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Zondo Commission – dodgy machinations behind Eskom’s insistence of Optimum sale to Oakbay

The commission of inquiry into state capture heard on Wednesday that former Gupta company Oakbay Investments may have lied about being good for the money to buy Glencore-owned Optimum mine in early 2016. This after former minister of mineral resources Mosebenzi Zwane allegedly persuaded Glencore to sell it to the Guptas, who enjoyed the backing of Eskom in the deal.

Piers Marsden, one of the business rescue practitioners appointed to help Optimum through its tough financial times in late 2015, testified about the aftermath of the agreement between Glencore and Tegeta for the mine to be sold to the latter for R2.1-billion. Negotiations between the two companies started in the midst of a stand-offish attitude from Eskom, months after former CEO Brian Molefe joined the power utility in April 2015. With the board’s blessing, Molefe had rejected a proposed agreement for a review of the price Eskom was paying for coal supplied by Optimum to its Hendrina power station.

Optimum was at this point operating at a loss, having supplied coal to Hendrina for less than it was costing it to the mine. The company even had to survive on a cash injection from Glencore for some time. Former Optimum CEO Clinton Ephron told the inquiry last month that business rescue was one of the options they took to avoid the worst case scenario, liquidation. Around August 2015, Eskom slapped Optimum with a lawyers’ letter, informing the supplier of penalties for which they were liable, for having supplied sub-standard coal for some time. According to Ephron, these amounted to R2.1-billion, and were backdated to 2011.

Marsden tried to engage Eskom on the matter, he said, but got the cold shoulder, until he instructed the mine to suspend supply, in response to Eskom’s decision to suspend payment for coal for the months of July and August. The stoppage jolted Eskom into action, and the business rescuers got the attention they wanted. When the power utility returned to the negotiating table, it was with a hard approach that Optimum must sort itself out and resume supply. Optimum, meanwhile, was determined to not sell, even if it meant continuing with the shareholder funding situation they were in. The offer from Oakbay would resurface several times, with the company assuring Optimum that they would be able to secure Eskom’s backing should Optimum sell to them.

Following a meeting in early September between Molefe and Ephron, it was decided that supply would resume, and that Optimum would consider its options further. In October, however, negotiations had started to go sour again, and Marsden, noticing that the history between the two companies was at play, put several options to Eskom: they would consider selling Optimum to a third party; selling to Eskom; or selling to a third party through bilateral negotiations with Eskom. The original coal supply agreement between Eskom and Optimum contained a clause that said, should Optimum ever decide to sell, it would have to be to a company that had Eskom’s backing. Eskom rejected all the options put forward by Marsden.

In December, an agreement was eventually reached for Optimum to be sold to Oakbay, which owned Tegeta – but not before some strong-arming from Zwane’s department, which in November slapped notices on several of Glencore’s other mines, presumably to frustrate the company into submission,

according to Ephron's testimony. The final offer was for R2.1-billion, and Rajesh Gupta assured Glencore CEO Ivan Glasenberg during the sealing of the deal in Zurich, Switzerland, that they were good for the money. At the time of their initial offer months before, KPMG had backed Oakbay as having the money for the purchase.

Marsden was surprised when, some months after the final agreement, and around the time that Glencore was expecting the cash transfer, he was told by Oakbay CEO Nazeem Howa of a shortfall of R600-million. Not long before that he had been shown a letter on a Bank of Baroda letterhead that assured that Oakbay had sufficient backing to proceed with the purchase. His position at the time was that any company wishing to buy Optimum would inherit its debt and the penalties incurred from Eskom, and therefore needed to have a good balance sheet.

Although Oakbay made the full payment to Glencore, it was only later that Marsden learned of a prepayment of R659-million by Eskom to Tegeta, before the company had officially started supplying coal.

The prepayment was discussed at length by Eskom's Snehal Nagar who works in the primary energy division, during his testimony earlier in the month. It was Nagar's team that had been pressured to make the payment to Tegeta on 13 April 2016. Although Tegeta already had a contract with Eskom, for supply of coal from Brakfontein mine, it had not started supplying from Optimum, and therefore had no account linked to that project. The Brakfontein mine account was used to process the rushed payment through Eskom's procurement system, to avoid delays. It would later be rectified and re-allocated to the Optimum account once that was set up.

Marsden told the inquiry that the payment from Oakbay to Glencore was finalised on the same date, 13 April 2016.

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