

AFFIDAVIT

I, the undersigned,

Natasha Wendy Anita Mazzone

Hereby make oath and state that:

AD DEPONENT

1.

- 1.1 I am an adult **female** person of the above details and of full legal capacity, employed as a member of parliament, at **on the third floor of the Marks Building, Parliament, room number M301** and residing in **Cape Town**
- 1.2 Unless specifically indicated otherwise, the facts contained in this affidavit fall within my personal knowledge, and are to the best of my belief both true and correct.
- 1.3 I do however point out that, where I refer to information contained in newspaper reports, I rely upon the veracity of the said reports, and that I am deposing this affidavit on the presumption that said reports are factually accurate.

AD PURPOSE

2.

- 2.1 This affidavit concerns possible criminal offences committed by various persons, including **ANOJ SINGH** (hereafter referred to as "Singh"), who is the current Chief Financial Officer ("CFO") of **ESKOM HOLDINGS SOC LTD** (hereafter referred to as "Eskom") and a member of the Eskom Board, and **PRISH GOVENDER** (hereafter referred to as "Govender"), currently a member of the Eskom Board.

- 2.2 I depose this affidavit in my capacity as a concerned citizen, and as a Member of Parliament representing a sizable constituency that is directly affected by the incidents detailed hereunder.
- 2.3 It is my belief that the acts detailed hereunder warrant further investigation by the South African Police Services, with the view to criminal prosecution.

THE ALLEGED OFFENCES

3.

- 3.1 I attach hereto as **ANNEXURE “A”** a copy of a report, dated 29 June 2017, that was commissioned by Mr G.T. Sexwale, Chairperson of **TRILLIAN CAPITAL PARTNERS (PTY) LTD** (hereafter referred to as “Trillian”) and compiled by Advocate Geoff Budlender SC regarding allegations on the Trillian Group of companies and related matters (Hereafter referred to as “the Budlender report”)
- 3.2 In paragraph 67.1 of the Budlender report it is revealed that Trillian Management Consulting (hereafter referred to as “TMC”) submitted an invoice, with reference ESK2016-MCO1, to Singh on 14 April 2016. The invoice is for the amount of **R 30 666 000.00 (THIRTY MILLION SIX HUNDRED AND SIXTY SIX THOUSAND RAND)** for “professional fees: Pro-rate share of Eskom Corporate Development Plan” and is stamped as “paid” on the same date.
- 3.3 The Budlender report further reveals, in paragraph 67.2 and 67.3, that on 10 August 2016 two invoices, with references ESK2016-MC02 and ESK2016-MC03 for the amounts of respectively **R 122 208 000.00 (ONE HUNDRED AND TWENTY-TWO MILLION TWO HUNDRED AND EIGHT THOUSAND RAND)** and **R 113 262 534 (ONE HUNDRED AND THIRTEEN MILLION TWO HUNDRED AND SIXTY TWO THOUSAND FIVE HUNDRED AND THIRTY-FOUR RAND)**, were submitted to Govender by TMC. Both were paid on 13 August 2016.
- 3.4 I attach hereto as **ANNEXURE “B”** an article that appeared in The New Age on **18 May 2017**, entitled “Eskom denies contracts with Trillian Capital”. In the article Khulu

Phasiwe, spokesperson for Eskom, is quoted categorically denying that Eskom has any contracts in place with Trillian Capital Partners and/or associated companies.

3.5 TMC is a 100% subsidiary of Trillian, and can therefore reasonably be included in the description of an “associated company”, and covered by the denial referred to in paragraph 3.4 above.

3.6 It is my respectful submission that Singh and Govender, who received invoices directly from TMC and therefore knew that Eskom was doing business with Trillian, committed an offence in terms of section 214(1)(c) of the *Companies Act, Act 71 of 2008* (hereafter referred to as “the Companies Act”). The relevant sections reads as follows (own emphasis):

(1) A person is guilty of an offence if the person-

(...)

(c) was knowingly a party to an act or omission by a company calculated to defraud a creditor or employee of the company, or a holder of the company's securities, or with another fraudulent purpose;

4.

4.1 I attach hereto as **ANNEXURE “C”** an article that appeared on Fin24 on 19 July 2017, entitled “Why Eskom crushed 2.1bn Optimum fine to just R 255.4m”, available at the following URL: <http://www.fin24.com/Economy/Eskom/why-eskom-crushed-r21bn-optimum-fine-to-just-r2554m-20170719>

4.2 At the time that Eskom reduced the fine described in the above article, Singh was CFO of Eskom.

4.3 I further attach hereto as **ANNEXURE “D”** an article that appeared on Times Live on 21 July 2017, entitled “Eskom top brass on spot for corruption questions”, available at the following URL: <https://www.timeslive.co.za/news/south-africa/2017-07-21-eskom-top-brass-on-spot-for-corruption-questions/?src=ilaw>

4.4 The article contains a transcript of questions posed to Singh by journalists at a press briefing held on 19 July 2017, and reveals that Singh approved a **R 1 680 000 000.00**

(ONE BILLION SIX HUNDRED AND EIGHTY MILLION RAND) guarantee to ABSA on behalf of Eskom for the purchase of the Optimum Mine by **TEGETA EXPLORATION AND RESOURCES (PTY) LTD**, a private company (hereafter referred to as “Tegeta”), which is by no means standard practice, is not a courtesy extended to other companies seeking to buy coal mines, and involved an enormous amount of risk for Eskom. See attached bank letter from ABSA to Tegeta confirming said guarantee labelled **ANNEXURE E**.

4.3 It is my respectful submission that this constitutes an offence in terms of section 50(1)(a), 50(1)(b) and 50(2)(b), read with section 86(2), of the *Public Finance Management Act*, Act 1 of 1999 (hereafter referred to as “the PFMA”). The relevant sections of the PFMA reads (own emphasis):

Section 50(1)(a)

(1) *The accounting authority for a public entity must-*

- (a) *exercise the **duty of utmost care** to ensure **reasonable protection of the assets and records of the public entity**;*

Section 50(1)(b)

(1) *The accounting authority for a public entity must-*

(...)

- (b) *act with fidelity, honesty, integrity and **in the best interests of the public entity in managing the financial affairs of the public entity**;*

Section 50(2)(b)

(2) *A member of an accounting authority or, if the accounting authority is not a board or other body, the individual who is the accounting authority, may not-*

(...)

- (b) *use the position or privileges of, or confidential information obtained as, accounting authority or a member of an accounting authority, for personal gain or to improperly benefit another person.*

Section 86(2)

(2) *An accounting authority is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that accounting authority wilfully or in a grossly negligent way fails to comply with a provision of section 50, 51 or 55.*

4.4 It is in my opinion also quite possible that further investigation may reveal that an offence was committed in terms of the *Prevention and Combatting of Corrupt Activities Act*, Act 12 of 2004 (hereafter referred to as the “PACCA Act”)

4.4.1 Section 3 of the PACCA Act reads as follows:

3 General offence of corruption

Any person who, directly or indirectly-

- (a) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or*
- (b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner-*
 - (i) that amounts to the-*
 - (aa) illegal, dishonest, unauthorised, incomplete, or biased; or*
 - (bb) misuse or selling of information or material acquired in the course of the, exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;*
 - (ii) that amounts to-*
 - (aa) the abuse of a position of authority;*
 - (bb) a breach of trust; or*
 - (cc) the violation of a legal duty or a set of rules,*
 - (iii) designed to achieve an unjustified result; or*
 - (iv) that amounts to any other unauthorised or improper inducement to do or not to do anything,*

is guilty of the offence of corruption.

4.4.2 Attached hereto as **ANNEXURE “F”** is an email thread indicating that **RAJESH (“TONY”) GUPTA** (hereafter referred to as Tony Gupta) agreed to pay for expenses incurred by Singh at the Oberoi Hotel in Dubai in the same week in which Singh approved an unusual guarantee on behalf of Eskom by Tegeta.

4.4.3 The Gupta family, of which Tony Gupta is a member, are significant shareholders in Tegeta.

4.4.4 The agreement by Tony Gupta to pay for Singh's expenses in the same week in which Singh approved the unusual guarantee, can be construed as a gratification offered to Singh by Tony Gupta in order to reward Singh for the approval of the guarantee, and this constitutes the general offence of corruption, in terms of section 3 of the PACCA Act as set out above.

5.

I lastly believe that during the course of an investigation it may emerge that other persons, other than those mentioned above, may be implicated to the extent that charges may be brought against them.

6.

This is all I can declare.

DEPONENT: NATASHA WENDY ANITA MAZZONE

I CERTIFY THAT THIS AFFIDAVIT WAS SIGNED AND SWORN TO BEFORE ME AT _____ ON THIS _____ DAY OF _____ 2016. THE DEPONENT HAVING ACKNOWLEDGED THAT HE/SHE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT AND I CERTIFY THAT THE REGULATIONS IN TERMS OF SECTION 10 OF ACT 16 OF 1963, AS PUBLISHED UNDER GN. R1258 OF 21 JULY 1972 AS AMENDED BY GN. R1648 OF 1977 AND GN. R1428 OF 1980 AND GN. R773 OF 1982, HAVE BEEN COMPLIED WITH.

COMMISSIONER OF OATHS

FULL NAMES : _____
DESIGNATION : _____
AREA : _____
ADDRESS : _____

Eskom denies contracts with Trillian Capital

May 18, 2017



Picture Credit: Gallo Images

The power utility, Eskom, today "categorically" denied claims that it had contracts with Trillian Capital Partners, rebutting media reports that suggested it had paid millions to the company.

Spokesperson for the utility Khulu Phasiwe refuted [claims published by amaBhungane today](#) that the alleged payments made to Trillian were used to funnel funds to Tegeta Exploration & Resources (Pty) in order to buy Optimum coal mine for the amount of R2.15bn.

"Eskom would like to state categorically that it has no contracts in place with Trillian Capital Partners and/or associated companies.

“When the current board was appointed in December 2014, Eskom was facing challenges at both operational and financial levels. This period was plagued by capacity constraints, delays in the new build programme and the associated cost overruns, and load shedding.

“Pursuant to this, in June 2015 the Board gave the mandate to negotiate a risk-based contract with McKinsey, covering the main risk areas of the turnaround strategy,” Phasiwe said in a statement.

The statement said in addition to the turnaround initiatives determined by the board, the utility faced other pressing challenges which included “unfavourable Nersa decision on Eskom’s selective reopener tariff application, fulfilling equity injection conditions set by the National Treasury, and imminent credit rating reviews by ratings agencies”.

“This required Eskom to engage with a wide variety of service providers to mitigate with a sense of urgency against these risks. These service providers included Deloitte Consulting, Barclays, McKinsey, Citibank and Trillian.”

The statement further alluded to the fact that there “is currently no master services agreement (MSA) in effect with Mckinsey, Regiments or Trillian”.

It further said “in June 2015 the Eskom Board approved a mandate to negotiate a MSA to help the company address operational and financial challenges that the company had to deal with. The proposed agreement was to be linked explicitly to benefits derived by Eskom, meaning that if no benefits were derived for Eskom no payment would be made”.

“However, the Eskom Board decided in June 2016 not to proceed with the MSA. All required governance processes were followed in this process, including a review by Eskom’s external auditors.”

On Tuesday, amaBhungane published claims attributed to former mineral resources minister Ngoako Ramatlhodi alleging that he had been “pressured” by the utility chief executive Brian Molefe and chairperson Ben Ngubane to

help Oakbay takeover Glencore's coal mine in 2016. But [Ramatlhodi yesterday backtracked, distancing himself from the claims attributed to him.](#)

Ramatlhodi told The New Age that he had never told amaBhungane that he had revoked Glencore's mining licence due to pressure exerted by either Molefe or Ngubane. He dismissed the suggestion as "ludicrous".

"There was no pressure at all. It was a meeting where I was asked to do something and I said I couldn't do it. It's not a criminal matter to suggest something for a minister to do," Ramatlhodi said.

ANC secretary-general Gwede Mantashe yesterday confirmed that former Ramatlodi had made no allusion to the ANC about pressure being exerted on him by Molefe either or Ngubane.

-TNA Reporter

Why Eskom crushed R2.1bn Optimum fine to just R255.4m

Jul 19 2017 13:21



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[Koko faces disciplinary action over R1bn contracts](#)
[Eskom mum on R5.5m bonus bonanza for Molefe, Koko and Singh](#)

Cape Town - Eskom reduced a massive R2.1bn fine levied on partly Gupta-owned Tegeta because of a problem with the coal crusher, explained Eskom chief financial officer Anoj Singh.

He came clean on the matter at Eskom's financial results presentation in Johannesburg on Wednesday.

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The struggling Optimum mine was bought by Tegeta Exploration & Resources, a company owned by the Gupta family and President Jacob Zuma's son Duduzane, after it went into business rescue.

Tegeta inherited the fine when it bought the mine from Glencore, before it was concluded in arbitration.

READ: [Concern about lack of disclosure of Eskom, Tegeta arbitration details](#)

Eskom struck a deal with Tegeta on the fine in March during arbitration. However, the power utility refused to disclose the details of the agreement, citing a confidentiality agreement.

"Eskom went into this process with legal opinion saying it should settle this claim," said Singh.

He said the underlying nature that gave rise to the claim was that Eskom was disputing coal quality from the mine.

The poor quality was because of a change in sampling equipment in 2010, said Singh.

"The change meant it was different than the original sampling equipment. The new design had a crusher, which increased the reject coal put in the plant. It gave a false positive of quantity of reject coal. This was the outcome of investigations over three to four years," he explained.

"We realised the contract was punitive and poor quality coal was being delivered. That is why the amount ramped up so quickly. When we realised the crusher was the problem, we understood that we had sufficient information that the crusher was causing this. That is why we went into settlement. The contract manager said the claim should be R700m. This was then discounted to R255.4m."

Eskom board chairperson Zethembe Khoza earlier announced that former acting Eskom CEO Matshela Koko will face disciplinary action, relating to tenders awarded to Impulse International while his stepdaughter was a director at the firm.

"The board has taken a decision to pursue disciplinary action against Mr Koko," he said, adding that the minister of public enterprises is aware of the decision.

Eskom top brass on spot for corruption questions

21 July 2017 - 06:57 BY CHARLOTTE MATTHEWS AND CAROL PATON



Stunning reversals, a shocking confession and elaborate justifications were among the responses from Eskom's top three officials to questions on the key controversies surrounding the company.

Acting CEO Johnny Dladla, chairman Zethembe Khoza and chief financial officer Anoj Singh were on the spot at the annual financial results presentation this week.

BACKGROUND: In April 2016 Gupta-owned Tegeta bought Optimum mine after it was put into business rescue by Glencore. Among the liabilities was a R2-billion fine for supplying Eskom with low-quality coal. Eskom's CE at the time, Brian Molefe, repeatedly declared that Tegeta would not be forgiven the fine. In April 2017 Eskom agreed to lower the fine to R577-million in an arbitrated process.

QUESTION: Eskom promised that Tegeta would not be forgiven the R2-billion fine levied on Optimum mine, but this has now been reduced to R577-million. Why?

Anoj Singh: Eskom sent Optimum [then owned by Glencore] a letter of demand for the penalty of R2.1-billion. There was a mechanism in the contract to resolve disagreements through arbitration, which was attempted with Glencore. The subsequent process was arbitration with Tegeta.

The dispute related to substandard coal qualities picked up by new coal sampling equipment installed in 2010.

The claim had accrued to R2.1-billion over time because it was based on a penalty of a rand per ton of coal supplied. That meant about R1.1-billion of the penalty resulted from the false results and about R700-million related to substandard coal.

BACKGROUND: Singh has been surrounded by a litany of allegations. These include measures to assist the Guptas in buying Optimum and a suspect contract with McKinsey, parts of which were subcontracted to Gupta-associated firm Trillian.

QUESTION: If Eskom is so concerned about governance why has Singh not been suspended?

Zethembe Khoza: We looked at the matters of interest pertaining to Singh. There were three: the prepayment to Tegeta; the arbitration award to Tegeta; and the McKinsey contract.

The prepayment to Tegeta was driven by the generation division and not by Singh. He was only involved when members of the board requested him to calculate the value of the diesel [that would have been bought if Eskom ran short of coal] and the cost of the prepayment. He was also asked to establish the surety of the prepayment. These matters were not initiated by him.

[Eskom accounts show R3bn in irregular expenditure](#)

The postponement of Eskom's financial results was triggered by the firm's auditors raising a qualified audit opinion on the accounts.

BUSINESS

-

4 days ago

[BREAKING: Eskom board to take disciplinary action against Koko](#)

The Eskom board has decided to take disciplinary action against executive Matshela Koko, the utility's interim chairperson said on Wednesday.

NEWS

-

5 days ago

The arbitration award was done by Eskom's head of legal. Singh only signed the document as Eskom's finance head.

The McKinsey contract was in place before Singh was at Eskom. He helped us when there was a dispute between Trillian and McKinsey.

So far, from the matters we have seen, there is nothing that warrants anything to the degree that he can be suspended.

QUESTION: The Guptas paid for you to stay in Dubai, which coincided with the Optimum purchase by Tegeta. They opened a shelf company for you in which they deposited R400,000. Can you explain this?

Anoj Singh: I'm preparing a public report and I will be in a position when it is complete to share it with all stakeholders.

BACKGROUND: McKinsey is embroiled in a controversy in which parts of its contracts with Eskom were subcontracted to Trillian.

McKinsey says this arrangement was the work of a rogue director, Vikas Sagar, who wrote to Eskom without authorisation, advising it to bill Trillian for parts of the contract and pay the Gupta company directly.

When asked in May if Eskom had any contracts with Trillian, it said that "it had not paid a cent" to the company. But at Wednesday's briefing Dladla said R900-million had been paid to McKinsey and R495-million to Trillian.

QUESTION: Two months ago you said Eskom had not paid Trillian a "cent". Today we hear that it was paid R495-million. Please explain.

Johnny Dladla: I won't comment on previous statements. Our investigation shows that R495-million was paid to Trillian. The issue is we didn't have a contract with Trillian itself.

So if a person searched for a payment to Trillian they would not find it.

As it stands I have asked for an independent review. I've suspended McKinsey. There was work done by Trillian under McKinsey but they were not contracted to Eskom.

Zethembe Khoza: We did not have a contract with Trillian, we had one with McKinsey. But McKinsey wrote to us asking us to pay Trillian directly. If that statement was made [that Eskom never paid Trillian] then it must have been incorrect. To my knowledge there was an invoice [from Trillian] that was paid for.

BACKGROUND: At the point that Tegeta was negotiating with business rescue practitioners to buy Optimum in December 2015, it became known that several major banks had given the Guptas notice that they would terminate their bank accounts over concerns about unexplained transfers and movement of money.

This, taken together with the R2-billion fine on Optimum as well as the fact that the mine was tied into a loss-making contract with Eskom until 2018, raised many questions as to how the Guptas would purchase Optimum.

While it had been strongly rumoured that Eskom had provided the guarantees to Tegeta, this was always flatly denied by Molefe.

QUESTION: Molefe in particular has said that Eskom paid no guarantees to any bank to assist the Guptas to buy Optimum.

On December 27 2015 did Anoj Singh sign a guarantee of R1.6-billion to Absa on behalf of Eskom for Tegeta's purchase of Optimum?

Anoj Singh: The guarantee was issued and cancelled, fortunately. The guarantee was contemplated and then put in place. It expired. It was not utilised. There was a guarantee.

QUESTION: Did you know about the guarantee? You were tender committee head at the time.

Zethembe Khoza: The R1.6-billion I don't recall but I will investigate it. I heard it for the first time [here today].

PLEASE EXPLAIN . . . ● Why, after Optimum was bought by Tegeta, its R2-billion fine was reduced to R577-million ● Why Anoj Singh helped the Guptas buy Optimum ● Why parts of Eskom's contracts with McKinley were subcontracted to Trillian ● Why Eskom gave Tegeta guarantees to help it buy Optimum

ANNEXURE "F"

From: Tony Gupta [<mailto:tony@sahara.co.za>]
Sent: 28 December 2015 02:02 PM
To: Ashu Chawla <ashu@sahara.co.za>
Subject: Re: Bills for Mr. Anoj Singh

Ok

On 26 Dec 2015, at 9:52, Ashu Chawla <ashu@sahara.co.za> wrote:

----- Forwarded message -----

From: "Sanjay Grover" <sanjay.grover@hotmail.com>
Date: 26 Dec 2015 13:50
Subject: FW: Bills for Mr. Anoj Singh
To:
Cc:

Best Regards

Sanjay Grover

Phone [+971502877423](tel:+971502877423)

From: FOC.TODB@oberoihotels.com
To: Sanjay.grover@hotmail.com
Date: Thu, 24 Dec 2015 10:06:11 +0400
Subject: Bills for Mr. Anoj Singh

Dear Mr. Grover,

Greetings from The Oberoi, Dubai.

Please find attached the bills of Mr. Anoj singh .

Please feel free to contact me for any further assistance.

Rupali Bisht

Front Office Cashier

The Oberoi

Business Bay

P.O. Box 71847

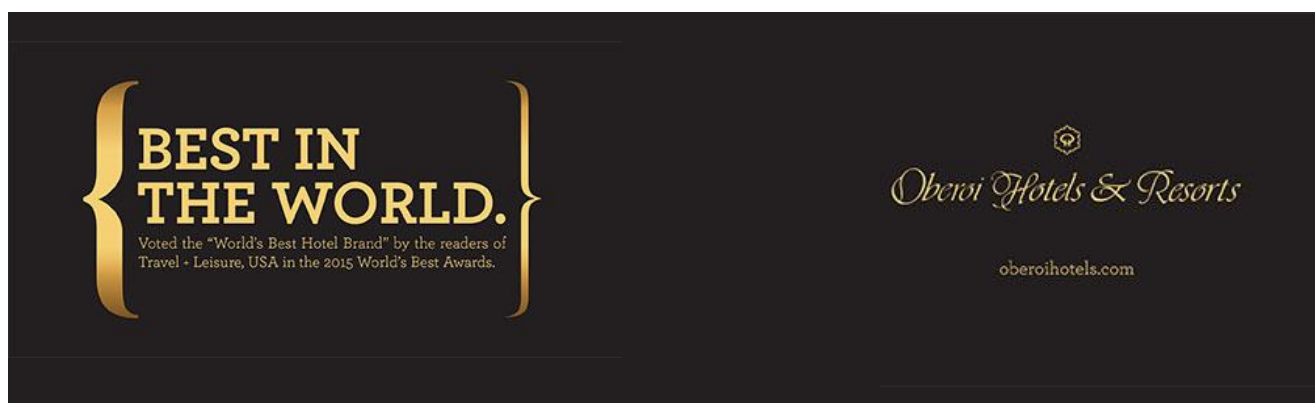
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<Mr. Anoj Singh.pdf>