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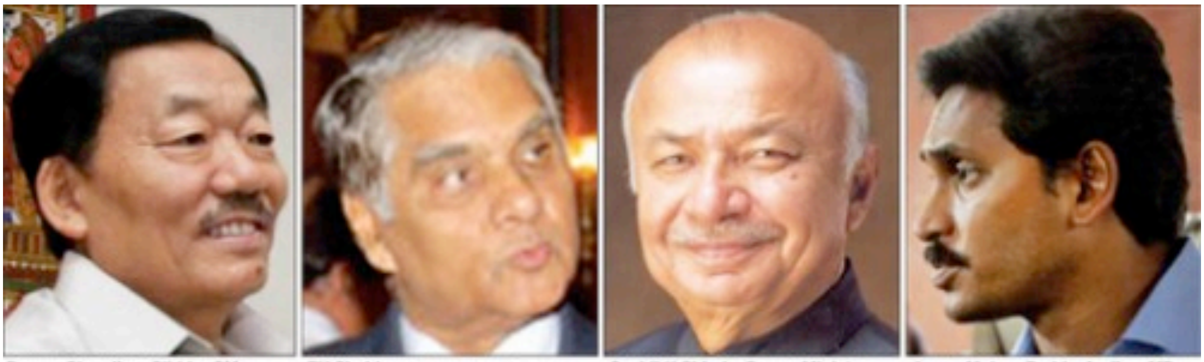
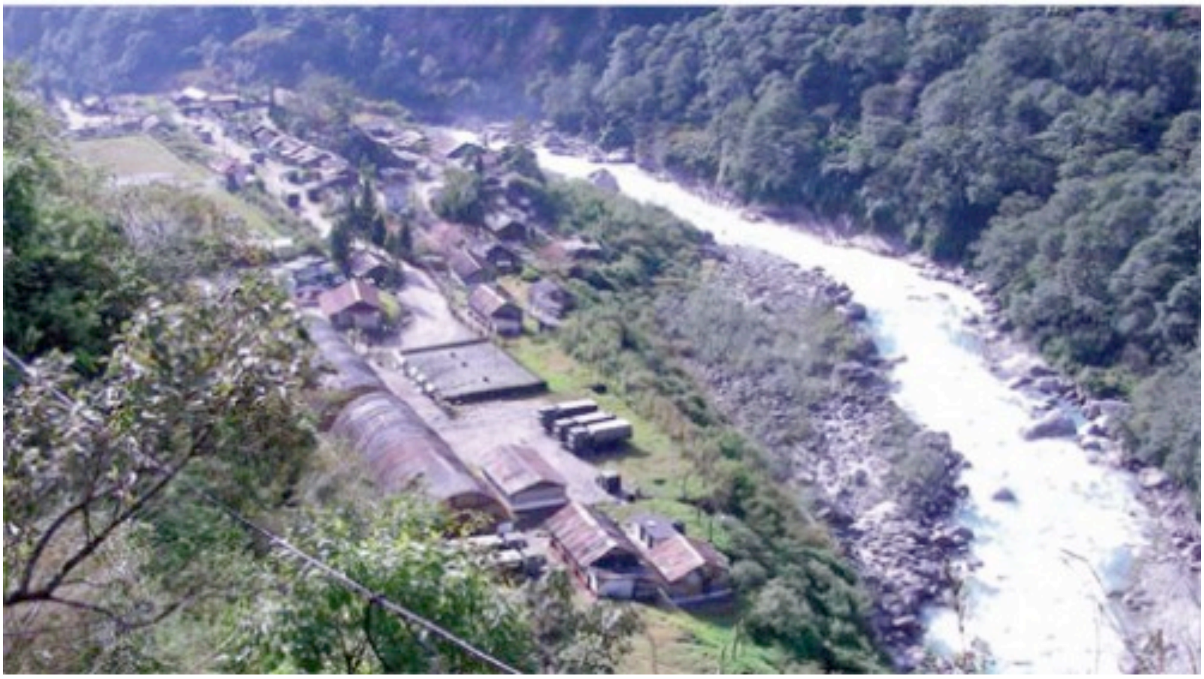
Rs 20,000 crore Hydropower Scam in Sikkim; State Govt in Cahoots With Pvt Players



Pawan Chamling, Sikkim CM | RV Shahi, ex-power secy | Sushil K Shinde, Power Minister | Jagan Mohan Reddy, Andhra MP



There is a dam in the upper reaches of Sikkim that holds back a murky reservoir of bribery, collusion and manipulation in allotting of power projects to private players, shell companies that are fronts for shadowy owners, seemingly reputable bureaucrats who have exchanged favours for post-retirement 'benefits', nationalised banks that have risked thousands of crores of public money in loans to inexperienced companies and 'consortiums of convenience' and the tragedy of a battered environment and lost lives. A crack in the face of the dam has already begun to leak secrets of lies, favours and bribes. It is called Teesta Urja Limited.

By Asif Syed in Delhi and Soumik Dutta in Gangtok

The massive Rs 20,000 crore scandal in the hydropower sector in Sikkim that has been building up since 2004 is about to burst.

On 7 April, the District Judge at Gangktok, Tashi Wangdi, issued an order that said the Government of Sikkim does not own even a single share in Teesta Urja Limited, which is developing the Rs 6,000 crore 1,200 Mega Watt Teesta Stage III Hydro Electric Project and is supposed to be "under joint sector with the Government."

The interim injunction, issued on an appeal from the Government of Sikkim (GoS) itself, went on to restrain Teesta Urja Limited (TUL) from holding a board meeting to change the composition of its Board of Directors until a further order. The order also mentioned that TUL has "refused to execute the Equity Share Agreement" through which the GoS would be given its legal and rightful stake in the joint venture company and that TUL wanted to deprive the government of its "vested rights".

The fact that the GoS does not hold even a single share in what is supposed to be a joint venture company even though TUL and GoS had signed and executed a Memorandum of Understanding agreement on 18 July 2005 is beyond shocking. It is illegal.

This is because time and again the Government of India (GoI) has specified that all private hydropower projects above Rs 100 crore have to be awarded through the route of competitive bidding. The only exception to this guideline is if the company selected through the process of issuing a Letter of Intent and then a Memorandum of Understanding is a joint venture company in which the State Electricity Board or a Public Sector Unit holds a majority stake of 51 percent or higher.

This is clearly not the case with Teesta Urja Limited. This private company was allotted the hydropower project not through competitive bidding but through an arbitrary process where it was favoured above other companies. And the judge's order is damming proof that the GoS does not hold even one percent equity! Which means TUL in reality is clearly not and has never been a joint venture company in which the government holds a majority stake. It is and has always been a 100 percent private company.

This scandal means that almost each and every official clearance and money that the project has received from the Government of India has been obtained under false pretences. TUL has illegally asked for and has received from the Government of India vital clearances like the Techno Economic Clearance from the Ministry of Power, Environment and Forest Clearance from the Ministry of Environment, land from the GoS and Rs 4,560 crore from the Rural Electricity Corporation and 10 nationalised financial institutions.

By law, regulation and Government of India guidelines many of those clearances and most of that money could have been given to Teesta Urja Limited only and only if it is a joint venture company in which the Government of Sikkim should have had a minimum equity stake of 51 percent. Which it clearly does not.

What makes the scandal even more painful is the knowledge that the GoS is not a victim of a scam but is an active and equal partner in crime with Teesta Urja Limited.

According to the MoU between the two, TUL had to allot equity to the GoS within six months of the signing of the agreement. That the equity has not been allotted for more than six years without any objection or action from the GoS shows that the GoS was complicit in that decision. What's worse is that the GoS actively endorsed the efforts of TUL to get clearances and money from the GoI even though it was acutely aware that the entire basis of those requests was invalid and illegal.

It is painfully clear that the shadowy people and companies behind TUL colluded with all the concerned officers of the Government of Sikkim and officers of the Ministry of Power and Central Electricity Authority, GoI who were responsible in advocating in favour of the allotment of the project to TUL to enrich themselves causing a loss to the exchequer and to the detriment of the people of India.

The loss to the people of Sikkim and India in just the case of Teesta Stage III and TUL is almost Rs 6,000 crore and it is certain that this scam covers almost every private power project in Sikkim. And it involves several prominent politicians, past and serving bureaucrats and many known and unknown businessmen. The implications of this are that the exchequer has been robbed of tens of thousands of crores of rupees and that the people of Sikkim and India have been deprived of the benefits of clean hydropower at competitive rates.

Some of the politicians who are linked to this project are Jagan Mohan Reddy, member of parliament and son of the former chief minister of Andhra Pradesh the late YSR Reddy, Pawan Chamling the chief minister of Sikkim and Sushil Kumar Shinde, the Governor of Andhra Pradesh from October 2004 to January 2006 and Minister of Power from then until now.

The bureaucrats who were instrumental in getting the project allotted and facilitating clearances and subsequent funding are RV Shahi, the former Power Secretary GoI, Tantra Narayan Thakur the CMD of PTC India Limited (an officer from the Indian Accounts and Audit Services, GoI), DD Pradhan, the then Principal Chief Engineer cum Secretary Department of Energy and Power GoS, Pema Wangchen, the Chief Engineer Department of Energy and Power GoS and Dr S Narayan, a former secretary to the Government of India.

The original promoter of TUL is a nondescript company called Athena Projects Private Limited (APPL) and the businessmen linked to this company are TV Vijay Kumar, promoter of Asian Genco Pte. Ltd. a Singapore based company and now majority owner of TUL, Krishna V Tatineni, director in Asian Genco Pte. Ltd. and a director in many Athena affiliated companies, Jayaprada Putrevu, director in Asian Genco Pte. Ltd., YV Apparao, the then MD of TUL, MS Ramakrishna, founder director of Karvy Financial Services, and MSP Rao, formerly with Rashtriya Chemicals and Fertilisers and Reliance Industries, Krishna V Tatineni.

The story so far is just the tip of the iceberg.

The genesis of this scam stems from the violation of the concept of 'Competitive Bidding' in government projects that is done to ensure transparency and a level playing field so that not only does the government get the best deal but also the citizens are reasonably sure that politicians, bureaucrats and businessmen have not colluded to enrich themselves at the cost of the exchequer and to the detriment of the people of the country.

It is needless and yet necessary to emphasise that this principle has been violated a countless number of times and is observed more in the breach. The results of violating this golden rule for public interest government projects are always regrettable – if the triumvirate of Neta, Babu and Seth gets away scot-free then it is the common people who suffer and if by some slip of fate, tenacity of an idealist citizen or (most likely) the chicanery of a rival vested interest the scam is uncovered, then the triumvirate suffers along with the people who also suffer because either the project is delayed or dropped altogether.

Road Map to Dystopia: The state distorts policy

This massive scam begins with the wilful distortion of established policy by the GoS.

In May 2004 Pawan Chamling and his party the Sikkim Democratic Front returned to power with a thumping majority. He was eager to show that his government would deliver progress and prosperity to the state and to do that he set out what he called the “100 Days Development Road Map for All Departments”. Along with an ambitious agenda for developing an industrial belt, privatisation of sick units, setting a software park and modernisation of bazars he also focused on the one sector without which nothing would be achievable – energy and power.

It is notable that he kept the power ministry portfolio with himself, reportedly on the advice of DD Pradhan the then Secretary of the Department of Energy and Power.

He directed the Energy and Power Department that any “capable private party to tap additional generation of energy should be pursued” and the department should “prepare itself for generating 3,000 MW for which agreements with such a capable party should be drawn up within this period” of 100 days.

In less than a month, on 15 June 2004, a high-powered committee was set up that included the Chief Secretary, two Additional Chief Secretaries, Principal Secretary Finance, Environment Secretary and the Power Secretary. This committee was to “examine the proposals received from all concerned for Teesta Stage I, II, III, IV, VI and other mini and micro Hydel Projects” and submit a recommendation with the “objective of securing the target of the State Government to produce 3,000 MW power by the year 2007.” The top brass of GoS was given a deadline of just 15 days.

A year or so before the High Powered Committee was appointed the GoS had engaged a consultant to prepare the hydropower policy for the state. The consultant’s report required that proposals for all projects would be widely advertised to seek potential bidders and projects would be awarded to the highest bidder. There would be certain criteria laid down to qualify the Independent Power Producer (IPP) such as past experience of hydro development, criteria for determining their financial capability, the rate of royalty, norms for maintenance of the projects and so forth. And by September 2003, the Administration Staff College of India had prepared the draft private power policy for Sikkim (which, to date has not been notified).

All this was junked as Chamling wanted to move fast. He wanted power and he wanted it now!

Sure enough, less than a month later the high-powered committee put out a document called ‘Terms of the State Government for Development of Hydro Power Project under Private Sector’. They proposed that projects above 25 MW in capacity would be developed on what is known as the ‘Build, Own, Operate, Transfer (BOOT)’ basis in public-private partnership. The GoS would enter into a MoU with the Independent Power Producer (IPP) and take an equity share of 26 percent in the projects and the IPP would arrange for the funds for the equity participation of the government. The GoS would repay the partner of the arranged funds from the revenue that would accrue from the free power to which it would be entitled. Royalty was set at 12 percent of net energy for the first 15 years and then 15 percent for the next 20 years.

There are two problems with this policy.

The first is that it goes against the letter and spirit of several guidelines of the Government of India that have been in force since 1995. The MoU route for giving power projects to private players was curtailed after a cut-off date of 18 February 1995 and that was stipulated repeatedly to state governments in writing by the Ministry of Power on 18 January, 15 February and 14 August of 1995 and once again on 28 June 1996.

The only exception to the route of competitive bidding for private hydro projects above 100 MW are: "Joint venture projects between State Electricity Board / Public Sector Undertaking and private company provided the SEB/PSU (either combined or individually) hold majority shares (51%) of the joint venture company."

In other words, as per GoI guidelines a joint venture company in which the State Government has less than 51 percent equity cannot be awarded a hydropower project above 100 MW by using the MoU route to bypass competitive bidding. It really can't get any clearer than that.

But the GoS and the Department of Energy and Power under Pawan Chamling did exactly the opposite of that – at least six times from 18 July 2005 to 1 March 2006.

The second problem would be obvious to even the most casual observer. The "Terms" are loaded in favour of the IPP.

It began with an absurdly low up front premium of "Rs 10,000 MW per MW of the installed capacity towards non-refundable processing fee." This while states like Himachal Pradesh and Uttarakhand were demanding and getting huge up-front premiums from private hydropower developers. By one calculation the cumulative loss on this count to the GoS alone is upwards of Rs 4,000 crore!

There was no provision of a security deposit to ensure earnestness by the IPP and there were no built in safeguards against non-performance. The IPP had to complete the project with a period of 48 to 60 months from the date of financial closure by the meagre penalty of Rs 10,000 per MW per month, according to the CAG had no logical basis, as it was not linked to the royalty that would be received on timely commissioning of the project.

It would seem this policy was designed to protect the legal and financial interests of the IPP no matter what the cost to the people and governments of Sikkim and India.

These "Terms" – which even the Comptroller and Auditor General of Sikkim criticised as they "favored the independent power producers at the expense of Exchequer" – were to form the basis for the more than 25 power project deals that were signed in the next few years.

In today, out tomorrow: Allotment process arbitrary

Along with a distorted policy on private hydropower projects was a totally arbitrary and potentially litigious allotment process. It's amazing that after jumping through all sorts of policy loopholes to be able to allot hydropower projects to preferred private parties the GoS made such a mess with the allotment process.

Before Athena Projects Private Limited, the promoter of TUL, was given the project, there was another consortium trying to wrangle the Teesta Stage III project led by a company called Cosmos Electric Supply Private Limited (CESPL), promoted by KL Chugh, the former chairman of ITC. The 'Consortium of Cosmos' as it was known included Leighton Engineers from Australia and Muller and Associates from

Germany who had committed to invest US $ 150 million (then Rs. 700 crore). And they had almost won the contract.

A Cabinet Note of 15 October 2004 lists Sutlez Jal Nigam Vidyut Ltd., New Delhi, Consortium of Cosmos, New Delhi, Jal Power Corporation Ltd., Hyderabad, Athena Advisors Pvt. Ltd., New Delhi (an earlier guise of APPL, who seem to be a Hydra headed entity) and SMEC, Australia.

In that note the Energy and Power Department recommends that the project be allotted to "the consortium of M/S Cosmos Electric Supply Limited and their partners on the terms of the State Government." This means that Cosmos had accepted the "Terms" set out by the high-powered committee of the GoS and they in turn had found their proposal acceptable. Cosmos had been selected and Athena had been rejected.

Three days later something very strange and damaging happened. For some strange, self destructive reason on 18 October 2004, Nagendra Rao, a director in CESPL wrote a letter to DD Pradhan, Secretary, Power and Energy Department saying that though they had accepted all the terms of the GoS, they wanted the GoS to reconsider either the duration of the contract from 35 years to 45 years or to continue with a royalty of 12 percent for 35 years instead of an increase to 15 percent after the first 15 years. Neither KL Chugh nor the representatives of Leighton or Muller had signed off on the letter.

The same day, the issuing of the Letter of Intent to 'Consortium of Cosmos' was deferred in the Cabinet meeting.

In spite of this snafu the Energy and Power Department persisted with its desire to allot the project to 'Consortium of Cosmos' and put forward another Cabinet Note on 5 November 2011 proposing the allotment of the Teesta Stage III project to them and the issuing of a Letter of Intent in view of "the capabilities of the consortium with regard to technical, financial and managerial, we may choose this consortium to be the joint venture partner of the State for the development of Teesta III project."

However that was not to be. Nagendra Rao's missile had done its work.

A Cabinet Note dated 21 February 2005 proposed to allot 13 hydropower projects to private players through the MoU route without any competitive bidding. The largest, most expensive and most difficult project, Teesta Stage III, was allotted to Athena Consortium, the very group that had been rejected just four months earlier. The Cabinet Note was approved a day later. Four short days later on 26 February 2005, the GoS issued a Letter of Intent to APPL.

On 5 December 2005, a new company DANS Energy Pvt. Ltd. was awarded the 96 MW Jorethang Loop hydropower project. The promoter, chairman and managing director of DANS Energy Pvt. Ltd. is T Nagendra Rao.

The odd thing about the transition of the Athena Consortium from laggard to victor is their changing persona. In their first letters to the GoS they are Athena Advisors Pvt. Ltd., then in a 14 September presentation they transform into a joint venture with Andhra Pradesh Genco, a State PSU, and a consortium of companies led by APPL called Athena Consortium. AP Genco is given prominence, Athena Consortium takes the second place and in the 21 February 2005 Cabinet Note they are called APGENCO-Athena Consortium.

The Letter of Intent, however, was sent exclusively to Athena Projects Pvt. Ltd.

The following were listed as members of Athena consortium:

1. Athena Projects Pvt. Ltd.

2. Larsen and Tubro

3. ICICI Securities

4. PTC India Limited

5. IL & FS

6. Karvy

7. Halcrow

At this point it is worthwhile to ask what exactly prompted the GoS to accept APPL as the leader of the consortium to build the largest hydropower project in Sikkim.

APPL had been formed only in August 2004 and until then in its short but exciting life it had not executed a single infrastructure project of any kind, shape or size. APPL did not have any experience let alone expertise in hydropower or power generation of any kind. The only electricity APPL would have generated would have been from the genset at its Jorbagh office during one of New Delhi's frequent power cuts.

Yet APPL was accepted as the leader of a consortium that included worthies such as Andhra Pradesh Genco and Larsen and Tubro, within six months of its existence!

Once APPL got the LoI matters proceeded at a fairly quick trot in a fairly routine manner. What was not routine, as you will see, was the response and behaviour of the government of Sikkim.

APPL formed a company called Teesta Urja Limited (TUL), a 'Special Purpose Vehicle', a company floated by APPL especially to enter into a joint venture with the GoS and qualify to be allotted the Teesta Stage III project through the non-competitive bidding MoU route. The Memorandum of Articles of Association is dated 7 March 2005 and the Certificate of Incorporation is dated 11 March 2005.

The Memorandum of Articles of Association shows the following as subscribers:

1. S Goplakrishnan, New Delhi: 100 shares

2. Mulakala Surya Prakasha Rao, New Delhi: 100 shares

3. Pina Potu Durga Prasada Rao, Delhi: 100 shares

4. Rajendra Singh, New Delhi: 100 shares

5. Hashu Pessumal Bhagat, Hyderabad: 100 shares

6. Dr. Chunchu Raghuvera Prasad, Gurgaon: 100 shares

7. Vusirikala Venkata Badareenarayana: New Delhi: 100 shares

8. Athena Projects Private Limited, New Delhi: 49,3000 shares

The address for APPL is given as No. 8 Golf Apartments, Sujan Singh Park, Maharishi Raman Marg, New Delhi 3. And it is signed through, Srinivasan Gopalakrishnan, s/o R. Srinivasan, New Delhi. S Gopalakrishnan and Srinivasan Gopalakrishnan are either the same person or brothers as they share the same address and father's name!

The total number of shares listed was 50,000 and APPL held 49,300. Not one share was in the name of the government of Sikkim. Let alone the 26 percent equity stake of the GoS in Teesta Urja Limited, not even the name of the GoS was mentioned in the document.

The same applies for the rest of the companies listed in the LoI and who were supposed to be partners in the consortium. They had all mysteriously vanished from the Memorandum of Articles of Association of APPL. Of the disappeared companies, Andhra Pradesh Genco is a state PSU, had it taken the required clearance from the state power department before it had participated in the consortium? And similarly wouldn't it need state permission to exit from the consortium? As late as 2010 the lawyer for TUL is quoted in a High Court of Sikkim order in a PIL as saying that TUL has to still issue equity to AP Genco. However no protest has been registered from AP Genco.

PTC India Limited and IL&FS have a significant government of India shareholding and senior government servants sit as GoI nominees on their boards of directors. Neither of them registered any objection. (PTC India Limited later became a shareholder of TUL and its website shows that it now owns an 11 percent equity stake. However it is not clear when exactly did PTC India Limited acquire that stake.)

On 6 April 2005, APPL informed the GoS through a letter that it had formed a company Teesta Urja Limited as a 'special purpose vehicle' for the implementation of the Teesta Stage III hydropower project. There is no mention of the government's 26 percent equity share.

The GoS replied by a letter dated 20 April 2005 stating that in principle they approved and that APPL and its consortium would hold 74 percent equity in TUL and the GoS would hold 26 percent. This reply is an indication of sarkari myopia at best and wilful blindness at worst.

One has to assume that the GoS would have seen the Memorandum of Articles of Association of TUL before giving its approval. One can hope that they would have noticed that not only were the consortium partners missing from the document, but so was the GoS and its much vaunted 26 percent equity share. Yet the GoS did not make an official objection or request to remedy the situation. By not being mentioned in the document the
GoS was tacitly being denied its share of 26 percent equity but it chose to remain silent and in a bizarre and self-defeating act gave its approval to the letter from APPL. This is one of Chamling's many self-goals.

On 5 May 2005, APPL received the certificate of commencement of business for TUL and on 18 July 2005 the government of Sikkim entered into a Memorandum of Understanding with Teesta Urja Limited for the development of Teesta Stage III.

The signatories to the agreement are DD Pradhan from the government and YN Apparao from Teesta Urja Limited.

At that time DD Pradhan was the Principal Chief Engineer cum Secretary, Department of Energy and Power, GoS. He was a key government player in the allotment of power projects to private developers in Sikkim. Now he works as the Director of Business Development for Abir Infrastructure Pvt. Ltd., an engineering and construction company that owns East Coast Energy Pvt. Ltd. (ECEPL) in partnership with Asian Genco Pte. Ltd., Athena Energy Ventures Pvt. Ltd. (a subsidiary of APPL) and PTC Indian Financial Services. ECEPL is developing the 2,640 MW Bhavnapadu thermal power plant.

The witnesses for the government were:

1. ND Chigapa, Chief Secretary, GoS
2. GK Subba, Additional Chief Secretary, GoS
3. TT Dorjee, Principal Finance Secretary, GoS. Now he is the chairman of the SERC
4. KN Sharma, Secretary, Land revenue Department

5. Pema Wangchen, Chief Engineer, Department of Energy and Power. He is now retired and is reported to be launching a four star resort at Sichey in East Sikkim. He too was considered to be one of the key government players in the allotment of power projects.

6. TR Poudyal, Principal Chief Conservator of Forests cum Secretary, Forest Department, GoS

The witnesses who signed for TUL were:

1. TV Vijaykumar, Director, TUL. Thotakura Venkat Vijay Kumar, is now also listed as the promoter and director of Asian Genco Pte. Ltd. However at the time of the signing of this agreement, AGPL was not yet in existence.

2. Rajeev Bhandari, PTC India Limited

3. MS Rana, Karvy

4. KK Gupta, L&T (he has signed in Hindi)

5. V Badrinarayana, Erudite Engineers Pvt. Ltd.

6. PD Prasada Rao, Erudite Engineers Pvt. Ltd.

7. CR Prasad, TUL

8. CK Mahanta

On 18 July 2005, APPL had completed a remarkable feat. From being formed on 5 August 2004 and not having executed even a single project of any sort, APPL had included and then ejected AP Genco and L&T from its consortium and had then closed a MoU to build a 1200 MW hydropower project – all in less than one year! Who says things move slowly in India?

Out to pasture: The MoU and its non-implementation

The MoU between the government of Sikkim and TUL on the issue of subscription of equity by the government clearly states: “The Company shall allocate 26% (Twenty Six percent) of the Company’s equity share to Government by way of execution of an equity subscription agreement between the Company and Government, which shall be executed within a period of 6 (six) months from the date of signing of the Agreement.

Upon execution of such an equity subscription agreement, Athena as defined in the Definitions Clause 1.2.5 shall, on request from the Government without the requirement of sovereign guarantees, arrange the funding for equity participation of Government in the Project at the mutual agreed terms.

The proceeds from such sale of Free Power and the dividends in respect of Government’s equity in the Project, whether in part or full at the discretion of the Government, would be utilized for repayment of the funding arranged by Athena for financing the equity participation of the Government, and the Government shall execute all the necessary agreements as desired by the providers of such funding.”

This basically means that within six months of signing the MoU, TUL has to execute an equity subscription agreement and allocate 26 percent of the shares in the company to the GoS. The GoS does not have to pay for those shares up front as it is APPL’s responsibility to arrange for the funds to finance the purchase of the shares, which the GoS will pay back to APPL or whosoever has raised the funds, not from its pocket but from the sale of the free power that it is entitled to get for 35 years.

As the MoU was signed on 18 July 2005, the equity subscription agreement should have been drawn up and executed by 17 January 2006. It is now known that this has not yet been done. One cannot fathom the reasons for this delay in simple paperwork in just this instance because as we have seen all other paperwork between APPL and the GoS moves at lightning speed. It is mind boggling that the GoS would silently abide being denied its rightful share of equity for almost seven years.

However, while the paperwork is simple the consequences of it not being done on time have been very serious for the GoS. It is because it does not have an equity subscription agreement that it has to run from pillar to post to get its rightful share allotted.

In fact the opposite is true, the GoS in the past has actually supported the position that TUL was actively working towards issuing the equity. In a reply to a PIL filed by Nar Bahadur Bhandari, the former chief minister of Sikkim, the lawyer for TUL, Jayanta Mitra had said, “the Govt. of Sikkim is in the final stages of approving the share subscription agreement vide which the Govt. of Sikkim would subscribe to the equity share capital of the respondent No.3 (TUL).”

And the Advocate General of the GoS, A Mariarputham who was also appearing in the same case of the government had quoted the LoI and MoU and accepted Mitra’s contention.

There is also a clause to protect the commercial interests of the GoS that states: “The balance 74 % (Seventy Four percent) of equity shares of the Company shall be subscribed by Athena. The Share holdings of each constituent of Athena and their responsibilities shall be communicated by the Company to the Government of Sikkim at the time of Financial Closure. The Company shall not change the constitution of the Athena consortium without prior permission from the Government. If the Company fails to submit the share holding agreement with the members of the Athena at the time of Financial Closure, then the Government can terminate this agreement.”

This provision in the agreement restricts APPL from changing the composition of the consortium as it has to keep the GoS informed about the individual share holding of each of the constituents of the consortium, and before any member of the consortium buys or sells shares, whether it is with members in the consortium or with entities from outside the consortium, it has to first take permission from the GoS.

This means no member can increase or decrease their shareholding in TUL without first informing and taking permission from the GoS. It also means that no outside entity can buy the shares of a consortium member and no consortium member can sell shares to an outside entity without first informing and taking permission from the GoS.

If there is a violation of this clause the GoS can unilaterally terminate the agreement.

However, the existence of this clause has had no restraining effect on APPL, who has violated this clause at least once when it awarded 50.9 percent of the equity of TUL to Asian Genco Pte. Ltd.

It would have been impossible for AGPL to be listed either in the LoI or the Memorandum of the Articles of Association as it was incorporated only in January 2007 in Singapore. Thus it is not a member of the Athena Consortium as specified in the MoU. The question therefore is whether or not the sale of equity to AGPL is illegal?

The sale of 50.9 equity to AGPL has resulted in a situation where the leader of the erstwhile Athena Consortium, APPL has been reduced to a minority shareholder. And AGPL who is now the owner of

TUL is not obligated to the GoS in any way because it has not entered into any contract or signed any agreement with the GoS.

While the sale of TUL's equity to AGPL is now a fact of life, the sale itself raises some very pertinent questions:

Whose stake in TUL did AGPL acquire to become the 50.9 percent equity owner?

How much money did AGPL pay to acquire that stake or in other words, what is the value of 50.9 percent of TUL's equity? And where has that money gone?

Public Ka Paisa – pooray 4,560 cr

Lent in India, Charged in Singapore

These are the funds from nationalised financial institutions that show as a charge in the accounts of Asian Genco Pte. Ltd. in Singapore
(Source: Accounting and Corporate Regulatory Authority, Singapore)

NAME OF LENDER	AMOUNT in Rs.	DATE CHARGE REGISTERED
RURAL ELECTRIFICATION CORPORATION LTD.	21,000,000,000.00	19/03/2008
ORIENTAL BANK OF COMMERCE	1,000,000,000.00	19/03/2008
LIFE INSURANCE CORPORATION OF INDIA	1,000,000,000.00	19/03/2008
UNITED BANK OF INDIA	1,000,000,000.00	19/03/2008
CANARA BANK	2,650,000,000.00	19/03/2008
HOUSING & URBAN DEVELOPMENT CORPORATION LTD.	5,450,000,000.00	19/03/2008
INDIA INFRASTRUCTURE FINANCE COMPANY LTD.	5,000,000,000.00	19/03/2008
BANK OF BARODA	2,000,000,000.00	19/03/2008
DENA BANK	1,000,000,000.00	19/03/2008
PUNJAB & SIND BANK	500,000,000.00	19/03/2008
PUNJAB NATIONAL BANK	5,000,000,000.00	19/03/2008
TOTAL	4560,00,00,000.00	

The total size of the scam is not known except that it runs into many thousands of crores of rupees. At the very least CAG estimates a loss to the exchequer of about Rs 280 crores in lost premiums and several thousand crores in royalty and earnings from the sale of surplus electricity have been lost due to delayed projects. The latest Public Interest Litigation filed in the High Court – there have been two unsuccessful PILs filed earlier – states the loss to be more than 10,000 crore and demands a CBI inquiry.

Already being mentioned in the same breath as the 'hydropower scam in Sikkim' is the name of Jagan Mohan Reddy, reputed to be the benami owner of at least two private power companies – Teesta Urja Limited and Himurja Infra Private Limited.

There is another figure that is doing the rounds, an exact Rs 4,560 crore.

This is the sum of money raised by Teesta Urja Limited from the Rural Electrification Corporation and 10 other nationalised corporations and banks. They are: REC (Rs 2,100 crore); Housing and Urban Development Corporation Limited (Rs 545 crore); India Infrastructure Finance Company Limited (Rs 500 core); Punjab National Bank (Rs 500 crore); Canara Bank (Rs 265 crore); Bank of Baroda – don't they ever learn? (Rs 200 crore); and Oriental Bank of Commerce, Life Insurance Corporation of India, United Bank of India, Dena Bank have given Rs 100 crore each and Punjab & Sind Bank has lent Rs 50 crore.

This money was most likely raised under false pretences as TUL was claiming to be joint venture company with the GoS. It is also possible that the GoS could have given an endorsement to TUL to present to the banks and corporations. But several questions still arise. Did these banks do their due diligence before lending such a large sum to TUL? Did they ask to see a list of the shareholders to whom it has issued equity? Do they know who the actual owners of TUL are? Did they ask TUL for a copy of the MoU to see whether or not it is complying with the agreement with the GoS? How much of their money has been spent? And where is what remains of the rest of the money?

These questions are especially pertinent because the funding was led by REC, and it is reported that REC does not have an in house project appraisal team. It normally works in tandem with the Power Finance Corporation, both of whom come under the Ministry of Power. So did the orders to help TUL raise funds come from the very top?

And TUL would have desperately needed that help because according to a source, after a through due diligence process SBI CAPS, the investment banking arm of the State Bank of India had rejected the funding application of TUL.

In any case TUL, with the timely aid from white knight REC, was able to achieve financial closure on 14.08.2007

At the moment this money is shown as a charge in the account of a Singapore incorporated and based company called Asian Genco Pte. Ltd. This company did not exist when Teesta Urja Limited signed the MoU with the GoS but now reportedly owns 50.9 percent of Teesta Urja Limited and in March 2010 received USD 425 million from five investment banks in a deal led by Gautam Bhandari of Morgan Stanley Infrastructure Partners and then another USD 60 million from PTC Ashmore India Energy Infrastructure Fund led by John Michael Lind, CEO of Ashmore India.

Any Internet search for APPL leads to dead ends and to the websites of its associate and joint venture companies like Athena Energy Ventures Private Limited, a JV with Power Trading Corporation India Limited and financial institutions IDFC and IFCI. Another company that shows up in link with APPL is Athena Infraprojects Private Limited that according to its website is promoted by MS Ramakrishna, founder director of Karvy Financial Services, Dr S Narayan, a former secretary to the Government of India and MSP Rao, formerly with Rashtriya Chemicals and Fertilisers and Reliance Industries.

The third known owner of Teesta Urja Limited is the PTC India Limited, headed by Tantra Narayan Thakur, an officer from the Indian Accounts and Audit Services.

Together they own 90.9 percent of Teesta Urja Limited.

Which is very strange, odd, unlikely, improbable and even though the Government of Sikkim has gone to court against it, it's very likely true.

This is because the Government of Sikkim is supposed to own 26 percent of Teesta Urja Limited and they have the Memorandum of Understanding to prove it!

But, but, but... they are now running from pillar to post like an agitated RTI activist who wants to file a PIL to claim their share.

Not Tic-tac-toe: How Did TUL get the TEC?

Last year when the Parliamentary Accounts Committee, then headed by BJP leader Murli Manohar Joshi questioned the MoP about the serious lapses in the allotment of power projects in Sikkim, the MoP forwarded the questions to the GoS.

After getting two notices from the PAC and the MoP, the Sikkim Power Development Corporation Ltd. asked 27 private hydropower project developers to furnish detailed reports about the consortium agreement, company profiles, memorandum of association, balance sheet etc at the time of allotment of projects by the state government. In a two separate letters the SPDCL General Manager, Raju Basnett and Manager Civil, Palchen D Chaktha issued notices to the concerned developers to furnish the requested documents at the earliest. In the enquiry list they also asked for the certificate of incorporation of the SPV including the Memorandum of the Articles of Association of the SPV, the changes in ownership with certified copies of certificates issued thereof by the registrar of companies, details of changes in the consortium members of the original project allottee and copies of the approval sought from the GoS as per terms of the MOU. They also asked for the present shareholding of the parent company as well as that of the SPV.

The earnestness of the inquires must have amused the many private hydropower developers and with a wry smile they would have dropped the letters from SPDCL into the wastepaper basket. Obviously none of them replied to SPDCL.

However a tenacious BJP party worker, Padam Chettri, filed an RTI application to get the information that the SPDCL could not. The private hydropower developers replied that as Private Limited company they are outside the purview of the RTI Act 2005 and it is not applicable to them. Furthermore they said, that in view of a notification (350/CEIII/SLDC/10-11/530 dated 18 April 2011) issued by the Department of Energy and Power, GoS the SPDCL has no rights under the implementation agreement with the company.

From these responses it becomes clear that none of the companies that have been awarded projects by the GoS consider themselves to be in a joint venture with the GoS and thus are not answerable to the GoS. This situation was facilitated by the GoS itself through its policies and actions.

In these circumstances it becomes very important to look at the first and the most important clearance that any hydropower project requires from the GoI. This clearance is called the Techno Economic Clearance and is issued by the Central Electricity Authority, which comes under the MoP.

On 12 May 2006 Teesta Urja Limited was given the TEC, even though for all practical purposes it did not qualify for the TEC.

It may not be possible to establish with any certainty just how did this happen and who is responsible for awarding the TEC to TUL. The finger of suspicion, however, does point to one person – RV Shahi, the Secretary to the GoI in the MoP from April 2002 to January 2007. It was during his tenure that the CEA gave the TEC to TUL.

The awarding of the TEC to TUL was not a routine matter that in normal circumstances would not have risen to the rarefied echelons of the Secy. MoP. At that time the Teesta Stage III was the largest hydropower project in Sikkim and the largest project to be undertaken by a company from the private sector. Add to this the fact that Teesta Stage III is in seismic zone 5 and presents an actual threat in the event of an earthquake. If there were one project in 2006 that would have gotten the attention of the Secy MoP then this one would be it.

The interesting question is not what RV Shahi did then. That is obvious. He gave TUL the desired and desireable TEC. The real question is what RV Shahi did after retirement from government service, and what does he do now?

The not so obvious answer is that he is the Chairman of a very young and very successful engineering consultancy company called Energy Infratech Private Limited. In the short time that it has been around this company has notched up some successes and currently, even in these recessionary times, it as a full order book with 28 hydro, thermal and wind power projects around the country.

Who owns EIPL? No one other than Asian Genco, the current owners of TUL.

Who is EIPL's biggest client? Why, it's none other than APPL and its subsidiary and joint venture companies, AIPL, AEVPL, ADPL, ECEPL and ACPL.

We do not mean to say that RV Shahi took a bribe or masterminded a brilliant quid pro quo – I give you clearance and support from the Ministry of Power when I am a government servant and you give me jobs contracts and commissions once I retire.

Heck no. All we are saying is that the GoI should take a more serious look at the proposal to ban senior government servants from taking up jobs in the private sector for a minimum of five years after retirement.

This, as we have said before is just the tip of the iceberg.

The story of the scam and scandal behind the Teesta Stage III Hydro Electric Project and other such projects has just begun to unravel. There are many more details about the other projects, their actual owners and political backers that have yet to be revealed.

Source: http://currentnews.in/2012/05/10/20000-crore-hydropower-scam-in-sikkim-state-govt-complicit/