

COMMISSION OF INQUIRY INTO STATE CAPTURE
HELD AT
CITY OF JOHANNESBURG OLD COUNCIL CHAMBER
158 CIVIC BOULEVARD, BRAAMFONTEIN

23 APRIL 2021

DAY 381



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DATE OF HEARING:

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 23 APRIL 2021

CHAIRPERSON: Good morning Mr Myburgh.

ADV MYBURGH SC: Good morning Chairperson.

CHAIRPERSON: Yes. I understand that there has been miscommunication about what time we start. We are supposed to start at 10:00 but it looks like one of my staff members sent the wrong information. So we are going to adjourn and start at 11:00 that will then give also the – your team and Mr Singh’s team a chance to discuss any
10 issues that may need to be discussed so that when we start at 11:00 we can just go on.

ADV MYBURGH SC: Thank you Chair.

CHAIRPERSON: Ja. We will then adjourn until 11:00. We adjourn.

REGISTRAR: All rise.

PROCEEDINGS RESUMES

CHAIRPERSON: Good morning again Mr Myburgh, good morning everybody.

ADV MYBURGH: Good morning DCJ.

20 **ADV VAN DEN HEEVER:** Morning Chairperson.

CHAIRPERSON: Good morning, good morning. Are you ready?

ADV MYBURGH: Yes thank you DCJ.

CHAIRPERSON: Okay. Let us start.

ADV MYBURGH: Good morning Mr Singh.

MR SINGH: Good morning Sir, morning Chair.

CHAIRPERSON: Good morning Mr Singh.

ADV MYBURGH: I would like just to go back to the issue of your travel. When you – when you went to Eskom did you continue making these personal/private trips to Dubai?

MR SINGH: If I recall correctly yes.

ADV MYBURGH: Can I ask you...

ADV VAN DEN HEEVER: Sorry Chairperson I cannot hear you.

10 **CHAIRPERSON**: You cannot hear your client or everybody?

ADV VAN DEN HEEVER: I cannot hear my learned friend.

CHAIRPERSON: Your client. Oh.

ADV VAN DEN HEEVER: Chairperson.

CHAIRPERSON: Okay alright.

ADV VAN DEN HEEVER: And I also need to hear him it is very important.

CHAIRPERSON: Yes.

20 **ADV MYBURGH**: Alright well let me repeat the question then if I may DCJ?

CHAIRPERSON: Yes.

ADV MYBURGH: I had asked you whether after you went to Eskom you continued with your personal/private trips to Dubai and I understand you answered yes?

MR SINGH: That is correct.

ADV MYBURGH: Could I ask you please to go to Bundle 5(b) Exhibit BB23. And could you turn – could you turn to page 829 in fact to 828.

MR SINGH: I am there.

ADV MYBURGH: Are you there?

MR SINGH: Yes.

ADV MYBURGH: Now this is a judgment of the High Court in the matter between Eskom McKinsey and Trillian etcetera where Eskom sought to overturn the payments
10 made to Trillian. I just want to take you to a few paragraph of this judgment insofar as it relates to you. Could you please go to paragraph 16 – 16 at page 835.

MR SINGH: I am there.

ADV MYBURGH: At the foot of page 835 paragraph 16 reads:

“Once Mr Molefe and Anoj Singh arrived at Eskom senior officials at Eskom who were expected to act in good faith and in the best interests of Eskom started to interact with
20 Mr Essa meeting him at his offices in Melrose Arch Johannesburg feeding him with confidential information belonging to Eskom. Some of these officials in particular Mr Matshela Koko and Mr Anoj Singh enjoyed trips to Dubai either paid for

or facilitated by Mr Essa through the Gupta Link businesses but these are then secured with the sole intention of favouring or benefitting Trillian if not fraudulent is quite obvious.”

And then if I could ask you to go to paragraph 56

ADV VAN DEN HEEVER: Chairperson would it not be convenient if Mr Singh answers the various points put to him by my learned friend otherwise it becomes a very long
10 statement and we might have to repeat it.

CHAIRPERSON: Well Mr Myburgh might be needing to refer him to Mr Singh to another paragraph before he makes a – puts the question he wants to put.

ADV MYBURGH: I just ...

CHAIRPERSON: What paragraph?

ADV MYBURGH: I want to take you to paragraph 56 at page 868 and just continues the theme obviously Mr Singh I am going to give you an opportunity to answer or to raise whatever you want to. At 56

20 “Corruption is the only issue that Trillian seems even though feebly to put in issue. Upon examination of the undisputed facts it seems that even on this aspect Trillian fails to make out a case. One of the events that stand out in the corruption collaboration –

sorry in the corrupt collaboration between Trillian and Eskom officials was the all expenses paid trips enjoyed by Eskom officials Koko and Anoj Singh to Dubai which were arranged by Mr Essa and Sahara a Gupta owned company.:"

Do you want to comment on those two paragraphs?

MR SINGH: Thank you Mr Chair. I think you – we refer this entire ...

10 **ADV MYBURGH**: And you need speak into the mic.

MR SINGH: Oh sorry.

CHAIRPERSON: Yes.

MR SINGH: Sorry Sir.

CHAIRPERSON: Bring the mic closer to you.

MR SINGH: Mr Chair if we refer to the entire how can I say – matter between Eskom and McKinsey and Trillian Mr you will note that I was not cited as a party to this application.

20 So for me to comment on these matters would be inappropriate but to the extent that Mr Myburgh to advise me to comment on paragraph 15 and to the extent that we have dealt with these matters yesterday Mr Chair I am – if you look at paragraph 16 Mr Chair it says:

“Senior Eskom officials were expected to have – 00:06:17 started interacted with Mr

Essa meeting him at his office at Melrose Arch feeding him with confidential information belonging to Eskom. Some of these officials in particular...”

So let us deal with the first 00:06:29 Mr Chair. Firstly Mr Chair I deny that I met Mr Essa at Melrose offices. There was no – there is no evidence suggesting that Mr Essa and I met at his Melrose Arch offices while he was a shareholder of Trillian.

10 Secondly Mr Chair in terms of feeding confidential information about Eskom again Mr Chair I deny that I fed any confidential information to Mr Essa because again there is no proof to support that.

In terms of the trips Mr Chair I think we have dealt with that yesterday and I have denied the involvement of Mr Essa or the Gupta – the Gupta linked entities relating to these trips that he has mentioned in paragraph 16.

If we then go to paragraph 56 Mr Chair we deal again with the issue of the corrupt collaboration between
20 Trillian and Eskom officials Mr Chair.

Again Mr Chair I deny any allegation of corruption against me. I have dealt with the issue of Trillian extensively in the Eskom stream and again Mr Chair in terms of the trips I deny any association with Mr Essa or Sahara Group of Companies relating to these trips as we

have dealt with this.

ADV MYBURGH: Alright and then if I can take...

CHAIRPERSON: Sorry Mr Myburgh. Do we by any chance have a set of the court papers relating to this judgment? Do you know?

ADV MYBURGH: I am sure we can obtain them DCJ.

CHAIRPERSON: Yes. I would like to – to see the set.

ADV MYBURGH: Yes.

CHAIRPERSON: Ja, ja. Well Mr Singh after the – this
10 application had been launched which resulted in this judgment were you – did you become aware of the fact that an application had been launched at the High Court by Eskom against Trillian among others? Did you become aware of the application pending in the High Court before the judgment?

MR SINGH: Mr Chair at the time I do not recall but I would think through the media I did become aware.

CHAIRPERSON: Yes. Yes. Nobody sent you the papers or anything?

20 **MR SINGH:** No Sir.

CHAIRPERSON: Okay alright.

ADV MYBURGH: Thank you. And then at paragraph 57 Trillian claims:

“That even assuming the correctness of these allegations they do not assist Eskom.

In essence the allegations concerning Messrs Koko and Singh do not demonstrate a cause or nexus between their alleged receipt of gratification and the conclusion of any agreement with McKinsey or the appointment of McKinsey or indeed Trillian and sub-contractors.”

What Trillian states in this exert is far removed from the truth as the following facts demonstrate. If you go over
10 the page.

“As Chief Financial Officer Singh was the signatory to the board tender committee submission on 8 August 2016 which motivated the R1.8 billion settlement inclusive of payment to BBEE partner which partner is not identified.

2. Trillian sent invoices directly to Singh as what appeared to be Trillian’s contact person at Eskom.

20 3. The board tender committee’s December 2016 resolution appointed Singh, Koko and Mabelane to negotiate – Mabelane I beg your pardon – to negotiate the final settlement which included payments to the BBEE partner.

4. On 6 July 2015 Koko was tasked to conduct negotiations as Group Executive Technology and Commercial to conduct negotiations of the MSA.

5. Koko and Singh sought approval of the 2015 McKinsey contract from the Eskom board.

10 Evidently there is a consistent pattern in the behaviour of these senior officials which at the end of the day benefitted Trillian.

Another theme in the conduct of these officials was that whenever invoices landed at Eskom's desk they were settled with alacrity and with a total and unseeingly disregard for Eskom's internal prescripts regarding payment approvals.

20 The objective evidence presented by Eskom demonstrates that just a nexus between Eskom and Trillian's benefaction but seeks – speaks to a theme of consistently corrupt behaviour.”

Perhaps I should just read the last sentence again.

“The objective evidence presented by Eskom demonstrates more than that just a

nexus between Eskom and Trillian's benefaction but speaks to a theme of consistently corrupt behaviour."

You want to comment upon that?

MR SINGH: Mr Chair again in terms of the objective evidence that is presented by Eskom demonstrates...sorry Sir.

CHAIRPERSON: You – I think you must put your file on top because when you speak looking down.

10 **MR SINGH:** Let me do this.

CHAIRPERSON: Ja. When you speak looking down we cannot hear you properly. Yes. Yes.

MR SINGH: Mr Chair in terms of let us start with probably the last sentence. In terms of the objective evidence presented by Eskom Mr Chair again reiterate I was not party to this application so I am not privy to the evidence that was actually presented by Eskom to demonstrate the issue of – that speaks to the theme of consistently corrupt behaviour.

20 On whose part I am extremely – I do not know who that – whose part it is. Mr Chair if we look at the – the paragraph 57.1, 57.2, 57.3, 57,4 and 57,5 and we will take them in turn.

Mr Chair if we can start with 57.5 it says:

"Koko and Singh sought approval of the

2015 McKinsey contract from the Eskom board.”

Mr Chair as I have – as we have discussed in Eskom’s stream dates become very important in these type of matters and I do not recall having arrived on the 1st of August 2015 where I sought approval for the McKinsey contract.

If I recall the McKinsey contract was a confinement to McKinsey he was approved in July 2015 by if I recall
10 correctly that was prior to my arrival.

So that is as it relates to 57.5. And here again on 57.4 Mr Chair which confirms.

“On 6 July Koko was tasked with the – to conduct negotiations as the Group Executive Technology and Commercial to conduct negotiations on the MSA.”

Which again suggests that it is pre-dated to my arrival of 1 August. If we look at the board tender commission – the board tender committee in December Mr
20 Chair I think that was – I do not think there is a dispute in terms of the 57.3.

Mr Chair I do not know what level of detail you want me to go into relating to these matters because obviously this is not an – this is not an Eskom stream but for me to – to fully – for you to fully appreciate the comment in terms

of the board tender committee 2016 resolution appointed Singh, Koko and Mabelane to negotiate the settlement agreement I would have to go in a relative amount of detail for you to appreciate the context behind this resolution.

CHAIRPERSON: I think – I think it is important that within the – within the context of Mr Myburgh’s question that you give me enough that you think gives you a fair or – a fair opportunity you know to deal with Eskom.

MR SINGH: Mr Chair can we do...

10 **CHAIRPERSON:** And obviously – obviously there is the Eskom work stream ...

MR SINGH: I was just going to suggest that.

CHAIRPERSON: Yes but I do not want a situation where the question might require you to deal a little more fully with the issue and you do not deal more fully with it to your detriment. So...

MR SINGH: Well Mr Chair I think maybe...

CHAIRPERSON: I would like you to – to be able to say this is the thrust of my answer or this is my answer.

20 **MR SINGH:** I think Mr Chair with the understanding that we still going to traverse these issues in the Eskom stream I will provide you with the context and the background behind 57.3 to the extent that I think it is necessary here with the understanding that will more fully cover it.

CHAIRPERSON: Well because Mr Myburgh is the evidence

leader subject to what he says because he might be wanting a full answer on certain matters; he might be wanting not so detailed an answer on certain matters. Mr Myburgh what is our input?

ADV MYBURGH: Chairperson I have no difficulty with Mr Singh.

CHAIRPERSON: Ja.

ADV MYBURGH: Providing whatever explanation he wishes to give at this time.

10 **CHAIRPERSON:** Yes. Ja okay alright. So ...

MR SINGH: Thank you Mr.

CHAIRPERSON: Ja so satisfy yourself that you have given a fair – you have given an answer that reasonably satisfies you that you have answered the question.

MR SINGH: Okay.

CHAIRPERSON: Ja.

MR SINGH: So let us come back to 57.3. So we have dealt with 57.5; we have dealt with 57.4 Mr Chair 57.2.

20 “Trillian sent invoices directly to Singh as what appeared to be Trillian’s contact person at Eskom.”

Mr Chair 57.2 as I recall in terms of the evidence that we presented on the Eskom stream okay. The – if memory serves me correctly the only invoice that was actually sent to me directly was the invoice for the

corporate plan that related to the R30 million payment. I do not recall if any of the MSA invoices were actually sent to me. And Mr Chair again the issue of Singh appears to be Trillian's contact person at Eskom I think we have explained and traversed again in the Eskom stream.

Any connotation as it relates to me being Trillian's contact person in a – how can I say – unsavoury manner I think we reject because we have explained that the invoice relating to corporate plan was sent to me directly because
10 I was a recipient of those Sir.

And as I say Mr Chair again this is from memory. In terms of the 57.1 Singh was a signatory to the board tender committee submissions on 8th August which motivated for R1.8 billion settlement inclusive of the BBBEE partner which was not identified.

Mr Chair factually that is not disputed. I did sign the memo I did recommend the memo and Mr Chair the recommendation of the memo was on the basis that the board tender committee had the mandate to either approve
20 or disapprove.

I did not hold the mandate because you will recall that prior to the 8th of August 2016 I think sometime in June 2016 the board tender committee had already taken a resolution to terminate the board – the Master Services Agreement with McKinsey and its sub-contractors. And that

resolution empowered a settlement process to be engaged upon following the 28th June letter from McKinsey let us call it letter of demand.

So Mr Chair again in context I did not approve a R1.8 billion settlement. The document was prepared based on a request from the board tender committee that emanated in June visa vie the settlement and the termination.

CHAIRPERSON: Was this – was the submission of the 8th
10 of August 2016 he did not recommend the approval?

MR SINGH: Mr Chair it was a recommendation for them to consider the settlement.

CHAIRPERSON: Ja. Ja.

MR SINGH: So yes.

CHAIRPERSON: Yes but it motivated for the approval?

MR SINGH: Yes.

CHAIRPERSON: Ja.

MR SINGH: But the actual approval actually sat with the board tender committee themselves.

20 **CHAIRPERSON:** I think the – to the extent that you want to make the distinction at a factual level that you did not approve.

MR SINGH: Yes.

CHAIRPERSON: Even though you may have recommended in support of the approval.

MR SINGH: Yes.

CHAIRPERSON: Is a fair point.

MR SINGH: Yes.

CHAIRPERSON: Ja okay.

MR SINGH: Mr Chair in terms of – so then going back to 57.3 Mr Chair because I am trying to deal with it in chronological order. The board tender committee in December 2016 resolution appointed Singh, Koko and Mabelane to negotiate a final settlement with – included
10 the payments for the partner. And she says subsequent to the approval of the 8th of August a 1.8 the board tender committee I think at that point approved the payment of R800 million of the R1.8 but there was continuous – there was still a settlement process that was – that was still on-going because the eventual amount that was actually settled on was an amount of R1.6.

CHAIRPERSON: Was an amount of?

MR SINGH: R1.6 billion.

CHAIRPERSON: Ja.

20 **MR SINGH:** And the settlement agreement Mr Chair was ultimately signed between Eskom and McKinsey in February 2017. So that is the context behind the December 2016 resolution of the board tender committee. In this on-going negotiation process they then requested that myself, Mr Koko and Mr Mabelane engage with

McKinsey to find a lower value than the R1.8 that they had originally – that they had originally approved and at that time Mr Chair I think this coincided with the independent review that had been done by Oliver Wyman and that was the basis for let us ask for a lower amount. Okay.

Mr Chair again in terms of this the resolution appointed us to do this we engaged with them, we nego – we engaged with McKinsey – when I say we I think it was primarily Mr Govender and Mr Mabelane that used then the
10 Oliver Wyman report to settle – to arrive at a settlement value of R1.6 billion which was then I think taken to the board tender committee in February and then was settled upon approval by the board tender committee which then resulted in Mr Mabelane signing the final settlement agreement with McKinsey which then affected the last payment of R1.6.

Mr Chair if we then go on to the point of evidently there is a consistent pattern of behaviour of these senior officials which at the end of the day benefitted Trillian.

20 Mr Chair I deny any benefit – any favouritism that I had showed toward Trillian or McKinsey for that matter. As I understand it Mr Chair the negotiations that were undertaken between Mabelane and Mr Govender in terms of the settlement process was actually done with McKinsey. Another theme of conduct of these officials was that

whenever invoices landed at the Eskom desk they were settled with alacrity and with a total and unseemingly disregard for Eskom's internal prescripts regarding payment approval.

Mr Chair again on the Eskom stream we went into a level of detail and we have also provided in our supplementary affidavits to the commission the roles and responsibilities of who approves – approves payments; how payments are approved; who the officials are that actually
10 checks invoices and the like.

CHAIRPERSON: I am sorry has that document been provided because you remember in the Eskom stream I think I did mention that Mr Seleka and his team should try and obtain the document that sets those things out at Eskom.

MR SINGH: Mr Chair just for clarity.

CHAIRPERSON: Operating procedures or policies ja.

MR SINGH: Yes. So we – if you recall Mr Chair I think it was on the last day that we came for the Eskom stream
20 previously where we put up a supplementary affidavit and it was relatively voluminous.

CHAIRPERSON: Ja oh well...

MR SINGH: And we wanted to start with that and then it was decided that listen we will continue with Mr Seleka's ...

CHAIRPERSON: Yes.

MR SINGH: And we will come back to –

CHAIRPERSON: Oh I think I ...

MR SINGH: So that – so those things are in that bundle.

CHAIRPERSON: Oh okay.

MR SINGH: So we will certainly come back to that Mr Chair.

CHAIRPERSON: Okay so I have not seen them. I think I (talking over one another).

10 **MR SINGH**: So the commission has not actually seen them.

CHAIRPERSON: Ja okay.

MR SINGH: But the documentation is with...

CHAIRPERSON: Is there.

MR SINGH: In the possession of the – as part of one of our supplementary affidavits.

CHAIRPERSON: Okay alright. Okay.

MR SINGH: So Mr Chair again if we look at the wording of this it says

“The conduct of these officials”

20 And I can only assume that they are referring to myself and Mr Koko. Mr Chair these invoices that the refer to on the MSA that was approved and paid I certainly did not play any role in the manner in which they were approved – in the manner in which they were processed in the system for them to be paid.

And again there is no evidence to suggest that I was the one that engaged in the payment of these invoices. I think Mr Chair that is all I would like to say in terms of this paragraph.

CHAIRPERSON: Okay alright.

ADV MYBURGH: Excuse me thank you. Before I go on further into the judgment could I ask you just to go back please to page 856. There the Judge quotes from an extract from Eskom's affidavit 47.2

10 “Eskom expands on the corrupt link
between Trillian, Essa and the Gupta family
when it says quote as I have mentioned Mr
Essa was the majority shareholder and a
director of Trillian Capital Partners. I
attach Mr Essa's biography as well as
relevant extracts from a PIPC director
search as annexure PH14 and PH15. Mr
Essa is widely known to be a close
associate of the Gupta family. Annexure
20 PH15 reflects Mr Essa's role as a director
of VR Laser another company with close
links to the Gupta family. Mr Koko has also
admitted that he attended private meetings
with Mr Essa regarding Trillian's work at
Eskom. In this regard I attach relevant

extracts of Mr Koko's testimony in Parliament as Annexure PH16."

Do you want to – do you have any comment on that?

MR SINGH: Mr Chair none of these issues in this paragraph 47.2 are within my personal knowledge.

ADV MYBURGH: Are you suggesting that you did not know that Mr Essa was a shareholder and director of Trillian?

MR SINGH: Mr Chair when the – I think I have testified to
10 this on the Eskom stream Mr Chair not until McKinsey had given us the termination letter relating to their relationship with McKinsey – or Trillian sorry.

ADV MYBURGH: So you came to learn – sorry whose termination letter?

MR SINGH: There was a process that – of vetting that Trillian was undertaking – McKinsey was undertaking on Trillian.

ADV MYBURGH: Alright. So you only came to learn of this right at the end?

20 **MR SINGH:** That is correct.

ADV MYBURGH: Did you not have any dealings with Mr Essa in relation to Trillian?

MR SINGH: So Sir.

ADV MYBURGH: I see. And then let us go to the conclusion. Paragraph 67 at page 875.

“In the present matter where the probabilities are apparent.”

MR SINGH: Sorry – what – sorry Sir what page is it?

ADV MYBURGH: 875 paragraph 67.

MR SINGH: 875 – 875?

ADV MYBURGH: 875. I think you appear to be in a – are you in the right file?

MR SINGH: No, no yes Sir. It is the same one.

ADV MYBURGH: Yes it is.

10 **MR SINGH**: Ja. I am there Sir.

ADV MYBURGH: Paragraph 67.

20 “In the present matter where the probabilities are apparent that senior officials of Eskom would leave no stone unturned to benefit Trillian where confidential information belonging to Eskom was leaked to Trillian where senior personnel of Eskom who were expected to display the conduct of the utmost good faith and to act in the best interests of Eskom where there appears to be a corrupt relationship between Eskom’s senior personnel and the directors of Trillian justice and equity demand nothing less than that the monies paid to Trillian unjustifiably

be returned to Eskom.”

Any comment on that?

MR SINGH: Mr Chair again if we look at the paragraph in turn Mr Chair I do not know who the officials that they refer to in terms of leaving no un stone – no stone unturned to benefit Trillian I deny that was me Mr Chair. As I have explained to you before Mr Chair. The entire process relating to the settlement Mr Chair was relating to negotiations with McKinsey themselves. The – where
10 confidential information belonging to Eskom was leader to Trillian Mr Chair I deny that was me in any way, shape or form. Personnel at Eskom were expecting to display a conduct of utmost good faith through – and act in the best interest of Eskom.

Mr Chair, I think at all relevant times, I – personally, I was conduct – I conducted myself in that regard. When the issues relating to the MSA became apparent, as I testified in terms of the reasons for the termination of the MSA, Mr Chair, that was acting in the
20 best interest of Eskom.

When that termination decision was made by the Steer Co, Mr Chair, I requested that Legal and the Procurement Department get engaged to ensure that the termination process is handled in a manner that is in compliance with or identified risks associated with the

termination process, I mitigated them appropriately.

Mr Chair, in terms of the negotiations or final negotiations, Chair, we did obtain a final independent assessment that was conducted by Oval(?) 1(?) which indicate a certain value which was negotiated by McKinsey and was settled. Again Mr Chair, acting in the interest of Eskom.

Lastly Mr Chair, at all relevant times Mr Chair I was – even to understand that the legal review and legal processes or legal review of this McKinsey contract was
10 being undertaken and there were no issues relating to a settlement.

And again, Mr Chair. Just from my perspective of the sake of clarity. Again, the legal assessment and legal aspects relating to this falls outside of purview of the office of the CEO.

ADV MYBURGH SC: And then if we go, finally, to the order. It starts at paragraph 70 at page 876 and I just want to direct your attention to page 878 following on the
20 paragraph that I have read. There were two orders that I just want to put to you or ask – bring to your attention.

17.6:

“The payments made by Eskom to Trillian arising from the impugn decisions above, were declared unlawful and invalid.”

And 17.7:

“Trillian is ordered to repay to Eskom the sum of R 595 228 913 29 together with interest thereon at the prescribed rate, calculated from the date of judgment...”

I do not suppose you have anything to say? Do you want to comment on that?

MR SINGH: No, Chair I do not have any comments.

ADV MYBURGH SC: So, Mr Singh, as I read paragraph 67
10 ...[intervenes]

MR SINGH: Sorry?

ADV MYBURGH SC: ...of this judgment. You were found, in effect, to have been in a corrupt relationship with Mr Essa.

MR SINGH: Sorry, which page are you on now?

ADV MYBURGH SC: 67.

MR SINGH: 867?

ADV MYBURGH SC: Yes, 876, paragraph 67.

MR SINGH: Oh ...[intervenes]

20 **ADV MYBURGH SC**: When you read that paragraph in the context of the judgment, in effect, you have found to have been in a corrupt relationship with Mr Essa.

MR SINGH: 876?

ADV MYBURGH SC: Yes.

CHAIRPERSON: Page 875, paragraph 67.

MR SINGH: Yes. Mr Chair, as I have explained previously from one of the other paragraphs, Mr Chair. I deny the fact that I have a corrupt relationship with Mr Essa.

ADV MYBURGH SC: Yes, but what I am putting to you is my interpretation of that paragraph is that you were found to have been in a corrupt relationship with Mr Essa because the directors of Trillian referred to are Essa and the senior officials of Eskom that are referred to are you and Mr Koko.

10 **MR SINGH**: Well, Mr Chair, then the finding of the court, obviously, occurred without my input because I was not cited as a party to this application.

CHAIRPERSON: So you accept that the interpretation of the paragraph but you say that the finding was made without your input?

MR SINGH: That is correct, sir.

CHAIRPERSON: Okay.

ADV MYBURGH SC: Alright. Now, whilst on the issue of Mr Essa. You will recall that on the first occasion that you
20 gave evidence, I took you to parts of Mr Bester's affidavit. We are still going to come back to that.

MR SINGH: That is correct.

ADV MYBURGH SC: And he said that he met with you and Mr Essa at Melrose Arch at a restaurant there in approximately April 2014 and you, as I recall, you denied

that. Correct?

MR SINGH: That is correct, sir.

ADV MYBURGH SC: And as I understand it, your evidence before the Commission, and you must correct me if I am wrong, is that you only ever met Mr Essa twice.

MR SINGH: That is so.

ADV MYBURGH SC: And you met him in the context of him wanting to meet you to explore potential business opportunities and I am talking about Transnet. You say
10 that those meetings might have happened at Melrose Arch but that was the sum-total of your meetings with Mr Essa. Is that correct?

MR SINGH: That is correct.

ADV MYBURGH SC: And as I understand it. You now in evidence content that both was when you were at Transnet and Eskom.

MR SINGH: [No audible reply]

ADV MYBURGH SC: You said when you were at Eskom, you had no need to work with Mr Essa.

20 **MR SINGH**: That is correct.

ADV MYBURGH SC: So your testimony before this Commission is. You have met this man only twice?

MR SINGH: That is correct.

ADV MYBURGH SC: Informally, outside of Transnet?

MR SINGH: That is correct.

ADV MYBURGH SC: So that then brings me to something that I did not ask you the last time and that is the testimony of Mr Gama. And you have been provided with the relevant extract of his affidavit.

CHAIRPERSON: May I interrupt you Mr Myburgh? Please do not forget your question because I do not want to forget getting this clarification from Mr Singh. I do not know whether this would have fallen under the Transnet – it may have fallen under the Transnet work stream. Did you deny
10 having part – having been part or having attended the meeting that Mr Henk Bester testified about, where he said, if I recall correctly, you were there and Mr Salim Essa was there and he was there.

One, I think he testified about two meetings which he had which involved Mr Essa but I think in one of them he said you were there but most of the time it was Mr Salim Essa who was doing the talking. But I think in the other one he did not include you. Did you deny having
20 been part of any meeting in which Mr Salim Essa was present as well as Mr Henk Bester?

MR SINGH: Mr Chair, I think for context, I think Mr Myburgh at that time had started leading this evidence relating to this meeting and I think we then got into the first bit of the details of the meeting ...[intervenes]

CHAIRPERSON: Yes.

MR SINGH: ...which I then denied it ...[intervenes]

CHAIRPERSON: Ja.

MR SINGH: ...being present at that meeting.

CHAIRPERSON: Yes.

MR SINGH: And then I got into the reasons as to why the meeting was potentially – how can I call it – as to why I deny the meeting ever happened.

CHAIRPERSON: H'm?

MR SINGH: And I think at that point in time, we then
10 adjourned for the day.

CHAIRPERSON: Ja.

MR SINGH: So I think we never completely traversed the reasons ...[intervenes]

CHAIRPERSON: Yes.

MR SINGH: ...as to why I had my denial.

CHAIRPERSON: Oh.

MR SINGH: But I did deny it.

CHAIRPERSON: Okay alright.

MR SINGH: [Indistinct]

20 **CHAIRPERSON**: Okay alright.

ADV MYBURGH SC: Yes. With ...[intervenes]

CHAIRPERSON: ...and I was wondering whether when he says he met Mr Salim twice, whether that could be one of the two times and that is why I wanted to double-check.

ADV MYBURGH SC: Yes, it was not. You are right. You

denied this. And perhaps just to refresh everyone's memory. You have – if you could please go to Transnet Bundle 4, Exhibit BB-19.

MR SINGH: Just give me one second. My files...
[Speaker moves away from microphone – unclear]

CHAIRPERSON: Do you need some assistance there, Mr Singh?

MR SINGH: Yes, if someone ...[intervenes]

CHAIRPERSON: Ja, okay someone will come and assist
10 you.

ADV MYBURGH SC: Thank you, Chair.

MR SINGH: Sorry, may I just...

[Speaker moves away from microphone – unclear]

ADV MYBURGH SC: I think it is in the files...

MR SINGH: Sorry, sir. You are at?

ADV MYBURGH SC: On page – so you need to go to the
tab that say BB-19.

MR SINGH: Yes.

ADV MYBURGH SC: And then if you could turn to page 45
20 of BB-19?

MR SINGH: [No audible reply]

ADV MYBURGH SC: This is Mr Ester(sic) – Bester's, I
beg your pardon, affidavit. And this is the meeting that the
DCJ was asking you about. I just want to reflect on it.

“Upon my arrival at Melrose Arch, as I walked

towards the restaurant, I was met by a gentleman who introduced himself as Mr Salim Essa.

He said that he was there to meet with us as part of the discussion with Singh and needed to see if the restaurant is clean.

I asked him where Singh was and he said that he will call him when he is ready.

10 I asked Essa whether he himself works for Transnet and he responded that he is doing a lot of things or something to the effect that I have a lot of businesses.

He clearly had no intention of answering my question in detail.

I was surprised at the time that as soon as Essa called Singh, Singh arrived a few minutes later...”

This is the meeting that you denied, is that so?

MR SINGH: That is correct, sir.

20 **ADV MYBURGH SC**: So you stand then by your testimony that you only ever met Mr Essa twice in the circumstances that I have described and you have confirmed?

MR SINGH: That is correct, sir. Sorry, just a point of clarification Mr Chair. Do you – or Mr Myburgh, do you want us to go into the detail as to why this meeting is

denied because we did not really finish it now?

ADV MYBURGH SC: I think you have already dealt with that but it is my intention to come back to MMP to finish off that later. Now ...[intervenes]

CHAIRPERSON: Okay. In that event, we must just make sure that he gets the chance to substantiate his ...[intervenes]

ADV MYBURGH SC: Okay. Mr Singh, perhaps you could just deal with that now so it will not ...[intervenes]

10 **CHAIRPERSON:** Yes. Ja, maybe – ja, to give ...[intervenes]

MR SINGH: Only for the sake of completeness Mr Chair, we can.

CHAIRPERSON: Yes.

MR SINGH: Because this is obviously one of the more contentious issues in Mr Bester's affidavit.

CHAIRPERSON: H'm.

MR SINGH: Mr Chair, when I started the last time in terms of providing feedback and context in terms of this meeting
20 Mr Chair. As I said, I deny these meetings and I was going into the details as to why I deny this meeting. And it has its nexus in the paragraphs that precede that.

CHAIRPERSON: H'm?

MR SINGH: And I think it is paragraphs 54 and 55, if I recall Mr Chair. It has been sometime in terms of being

able to have dealt with these matters. But I think the issue is, and I have dealt with this in my affidavit, in my responding affidavit Mr Chair.

If you look at paragraph 55. Now you will recall Mr Chair, the nexus of this entire process was a company called DEC and Mr Reddy and how the DEC and Mr Reddy was trying to use their influences to engage with Mr Bester's company to be able to become a subcontractor to them.

10 And I think that Mr Bester had testified to the fact that it was, you know, they were unscrupulous or underhanded mechanics that were happening at the time. So notwithstanding that testimony that Mr Bester had given prior to that – this Mr Chair, he still seeks out Mr Reddy to engage with myself through purportedly resolve some unpaid invoices in terms of the project that they had undertaken at the time.

 And Mr Chair, at that time, Hatch was involved in, if I recall correctly, the new multi-product pipeline
20 project and this is the pipeline project and Mr Bester is, obviously, from the Railroad Division of Hatch. So Mr Chair, in that then – again, I am not understanding how Mr Bester gets involved in Rail – I mean in pipeline related invoices when he is a Rail - Director of Rail in the Hatch environment, but anyway.

He then goes on to say that:

“At the time Craig Sumption, CFO of Infrastructure Division of Hatch, now the CEO of Hatch Africa, sent numerous emails to Singh requesting a meeting to discuss the outstanding invoices without success...”

Mr Chair, then he does not attach any of these emails. I do not have any recollection of these emails in terms of a request for discussions from Mr Simmer.

10 “There he told me that it was possible for him to arrange a meeting as he had very close relationships with Singh and that he will arrange the meeting.

Pursuant to my request to Reddy, he called me and told me that Singh would meet me – would meet us but outside Transnet offices at a restaurant at Melrose Arch.

The meeting was confirmed and Craig Simmer from Hatch Infrastructure Division and
20 Sumption accompanied me to the meeting...”

Mr Chair, what is peculiar about this meeting is that Mr Bester does not attached any of these invites of – to Mr Simmer or to Mr Sumption, yet if you recall, previously he had a very good record of actually providing us meeting requests previously in his testimony.

Neither does he supply us with the confirmatory affidavits of Sumption or Simmer in terms of that. And again, Mr Chair, peculiarly, the date of the meeting, neither Simmer nor Sumption arrive. So it is ...[intervenes]

CHAIRPERSON: Just repeat that, please?

MR SINGH: I said curiously, on the date of the meeting, neither Sumption nor Simmer arrive at the meeting. **So it is just ...[indistinct] [00:16:34] that turns up** - that arrives to purportedly meet with the CFO of Transnet to discuss
10 invoices that are outstanding on which he has no background.

So if I had to – if it was not a legitimate meeting where he was prepared to come and discuss these invoices, Mr Chair, he was going to discuss invoices of which he had no understanding or background. And I am saying, Mr Chair, it is highly irregular for a person – well, in an organisation such as Hatch to engage with the CFO, Group CFO of an organisation like Transnet and sent individuals that actually have no background in terms of
20 the topic that is going to be discussed.

Secondly, Mr Chair. What is curious is that:

“Upon my arrival at the restaurant at Melrose Arch... [which is paragraph 57, Mr Chair, on page 045] ...I walked towards the restaurant.

I was met by a gentleman who introduced

himself as Mr Essa...”

Now again, Mr Chair. I am not too sure how either Mr Bester or Mr Essa recognises each other because at this time Mr Reddy is not there, neither am I there but they recognise each other somehow and then obviously the discussion ...[intervenes]

CHAIRPERSON: Well, it is clear from that sentence that Mr Bester, at least it seems to me, is meeting somebody that he did not know before. I get the impression that
10 Mr Essa on Mr Bester’s version walked to him and introduced himself. Obviously, he could only do that if he thought he was the person he expected to meet there.

MR SINGH: But that is the point Mr Chair.

CHAIRPERSON: If he had been told how he looks like or something like that.

MR SINGH: And that is what I am saying. [Indistinct]
[00:18:41] by someone that I did not know, I would probably ask: How do you know who I am? I think. Which Mr Bester fails to explain.

20 **CHAIRPERSON:** H’m?

MR SINGH: And Mr Chair, lastly. In terms of these issues. I deny that I was at this meeting. I also deny the fact that Mr Essa called me. And I arrived at ...[intervenes]

CHAIRPERSON: You denied that Mr Essa...?

MR SINGH: That Mr Essa called. Because it says here, in the last sentence of paragraph 57.

CHAIRPERSON: H'm?

MR SINGH: Yes.

“I was surprised at the time that as soon as Essa called, Singh arrived a few minutes later...”

CHAIRPERSON: H'm.

MR SINGH: I have not arrived – I have not received any
10 calls from Mr Essa, Mr Chair.

CHAIRPERSON: H'm. Yes. Well, in paragraph 58, he says that the meeting centred around payments from Transnet to Hatch for work that had been performed on the MMP and Hatch was supposed to have been paid within 45-days after submitting invoices to Transnet but he says the meeting was superficial because you did not offer any insight into the reasons for the late payments of system communication that could potentially improve the payments.

20 And he says he thought you were probably disappointed with the meeting. He had a distinct impression that you had hoped that the discussion were going centre around Hatch working with Reddy and his group, rather, and to resolve Hatch issues of outstanding payments.

He said throughout the meeting, he got the impression that Essa was the boss and you were his subordinate.

MR SINGH: Mr Chair, I deny the entire contents of this paragraph.

CHAIRPERSON: Yes. Did you know Mr Hatch at all while you were at Transnet? Sorry. No, no Mr Bester. Did you know Mr Bester at all when you – while – when you were at Transnet?

10 **MR SINGH**: No, Mr Chair. To the best of my recollection I do not think I ...[intervenes]

CHAIRPERSON: Yes. So, but you ...[intervenes]

MR SINGH: Other than ...[intervenes]

CHAIRPERSON: This ...[intervenes]

MR SINGH: Let me qualify that.

CHAIRPERSON: Ja.

MR SINGH: Because later on in his affidavit, he does mention – I cannot recall if it is later on or it has already preceded Mr Chair, but he does mention that there were –
20 there was a meeting that happened at Transnet offices.

CHAIRPERSON: Which you were supposed to attend, according to him.

MR SINGH: That was an earlier ...[intervenes]

CHAIRPERSON: ...walking up and down the passage.

MR SINGH: Yes. But this was an earlier meeting.

CHAIRPERSON: Oh, that is an earlier one.

MR SINGH: But I think there is another one that comes later on.

CHAIRPERSON: Ja.

MR SINGH: Where I think did attend that meeting and Mr Bester was part of it.

CHAIRPERSON: Yes.

MR SINGH: So, if anything, Mr Chair. I would probably have met him at that meeting.

10 **CHAIRPERSON:** Yes, okay.

MR SINGH: And I think then there was – there was a cocktail function or something thereafter.

CHAIRPERSON: Ja.

MR SINGH: And maybe he was there and maybe I met him there.

CHAIRPERSON: H'm.

MR SINGH: So, but prior to that Mr Chair, I would find it difficult to understand when I would have engaged with Mr Bester.

20 **CHAIRPERSON:** But on, as I understand it and you must tell me if I misunderstand you. On your version, Mr Henk Bester just fabricated this whole idea of this meeting and that he had a meeting with you and Mr Salim Essa?

MR SINGH: So Mr Chair, on the available facts it is clearly a fabrication.

CHAIRPERSON: H'm. And why do you think he would want to falsely and deliberately put you in a meeting that you did not attend?

MR SINGH: Mr Chair, the motives of these things, I would not know.

CHAIRPERSON: Yes. But the two of you never had any issues?

MR SINGH: No, Mr Chair.

CHAIRPERSON: Yes. Okay. Mr Myburgh.

10 **ADV MYBURGH SC:** Yes, thank you. Perhaps I could just take you to a few other paragraphs because there was another meeting that Mr Bester had with Mr Essa and that you see at paragraph 59 at page 46.

“Soon after this meeting, I received a call...”

But perhaps before I lose my train of thought. Can I ask you this? Do I understand you know to say - or perhaps I could put it differently. Did you ever receive telephone calls or make telephone calls to Mr Essa whilst you were at Transnet?

20 **MR SINGH:** No, sir.

ADV MYBURGH SC: Not a single one?

MR SINGH: No, sir not that I recall.

ADV MYBURGH SC: Even around the two meetings that you had?

MR SINGH: Which two meetings? Yes.

ADV MYBURGH SC: The two meetings that you have told us about.

MR SINGH: Yes, sir.

ADV MYBURGH SC: You did have telephone calls around those meetings?

MR SINGH: No, sir.

ADV MYBURGH SC: So you had not – you placed not a single call to Mr Essa at your time at Transnet and he placed not a single call to you?

10 **MR SINGH:** Not to my recollection.

ADV MYBURGH SC: Alright.

CHAIRPERSON: Let me put this proposition. Coming – going back to my question to you about this meeting. What would you say to the proposition or a proposition along these lines that on your own version Mr Henk Bester had no reason to fabricate a story like this against you but maybe you might have a reason to deny that a such a meeting took place even if it did take place because it might associate you with Mr Salim Essa who has lots of
20 allegations of corruption against him. What would you say to such a proposition?

MR SINGH: Mr Chair, I think – again, I would not want to speculate, right. So the proposition that you put, I would not want to look at it in the term of speculation.

CHAIRPERSON: Okay.

MR SINGH: I would rather take you back to what I would believe as to be the objective facts ...[intervenes]

CHAIRPERSON: Ja.

MR SINGH: ...relating to Mr Bester.

CHAIRPERSON: Okay.

MR SINGH: Mr Chair, if you look at ...[intervenes]

CHAIRPERSON: And those are the ones that you have articulated.

MR SINGH: No, no I will ...[intervenes]

10 **CHAIRPERSON**: You want to clarify it?

MR SINGH: Yes.

CHAIRPERSON: Okay.

[Parties intervening each other – unclear]

MR SINGH: So if you look at the entire submission of Mr Bester. Mr Bester engages in this – firstly, he engages with the issue of Reddy and DEC and then engages with Ms Strydom and – what is the gentleman's name? Strydom and Basson.

CHAIRPERSON: Yes.

20 **MR SINGH**: Right.

CHAIRPERSON: H'm.

MR SINGH: In the issues relating to DEC and a subcontractor. Now, Strydom, Basson and Bester are fully aware that they are not supposed to be doing this yet they continued doing it. Okay? It then comes to a point where

he concludes that Reddy is a less than honourable gentleman. On his version.

He, nonetheless, then still seeks our Reddy's help to resolve this alleged impasse relating to the invoices that he wants resolved. And coincidentally, then there is a meeting with Essa that has happened notwithstanding the fact that he then has this, let us say, meeting/interaction with Essa.

I think then Mr Myburgh was going to lead to the
10 next meeting with Mr Bester and Mr Essa that excluded me. Again, I am not too sure whether it was arranged by Reddy or not but again he still proceeds with the meeting with Mr Essa. Again, Mr Chair, you then move on. Now you have the extension to the first ...[indistinct] [00:26:55] that was issued.

Now you have MMP 2, let us call it that. And again, Mr Chair there is an issue of subcontractors that comes up, right? We still maintain that we require a high-level of empowerment in the tender. They understand that
20 that is a requirement and they basically know that they need to comply with, again ostensible, because of the history, let us call it, Phase 1.

They then still, Mr Chair, notwithstanding the fact they have already understood the issues with DEC, understood the potential relationship that DEC may have

with Mr Essa. Understanding the issues that Mr Essa allegedly has of his own. They have – Hatch themselves sits down and have a meeting as to whether they can then accept DEC as a subcontractor on Phase 2 and eventually accept Hatch as – accepts DEC as a subcontractor.

Now, Mr Chair when you take all of this into account, it will probably be looking – it would probably seem to me a more plausible outcome for Mr Bester to be explaining why Hatch was engaging in this behaviour rather
10 than me and in a meeting with Mr Essa.

CHAIRPERSON: Okay. Thank you. Mr Myburgh.

ADV MYBURGH SC: Yes, thank you. Now just incidentally. The affidavit does read that Mr Simmer and Sumption accompanied Mr Bester to this meeting. That you will see at paragraph 56.

MR SINGH: Oh, that is correct, sir. Sorry, yes.

ADV MYBURGH SC: Yes. And in fact, Mr Bester testified to that. So Mr Singh, what we do know is that ...[intervenes]

20 **MR SINGH**: But it does not retract from the fact that we do not have confirmatory affidavits, only one of them.

ADV MYBURGH SC: Fair enough. What we do know, Mr Singh, that this is a very important allegation made against you.

MR SINGH: That is correct, sir.

ADV MYBURGH SC: You did not apply to cross-examine Mr Bester.

MR SINGH: That is correct, sir.

ADV MYBURGH SC: In fact, you applied – you have not applied to cross-examine anyone.

MR SINGH: That is correct, sir.

ADV MYBURGH SC: I see. Now let us go to the next meeting that Mr Essa had with Mr Bester. At paragraph 59, at page 46:

10 “Soon after this meeting, I received a call from Reddy informing me that Essa requested a follow-up meeting with me in Melrose Arch.

I informed Craig Sumption of the call and the meeting date as set.

Unfortunately, I cannot remember the date of the meeting.

The meeting was held at JB’s Corner at Melrose Arch and in attendance was Essa, Reddy and me...”

Let me take you to paragraph 61:

20 “It was a bizarre meeting. It appeared to me that Essa was a regular in the restaurant as everyone seemed to recognise him.

He, Essa, allowed carrying [word cut] with him and during the meeting he received numerous calls which interrupted our conversation as he

continuously to take calls. I became very annoyed with this behaviour.”

Paragraph 62:

“Essa told me that Hatch must include his company (whose name he did not mention at the time) in our phase 2 tender submission. I told him that we had already finalised our group including our SD partners and that there was no way of now including his company in the submission.”

10 Paragraph 63:

“He insisted that we should include his company and said that they have a lot of power. Having regard to my previous understanding they to be Essa and Singh but I could also have included other individuals within and outside Transnet that could also. Essa mentioned that “they”, Essa and Singh, would increase the contract value after award and that we should include about 80 million. I cannot remember the exact value but it was an enormous figure as an initial value. He further indicated that the 80 million will increase to something ridiculous in the order of 350 million or beyond. He said that the contract value (for in phase 2) would eventually increase the over 2 billion. If I remember correctly at the time our submission for rail was valued at

approximately 800 million.”

Now what I want to ask you, is are you able to dispute – do you have any knowledge of this second meeting that Bester held with Essa?

MR SINGH: No, Sir, I did not know.

MR MYBURGH SC: And you see here that Mr Essa was really trying to muscle in on Hatch was he not, as an SD partner.

MR SINGH: I would appear so.

10 **CHAIRPERSON**: For what it is worth, I just mention that when Mr Bester makes the allegation that Mr Essa said the contract value eventually increased to over R2 billion, it is difficult to read that without thinking about the trains which – where the value increased drastically. That crosses my mind, that is all I am saying.

MR SINGH: Mr Chair, maybe if put your mind at ease, Mr Chair, the contract was not awarded for 2 billion.

CHAIRPERSON: Ja, no, I am not giving any figures but I know there was – there are transactions where the values
20 increased in a manner that is very unusual. Yes, Mr Myburgh?

MR MYBURGH SC: Yes, thank you. Then perhaps whilst we are on this affidavit let me take you to paragraph 75 because you are correct, Mr Singh, you did – there was a time when you met Mr Bester and there is reference in this

affidavit to I think it is a cocktail party. That you find at page 51, paragraph 75.

CHAIRPERSON: Maybe before you proceed, Mr Myburgh. Mr Singh, if this meeting which you said you know nothing about takes place, the challenge with your version is that Mr Bester say in effect it was a follow up on the previous meeting which you say is a fabrication?

MR SINGH: Yes, Mr Chair.

CHAIRPERSON: Yes, so I am just mentioning that there
10 is that challenge.

MR SINGH: Mr Chair, I do not see the challenge, Mr Chair.

CHAIRPERSON: Well, the challenge is this. If Mr Bester is correct that this was a follow up meeting then there must have been an earlier meeting then the earlier meeting would only the one he is talking about.

MR SINGH: Mr Chair ...[intervenes]

CHAIRPERSON: But if you say it was – if it was not a follow up, it was a standalone meeting, that is different.

20 **MR SINGH:** Well, Mr Chair, I think let us put the earlier meeting into context. When I say I deny the meeting, I deny that I attended the meeting. I would not be in a position to deny that the meeting actually happened between Mr Bester and Mr Essa.

CHAIRPERSON: Yes. So you deny that you were part of

the meeting.

MR SINGH: Part of the meeting on the basis of what I have suggested.

CHAIRPERSON: Yes. You do not deny that there may have been a meeting involving them without you.

MR SINGH: Yes, I would not be able to do that.

CHAIRPERSON: Yes. Okay, alright. But then if that was the case then Mr Bester must really have been singling you out to just falsely put you in that meeting in a very strange
10 way because a meeting took place and you would have known who were in that meeting but he brings you in knowing that you were not in that meeting. That would be the implication.

MR SINGH: Well, Mr Chair, I think in my last response to your proposition I outlined possibility as to why Mr Bester is taking the approach that he is taking.

CHAIRPERSON: Ja.

MR SINGH: In order to motivate why they actually ended up taking BEC as Hatch as a subcontractor where they
20 patently knew that it was problematic or there were alleged issues with BEC and the alleged relationship that existed with Mr Essa and Mr Essa himself in terms of the allegations against Mr Essa.

CHAIRPERSON: Yes, yes, okay. Mr Myburgh?

MR MYBURGH SC: Yes, thank you. And at paragraph 75,

page 51:

“After negotiations but before the project kicked off in early 2015 the senior people of the H2N JV 06.31 were invited to a meeting with Senack(?) Peter in Carlton Centre. In attendance of on behalf of the H2N JV were me, Aligasen Naidu, CEO Mott MacDonald and Dempsey Naidoo, CEO of Mott MacDonald and an executive of Orecon. At this meeting Singh told us that we were very lucky to have been awarded this contract and he will watch us very closely. All directors viewed Singh’s comments as very negative and could not understand why he was against our appointment. It may have been because we did not include Essa in our bid. After this meeting the H2N JV hosted a small celebratory function and invited senior representatives of Transnet such as Singh, Peter, Skhosana and Mr Mohammed Mahomed. During his speech Singh made negative comments about the H2N JV and criticised our team before the project had even commenced.”

Do you want to comment on that?

MR SINGH: Mr Chair, yes. In my affidavit, Mr Chair, I go to some extent in terms of trying to outline the context behind this meeting. If I take you back to the testimony I

led before the Commission, Mr Chair, you will remember that I ...[intervenes]

CHAIRPERSON: I am sorry, are you talking about an affidavit where you are responding to Mr Bester's affidavit that we are looking at now?

MR SINGH: Yes, Mr Chair.

CHAIRPERSON: Okay, is it in the bundle, Mr...?

MR MYBURGH SC: Yes, I will find it whilst Mr Singh is [indistinct – dropping voice]

10 **CHAIRPERSON**: Okay, alright.

MR SINGH: Thank you, Mr Myburgh.

CHAIRPERSON: Continue?

MR SINGH: Mr Chair, in terms – let me take you back to when we actually started the MEP phase 1. MEP is manganese expansion project which is this entire affidavit of Mr Bester. I did say, Mr Chair, at that time it was a relatively large project. I think it was probably one of the top five projects in terms of by size in the capital expenditure programme of 300 billion which I introduced
20 yesterday.

Mr Chair, a project of this size and magnitude does and will carry an inordinate amount of risk, an execution risk relating to – from time of inception to time of completion and Mr Chair, one of the reasons that we as Transnet at the time were focusing particularly on let us

call it capital expenditure and capital expenditure risks was because of the sheer size of the capital expenditure programme was 300 billion.

As I explained yesterday, Mr Chair, the MDS was a counter-cyclical investment strategy so it means we were actually investing against the demand which increased the risk quite significantly for the organisation so you needed to have a handle on risks, a real handle on risk. So given the fact that we had history, Mr Chair, of overruns on
10 previous locomotive purchases on the NMPP itself, the Durban dug-out port, the Transnet entrance wide – sorry, not Durban dug-out port, Mr Chair, I think the project was called the Durban entrance harbour widening project and given the fact that we are now embarking on this 300 billion programme, one of the stakeholders that were really keen on understanding how we were going to manage the programme from a risk perspective was the credit rating issue.

The next stakeholders that would be interested in
20 understanding how we were going to manage this significant [indistinct – dropping voice] was potentially investors that were going to fund Transnet.

Now we needed to demonstrate firstly that we had learnt – or we had learnt our lessons from the past and what were we going to do differently in the future. That

would be one way to demonstrate through [indistinct] 11.01 as well as potential investors that okay, we know what we are doing.

And one of the biggest issues that we encountered on the NMPP project or the new multi product pipeline project, Mr Chair, and I think I cover it in one of my affidavits but the project actually increased from I think it was 9 billion to - and I think currently it is sitting at about 30 billion, if I am not mistaken or 35 billion in terms of
10 completion, is that the EPCM contractor is vital and the manner in which you engage the EPCM contractor, the way you engage with the EPCM contractor, the manner in which you manage the EPCM is critical to one, successful implementation of the project and when we say successful implementation of the project we are talking project on time, within budget and within schedule.

Now the reason why EPCM contractors are so critical, Mr Chair, is because they become an extension of the organisation. So Transnet does not – or Eskom does
20 not have the personnel who actually sit on the project on a day-to-day basis to manage it, so we actually outsource that to what we call the EPCM project or the EPCM consultant.

Now Hatch, Mr Chair, was one of those consultants. So we are basically taking an MEP project, we are handing

it over to Hatch and we are saying Hatch, implement this project on our behalf and you have a budget of whatever it is, let us 10 million. So basically we are handing 10 million over the Hatch, right?

So the context of this meeting, Mr Chair, was there was – in my view there was nothing untoward about it, this meeting was basically a meeting to say guys, we have dealt with EPCM contractors in the past, we have burnt our fingers significantly and we have a live example in the
10 NMPP. We want do things differently on this project, we want this project to be a success and we want it to be on time, within budget and schedule and that is what your actual function is. And that was the context behind this meeting. There was nothing untoward about it, it would – this meeting was, as I said, set up to outline Transnet's expectation vis-à-vis our EPCM contractor that was appointed.

Also, Mr Chair, just to highlight, in terms of - to provide context in terms of the award, Hatch could have
20 been awarded, any other company could have been awarded and this comment of whoever was awarded would have had the same meeting because the underlying basis for the meeting was to outline our expectations.

So even it was any other – if it Orecon that was appointed, they would have also been said you were lucky

to get this because our expectation is not to service us as you serviced us in the past, it is completely different. And, Mr Chair, in my – I actually played no role in awarding this, so whether it was Hatch, whether it was Orecon, whether it was any of the other engineering companies that was awarded, it was a product of the process and the evaluation process is conducted by the evaluation team.

So, Mr Chair, that is the context behind this meeting and as I said it was really a meeting where we really
10 wanted to outline what Transnet's expectations of our EPCM service providers was going forward.

CHAIRPERSON: Okay.

MR MYBURGH SC: Well, that is the context but did you say these things, that they were lucky to have been awarded the contract and did you make – were you critical of them?

MR SINGH: Mr Chair, I do not think I was critical of them, I think that is the reason why I spent an inordinate amount of time explaining the context for the meeting and the
20 context of the meeting was to outline our expectations.

MR MYBURGH SC: Yes. Well, did you say these things, did you say they were very lucky?

MR SINGH: No.

MR MYBURGH SC: DCJ, you asked for the reference to the affidavit. You will recall that Mr Singh has filed a

series of affidavits, five different affidavits. He deals with Mr Henk Bester in his first affidavit and that you find in bundle 5B at page 445. I do not intend to take you through it, I just simply bring it to the attention of the DCJ.

CHAIRPERSON: Ja.

MR MYBURGH SC: From paragraphs 42 onwards.

CHAIRPERSON: I am sorry, just repeat the page?

MR MYBURGH SC: Page 445 through to page 451.

CHAIRPERSON: Okay.

10 **MR MYBURGH SC:** But these are things that we had gone through, Mr Singh, before. I am not going to re-traverse that.

What I would like to do then is to take you to Mr Gama's evidence. If I could ask you please to pull out EXHIBIT BB28.

CHAIRPERSON: Okay, I have found it Mr Myburgh, I just wanted to know where it is because I might have to just read it again.

MR MYBURGH SC: Thank you.

20 **CHAIRPERSON:** Okay, alright. We go back to bundle 4?

MR MYBURGH SC: We are now in a different exhibit, EXHIBIT BB28, Mr Gama's exhibit.

CHAIRPERSON: In which bundle?

MR MYBURGH SC: It is in a different file, your registrar will give it to you.

CHAIRPERSON: Oh, a different one, ja.

MR MYBURGH SC: And could you please turn up page 48? Are you there?

MR SINGH: Sorry, what page, Sir?

MR MYBURGH SC: Page 48.

MR SINGH: I am there, Sir.

MR MYBURGH SC: Paragraph 31.3.

“In or during July/August 2015...”

Says Mr Gama.

10 “...I needed to discuss a work-related issue with Anoj Singh, the then Chief Financial Officer of Transnet. Singh’s office was in close proximity to mine and I walked to his office and observed (through a clear glass partition) in boardroom together with Singh. I entered the office ...[intervenes]

CHAIRPERSON: Together with Essa.

MR MYBURGH SC: Sorry, I beg your pardon, together with Essa.

20 “I entered the office and had a very brief discussion with Singh and as I left Essa indicated to me that he was desirous of having a meeting with me. Without giving much thought to the request, I responded that he could obtain my contact details from Singh.”

Do you want to comment on that?

MR SINGH: Yes, Mr Chair. Mr Chair, I have no recollection of this said meeting with Mr Essa and neither do I recall Mr Gama ever meeting Mr Essa in my office. Mr Chair, you would have regard for the date being July/August 2015. If it was August 2015, Mr Chair, I can tell you the meeting never happened because I was at Eskom at the time, then that only leaves July 2015.

Mr Chair, in terms of July 2015, if the meeting did
10 happen and on Mr Gama's version, Mr Chair, my office is constructed in such way that my office is let us say here and then there is an atrium and my PA sits in the atrium and then there are two – there is two additional individuals that sit in an office that is adjoined to the atrium. So you have my office here, you have the atrium and then there are two additional offices but they are all part of one office, okay?

So, Mr Chair, if this meeting did indeed happen, it will be very easy for either Ms Thakhane, who was my PA
20 at the time, to confirm whether Mr Essa was indeed in my office or Mr Yusuf Mahomed, who would be sitting in that additional office or Mr Norman Mabaso, who also occupied that office to confirm that this actually happened which I categorically deny.

MR MYBURGH SC: Just so that I understand your

evidence, when you say you have no knowledge or recollection, you are not saying you cannot remember, you are saying this did not happen, you categorically deny that it happened.

MR SINGH: That is correct.

MR MYBURGH SC: So Mr Gama also just gets it all wrong?

MR SINGH: Well, Mr Chair, respectfully, I think when Mr Gama comes he can explain. Well, he has already come,
10 but ...[intervenes]

MR MYBURGH SC: Yes, he has already come.

MR SINGH: Yes but in my view, Mr Chair, I am telling you this meeting did not happened.

MR MYBURGH SC: You did not ...[intervenes]

CHAIRPERSON: Yes, Mr Myburgh, continue?

MR MYBURGH SC: Ja, sorry, you also did not apply to cross-examine Mr Gama.

MR SINGH: No, Sir.

CHAIRPERSON: So you say that he is also just fabricating
20 this story of having seen you having a meeting with Mr Essa in your office.

MR SINGH: That is correct, Sir.

CHAIRPERSON: And are you able to offer any reason why Mr Gama would want to falsely implicate you in a meeting with Mr Salim Essa in your office?

MR SINGH: I have no reason, Mr Chair.

CHAIRPERSON: Yes, okay.

MR MYBURGH SC: So at this time Mr Gama was the Acting GEC of Transnet.

MR SINGH: That is correct.

MR MYBURGH SC: And you were his CFO?

MR SINGH: That is correct.

MR MYBURGH SC: Now Mr Gama's version or evidence about the fact that Mr Essa said I am desirous of meeting
10 with you and without giving much thought, as he said, you responded and said he could obtain my contact details from Singh. That you knew to be Mr Essa's *modus operandi*, did you not? He was desirous of meeting you, he sought you out and he had meetings with you, correct?

MR SINGH: There is two, yes. One or two, yes.

MR MYBURGH SC: So that is how Mr Essa operated?

MR SINGH: I would not know, Sir.

MR MYBURGH SC: No but I am asking you, is that not exactly what he did in relation to you, he knew
20 ...[intervenes]

MR SINGH: As it relates to ...[intervenes]

MR MYBURGH SC: Just if you bear with me? He knew you to be a high-ranking official at Transnet, seems he sought you out, he sought to make contact with you and meet with you. He did that, did he not?

MR SINGH: That is correct.

MR MYBURGH SC: And he then does the same with Mr Gama because of course now Mr Gama is a very high-ranking official, he is acting as the GCE of Transnet, correct?

MR SINGH: I would hazard to say that Mr Gama was a high-ranking official of Transnet for a very long time, other than when he was a GCE, he was also the Chief Executive of Transnet Freight Rail for a very long time.

10 **MR MYBURGH SC:** But this is Mr Essa's *modus operandi*, is it not, to try and make contact – close contact with high-ranking officials.

ADV VAN DEN HEEVER: Chairperson, I wanted – or I left my learned friend to pursue this point but I really have to object at this point in time. When you put a proposal like this to a witness you must have a factual basis on which you put the proposal and ...[intervenes]

CHAIRPERSON: Just tell me what proposition?

ADV VAN DEN HEEVER: That this is his *modus operandi*.
20 The way that my learned friend is putting it to Mr Singh, he is asking him to comment on a factual statement that my learned friend is making and I am submitting to you there is not a basis for him making such a factual statement unless he can direct me where in the bundles he has got it under oath and I will then ask forgiveness for having

missed it.

CHAIRPERSON: Mr Myburgh?

MR MYBURGH SC: Well, the factual basis is what happened with Mr Singh and I thought I had made that clear. Perhaps I can re-traverse that ground. Mr Singh...

MR SINGH: Yes, Sir.

MR MYBURGH SC: It is your own evidence, as I understand, you must correct me if I am wrong, that you had two meetings with Mr Essa. He contacted you. Your
10 evidence is not that you contacted him so on two occasions when you were Chief Financial Officer he makes contact with you. He asks for meetings with you and during those meetings he, I think you said, explored potential business opportunities. So I am simply putting to you that Mr Gama's version of what Mr Essa said to him accords with your interaction with Mr Essa.

ADV VAN DEN HEEVER: Chairperson, I again object. That is not so. Look at what is stated by Mr Gama.

CHAIRPERSON: Well, Ms van den Heever, I am going to
20 add to what Mr Myburgh says about Mr Salim Essa's *modus operandi*, I am going to add something that is not in the Transnet work stream because I happened to hear evidence relating to different work streams, it is something that happened in the Denel work stream, Mr Essa ...[intervenes]

ADV VAN DEN HEEVER: Chairperson, I just missed ...[intervenes]

CHAIRPERSON: Mr Essa sought out the CEO of the Denel, Mr Saloojee and called him to a meeting at the Gupta house and on the evidence that has been led here, sought to have Mr Saloojee agree to some businesses involving Denel and entities that Mr Salim Essa was connected with.

ADV VAN DEN HEEVER: Thank you, Chairperson. Of
10 course, we have no knowledge of that, so...

CHAIRPERSON: Yes, okay.

ADV VAN DEN HEEVER: So my objection was based on a proposal that was put that was nowhere to be found in our bundle.

CHAIRPERSON: Yes, no, no, that is fine. Okay.

MR MYBURGH SC: Perhaps I could just fast forward. What then happened, I do not assume you can dispute this, is that Mr Essa then did invite Mr Gama to a meeting. Can you dispute that?

20 **MR SINGH:** Mr Chair, I have no knowledge of this said meeting.

MR MYBURGH SC: Mr Gama's version is that that invite arose from the interaction in your office.

MR SINGH: Mr Chair, I testified to the fact that this meeting in my office never happened.

CHAIRPERSON: Well, actually, now that Mr Myburgh has asked that question, I wanted to say to you when I asked you a question about whether Mr – you were saying Mr Gama was fabricating all of this about this meeting, I was under the wrong impression that he saw you sitting with Mr Salim Essa on his version while he was passing, but I see that he actually says he did enter your office.

MR SINGH: Yes.

CHAIRPERSON: Which means he had a proper opportunity
10 to see who you were with on his version.

MR SINGH: That is correct.

CHAIRPERSON: So as opposed to maybe just passing and seeing inside your office through a window or glass or something. So he says he did enter, so which means that it is unlikely he would be mistaken about if he saw you with somebody that might not have been Salim Essa, if he was just passing and saw through a window. But here he says he entered so if his version is true he had enough opportunity to see who the person was that you were
20 having a meeting with. Alright, I understand that you say no such meeting took place, I just wanted to clarify because earlier on I was under the impression that he did not enter your office but it is clear from his version that he says he did enter. But you say nothing of that sort happened.

MR SINGH: No, Sir. Sorry, I am saying yes, nothing of that sort happened.

CHAIRPERSON: Okay. Mr Myburgh?

MR MYBURGH SC: Yes and then going back to the invitation, Mr Essa does invite him to a meeting, probably seen Mr Gama, he gets the address and as things turn out it is the Saxonwold compound of the Guptas. The meeting takes place there. I do not suppose you can dispute that?

MR SINGH: Mr Chair, I have no personal knowledge of
10 this meeting, I am not sure how I can dispute it.

CHAIRPERSON: Please just repeat your answer, it was soft.

MR SINGH: I said I have no personal knowledge of this meeting, so Mr Myburgh wants me to dispute this meeting.

MR MYBURGH SC: No ...[intervenes]

CHAIRPERSON: ...to dispute. He wants you to comment and say whether that is true or it is not true or what you have to say about it.

MR SINGH: Well, from what I submit Chair, it is not true
20 because the meeting that Mr Gama alleges to have happened in my office, did not happen. So this meeting that he alleges that [indistinct – 00:00:19] did the meeting in my office would not have happened.

ADV MYBURGH SC: Alright ...[intervenes]

CHAIRPERSON: So ...[intervenes]

MR SINGH: And Mr Chair, it is interesting to note that that paragraph 31.2 which is on page 047, Mr Gama actually had his first interaction with Mr Essa at a Regiment's meeting.

CHAIRPERSON: Yes.

ADV MYBURGH SC: I am going to come to that.

CHAIRPERSON: So Mr Singh, I do not know if you pick up what I pick up here. the meeting that Mr Gama on his version subsequently held, had with Mr Essa either in
10 October or November, which he deals with at paragraph 31.4, is a follow up on the discussion that he says Mr Salim Essa had on the day that he had a meeting with you in your office, that is Mr Salim Essa and Mr Gama says he entered your office and spoke to you briefly and as he was leaving, Mr Salim Essa followed him and asked, and said he would like to have a meeting with you.

So this is a follow up meeting arising out of that. So we spoke earlier on about a follow up meeting that Mr Henk Bester talked about with Mr Salim Essa, having had
20 on his version a meeting with Mr Salim Essa and yourself. So you say you cannot dispute that this October / November meeting of Mr Gama and Salim Essa took place, but you say definitely the meeting that he talks about, that is Mr Gama in your office with Mr Salim Essa, did not take place.

MR SINGH: Mr Chair, let me put it to you this way. Mr Gama, I think you are correct Mr Chair in terms of summary that I deny the meeting that took place in October or November, emanated from the meeting that took place in my office, and as I said, to confirm whether this meeting in my office took place or not, is very easy.

It is a matter of speaking to three individuals. Okay. In terms of the follow up meeting Mr Chair, again it is convenient for Mr Gama to say he has met with the
10 Gupta family and he has met with Mr Essa and conveniently implicate me in terms of the person that introduced him to Mr Essa.

CHAIRPERSON: No, he does not say that. He says he had met Mr Salim Essa earlier, prior to your, to him seeing you with him in your office. Paragraph 31.2.3, he had met him, it was about approximately ten people. I think it was at Regiments.

He had, so he does not have to say you introduced him to Salim Essa. He had met Salim Essa before.

20 **MR SINGH:** I agree Mr Chair.

CHAIRPERSON: Hm?

MR SINGH: I see that Mr Chair, and hence I am saying Mr Chair, it is convenient as you were pointing out previously to say Mr Bester alleges that he had a meeting with you and then there is a follow up meeting. Mr Gama has a

meeting where Mr Salim Essa is present and then he has a follow up meeting.

I am saying, and this is what I was trying to get to. Is that it is very convenient for individuals like Mr Bester and Mr Gama, to after the event associate my relationship with Mr Essa, on the basis of trying to cover up stuff that they have to account for.

ADV MYBURGH SC: I am not sure ...[intervenes]

CHAIRPERSON: You are not suggesting that Mr Bester
10 and Mr Gama came together for, which are stories that
...[intervenes]

MR SINGH: No, no, no. I am not suggesting that Mr Chair. What I am suggesting is if you look at the case of Mr Bester, I outlined to you the reason why Mr Bester would be taking the approach that he is taking, to explain the reason why he puts me at a meeting that I was not at.

CHAIRPERSON: Well, you said what you said but one of
the things you did was you conceded that if I recall
correctly, that he would not have had a motive to falsely
20 implicate you.

MR SINGH: No Mr Chair, but beyond that Mr Chair, I then went on to say that if you look at the reason why Mr Bester may have put me at that meeting, is to conveniently explain the reason why [indistinct – 00:05:40] then actually ended up being a subcontractor to DSA.

CHAIRPERSON: Yes.

MR SINGH: And again Mr Chair ...[intervenes]

CHAIRPERSON: And where is Mr Gama?

MR SINGH: Again Mr Chair, Mr Gama ends up or admits going to the Saxon world reason and conveniently it is as a result of meeting with me at my office.

CHAIRPERSON: Well, he does not link it to meeting you and or meeting with Mr Salim Essa at your office. But anyway, Mr Myburgh?

10 **ADV MYBURGH SC:** Why do you say he conveniently links it to you? What would ...[intervenes]

CHAIRPERSON: What is the convenience?

MR SINGH: Well Mr Chair, you ... well, as I understand what Mr Myburgh and what you are trying to ascertain, is this meeting that happened in October flow from the meeting that happened in July, August. So what you are trying to say is that this meeting, well what Mr Gama is saying is that had this meeting in July not happened, then the 15 October / November meeting would not have
20 happened.

I am saying it is convenient that you meet someone in the office in July and automatically in October then a meeting happens that you then attend in Saxon world.

CHAIRPERSON: Well, I am not sure that I understand the convenience part, but let ... I think we must proceed Mr

Myburgh.

ADV MYBURGH SC: Thank you. So I want to then take you to the first time that Mr Gama met Mr Essa. This is at paragraph 31.2. You have referred to this at page 47. He says that:

10 “In and during 2015 I attended a meeting with representatives of Regiments Capital Pty Ltd at Transnet’s offices. The meeting was attended by a number of Transnet officials, executives and senior consultants, representing Regiments as well as consultants from McKinsey and company.”

Next sub paragraph:

 “Because I knew all of the McKinsey consultants, I assumed that the remainder of the persons in attendance represented Regiments.”

Next sub paragraph:

20 “One of these persons was introduced to me as Salim Essa. I recall that approximately ten persons attended the meeting. Regiments was a service provider to Transnet, advising it on certain transactions that we considered entering into.”

Are you able to deny this or dispute this, that Mr

Essa was present at your office, at this meeting?

MR SINGH: Sorry, at my office?

ADV MYBURGH SC: Transnet's offices during 2015.

MR SINGH: I think Mr Gama would have to define which is Transnet's offices.

ADV MYBURGH SC: He did in his evidence, he said the Carlton Centre.

MR SINGH: Okay, that is 50 floors.

ADV MYBURGH SC: I am asking you are you able to
10 dispute this?

MR SINGH: This is not within my knowledge, I cannot dispute it? I deny that from my recollection, I do not recall Mr Essa ever being in Transnet offices.

ADV MYBURGH SC: That is what I wanted to put to you. I mean on this version Mr Essa came to the offices at the Carlton Centre, was it unusual? You say you never saw him.

MR SINGH: I have never seen Mr Essa at the Carlton Centre. I think just for the record Mr Chair.

20 **ADV MYBURGH SC:** Yes.

MR SINGH: And this is not to create an acrimonious relationship with the commission.

CHAIRPERSON: Ja.

MR SINGH: I would just like to place on record that we did receive a 33 notice for Mr Gama.

CHAIRPERSON: I am sorry, just repeat that?

MR SINGH: I said I just want to place on record that we did receive a 33 notice for Mr Gama. But that was a redacted version of the [indistinct – 00:09:46] and it only contains paragraph 31.3.

CHAIRPERSON: It did not contain this particular paragraph?

MR SINGH: We had to request ...[intervenes]

CHAIRPERSON: Ja.

10 **MR SINGH:** The full affidavit of Mr Gama which was then provided.

CHAIRPERSON: Yes, oh.

MR SINGH: And that comes to the point of Mr Myburgh in terms of us wanting to cross-examine.

CHAIRPERSON: Yes.

MR SINGH: Whether we would have or did not, that is besides the point.

CHAIRPERSON: Ja.

20 **MR SINGH:** The point if I would like to place on record that at our request then only were we provided with the full affidavit of Mr Gama.

CHAIRPERSON: Yes. Mr Myburgh?

ADV MYBURGH SC: Yes, thank you and do you feel that you have been able to answer the questions that I have posed to you in relation to those two paragraphs now

adequately?

MR SINGH: Mr Chair, I think we have covered it adequately.

ADV MYBURGH SC: Alright.

CHAIRPERSON: Okay.

ADV MYBURGH SC: Yes, you can put that away. I would like to now deal with the FNB account.

CHAIRPERSON: Are we going back to Bundle 5B?

ADV MYBURGH SC: Bundle 5C Chairperson.

10 **CHAIRPERSON:** 5C. I see that we are at quarter to one.

ADV MYBURGH SC: Yes, it is Chair.

CHAIRPERSON: But I guess 15 minutes might still be used.

ADV MYBURGH SC: I am sure we can use it, yes.

CHAIRPERSON: Ja, ja okay. Yes. What is the page on the ...[intervenes]

ADV MYBURGH SC: Page 1568.

CHAIRPERSON: Okay.

20 **ADV MYBURGH SC:** So at 1568 you find an affidavit, a short affidavit from Mr Benjamin running to 1572. You have had an opportunity to read this affidavit I take it?

MR SINGH: That is correct.

ADV MYBURGH SC: Could I ask you please to go to paragraph 6, it is an affidavit of Mr Benjamin. He is the head of the Transnet stream investigation team as you

know. At paragraph 6, he says:

“During November 2018, Fundudzi Forensic Services, Fundudzi issued a final forensic report commissioned on behalf of national treasury style Chapter 3, report relating to Eskom investigations. This report is one of a number of reports issued by Fundudzi in terms of an appointment by national treasury.”

Then we have the tender number:

10 “To conduct forensic investigations into allegations of irregularities, and misconduct at Transnet and Eskom. As part of the commission’s ongoing investigations relating to Transnet I reviewed the abovementioned Fundudzi Chapter 3 report, specifically paragraphs 8.3, 8.4 and 8.6.7 dealing with the analysis of an FNB bank account with account number 62364926380, the account held by Mr Anoj Singh. Mr Singh, the former group chief
20 financial officer of Transnet (July 2012 to July 2015), and Eskom (August 2015 to January 2018). I attach hereto a copy of an extract of Findus’s Chapter 3 report as Annexure CB1 setting out the findings, conclusions and recommendations of their analysis of the

account. I refer to the relevant Fundudzi findings later in this affidavit.”

But perhaps I could take you to this Annexure CB1, if I may. This you find at page 1573 and the relevant part for present purposes, you find at paragraph 8.3 which is on page 1575. Then you will see there that there is a heading movements in Singh’s FNB bank account number. It is the one ending 308 that Mr Benjamin refers to as the account.

CHAIRPERSON: You said 308, you mean 380?

10 **ADV MYBURGH SC:** 380, I beg your pardon.

CHAIRPERSON: Ja.

ADV MYBURGH SC: Mr Benjamin refers to that as the account. 8.3.1:

“During the analysis of Singh’s computer hard drive, we determined that there were bank statements for the period 6 July 2012 to 5 July 2016 for FNB account number, the one ending 380 in Singh’s name. We further determined that said bank account was opened at FNB

20 Carleton Centre on 5 July 2012 with a cash deposit of R200-00. We analysed the said statements, and established the following.”

And then they deal with transfers in 2012, transfers in 2013, transfers in 14, transfers in 15, transfers in 16, and then you go to page 1577. There is a heading the

source of credits into Singh's bank account number, it is the one ending 380.

So from an analysis of Sing's bank account number ending 380 we determined that the description of all the credits as reflected as mag tape credit EGR01. The credit [indistinct – 00:16:42] FNB account reflected above include what appears to be his monthly salaries from Transnet and Eskom.

10 Credits further reflected large sums of money whose sources are unknown and suspicious. We determined that the reference ending 136 is reflected in both Singh's Absa account number and FNB account. Etcetera, and if I could then take you to the conclusion at page 1579, at paragraph 8.6.8 there is reference there to the fact that Singh indicated in his responses that all funds received in his bank account were received in view of his employment at Transnet and or Eskom.

Then paragraph 8.6.10:

20 "Singh may have received funds from other sources to service his personal lifestyle as there were minimal transactions in his bank account."

Now can I just ask you to comment on paragraph 8.6.8? My understanding and from what I have read is that you were asked to comment on an earlier draft of this

report in this regard, in relation to this account. Is that correct?

MR SINGH: That is correct.

ADV MYBURGH SC: And it seems from paragraph 8.6.8 that the question was asked of you as to what the source of the funds in this account were.

MR SINGH: That is correct.

ADV MYBURGH SC: And that your answer was, it is effectively your remuneration from Transnet and or Eskom.

10 **MR SINGH**: That is correct.

ADV MYBURGH SC: If I could take you back then to Mr Benjamin's affidavit. At paragraph 7 at page 1569 he introduced the extract from the Fundudzi report which we have dealt with and then at paragraph 8, he says:

“I was subsequently tasked by the commission to conduct an independent analysis of the account.”

Under the heading procedures performed, paragraph 9:

20 “I established that the commission have summonsed Mr Singh's bank accounts including the abovementioned account during May 2019.”

Paragraph 10:

“I was provided access to Mr Singh's bank

statements for the account by the commission on 26 March 2021. Copies of the bank statements for the account is attached hereto as Annexure CB2.”

As you would have seen, they run from page 1580 all the way through to page 1712. Would you confirm that? 1580 to 1712.

MR SINGH: 1712, that is correct.

ADV MYBURGH SC: Then at paragraph 11:

10 “I obtained a spreadsheet of Mr Singh’s net salary payments from the HR department at Transnet for the period August 2010 to November 2015. See Annexure CB3 attached.”

Now that attachment you find at page 1713 ...[intervenes]

CHAIRPERSON: 1573?

ADV MYBURGH SC: 1713.

CHAIRPERSON: 1713.

ADV MYBURGH SC: You see that Mr Singh?

20 **MR SINGH**: That is correct.

ADV MYBURGH SC: Perhaps you can just keep your finger there and then go back to page 1570 and pick up at paragraph 12:

“I analysed all the transactions reflected in the account on an Excel spreadsheet, on the

opening date 5 July 2012, to the closing date 4 December 2016.”

And he refers to his spreadsheet as CB4. Now that you find at page 1714 through to page 1718. You see that?

MR SINGH: That is correct.

ADV MYBURGH SC: Then you can keep your finger there, going back to paragraph 13 at 1570:

10 “I compared the deposits made into the account Annexure CB4, to the schedule of net remuneration paid by Transnet. I compared my observations, based on my independent analysis to the findings in the Fundudzi Chapter 3 Eskom report.”

Then under the heading over the page comparison independent analysis to findings in Fundudzi report, 15:

20 “I concur with Findus’s finding in paragraph 8.6.7 of their report, that the bank balance in the account accumulated to 19 million.”

20 16:

“The balance peaked at R19 884 811-32 in October 2015.”

You agree with that?

MR SINGH: Should I have reference to this?

ADV MYBURGH SC: Sorry?

MR SINGH: Should I have reference to this?

ADV MYBURGH SC: You go to page 1716 of the spreadsheet, at the bottom, number 41. This is taken from the October statement and you will see over the page that the balance reflected in bold.

MR SINGH: That is correct.

ADV MYBURGH SC: Is the R19 884 811-32. You see that?

CHAIRPERSON: I am sorry. You said page 1716?

10 **ADV MYBURGH SC:** So 1716, you go to item 41, BCJ at the bottom.

CHAIRPERSON: Yes.

ADV MYBURGH SC: That is dealing with, it is taken from the October 15 statement.

CHAIRPERSON: Yes.

ADV MYBURGH SC: And if you go over the page still dealing with October 15, you will see on the right hand side in bold highlighted.

CHAIRPERSON: Oh, yes.

20 **ADV MYBURGH SC:** There is the number, the 19 million that we are speaking of.

CHAIRPERSON: Okay.

ADV MYBURGH SC: Would you confirm that Mr Singh?

MR SINGH: I confirm that.

ADV MYBURGH SC: Then if you go back to paragraph 17,

at page 1571:

“I concur ...”

Says Mr Benjamin:

“With Findus’s finding in paragraph 8.3.20 that Mr Singh did not utilise his salary for the period July 2012 to July 2015.”

That is Transnet time. He goes on to say, paragraph 18 and the two paragraphs should be read together:

10 “The total debits during the aforementioned period which is July 2012 to July 2015, amounted to R594 596-00 of which four hundred and fifty thousand was a transfer to an Absa account and the remaining R144 596-00 related to cash withdrawals and point of sales transactions over the 37 months period.”

Are you in a position to confirm that or would you need to look at the documents more?

20 **MR SINGH**: I think for now we will take it on face value and agree.

ADV MYBURGH SC: Paragraph 19. In paragraph 20.4.2 Fundudzi states that:

“The credits into the account included what appears to be monthly salaries from Transnet and Eskom.”

Paragraph 20:

“This is incorrect. The credits relate only to Mr Singh’s remuneration payments from Transnet.”

Would you confirm that?

MR SINGH: That is correct.

ADV MYBURGH SC: Paragraph 21:

10 “In paragraph 8.4.2 Fundudzi states that the credits further affected large sums of money whose sources are unknown and suspicious.”

Paragraph 22 Mr Benjamin says:

“This is incorrect. There are no suspicious credits into the account. All deposits relate to remuneration received from Transnet.”

I take it you would confirm that.

MR SINGH: Correct.

ADV MYBURGH SC: And then the last paragraph which brings us to the stroke of lunch time, coincidentally, paragraph 23:

20 “I note that despite the accumulated amount of 19 million etcetera, Mr Singh did not earn any interest on the account.”

Would you confirm that?

MR SINGH: I will take it at face value at this stage sir.

ADV MYBURGH SC: Chairperson, it is now one o’clock. If

this is a convenient time?

CHAIRPERSON: Yes, let us take the lunch adjournment and we will resume at two. We adjourn.

HEARING ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let's continue.

ADV MYBURGH SC: Thank you. Mr Singh could I just ask you please to go to page 1716 of Bundle 5C.

CHAIRPERSON: I'm sorry 1?

10 **ADV MYBURGH SC:** 1716.

MR SINGH: I'm there sir.

ADV MYBURGH SC: Are you there, alright, I just wanted to confirm with reference to the shading, I think you've given evidence previously that – and you must correct me if I am wrong, that when you were seconded to Eskom you were still paid for a time by Transnet, is my recollection correct?

MR SINGH: That is correct.

20 **ADV MYBURGH SC:** Do you want to keep your mask on or is it by mistake?

MR SINGH: Thank you.

ADV MYBURGH SC: So at item 38 on the left hand side there we see in shading your July salary, Transnet, then you were at Transnet?

MR SINGH: That is correct.

ADV MYBURGH SC: And then we see a Transnet salary in August and September, but in those months you had been seconded to Eskom.

MR SINGH: That is correct.

ADV MYBURGH SC: And then you also see in October it seems what happened is that you were then paid out Transnet LTI's, I take it that's long term incentives on a proportionate basis.

MR SINGH: That is correct.

10 **ADV MYBURGH SC:** And you were also then paid some leave.

MR SINGH: That is correct.

ADV MYBURGH SC: Which then takes us to the balance that we had spoken about before. DCJ I need to point out to you that there are some corrections that need to be made at page 1718.

CHAIRPERSON: Yes.

20 **ADV MYBURGH SC:** You will see that if you look at 1717 right at the bottom, number 57, there a schedule is dealing with February 2017, when you go to 1718 and you pick up at March it reflects March 2016, so those years in that column should actually be 17.

CHAIRPERSON: Oh, okay.

ADV MYBURGH SC: And then the other correction that needs to be made is that when you get right to the bottom,

and it refers to Transfer Money Market that first account there ...[intervenes]

CHAIRPERSON: I am sorry, I just want to make sure that I correct this.

ADV MYBURGH SC: DCJ I have asked Mr Benjamin to ...[intervenes]

CHAIRPERSON: To prepare a supplementary or replacement ...[intervenes]

ADV MYBURGH SC: He will prepare a supplementary
10 affidavit and there will be a replacement page.

CHAIRPERSON: Okay, no that's fine.

ADV MYBURGH SC: None of this is particularly material for present purposes.

CHAIRPERSON: Ja.

ADV MYBURGH SC: Then under the heading transfer money account ...[intervenes]

CHAIRPERSON: On ...[intervenes]

ADV MYBURGH SC: 1718 at the bottom.

CHAIRPERSON: Yes.

20 **ADV MYBURGH SC:** The first of those accounts there ends 398 that actually is an incorrect account number, it should be an account number ending 607.

CHAIRPERSON: 607?

ADV MYBURGH SC: Yes, and those fours that you see under the heading transfer money account it just needs to

be clarified that that is actually the 4th of December.

CHAIRPERSON: Oh.

ADV MYBURGH SC: So that should be 4/7.

CHAIRPERSON: Yes, okay, okay.

ADV MYBURGH SC: So what we have here really in summary Mr Singh is that in three years or three months or so we see an accumulation of about R19million in salary – let me call it remuneration, it is not just salary it is also incentives and the like and we see outflows of just of
10 R700 000, that's all in those three years and three months, so the question that I just want to discuss with you is how is that you were funding your day to day expenses and your lifestyle during these three years, three years and three months?

MR SINGH: Mr Chair at this point Mr Chair the discussions that we had with the Chairperson yesterday as well as Mr Myburgh and the investigation team obviously we have now understood that the team and the Commission has access to a number of my bank statements, not only
20 this bank statement, and Mr Chair it is concerning for me to be requested to answer this question, given the fact that you have access to these other bank statements, because these other bank statements would reflect the fact that my lifestyle was funded from those bank statements, as I testified yesterday.

The debit orders, credit cards, groceries, electricity, water, all my normal expenses would have come off those accounts.

ADV MYBURGH SC: Yes, that I understand, but how did you pay for them? Because on the face you weren't using your salary – your remuneration, let me use that lauded term, that is really the question I am asking you. I mean obviously you must have like everyone had accounts and debit orders and the like. The question really goes to how
10 were you funding that ...[intervenes]

CHAIRPERSON: In other words what was the source of the money you used to incorporate those other accounts from which you were funding your living expenses and the like.

MR SINGH: Well again Mr Chair it is again concerning that having analysed this account in detail that you have, having access to the bank statements that we know you have that the Commission doesn't have an answer to that question and again Mr Chair the answer to that question
20 ...[intervenes]

CHAIRPERSON: Does that mean you are not going to give the answer or what?

MR SINGH: No Mr Chair, it goes to the point of the fact that the Commission has these documents.

CHAIRPERSON: Yes.

MR SINGH: You have conducted an analysis of this account the bank statements that you have indicates that as I said to you the lifestyle was funded through those bank accounts. Those bank accounts also reflect salary payments, long-term incentives from funds there, and this is why I am saying it is ...[intervenes]

CHAIRPERSON: So are you saying your remuneration from Transnet didn't come through one account it went through it went into different bank accounts, are you saying
10 that the remuneration from Transnet that we see reflected in this bank account over that period doesn't give the true picture of the money you were getting from Transnet?

MR SINGH: No Mr Chair I have been employed by Transnet for over ten years.

CHAIRPERSON: Yes.

MR SINGH: Or 12 I think, 12 years by the time I left.

CHAIRPERSON: Yes.

MR SINGH: So for the period from the time I actually I think came to Johannesburg in 2003 my salary from
20 Transnet were going into a bank account, so that's the source of the funds that ...[intervenes]

CHAIRPERSON: And so the funds that you say you used to finance you living expenses and your lifestyle during the three years that we are talking about, you say that came from your remuneration from Transnet but not from the

remuneration during those three years but from prior years.

MR SINGH: That is correct sir.

CHAIRPERSON: Okay so does that mean in the years prior to these three years you didn't – you had enough to spend during those years and have a lot of reserves and savings or what?

MR SINGH: That is correct Mr Chair, I mean if you look at this bank statement itself Mr Chair it is testament to the fact that I had a saving culture, so similarly Mr Chair the
10 Commission had the opportunity to analyse the bank statements that are in their possession for a period of time, you would have come to a very quick conclusion that the money that was in those accounts emanated from Transnet, Transnet alone.

CHAIRPERSON: So in short generally speaking the money that went into those other accounts that you are talking about was also money from Transnet, it was your remuneration it is just that you saved a lot of money during those years and you were able during these three years
20 when you didn't touch the salary that came in during those three years, you were able to use whatever money you had accumulated over those prior years?

MR SINGH: That is correct.

CHAIRPERSON: Okay, Mr Myburgh?

ADV MYBURGH SC: So in short you drew from your

savings?

MR SINGH: Sorry sir?

ADV MYBURGH SC You drew from your savings in these years?

MR SINGH: In these years in question?

ADV MYBURGH SC Yes.

MR SINGH: Yes.

ADV MYBURGH SC Alright, and just so that you – that I understand it you say all of these other accounts will
10 reflect only deposits of remuneration from Transnet, no other income?

MR SINGH: Well Mr Chair you know you're talking about accounts that go back quite a few years, I am not exactly sure if there are credits that emanate from other sources, but certainly the majority of the credits that would emanate from those accounts would certainly be from my employment accounts.

CHAIRPERSON: So you are saying you can't be sure whether if somebody were to go through the whatever
20 monies came in, into those accounts, you can't be sure that there won't be money that came from somewhere else other than Transnet, here and there but mainly it was Transnet and it was there anything that came from somewhere else it might be a very small percentage?

MR SINGH: Mr Chair maybe let me answer to you this

way.

CHAIRPERSON: Yes.

MR SINGH: I think with the exactness of my responses that the Commission requires it is difficult for me to categorically state that everything single credit ...[intervenes]

CHAIRPERSON: Ja, yes, ja.

MR SINGH: In all of my bank statements emanated from remuneration from Transnet.

10 **CHAIRPERSON:** Yes, ja.

MR SINGH: But what I can say to you Mr Chair is that as you said the majority of that if not 99% of them probably emanated from Transnet. There would have been some I would assume SARS credits, some SARS refunds, some medical aid refunds if I recall, probably interest and also Mr Chair it depends on the type of account it would have been. If it was a – how can I call it, if it was Money Market account or an investment account there would have been you know dividends or something that accrued relating to
20 the type of investment.

So Mr Chair but again as I said the analysis was done on this account, so the analysis to be done on the other accounts will be just as easy.

CHAIRPERSON: Ja, okay.

ADV MYBURGH SC: That's not, it is not quite as simple as

you say because we have been asked as you know to produce the summonses in relation to your bank account records and in the process of trying to put that together we have come to learn that you had many, many bank accounts, I mean do I understand correctly that you might have had as many as 12 FNB accounts?

MR SINGH: Mr Chair I am not too sure the period over which this is, but again depending on whether you had a credit card or a debit card or a savings accounts or a garage card or a money market account or an I don't know, let's call it, I don't know what other accounts they would have had, if they allocated different account numbers to it then ja you would have had more than one account number.

ADV MYBURGH SC: But then you also had multiple accounts at Investec, multiple accounts at Capitec, multiple accounts at Standard Bank and multiple accounts at ABSA.

MR SINGH: Mr Chair again as I have mentioned if you have a garage card with ABSA it is an account, if you have a First Card with ABSA it is an account, if you have a debit card it would have a certain account, so it seems that that is how the banks operate, so if I had those accounts then I had those accounts.

ADV MYBURGH SC: And so as I understand what you

are saying is that the Commission can to and analyse all of those accounts and then work out how you were funding your living expenses but which of these accounts did you actually use as a current account, because you weren't using this as a current account. Which of your bank accounts did you use as a functioning day to day current account, debit orders for medical aid, bonds, whatever it is?

MR SINGH: Mr Chair that would either be the – well it
10 would be the ABSA account and it would also be the Standard Bank.

CHAIRPERSON: What is the last one?

MR SINGH: The Standard Bank.

CHAIRPERSON: Yes.

ADV MYBURGH SC: The ABSA and Standard Bank current accounts.

MR SINGH: Ja.

ADV MYBURGH SC: Alright.

MR SINGH: The predominant credit card that I used Mr
20 Chair was probably the Investec one.

ADV MYBURGH SC: Sorry?

MR SINGH: I said the predominant credit card that I utilised was the Investec one.

CHAIRPERSON: The Investec account ...[intervenes]

ADV MYBURGH SC: I mean when you say ...[intervenes]

MR SINGH: Sorry?

CHAIRPERSON: The Investec account?

MR SINGH: The credit card.

CHAIRPERSON: Credit card, Investec credit card, that is the one you predominantly used?

MR SINGH: If I could recall Mr Chair.

CHAIRPERSON: Okay. Let me take this chance to just confirm something. The payments that you would have made to Travel Excellence for your trips, do you remember
10 when you were giving evidence under the Exco Eskom work stream, you said sometimes you paid by cash, sometimes I think EFT and sometimes you used ebucks but which of the accounts would you have normally used for those payments and for trips?

MR SINGH: Mr Chair I wouldn't recall offhand right now.

CHAIRPERSON: You wouldn't recall, but if you were predominantly using the Investec Credit Card there might be a good chance that maybe that is where one could look, you remember we said we need to look at the bank
20 statements and bank record and see ...[intervenes]

MR SINGH: Mr Chair recently I would recall that I used the Investec credit card.

CHAIRPERSON: The Investec credit card.

MR SINGH: Credit card, yes.

CHAIRPERSON: Yes, okay, alright.

ADV MYBURGH SC: You say recently?

MR SINGH: Yes.

ADV MYBURGH SC: But we're talking about 2014.

CHAIRPERSON: Oh yes, yes. I thought you said you recently recalled that you would have used it.

MR SINGH: No, no sir the period that I haven't gone into trying to find records because as I said we don't have access to those records.

CHAIRPERSON: Ja 2014/2015. Okay, but if one could
10 look at your Investec Credit Card and look at the ABSA account and FNB, okay.

ADV MYBURGH SC: And the we can find the payments to Travel Excellence.

MR SINGH: Mr Chair as I said I don't recall how and when these payments were made, but I would recall that I probably did some internet payments and some credit card payments but they were predominantly cash.

CHAIRPERSON: Ja,

ADV MYBURGH SC: They were predominantly cash?

20 **MR SINGH:** Yes.

CHAIRPERSON: Did you say they were predominantly cash the payments?

MR SINGH Based on our testimony we had given previously yes sir.

CHAIRPERSON: Oh, okay, so there would have been few

EFT payments?

MR SINGH: If I recall Mr Chair.

CHAIRPERSON: Okay so most were cash?

MR SINGH: Yes sir.

CHAIRPERSON: Okay, I had not understood your evidence like that before, so most were cash and there might have been a few that were EFT.

MR SINGH: That is correct.

CHAIRPERSON: And those that were EFT would either be
10 ABSA or Investec account.

MR SINGH: Probably Mr Chair but I cannot confirm.

CHAIRPERSON: H'm. Okay.

ADV MYBURGH SC: You see Mr Singh my recollection of your evidence when Mr Seleka was questioning you in relation to those payments that your evidence was the other way round, that you said look occasionally you would pay in cash but you explained that you would use a variety of different means. Can we take it now that you're settling on that usually you paid in cash?

20 **MR SINGH**: Mr Chair I don't ...[intervenes]

ADV VAN DEN HEEVER: Chairperson I ...[intervenes]

CHAIRPERSON: I think not usually Mr Myburgh, predominantly, or mostly, mostly, ja.

MR SINGH: So what is the proposition that you are putting?

CHAIRPERSON: No, he is asking whether we can take it that – he says he understood your evidence when you were being questioned by Mr Seleka to be that usually or most of the time the payments were in cash but there were sometimes when it was through other means, but he is saying as he understands you now you are saying – he was saying usually, and I was correcting, as you are saying most of the time it was cash, that is what you are saying, that is what you said, so he was wanting to confirm that he
10 understands you correctly.

MR SINGH: That is correct Mr Chair.

CHAIRPERSON: Okay alright.

ADV MYBURGH SC: So predominantly cash. So the other thing I wanted to ask you is this is as these bank statements show this was not an interest bearing account, you didn't receive any interest?

MR SINGH: Yes that is correct Mr Chair.

ADV MYBURGH SC: And in fact what it shows is that there was a time when you transferred out, this is in 2016,
20 I think it is R16million into two money market accounts, that you see if you would like to look at page 1717, line item 15, you see there was a transfer of one million and five million into account 608, that is R6million, and then there was a transfer of one million and nine million and ten million into the Money Market account ending in 607, do

you see that?

MR SINGH: That is correct.

ADV MYBURGH SC: And I can take you to those statements but once you made those transfers on a monthly basis you were getting almost R100 000 in interest.

MR SINGH: That is correct.

ADV MYBURGH SC: Why did you not put these proceeds or the inflow into an interest bearing account, I mean this
10 is a huge amount of money, when you did that you made R100 000 a month.

MR SINGH: Mr Chair in dealing with this question Mr Chair is it possible to just take a two minute recess to consult?

CHAIRPERSON: Mr Myburgh?

ADV MYBURGH SC: I have no objection.

CHAIRPERSON: Okay, we will take a let's say five minutes adjournment.

MR SINGH: Thank you.

20 **CHAIRPERSON:** We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let's continue. Your mic Mr Myburgh.

ADV MYBURGH SC: Are you in a position to answer my q

question.

MR SINGH: Can you just repeat the question.

ADV MYBURGH SC: The question was why didn't you put the money into an interest bearing account?

MR SINGH: Mr Chair at the time I had personal reasons to need – to have access to these funds.

CHAIRPERSON: Why would that preclude you from putting it in an interest bearing account. I can understand if you say they earned little interest because they were in
10 an account that pay you little interest because if you wanted to get a high interest rate you would have had to put the away for a long time without having access to them, but I don't understand when you use that to say put them where you wouldn't earn any interest at all.

MR SINGH: Yes Mr Chair I think when we say that the accounts, this was a cheque account if I am not mistaken Mr Chair and so the interest on this account would have been very relatively low if I recall, I am just trying to check if it actually discloses interest, so Mr Chair as I have
20 indicated there was a need for me to maintain this account to have liquidity and at some point I was approached by the private banker at First National Bank who suggested that there is probably a better way to still have access to the funding and having liquidity and still earn interest, and that is the point in time when I then agreed to open up

these Money Market account, which then resulted in the earning of interest.

CHAIRPERSON: Mr Myburgh?

ADV MYBURGH SC: Yes, when you say the interest rate was relatively low there was no interest in these accounts, unless you have a better sense of them than me, but let me just take you – and you must correct me if I am wrong. Let's go to the first one, 1580.

MR SINGH: No, no Mr Chair I concede because I have
10 looked at the bank statement.

ADV MYBURGH SC: It wasn't a matter of being relatively low, the interest was zero.

MR SINGH: I know, I have seen that. And I guess Mr Chair that is what prompted the private banker at FNB to suggest the opening of the Money Market.

ADV MYBURGH SC: Mr Singh you were chief financial officer of Eskom, of Transnet, I beg your pardon, and you needed a private banker to tell you that ...[intervenes]

ADV VAN DEN HEEVER: Chairperson is that a question
20 or is it a statement, or what is my learned friend trying to do?

CHAIRPERSON: Well Mr Myburgh is quite entitled to put what he is putting to Mr Singh, what do you say about that Mr Singh? But you – you are so highly qualified in finance how could you have to wait to be advised by a private

banker to put your money into an interest bearing account.

MR SINGH: No Mr Chair as I have said I needed to reference the bank account to actually see whether interest was actually earned on this account or not and I have – it was my impression that it was relatively interest that I was earning but in actual fact I was actually earning no interest. So Mr Chair would be my reason.

CHAIRPERSON: Well I am not sure that I understand that answer Mr Singh because I understood you earlier on to be
10 saying the reason why you were quite content, and I know I am using my own words now, you were quite content to have such large amounts to remain in an account that didn't give you interest was because you needed to have access to these funds. Now that is an answer of somebody who was aware that he was not getting interest in these accounts, but for certain reasons was – had no problem with that because of whatever reasons he had, but if you had – if you knew that the account, if your impression was that the account was giving you a low
20 interest as opposed to zero interest then when Mr Myburgh said to you why did you keep such large amounts in an account that didn't give you any interest your answer wasn't going to be that because I wanted to have access to the money, your answer would have been no, no, no, these accounts did give me interest but it was a low interest, but

it is not correct to say it did not give me interest, that would have been your answer.

What do you say to that?

MR SINGH: Mr Chair I think your proposition is properly well stated, I should have said if I understood that the interest was a relatively low interest bearing I should have said my recollection was that the interest was relatively low rather than agreeing to the fact that there was no interest bearing.

10 **CHAIRPERSON:** Mr Myburgh?

ADV MYBURGH SC: Mr Singh perhaps I can just ask you this, and you are much better versed in this than I am at the moment, but just as a typical man in the street really isn't it general knowledge that a current account would bear much lower interest, an ordinary current account, than any investment account, than a Money Market account?

MR SINGH: That is why I had the perception that this account was a relatively low interest bearing account compared to the Money Market.

20 **ADV MYBURGH SC:** Yes, but that is really I think the DCJ is getting at, on your own version you thought it was low, we said it was zero, you say you didn't know that for some reason, but if you knew you were in a current account you didn't need to know the interest rate, why didn't you move the money into a Money Market account?

MR SINGH: But that is the reason Mr Chair I was happy to forego the interest that I thought I was earning, which I was not earning ostensibly now, because I needed liquidity regarding cash. So in my case, because I needed liquidity I was saying okay I am happy to forego the interest that I would get on a more longer term investment *vis-a-vis* the fact that I needed the money, or access to it.

ADV MYBURGH SC: I am not sure I understand why you would forego liquidity if you put it into an ordinary savings
10 account for example.

MR SINGH: Well Mr Chair that was the decision I made at the time, and it is what I did at the time.

ADV MYBURGH SC: Mr Singh I am just going to ask you one thing, I mean did you pay less or more attention to your personal financial affairs than you did the affairs of Transnet?

MR SINGH: As I told Mr Chair I actually probably paid more attention to the affairs of my professional work than my own.

20 **ADV MYBURGH SC:** I see.

CHAIRPERSON: Well let me ask this question, as I understand your evidence you, and you say you needed liquidity, that is why you kept these large amounts in an account that didn't give you interest, you mean you wanted to be able to draw cash from it or use it if and when you

had a need?

MR SINGH: That is correct.

ADV MYBURGH SC: And did you think you were going to have a need for millions?

MR SINGH: Mr Chair in this case as I explained – I say in this case, as I explained originally, that the need to have this quantum of ...[indistinct] was for a private and confidential reason ...[intervenes]

ADV VAN DEN HEEVER: Chairperson if we go off line and
10 we go *in camera* I am sure my client will at that stage disclose it, right now he doesn't want to disclose his private business for all and sundry to hear.

CHAIRPERSON: No, not that is fine.

ADV VAN DEN HEEVER: There is nothing nefarious or strange about it, there is a very legitimate reason for it, but if you insist we can go *in camera* and he can tell you.

CHAIRPERSON: No Ms van den Heever, no please.

ADV VAN DEN HEEVER: But what I am saying
Chairperson we can disclose it to the Commission
20 ...[intervenes]

CHAIRPERSON: I heard you. And Mr Singh is equally able to say exactly that, and I think in a way he had begun to say something, okay, so you are saying there is a reason which made it necessary for you to have cash of that size, of millions of rands, ready should you need it?

MR SINGH: That is correct.

CHAIRPERSON: And that is a reason that you would rather disclose not publically.

MR SINGH: That is correct.

CHAIRPERSON: Okay, Mr Myburgh? I believe that Mr Myburgh if you want to take ...[intervenes]

ADV MYBURGH SC: I am happy for that to be done privately, you would be of a much better sense DCJ of how we should go about doing that.

10 **CHAIRPERSON:** Yes.

ADV MYBURGH SC: Whether we go offline, whether Mr Singh should put in an affidavit.

CHAIRPERSON: Yes.

ADV MYBURGH SC: We are in your hands.

CHAIRPERSON: Yes, I think maybe we should do that, he should put that in an affidavit and because I think we won't finish with him today.

ADV MYBURGH SC: Yes.

20 **CHAIRPERSON:** And then I can see that and then we can then take it from there. Okay.

ADV MYBURGH SC: Perfect.

CHAIRPERSON: Alright, you will do that Mr Singh?

MR SINGH: That is fine.

CHAIRPERSON: Okay alright.

ADV MYBURGH SC: Alright, Mr Singh I now want to go

back to where I started briefly yesterday. You will remember that I said to you ...[intervenes]

CHAIRPERSON: Maybe just to make sure there is no misunderstanding I am not ruling that whatever information Mr Singh will give in that affidavit will not be disclosed, but I am simply saying initially let me have a look at it without it being made public then we can take it from there, okay.

MR SINGH: Understood Mr Chair.

CHAIRPERSON: Okay.

10 **ADV MYBURGH SC:** Thank you DCJ. So I said that before I deal with the transaction advisors and appointment of consultants ...[intervenes]

MR SINGH: Sorry Mr Chair, is it possible to ask for a short recess Mr Chair.

CHAIRPERSON: Okay, alright. Ten minutes?

MR SINGH: That is more than sufficient Chair.

CHAIRPERSON: Yes, okay alright, let's take ten minutes adjournment.

We adjourn.

20 **REGISTRAR:** All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: I understand that counsel for Mr Singh would like to request that we adjourn for the day.

ADV VAN DEN HEEVER: We wanted to ask if possible at

this point to adjourn, we have explained to Chairperson in chambers what is the reason, I do not think it is necessary to publically broadcast it, I hope you understand the reasons and ...[intervenes]

CHAIRPERSON: Yes, but I think without going into details, it is related to Mr Singh's health, I think that ...[intervenes]

ADV VAN DEN HEEVER: Put simply.

CHAIRPERSON: That is my understanding, you confirm,
10 ja. Mr Myburgh?

ADV MYBURGH SC: We have nothing to add
Chairperson, we accept that.

CHAIRPERSON: Yes, okay, we are going to then adjourn because of health related reasons to Mr Singh and another date will be arranged. It is just important that we say something because the public knows that we don't have time so we cannot be seen to be not using time that is available for no valid reason, so – okay we are going to adjourn, another date will be determined for Mr Singh to
20 continue with his evidence, so we will adjourn for the day, and for the benefit of the public on Monday the Commission will hear the evidence of Mr Gama, Siyabonga Gama under the Transnet work stream during the day and in the evening Mr Myburgh?

ADV MYBURGH SC: In the evening we first will have Mr

Gigaba's application in relation to Ms Gigaba's evidence.

CHAIRPERSON: Yes.

ADV MYBURGH SC: And then obviously subject to what you may or may not rule Ms Gigaba might give evidence after that.

CHAIRPERSON: After that ja, okay, alright. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 26 APRIL 2021