

# Thaker & Co.

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**Sent Via: By Regd. A.D. / E-mail.**

**Date: 05.07.2017**

**Without Prejudice**

To,

1. Sameeksha Trust, a registered charitable trust,  
Owner of the Magazine Economic Political Weekly,  
EPW Research Foundation, C-212, Akurli Industrial  
Estate, Akurli Road, Kandivli (East),  
Mumbai - 400 101.
2. Paranjay Guha Thakurta (Author of the Article)  
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RE:

**(i) ARTICLE DTD.17.6.2017 TITLED AS "MODI GOVERNMENT'S Rs 500-CRORE BONANZA TO ADANI GROUP COMPANY" CIRCULATED IN Economic Political Weekly.**

Under the instructions of my client Adani Power Ltd. having its registered office at Achalraj Opp. Mayor's Bungalow Law Garden Ellisbridge, Ahmedabad and also having its power plant at Mudra, Gujarat. I have to address you this notice as under:

1. My client is a Company incorporated under Companies Act, 1956 and inter-alia engaged in the business of generating, transmitting and selling electrical power. The company has set up a thermal power plant at Mundra within the Special Economic Zone.
2. The Group Chairman, Mr. Gautam Adani is an Indian entrepreneur and billionaire with business experience of more than 33 years. Mr. Gautam Adani is a first-generation entrepreneur who has led the Adani Group from a modest background to create an \$8 billion professionally managed empire in a relatively short period of time. Mr. Gautam Adani is also ranked among the 100 most

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influential businessmen worldwide in the shipping industry and delivery related infrastructure.

3. My client company, through perseverance and hard work of many decades and due to the illustrious leadership and guidance of the Group Chairman, Mr. Gautam Adani, has earned superior reputation in Indian as well as in Global markets. The company has large numbers of dealings with local as well as foreign clients and falls under the corporate structure of the Adani group, which is a globally integrated infrastructure developer with diversified business' in various fields such as resources, logistics, energy, mining, ports etc. The group has four listed companies on the Bombay Stock Exchange and the National Stock Exchange. The Adani group enjoys impeccable global respect as one of the leading corporate groups in India.
4. The present notice is given against the scandalous, frivolous, misleading, derogatory, libelous and defamatory statements made by you in Economic Political Weekly in an article dated 17.06.2017 with a heading "MODI GOVERNMENT'S Rs 500-CRORE BONANZA TO ADANI GROUP COMPANY" with a view to harm reputation of my client company and lower the esteem of my client company in the mind of public at large.
5. My client submits that you No. 2, 3, 4 & 5 have authored a defamatory article and have published in the magazine of You No.1 to vilify my client.

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6. The article is nothing but tittle-tattle and the said fact is very much within your knowledge. The denigration is made just to criticize my client and it is opprobrium and is to smear my client.
7. The language used in the article by you No. 2 to 5 is contumely to your knowledge and the said article has been published by you No. 1 - The article is a character assassination against my client without any verification and authenticity and a false article which is published in the website of you No. 1 which can be viewed by millions.
8. My client states that the said article is published and circulated with a view to tarnish/harm the reputation of my client, the Group Chairman Mr. Gautam Adani and the Adani Group. You all have conspired to defame my client company by way of making scandalous and defamatory statements with the sole intention of harming reputation of my client company. That the statements made were per se defamatory and such imputations were made to lower the reputation and goodwill of the company. The imputations/allegations made were read by people at large across the globe.
9. It is submitted that you No.2 to 4 are in a habit of mud-slinging my client by falsely accusing with the aim to damage the reputation of my client and You No.2 to 4 wrote an article dtd.14.1.2017 titled as " Did the Adani Group Evade Rs.1,000Crore in Taxes?", which was also

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published and circulated in The Wire. The said article was also written with an oblique motive of tarnishing the image of Adani Group and its Chairman Mr. Gautam Adani. The said article also contained various incorrect facts and is far from actual facts on the subject matter. It is submitted that, you No.2 had sent a questionnaire through e-mail to the Chief Legal Officer of Adani Group before publishing the article dtd.14.1.2017, to which Chief Legal Officer had sent elaborate necessary reply to the said e-mail. However, even after getting the said email and after getting the correct information from my client, you no.2, inspite of having knowledge of all the correct facts, did not bother to re verify the facts conveyed to you and published and circulated the said article through You No.1. This clearly states and establishes that your only malafide object was to tarnish the reputation of my client. It is further submitted that after publication of your article dtd.14.1.2017 the Government filed a review petition before the Hon'ble Supreme Court, which was also got dismissed. This modus operandi of you all clearly establishes that you all are acting jointly and severally in connivance with each other and are habitual offender.

10. It is submitted that you No.2 has also emailed queries to my client with respect to the functioning of the Adani Power Ltd and availing the benefits given by the government pertaining to the applicability of the custom duty either on removal of electricity from SEZ TO DTA or duty on raw material to which my client's chief legal officer has replied through his email dated 10<sup>th</sup> June 2017, in

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which he has specifically informed you that the Honorable Gujarat High Court in July 2015 held that no customs duty is payable on the electricity removed from SEZ to DTA and the said judgment of the Honorable Gujarat High Court was challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court had dismissed the Civil Appeal and review petition both filed by Union of India and therefore the judgment of the Hon'ble Gujarat High Court was affirmed and confirmed and therefore no duty is payable on electricity removed from SEZ to DTA, moreover the said Chief legal officer has also informed that you No.2 that Adani Power Ltd was approved prior to 27.02.2009 in processing area of SEZ and according to the act no duty/ levy is payable on goods imported/ procured in SEZ to carry on the operations. Moreover as per the SEZ Act 2005 read with rule 27 of SEZ Rules 2006 a unit (producer or manufacturer within SEZ) may procure from DTA all types of goods (including capital goods/ new or second -hand) raw materials, semi-finished goods, components, consumables without payment of duty, tax or cess or procure from DTA after availing export entitlements under the provisions of Section 26 of the SEZ Act 2005 r/w Rule 27 of SEZ Rules, 2006. Moreover, at present duty on electricity generated and removed from SEZ by different categories of producers and supplied to DTA is governed by notification no. 9/2016-cus dated 16/2/2016 r/w Power guidelines dated 16/2/2016 issued by MOCI.

11. Even after receiving the reply from my client's company you No. 2 to 5 did not bother to re verify the facts conveyed

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to you. This clearly states and establishes that your only malafide object was to tarnish the reputation of my client.

12. On reading of the article published in the "Economic Political Weekly", our clients state that the same contains the following defamatory statements:

- i) The full Title "Modi Government's Rs. 500-Crore Bonanza to Adani Group Company". The government has quietly tweaked rule relating to special economic zones - and the new rules specifically favour the Adani Group."
- ii) The government recently took a decision to quietly tweak the rules relating to special economic zones (SEZs) which has enabled a company in the Adani Group to reap a bonanza of around Rs.500 Crore.
- iii) The Adani Group is headed by Gautam Adani who is understood to be close to Prime Minister Narendra Modi.
- iv) According to reliable information received by the authors of this article, the amendment was made to specifically provide Adani Power Limited (APL) an opportunity to claim refunds on customs duty to the tune of Rs. 500 Crore.
- v) Were these rules tweaked to help one company headed by a well-connected individual?
- vi) There has been no tax paid in raw materials and consumables which is mandatory as per SEZ law.
- vii) The High Court was mislead and wrongly recorded that "the Custom duty on electricity from the SEZ to

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DTA will not be maintainable as this will lead to double taxation".

viii) Fraud on court.

ix) Article dated 14.1.2017 "Did the Adani Group evade Rs. 1000 Crore in taxes".

13. The above statements, individually and cumulatively are not only patently false, but also ex-facie defamatory. Parliament has vested Central Government with rule making power to implement the SEZ Act, 2005. The Central Government, in exercise of the powers delegated to it, amended SEZ Rules, 2006. In abdication of the duties which you owe to the public at large, should have known that the amendment you have written about the SEZ Rules in August, 2016 was the result of various decisions, orders and judgments passed by courts and statutory authorities to cure the lacuna in the SEZ Acts and Rules which lacked machinery both for raising demands (a provision beneficial to the State) in case of non-levy or short-levy or erroneous refunds as well as for sanctioning refunds of duty collected in excess of law. To call such an amendment, which is in public interest, a bonanza to the Adani Group and to further say that such an amendment is based on a "decision to quietly tweak rules" is mischievous and malafide. The above defamatory statements including the title have been made with an intention to harm the reputation of Adani Group, and in particular, Mr. Gautam Adani, Chairman of Adani Group of Companies.

The article, when read as a whole, and in particular the statement therein that "The Adani Group is headed by

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Gautam Adani who is understood to be close to Prime Minister Narendra Modi.” seeks to malign our clients in suggesting receiving favors from the Government, when it has neither sought any such favors as alleged nor have any such favors being extended. Such statement is irresponsible, reckless and scandalous made purely with tarnish the name and reputation of our client.

14. As you have noticed in the above article, our clients have succeeded before the Honourable Gujarat High Court vide Order dated 15.07.2015 in SCA No.3142/2010. Our clients' applications for refund of the duty on the electricity are in the nature of consequential reliefs based on the said Order dated 15.07.2015. On the other hand, our clients' application for refund of duty paid on coal is based on the provisions of the SEZ Act and the SEZ Rules as in force from the inception and/or introduction of the law, and not on any amendment. The amendment, merely relates to the procedure for obtaining refund and to the extent the machinery available for the same under the Customs Act and to the SEZ Act and the SEZ Rules but the right to refunds is based on the existing laws, which have been in force since 2005-2006. You No. 2 to 5 have deliberately and purposely with a malafide intention to damage the reputation of our clients, and tarnish their images in the eyes of the shareholders and the public at large, made defamatory statements in the article.

15. Apart from the defamatory nature of the article, your article also seeks to interfere with the administration of justice by making false statements in relations to matters

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which are subjudice and pending before the courts and statutory authorities. Your article, therefore, also amounts to criminal contempt of courts.

16. That after the said statements were made, my client has suffered injury on its reputation and had to undergo serious agony to explain it to the well-wishers, employees, investors, bankers, shareholders and other local residents of the area. Apart from that, the act of you no.2 to 5 has lowered my client's reputation-esteem amongst his shareholders and employees. Not only was the intention on your part to make defamatory allegations against my client but the purpose was to publish the same so that large number of person can view such defamatory publication. My client states that with a specific intention of the allegations being circulated at large, such imputations/defamatory remarks are made. It is submitted that on account of the said publication which is being viewed by the public at large at several places which is causing serious injury to my client's reputation.

17. The contents per se are defamatory statements and/or comments without the least justification. It does not contain fair and accurate information regarding the affairs of my client. The comments made therein against my client are reckless and wholly unfair and generally considered as disgraceful. The same cannot to be said to have been made for public good. There is also no material to show good faith behind the statements made by you.

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18. My client further submits that the said wrongful statements made against my client have caused serious damage and/or loss and/or injury to my client's character, dignity, reputation, respect and goodwill and the damages caused is irreparable and the same cannot be compensated by merely valuing the same in terms of money taking into consideration the status and respect commanded by my client.

19. You all with bad motive and illegal intention of tarnishing image and goodwill of my client have caused immense distress to my client. Your action has caused great mental agony and suffering. The allegations made by you all are malicious, completely false and greatly harmful to the reputation of my client and your action was deliberate intention to lower the esteem of my client.

20. The allegations made by you against my client are false and false to your knowledge. You have persisted to give false details and defamatory statement intending to damage the reputation of my client.

21. You have made reckless and highly defamatory statements and intending to cause maximum damage to my client's reputation and standing. While you have tried to set links on imaginary basis with clear wrongful motives against my client.

22. This act of yours is causing and can further cause serious reputational damage to my client. The false allegations and

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statement made by you has brought moral disrepute to my client's image and disparage his reputation in the business. The statements made by you are injurious malicious and intended to defame my client to maximum extent. In view of the defamatory statements made by you against my client, you are liable for criminal prosecution apart from being liable to pay damages to my client including the exemplary damages.

23. In the facts and circumstances stated hereinabove, my client states that the aforesaid imputations made by you No.2 to 5 in their statements against my client, which include my client and its promoters are highly offensive, insulting, distasteful, disgraceful and defamatory and have been made by you to bring my client and other constituents of my client and its promoters into disrepute, dislike, ridicule, contempt, hatred and disesteem. My client further states that you have made the aforesaid defamatory imputations irresponsibly, maliciously and with the oblique motive of somehow furthering their narrow commercial and publicity interests at the cost of my client and its promoters' image, reputation and goodwill. The aforesaid defamatory imputations made are without justification have, as a matter of fact, harmed my client's reputation, including its promoters immensely and is capable of harming their reputation further. My client states that on account of the defamatory statements published by you, it is facing worldwide embarrassment by way of inquiries being made. My client further states that your actions have not only affected my client's reputation and goodwill,

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but the same have also lowered the image and goodwill of my client, among others, worldwide. Thus, you have committed actionable wrongs against my client, among others. Therefore, you, besides being liable for penal consequences thereof, are also jointly and severally liable to pay damages to my client.

24. It is submitted that you have stated baseless and defamatory statements harming and injuring the reputation of my client Company. It is further submitted that by bare perusal of the statements would clearly reveal that the articles are per se defamatory in nature.

25. It is most respectfully submitted that by stating the aforesaid statements concerning my client company intending to harm and/or knowing or having reason to believe that such imputations will harm the reputation of my client company by so doing you have committed the offence under Section: 500 of the IPC.

26. It is submitted that in this entire incident, not even a single time you have shown any proof of whatsoever nature. This clearly defines your intention to malign the image of my client Company.

27. It is submitted that due to your aforesaid acts my client has suffered irreparable loss and injury. Further, the aforesaid acts of you are causing immense detriment, damage and injury to my client's business, reputation and business prospects. These acts of you have caused

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incalculable and irreparable loss and injury to my client Company. My client Company has suffered loss worth more than crores of rupees to its business, business prospects, reputation, goodwill and its ongoing operations. It is submitted that you have made defamatory statements and have started publishing articles or reporting of any kind, directly or indirectly, which are defamatory in nature and therefore you all are required to be restrained by the court from publishing, republishing, carrying out reports or articles or reporting of any kind, directly or indirectly, which are defamatory in nature. The statements are false and defamatory and they refer to my client Company in a bad light.

28. It is submitted that my client is entitled to his good name and to the esteem in which he is held by others, and has a right to claim that his reputation shall not be disparaged by defamatory statements made about him to a third person or persons without lawful justification or excuse. The freedom of speech and expression is not to be exercised in such a way as to constitute an infraction of the law relating to defamation. It has been said that just as every individual possess the freedom of speech and expression, every person also possessed a right to his reputation, which is regarded as property. Hence nobody can so use his freedom of speech or expression as to injure another's reputation or to indulge in what may be called character assassination.

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29. It is certain that your article contains imputations and insinuations against my client's character. You have made baseless and reckless allegations. They are baseless because they have not been proved. They are reckless because you have continued to allege the same facts differently and repeatedly.

30. You No. 2 is a Senior Journalist having experience of many years and have knowledge of the facts mentioned in the article and before publishing the article you had communication with my client and my client though having given you the correct information you have published article to malign my client's image in the market and the criticism that you have made is nothing but a denunciation and the language is a vituperation against my client and with the ulterior motive of vitriol the said defamatory statements made which are factually incorrect to your knowledge. You No. 1 have published the defamatory article whereby it not only tarnishes the image of my client but as the said article can be viewed worldwide, it also tarnishes the image of our country as a whole and also the image of Honourable Prime Minister of India.

31. The publication of a disparaging statements has the effect of causing injury not only to my client but also to the public, as it tends to create an apprehension in the minds of the people regarding the integrity, ability, or fairness of my client or to deter actual and prospective stakeholders

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from placing reliance upon my client.. The news item under question undoubtedly contains serious imputations against the character and conduct of my client.

32. In this regard, you all are hereby called upon, within 48 hours of receipt of this Notice, to:

- a. Take immediate steps to remove/ delete and to unconditionally retract your said article titled as "MODI GOVERNMENT'S Rs 500-CRORE BONANZA TO ADANI GROUP COMPANY" circulated in Economic Political Weekly; and
- b. Unconditionally apologize to our client and
- c. Unconditionally 'cease and desist ' from publishing any defamatory statement/ imputation against our client in any manner whatsoever, and
- d. Unconditionally issue a signed clarification as per our client's requisitions at S.Nos. (a.), (b.) and (c.) above to be published as permanently in your said website where your original said article have been published.

33. We, therefore, hereby call upon you to forth with publish an unconditional apology and withdraw the above article and refrain from publishing any further report in respect thereof and/or in relation thereto and/or in continuation thereof. If our clients do not receive your confirmation about the compliance within 48 hours on receipt of this notice, our clients shall be constrained to take such action as they may be advised for the costs and consequences, for which you alone shall be responsible.

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34. The present Notice is without prejudice to our client's rights to seek appropriate recourse against you all the Noticees, for damage and harm caused to our client by the publication, circulation and online posting of the said article.

Please take the Notice accordingly.

Abhisht Thaker

A. K. Thakar

Advocate

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