact remained that the consignments of Indonesian Coal had been shipped directly for Indian ports. KISSPL & KISPL being related parties under the provisions of CVR 2007, any direct import by KISPL from KISSPL ran the risk of a detailed scrutiny of the declared value by the Customs Authorities at the time of clearance. Hence, it appears that to camouflage the related party transactions and to avoid scrutiny of its declared value, KISPL got the consignments from KISSPL invoiced through unrelated but known intermediary firms to portray as if the transactions were unrelated ones. It appears that the transactions amongst KISSPL & STL/RMTL and STL/RMTL & KISPL, were **sham transactions** conducted primarily with the intention of mis-declaring the value and quality of the imported Coal. Considering the fact that KISSPL was primarily setup by KISPL as a wholly owned subsidiary for the purpose of procurement of Coal, it was not in accordance with the **ordinary prudence of business for KISPL to procure the very same consignments purchased by KISSPL for delivery at the time and place as required by KISPL, from some other intermediary firm and that too at exorbitant prices.** As discussed at para 7.4 it was observed that when no artificial inflation of the invoice

price was involved KISPL had directly imported the goods (Coal) from IMR, Switzerland, and KISSPL, Singapore was not involved in the transaction. This appears to show that the price was not the sole consideration for sale in the said transactions, and that the transactions themselves were sham, and meant to hoodwink the Customs Authorities into accepting the artificially inflated value of the Coal. It therefore appears that the value of the Coal declared by KISPL at the time of import, and the other particulars furnished to the Customs during the import of the said consignments appeared to be wrong declarations in terms of the provisions of CVR, 2007 and did not represent the transaction value as envisaged under section 14 of the Customs Act, 1962. As such, in the light of the investigation, the declared value appears to be liable for rejection under Rule 12 of the CVR 2007.

9.2 The eventual consignee for the said consignments of Coal:

It appears that, KISPL had entered into Contracts with MAHAGENCO for supply of Coal to TPS at Bhusaval and Chandrapur, and supplies to the said TPS were to be made through Haji Bunder (Mumbai) and Kakinada Ports, respectively. Further, the Coal was to be supplied to the said TPSs during the period from September/ October 2013 to June 2014. In the case of the said six consignments, KISSPL, the wholly owned subsidiary of KISPL operating under Shri Rahul Bhandare, had entered into contracts with IMR, Switzerland for purchase of consignments of Coal. As per the said contracts with IMR and the invoices issued by IMR, the Coal was to be delivered at Haji Bunder (Mumbai) and Kakinada Ports, i.e. the same ports through which KISPL was required to supply the Coal to the said TPSs. Further, it appears that the period during which the said contracts had been made with IMR also correspond to the period during which KISPL was required to supply Coal to the said TPSs. In other words, KISSPL had entered into contracts for purchase of Coal from IMR exactly at the same time when there was requirement of Coal by KISPL to supply the same to the TPS at Bhusaval and Chandrapur. Moreover, the 'Form-AI' issued by the Indonesian Governmental Authorities in relation to the export of the said consignments from Indonesia also mention the consignee for the said consignments of Coal as KISPL, New Delhi. The documents appear to indicate that though the Coal had apparently been purchased by KISSPL, the same had been eventually sold to KISPL by routing the invoices through its known intermediary firms. The import of Coal by KISPL appears to be a predetermined fact and the entire gamut of transactions appear to have been conducted with the objective of altering the price and the quality of Coal. As such, it appears that the said consignments were procured by KISSPL for eventually being imported by KISPL. Comparison of the details pertaining to the period and ports of supply as per KISPL-MAHAGENCO Agreements and the Contracts entered into between KISSPL-IMR appears to indicate that the Coal had been purchased for eventual import by KISPL. The said details are as under:-

‘Table-11’

Sr. No.	Period, TPS & Port for supply to MAHAGENCO	KISSPL-IMR Contract date & Laycan at Load port	KISSPL-IMR Port as per Contract / Invoice	Name of Vessel (M.V.)/ date of BL	BoE date & Port
1	October 2013-June 2014, TPS Chandrapur & Port Kakinada	22.10.13, 15 th -25 th November 2013	Kakinada	CAPITAL 06.12.13	13-12-13 Kakinada
2		02.05.14, 05 th -15 th May 2014	Kakinada	RHODOS 22.05.14	30-05-14 Kakinada
3	September 2013-June 2014, TPS Bhusawal & Port Haji Bunder – Mumbai	08.10.13, 20 th -30 th October 2013	Haji Bunder – Mumbai	WORLD 30.10.13	12-11-13 Mumbai
4		22.10.13, 15 th -25 th December 2013	Haji Bunder – Mumbai	MAPLE OPAL 06.01.14	17-01-14 Mumbai
5		13.03.14, 27 th March – 5 th April 2014	Haji Bunder – Mumbai	OWL 19.04.14	01-05-14 Mumbai
6		09.04.14, 15 th -25 th April 2014	Haji Bunder – Mumbai	MARIA 05.05.14	19-05-14 Mumbai

10.0 Determination of value of Imported Goods:

10.1 In terms of Rule 12 of the CVR 2007, in cases where there is reasonable doubt that the declared value does not represent the transaction value; and where the declared value is rejected, the value is to be determined in accordance with rules 4 to 9 by proceeding sequentially. For reasons discussed at para 9 and its sub-paras above it appears that price was not the sole consideration for the sale and further manipulation of the test reports made the invoice a fraudulent one, which necessitated the rejection of the declared value and of determining the correct value.

10.2 In terms of Rule 4 of the CVR 2007, the value of imported goods shall be the transaction value of identical goods sold for export to India and imported at or about the same time as the goods being valued. Further, if more than one transaction value of identical goods is found, the **lowest** of such value would be used to determine the value of imported goods. In terms of Rule 2 (d) of the CVR 2007 "identical goods" meant imported goods -(i) which are **same in all respects, including physical characteristics, quality** and reputation as the goods being valued except for minor differences in appearance that do not affect the value of the goods; (ii) produced in the country in which the goods being valued were produced; and (iii) **produced by the same person** who produced the goods, or where no such goods are available, goods produced by a different person.

10.2.1 In order to determine the value of a particular consignment of Coal under Rule 4 of the CVR 2007, it is essential that the contemporaneous imports, on the basis of which the value is to be determined, has to be identical with the said consignment in all respects, i.e. the physical characteristics, quality, country of export, manufacturer etc. Scrutiny of the documents indicate the physical characteristics and the quality of Coal is dependent on several parameters such as GCV (ARB/ADB), TM, IM, ASH (ADB), Sulphur (ADB), Volatile Matter, Fixed Carbon etc. Considering the multitude of parameters which collectively define

the characteristics and quality of the Coal and the fact that the imported goods fell in the category of a natural resource, and not manufactured goods, it appears that contemporaneous imports, identical in all aspects were highly unlikely. As such, determining the value of the goods under rule 4 of the CVR does not appear to be feasible.

10.3 In terms of Rule 5 of the CVR 2007, the value of imported goods shall be the transaction value of similar goods sold for export to India and imported at or about the same time as the goods being valued. Rule 2 (f) of the CVR 2007 defines "similar goods" as imported goods -(i) which although not alike in all respects, have **like characteristics** and like component materials which enable them to perform the **same functions** and to be **commercially interchangeable** with the goods being valued having regard to the **quality**, reputation and the existence of trade mark; (ii) produced in the country in which the goods being valued were produced; and (iii) produced by the same person who produced the goods being valued, or where no such goods are available, goods produced by a different person.

10.3.1 Most of the contemporaneous imports of Indonesian Coal are under scrutiny and investigation for over-invoicing the value of Coal. In the given circumstances, reliance on contemporaneous imports of similar consignments of Indonesian Coal was unlikely to result in any proper determination of the value of the imported Coal. Moreover, the Contracts / Agreements on record also indicate that any change or variation in the various parameters of Coal such as such as GCV (ARB/ADB), TM, IM, ASH (ADB), Sulphur (ADB), Volatile Matter, Fixed Carbon etc. had the potential to affect the price of the Coal. Further, within similar goods the mode of loading, port of loading/ discharge, bonus/ penalty clauses, quantity procure, long or short term contracts etc. all influence the price of Coal. As such, it appears that considering similar consignments of Coal with 'like characteristics, was not dependable method for determining the value of the imported Coal in terms of Rule 5 of the CVR 2007.

10.4 In terms of Rule 7 of CVR 2007, the value of imported goods shall be based on the unit price at which the imported goods or identical or similar imported goods are sold in the greatest aggregate quantity to persons who are not related to the sellers in India.

10.4.1 Since the value of the imported goods does not appear to be determinable under Rule 4 and Rule 5 of the CVR 2007, and the imports are under scrutiny for over-valuation it appears that most sales of such Coal in India may not provide a proper platform to determine the value of the Coal in terms of Rule 7 of the CVR 2007.

10.5 In terms of Rule 8 of the CVR 2007, the value of imported goods shall be based on a **computed value**, which shall consist of the sum of (a) the **cost or value** of materials and fabrication or other processing employed in producing the imported goods; (b) an amount for **profit and general expenses** equal to that usually reflected in sales of goods of the same class or kind as the goods being valued which are made by producers in the country of exportation for export to India; (c) the cost or value of all other expenses under sub-rule (2) of rule 10.

10.5.1 The imported Coal being a natural resource does not fall under the category of manufactured goods, as such computing the value on the basis of cost of the material and the other processing in 'producing' the goods does not appear to be a viable option. Further, due

to non-availability of the actual profit and general expenses in each transaction, it appears that determination of value under Rule 8 of the CVR 2007 is not a feasible option.

10.6 In terms of Rule 9 of the CVR 2007, the value shall be determined using reasonable means **consistent with the principles and general provisions of CVR 2007** and on the basis of data available in India. Provided that the value so determined shall not **exceed the price** at which **such or like** goods are ordinarily sold or offered for sale for delivery at the time and place of importation in the course of **international trade**, when the seller or buyer has no interest in the business of other and **price is the sole consideration** for the sale or offer for sale.

10.6.1 The investigation indicates that the series of transactions amongst the subsidiary and known intermediary firms of KISPL, did not appear to be genuine or ordinary transactions in the course of international trade, and were in fact a part of a larger conspiracy meant to camouflage the actual cost and quality of the Coal. The only transaction which appears to be genuine was the transaction between IMR & KISSPL where the buyer and the seller of the goods were not related/known and **the price appeared to be the sole consideration for sale**. KISSPL had been setup in Singapore with the sole objective of procuring Coal for KISPL. As such, under ordinary circumstances, the consignments of Coal procured by KISSPL would be invoiced to KISPL and not to any of the intermediary firms. Shri Rahul Bhandare, Chairman of KISPL and Director of KISSPL had in his statement recorded on 01.08.2016 and referred to at para 6.2 above stated that KISSPL was created as a necessity of law. There is nothing at present to indicate that KISSPL itself was a Sham unit and hence it cannot be disregarded, although it does appear to have also facilitated the artificial inflation of invoice over and above any legitimate trading profit that it would have been entitled to in the course of normal international trade. It appears that in case the said consignments of Coal were to be sold by KISSPL to KISPL, the same would be done only after reasonable profit and general expenses were factored in into KISSPL's cost. Enquiries in the Coal trade appear to suggest that there is a reasonable profit margin of 2-5% in majority of transactions relating to Coal, i.e. an average profit margin of **3.5%** would appear to be appropriate to finalise genuine transactions, provided, price is the sole consideration for the sale. The documents pertaining to shipment per 'M.V. Forever SW' indicate that, KISPL had procured Coal from IMR, Switzerland at USD **82.17** CFR Mumbai vide Invoice No. IMR-2010-11/2625 dated 16.03.2011 and thereafter the said consignment was sold to M/s Uttam Galva Steels Ltd., Mumbai on a 'high seas sale' basis at USD **85.00** CIF Mumbai. Considering the prevalent exchange rate of Rs. 45.70/USD and the insurance amount of Rs.52267.46, it appears that the Coal had been sold by KISPL on a profit margin of **3.39%**. It therefore appears that the Coal shipped per 'M.V. Forever SW' was sold without artificially inflating the price or manipulating the quality parameters of the Coal. **Rule 9 of the CVR, 2007 permits determination of value** using reasonable means **consistent with the principles and general provisions of CVR 2007**. **Considering the aforesaid, it appears that a margin of 3.5% on account of profit and general expenses could be attributed to KISSPL's cost price in order to arrive at the**

Price at which the Coal under the said six shipments would ideally have been invoiced to KISPL.

10.7 Considering the aforesaid, it appears that the value of the said six consignments of Coal, can be determined in terms of Rule 9 of the CVR 2007, after factoring in a profit margin of 3.5% as under:

‘Table-12’

S. No	Name of Vessel (Quantity of Coal in MT) & Port	Bill of Entry No. & Date	Declared CIF value (INR)	CIF value for KISSPL (INR)	Proposed value determined under Rule 9 of the CVR, 2007, after inclusion of profit in KISSPL's CIF value (INR)	Inflation of price/ over-valuation in the value declared by KISPL, i.e. difference in declared CIF value and the proposed value determined under Rule 9 of CVR, 2007 (INR)
(1)	(2)	(3)	(4)	(5)	(6)	(7) i.e. (4-6)
1	MV CAPITAL (54,150) Kakinada	4073483/ 13.12.13	18,48,28,561.75	15,77,80,699.65	16,33,03,024.1	2,15,25,537.61
2	MV MAPLE OPAL (56,397) Mumbai	11/ 17.01.14	20,53,44,740.90	17,66,22,432.69	18,28,04,217.8	2,25,40,523.07
3	MV MARIA (58,550) Mumbai	5533650/ 19.05.14	18,83,90,826.50	15,74,68,761.25	16,29,80,167.9	2,54,10,658.61
4	MV OWL (57190) Mumbai	5365703/ 01.05.14	18,78,95,995.00	15,51,06,451.64	16,05,35,177.4	2,73,60,817.55
5	MV RHODOS (55200) Kakinada	5656757/ 30.05.14	17,18,03,247.00	13,86,05,985.60	14,34,57,195.1	2,83,46,051.9
6	MV WORLD (55000) Mumbai	3782085/ 12.11.13	18,40,58,300.00	17,72,73,140.00	18,34,77,699.9	5,80,600.1
	Total		112,23,21,671	96,28,57,471	99,65,57,482.5	12,57,64,188.5

11.0 Summary of the investigation on the basis of the available evidence:

11.1 From the above, it appears that:

- a) M/s. Knowledge Infrastructure Systems Pvt. Ltd., New Delhi, (KISPL) a Company incorporated in 2003 was into the business of importing Coal from Indonesia. Mr. Rahul Bhandare held 99.50% of the total shares of KISPL and the management of the Board of KISPL was vested on Mr. Rahul Bhandare (Chairman cum Managing Director) and Mr. Vipin Mahajan (Director);
- b) KISPL also supplied imported Coal to Public Sector Power Generating Companies such as MAHAGENCO. Bids had been invited from eligible bidders by MAHAGENCO for supply of Coal to their Thermal Power Stations (TPS) located at

Bhusawal and Chandrapur. The bids submitted by KISPL were accepted by MAHAGENCO and accordingly MAHAGENCO and KISPL entered into agreements for supply of Coal to the abovementioned TPS via Mumbai (Haji Bunder) and Kakinada Ports, respectively. The Coal was to be supplied to the said TPSs during the period from September/ October 2013 to June 2014 and Coal having GCV (ARB) below 4000 Kcal/Kg and TM (ARB) above 30% was to be considered as 'off-spec';

- c) M/s. Knowledge International Strategy Systems Pte. Ltd., (KISSPL) incorporated in 2010 in Singapore was a wholly owned subsidiary of KISPL and Mr. Rahul Bhandare was also a Director in the said firm. KISPL was the ultimate holding Company as far as KISSPL was concerned. Springs Trader Ltd., which had its registered office in Hong Kong, was reportedly being run by one Mr. Wayne Ledwidge, an acquaintance of Mr. Rahul Bhandare. Rescom Mineral Trading Ltd., Hong Kong (RMTL) was another intermediary firm apparently in the business related to supply of Coal;
- d) When KISPL was required to supply Coal to TPS Bhusawal, the wholly owned subsidiary of KISPL, i.e. KISSPL contracted/ purchased the Coal from suppliers such as IMR on a CIF/CFR basis with Port of discharge as Mumbai (Haji Bunder). Similarly for Coal consignments which would eventually be supplied to TPS Chandrapur, the port of discharge in the contracts with IMR was Kakinada Port. In other words, the Port of Discharge in the Contracts with IMR depended on the TPS to which the Coal would eventually be supplied by KISPL.
- e) At the time of Shipment from Indonesia, the Coal used to be tested at the Load Port and 1stCOSA was issued by IIA appointed by IMR. The invoices for the sale of the Coal were issued by IMR on the basis of the parameters reported in the said 1stCOSA and accordingly payments were made to IMR by or through KISSPL on the basis of the said 1st COSA.
- f) Since the quality parameters of Coal contracted with IMR through KISSPL, were not as per the specifications mentioned in MAHAGENCO's bids, KISPL entered into sham contracts with intermediary firms such as STL/ RMTL depicting purchase of Coal of higher parameters and also at a higher value. The parameters of Coal in the sham Contract were framed in line with the requirements in MAHAGENCO's bid specifications. Further, since the parameters reported in the '1st COSA' indicated the quality parameters of the Coal to be inconsistent with MAHAGENCO's specifications, KISPL in league with KISSPL/ STL/ RMTL procured 2ndCOSA from other Inspection Agencies such as Proteknika Jasapratama - Indonesia, Pt. Artha Buana Inspektindo, Indonesia etc. for the same consignment, whereby the parameters of the Coal would be certified as being superior than actual and in accordance with MAHAGENCO's specifications. It appears that, as far as payments to the actual suppliers (e.g. IMR) were concerned, the 2nd COSA were of no relevance. On the basis

of the sham contracts and the '2ndCOSA', the consignment of Coal would be invoiced to KISPL at artificially inflated prices by STL/RMTL. KISPL would subsequently file the Bills of Entry for the said consignments and the Coal would eventually be supplied to the designated TPS.

- g) In terms of the contracts between IMR and KISSPL, IMR was required to provide the Certificate of Origin, in 'Form-AI' for the consignments of Coal issued by the relevant Indonesian Govt. Authority. The said 'Form-AI' certificates would be required in case the importer (KISPL) opted to avail duty benefit in terms of AIFTA. Incidentally, the 'Form-AI' also specified the actual value of the Coal (on FOB basis), however, the said FOB value, even after factoring in the freight component, was nowhere in parity with the CFR/ CIF prices mentioned in the invoices submitted to the Customs at the time of import. Since the FOB value in the 'Form-AI' would raise suspicion regarding the actual price and thereby the quality of the Coal and also reveal KISPL as the actual/original consignee of the Coal, the said document appears to have not been produced/ presented by KISPL before the Customs at the time of import, lest it would expose their *modus*.
- h) Similarly, in terms of the contracts between IMR and KISSPL, wherever the Coal had been contracted on a CIF basis, IMR was under obligation to arrange for suitable insurance, covering at least 110% of the value of the cargo from the load port in Indonesia to the discharge port in India and a copy of the Insurance Policy was also to be sent to the Buyer. Submission of the Insurance documents (provided by IMR), at the time of import would however also hint at the actual value of the goods, as such, KISPL appears to have even suppressed the actual insurance documents, and preferred to re-insure the Coal from firms such as TATA AIG etc. for the purpose of declaring the insurance component at the time of import.
- i) The Contracts between IMR and KISSPL indicate that insurance documents (for consignments contracted on CIF basis) and 'Form-AI' certificates had been provided to KISSPL by IMR. In the normal course of trade, the said documents would have been forwarded to the eventual importer as the same would have enabled the importer to specify the insurance component in the import value and to claim duty benefit under AIFTA. However, the sham contracts between KISPL and STL were framed in a manner whereby KISPL was required to (re)insure the Coal at its own cost and there was no obligation on part of the supplier (STL) to provide 'Form-AI' certificates to the apparent buyer. In the case of KISPL's contract with RMTL, it was similarly evident that there was no obligation on RMTL to provide copies of 'Form-AI'. Further, though the contract between RMTL and KISPL had envisaged that the insurance of the Coal was to be done by RMTL, the invoice raised by RMTL had charged KISPL on a CFR basis instead of CIF basis.

- j) In the manner as stated above, KISPL appears to have procured inferior quality Coal from suppliers such as IMR through KISSPL and thereafter got the invoices routed through known intermediary firms such as STL/ RMTL. In the process, KISPL not only artificially inflated the price of the Coal but also manipulated the actual quality parameters of Coal. It therefore appears that KISPL, made unscrupulous gains, by way of supplying inferior quality Coal to MAHAGENCO. Further, the illicit gains accrued, due to fraudulent supply of inferior quality Coal by artificial inflation of the value of Coal, were transferred to the firms based in Singapore & Hong Kong on the basis of invoices showing inflated cost of the Coal.

12.0 Liability of KISPL and others to Penalty:

12.1 On the basis of the available evidence, it appears that—

- a) KISPL, headed by Shri Rahul Bhandare was in the business of importing Coal and had entered into Agreements with MAHAGENCO for supply of Coal of foreign origin to Thermal Power Stations at Bhusaval and Chandrapur. In terms of the KISPL – MAHAGENCO Agreements, the Coal for the Bhusaval TPS was to be supplied at the price of USD 70.20/MT CIF Haji Bunder (Mumbai) Port and the Coal for the Chandrapur TPS was to be supplied at the price of USD 65.55/MT CIF Kakinada Port. Further, the Coal, inter-alia, having GCV (ARB) below 4000 Kcal/kg and TM (ARB) above 30% was to be considered as off-spec (off-specification) and in case of receipt of off-spec Coal at TPS, only inland transportation cost from port of entry to destination TPS, was to be reimbursed to KISPL by treating cost of Coal as One Rupee per MT. As such, KISPL was required to import Coal as per specified parameters from foreign suppliers and deliver it to TPS Bhusaval and TPS Chandrapur through Mumbai and Kakinada Ports, respectively;
- b) KISSPL, the wholly owned Singapore based subsidiary of KISPL operated in close association with KISPL for procuring imported Coal and whenever required KISPL would also open LCs in the name of 3rd parties for the procurements made by KISSPL. Shri Rahul Bhandare, the Head of KISPL was also a Director in KISSPL. In and around the period when KISPL had a requirement for supplying imported Coal to MAHAGENCO, KISSPL contracted Coal from IMR, Switzerland for delivery at the very ports through which the Coal would eventually be supplied to the MAHAGENCO's TPS. The invoices for the said consignments were however routed to KISPL through known intermediaries by way of sham contracts. In the process of routing the invoices, the price of the Coal would be artificially inflated and the quality parameters of the Coal would also be modified to make it appear as if the Coal was as per MAHAGENCO's requirements. On the basis of the inflated invoices and the manipulated 2nd COSA, inferior quality Coal would be mis-declared as Coal of higher specifications and price by KISPL and imported into India for subsequently being

supplied to MAHAGENCO. The investigation indicates that firms such as STL/RMTL were known intermediaries and had apparently acted as conduits at the behest of KISPL/ KISSPL. The said intermediary firms had entered into sham contracts with KISPL and had raised invoices showing artificially inflated value of Coal. It appears that a fraud had been perpetrated by KISPL in collusion with KISSPL, STL & RMTL whereby Coal of inferior quality had been sold to MAHAGENCO at inflated prices as Coal of superior (prescribed) quality. KISPL primarily being the holding Company of KISSPL, Rahul Bhandare being the Director in both KISPL and KISSPL, KISPL being the consignee in the 'Form-AI' reflecting the actual FOB price of the Coal and KISPL apparently willing to purchase Coal from known intermediaries sans 'Form-AI' and insurance, indicates that KISPL was by no means unaware of the actual cost and quality of Coal. However, in spite of the same, KISPL had suppressed the fact that the Coal had originally been procured by its own subsidiary, had also suppressed the 'Form-AI', the actual COSAs and the actual insurance documents for the said consignments and had knowingly mis-declared the value and quality of the Coal to the Customs authorities in India.

- c) Mr. Rahul Bhandare, being the head of KISPL was in complete control of both KISPL and its subsidiary –KISSPL and was also aware of their requirements. The holding company and its subsidiary were operating in close association for procurement of imported Coal and it wasn't merely coincidental that KISSPL was contracting Coal for ports through which KISPL was required to supply to MAHAGENCO and that the parameters in the sham contracts and the 2ndCOSA had been conveniently aligned to match MAHAGENCO's specifications. The statements of Shri Rahul Bhandare and Shri Vipin Mahajan further acknowledge their acquaintance with Mr. Wayne Ledwidge of Springs Trader Ltd. Since the Coal was procured by KISSPL and import invoices for the same Coal were being raised by STL/RMTL, it appears that the amounts remitted by KISPL to STL/RMTL were eventually finding their way to the accounts of its own subsidiary i.e. KISSPL. Such association between the said firms would not be without the knowledge and concurrence of Mr. Rahul Bhandare, Mr. Vipin Mahajan and the Directors of the said intermediary firms. Mr. Vipin Mahajan was a trusted aide of Mr. Rahul Bhandare and was head of operations at KISPL. The documents submitted by KISPL indicates that in many cases, KISPL had opened third party LCs on behalf of KISSPL i.e. the payments for the purchases made by KISSPL were made through the accounts of KISPL. As such, it also appears that both Shri Rahul Bhandare and Shri Vipin Mahajan were not only well aware but also at the helm of affairs.
- d) The relevant details pertaining to the transaction of Coal in the said six consignments are shown as under :-

'Table-13'

Sr. No.	TPS (via port)	Contract No. & date	Contract CIF/CFR Value USD/MT (Port)	Name of Vessel/ Qty. in MT as per BL	Parameters in 1 st COSA (GCV & TM)	Value in IMR Invoice (USD/MT)	Value as per 'Form-AI' (USD/MT)	Bill of Entry No & date, Port	Declared value in import invoice (USD/MT)
1	Chandrapur (Kakinada)	IMR/KISSPL /CIF/ 22102013 dt.22.10.13	48.55 CIF (Kakinada)	CAPITAL (54,150)	3661 Kcal/kg & 40.70%	46.77 CIF	30 FOB	4073483 13-12-13 Kakinada	54.75 CFR
2	Bhusawal (Haji Bunder – Mumbai)	IMR/KISSPL /CIF/ 22102013 dt.22.10.13	34+Freight CIF (Haji Bunder – Mumbai)	MAPLE OPAL (56,397)	3804 Kcal/kg & 39.75	50.35 CIF	30 FOB	11 17-01-14 Mumbai	58.50 CFR
3	Bhusawal (Haji Bunder – Mumbai)	IMR/KISSPL /CFR/ 09042014 dt.09.04.14	45.25 CIF (Haji Bunder – Mumbai)	MARIA (58,550)	3758 Kcal/kg & 39.19%	44.75 CIF	32 FOB	5533650 19-05-14 Mumbai	53.50 CFR
4	Bhusawal (Haji Bunder – Mumbai)	IMR/KISSPL /CFR/ 13032014 dt.13.03.14	46.57 CFR (Mumbai)	OWL (57,190)	3637 Kcal/kg & 40.56%	44.57 CFR	31 FOB	5365703 01-05-14 Mumbai	54.00 CFR
5	Chandrapur (Kakinada)	IMR/KISSPL /CIF/ 02052014 dt.02.05.14	42.56 CIF (Kakinada)	RHODOS (55,200)	3730 Kcal/kg & 39.91%	41.78 CIF	31 FOB	5656757 30-05-14 Kakinada	51.75 CFR
6	Bhusawal (Haji Bunder – Mumbai)	IMR/KISSPL /CIF/ 01-2013 Dt.08.10.13	50.40 CIF (Haji Bunder – Mumbai)	WORLD (55,000)	3851 Kcal/kg & 38.13%	51.08 CIF	30 FOB	3782085 12-11-13 Mumbai	53.00 CFR

13.0 In view of the above mis-declaration of the parameters / grade of Coal and artificial inflation of the value thereof, it appears that –

- KISPL was aware that the value and quality of the goods declared in the said Bills of Entry were not true. In spite of the same, KISPL declared the contents of the said Bills of Entry to be true and thus violated the provisions of sub-section 4 of section 46 of the Customs Act, 1962;
- As the actual value and quality / grade/ parameters of the Coal imported did not correspond to the entries made under the provisions of the Customs Act, 1962, the impugned consignments of Coal appear liable to confiscation under the provisions of section 111 (m) of the Customs Act, 1962;
- Since the acts and omissions on the part of KISPL, Mr. Rahul Bhandare (Managing Director- KISPL) and Mr. Vipin Mahajan (Director – KISPL) appear to have rendered the impugned goods liable for confiscation under section 111(m) of the Customs Act, 1962, KISPL, Mr. Rahul Bhandare and Mr. Vipin Mahajan appear to be liable for penalty under the provisions of section 112 (a) of the Customs Act, 1962;
- Since the import of impugned consignments of Coal has been knowingly and intentionally made on the basis of false and incorrect declarations, statements and

documents, KISPL, Mr. Rahul Bhandare and Mr. Vipin Mahajan also appear to be liable for penalty under the provisions of section 114 AA of the Customs Act, 1962; and

- e) The declared value of the impugned consignments of Coal imported by KISPL does not appear to be the true. Hence, the same needs to be rejected in terms of Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules 2007. The amounts received by IMR for the sale of the said Coal could be taken as the basis to arrive at the value of the six consignments of Coal after factoring in a profit margin of 3.5% towards KISSPL and accordingly the value of the goods could be determined in terms of Rule 9 of the CVR, 2007.

13.1 Now, therefore, M/s KISPL are hereby called upon to show cause, in writing, to the Adjudicating Authorities mentioned in Column (7) of the 'Table-14' below for the respective imports mentioned against each, within thirty days of receipt of this Show Cause Notice,

'Table-14'

S. No.	Port of Import (Vessel)	Bill of Entry No. & Date	Declared CIF value in INR	Proposed CIF value in INR under rule 9 of CVR, 2007	Extent of over-valuation (INR)	Adjudicating Authority
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1	Kakinada (CAPITAL)	4073483/ 13.12.13	18,48,28,561.75	16,33,03,024.14	2,15,25,537.61	The Commissioner of Customs (Preventive), 55-17-3, C-14, 2 nd Floor, Industrial Estate, Autonagar, Vijayawada- 520007.
2	Kakinada (RHODOS)	5656757/ 30.05.14	17,18,03,247.00	14,34,57,195.10	2,83,46,051.90	
	Total		35,66,31,808.75	30,67,60,219.24	4,98,71,589.51	
1	Mumbai (MAPLE OPAL)	11/ 17.01.14	20,53,44,740.90	18,28,04,217.83	2,25,40,523.07	The Commissioner of Customs (Import -II) Mumbai Zone-I, New Customs House, Ballard Estate, Mumbai- 400 001.
2	Mumbai (MARIA)	5533650/ 19.05.14	18,83,90,826.50	16,29,80,167.89	2,54,10,658.61	
3	Mumbai (OWL)	5365703/ 01.05.14	18,78,95,995.00	16,05,35,177.45	2,73,60,817.55	
4	Mumbai (WORLD)	3782085/ 12.11.13	18,40,58,300.00	18,34,77,699.90	5,80,600.10	
	Total		76,56,89,862.40	68,97,97,263.08	7,58,92,599.32	
	Grand Total		112,23,21,671.15	99,65,57,482.31	12,57,64,188.84	

as to why:-

- (a) The declared CIF value as detailed in Column (4) of 'Table-14' above, of the goods under the Bills of Entry as detailed in Column (3) of the said 'Table-14',

and the quality parameters depicted in Column (4) of 'Table-10' should not be considered as a wrong declaration in terms of the provisions of Rule 11 of the CVR, 2007 and declared CIF value as detailed in Column (4) of 'Table-14' above should not be rejected under Rule 12 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007;

- (b) The value of the goods, covered under the respective Bills of Entry mentioned in Column (3) of the 'Table-14' above, should not be determined as detailed in Column (5) of 'Table-14' above, in terms of Rule 9 of the CVR 2007;
- (c) Goods covered under the respective Bills of Entry mentioned in Column (3) of the 'Table-14' above, having declared and proposed CIF value as detailed in Column (4) and Column (5) of the said Table, should not be held liable to confiscation under Section 111(m) of the Customs Act, 1962;
- (d) Penalty under Section 112 (a) read with Section 112(iii) of the Customs Act, 1962 should not be imposed on them in relation to the above goods; and
- (e) Penalty under Section 114 AA of the Customs Act, 1962 should not be imposed on them in relation to the above goods.

13.2 Mr. Rahul Bhandare and Mr. Vipin Mahajan are required to show cause to the Adjudicating Authorities, as mentioned in Column 7 of 'Table-14' above, for respective imports mentioned against each, as to why:-

- (a) Penalty under Section 112 (a) read with Section 112(iii) of the Customs Act, 1962 should not be imposed on each one of them in relation to the goods mentioned in 'Table-14' above; and
- (b) Penalty under Section 114AA of the Customs Act, 1962 should not be imposed on each one of them in relation to the goods mentioned in 'Table-14' above.

14. The aforementioned Noticees are required to show cause to the respective Adjudicating Authorities within 30 days of receipt of this Notice, and are further required to indicate in their written reply as to whether they wish to be heard in person before the case is adjudicated. If no mention is made about this in their written replies, it will be presumed that they do not desire any personal hearing and the case will be decided on the basis of evidence on record. If no cause is shown against the action proposed to be taken within 30 days from the date of receipt of this notice or having shown cause, or they do not appear before the respective Adjudicating Authorities when the case is posted for personal hearing, the case will be decided ex-parte based on the evidence on record.

15. Copies of 'Annexure A – F' and all the relied upon documents as enlisted in 'Annexure-R' are enclosed in the form of a Disc (CD/DVD). However, in case the notices

wish to inspect any of the documents relied upon by the department in this Show Cause Notice and to obtain further copies thereof, they may do so by prior appointment with the Deputy Director, 'C' Cell, DRI Zonal Unit, 13, Vithaldas Thackersey Marg, New Marine Lines, Mumbai – 20 (Telephone No. 022-22050191/92/93/94, Fax- 022-22010323).

16. The Department reserves its right to amend the Show Cause Notice, if need be, prior to adjudication of the same. This Show Cause Notice is issued without prejudice to any other action that may be taken against the persons mentioned herein or any other person, under the Customs Act, 1962 or any other law for the time being in force in the Republic of India.



(M. AJIT KUMAR)
PR. ADDITIONAL DIRECTOR GENERAL

Encl.: 'Annexures - A to F' and 'Annexure-R'.

To,

1. **Knowledge Infrastructure Systems Pvt. Ltd.,
Salcon Aurum Complex, 4 Commercial Centre,
Jasola, New Delhi-110025.**
2. **Mr. Rahul Bhandare,
Managing Director, KISPL,
Salcon Aurum Complex, 4 Commercial Centre,
Jasola, New Delhi-110025.**
3. **Mr. Vipin Mahajan,
Director, KISPL,
Salcon Aurum Complex, 4 Commercial Centre,
Jasola, New Delhi-110025.**

Copy to:-

- 1) **The Commissioner of Customs (Preventive),
55-17-3, C-14, 2nd Floor, Industrial Estate, Autonagar, Vijayawada- 520007.**
- 2) **The Commissioner of Customs (Import -II) Mumbai Zone-I, New Customs
House, Ballard Estate, Mumbai- 400 001.**
- 3) **Central Economic Intelligence Bureau, New Delhi.**
- 4) **The Dy. Director, 'B' Cell, DRI, MZU.**
- 5) **Office Copy.**

Annexure A - pertaining to Coal imported per '**M.V. Capital**'.

Annexure B - pertaining to Coal imported per '**M.V. Maple Opal**'.

Annexure C - pertaining to Coal imported per '**M.V. Owl**'.

Annexure D - pertaining to Coal imported per '**M.V. Rhodos**'.

Annexure E - pertaining to Coal imported per '**M.V. World**'.

Annexure F – relevant documents pertaining to Coal imported per '**M.V. Forever SW**'.

ANNEXURE R

RELIED UPON DOCUMENTS I.R.O SHOW CAUSE NOTICE

1. Memorandum & Articles of Association, KISPL
2. Director's Report dated 30.06.2011, KISPL and list of shareholders for FY 2011, 2012, 2013, 2014 and 2015
3. Memorandum & Articles of Association, Knowledge International Strategy Systems Pte. Ltd., Singapore
4. Directors Report and audited financial statements of KISSPL dated 31.03.2015
5. Letters/Summons dated 09.11.2015, 23.11.2015, 22.12.2015 & 24.06.2016 issued under the provisions of section 108 of the Customs Act, 1962
6. MAHAGENCO-KISPL Agreement dated 30.08.2013
7. MAHAGENCO-KISPL Agreement dated 25.10.2013
8. Summons dated 27.10.2015 issued to IMR, New Delhi.
9. Letter dated 30.11.2015 received from IMR, Switzerland.
10. Statement of Shri Rahul Bhandare, Chairman of KISPL & Director of KISSPL recorded on 01.08.2016 under the provisions of section 108 of the Customs Act, 1962
11. Statement of Shri Vipin Mahajan, Director of KISPL recorded on 02.08.2016, under the provisions of section 108 of the Customs Act, 1962
12. Relevant documents pertaining to Coal imported per '**M.V. Maria**'.
13. Relevant documents pertaining to Coal imported per '**M.V. Capital**'.
14. Relevant documents pertaining to Coal imported per '**M.V. Maple Opal**'.
15. Relevant documents pertaining to Coal imported per '**M.V. Owl**'.
16. Relevant documents pertaining to Coal imported per '**M.V. Rhodos**'.
17. Relevant documents pertaining to Coal imported per '**M.V. World**'.