

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 305/MP/2015

Coram:

**Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member
Shri Ravinder Singh Dhillon, Member**

Date of Order: 25th March, 2026

In the matter of

Petition under Section 79 of the Electricity Act, 2003 read with the provisions of the Power Supply Agreement dated 5.1.2011 and Power Purchase Agreement dated 25.3.2011 for directions to make Energy Charges as pass-through based on the actual fuel cost incurred by the Petitioner.

And

In the Matter of:

**Adhunik Power and Natural Resources Limited,
9B, 9th Floor, Hansalaya Building
15, Barakhamba Road, Connaught Place,
New Delhi-110 001**

..... Petitioner

VERSUS

- 1. West Bengal State Electricity Distribution Company Limited,
Vidyut Bhawan (7th Floor), DJ-Block, Sector-II,
Salt Lake, Kolkata-700091, West Bengal**
- 2. PTC India Limited,
2nd Floor, NBCC Tower,
15 Bhikaji Cama Place,
New Delhi -110066**
- 3. Tamil Nadu Generation and Distribution Corporation Limited,
NPKRR Maligai, 6th Floor,
Eastern Wing, 144, Anna Salai,
Chennai- 600002, Tamil Nadu**
- 4. Jharkhand State Electricity Board,
Presently known as Jharkhand Bijli Vitran Nigam Limited,**



ORDER

This order is passed in compliance with the directions of the Hon'ble Supreme Court in judgment dated 27.02.2026 in Civil Appeal Nos. 2584-2585 of 2026 titled *West Bengal State Electricity Distribution Co. Ltd. v. Adhunik Power & Natural Resources Ltd. & Ors.*), whereby the Commission has been directed to modify its consequential order dated 11.02.2026, passed in terms of the judgment of Appellate Tribunal for Electricity ("the APTEL") dated 04.09.2025 in Appeal Nos. 143/2020 & 66/2022, in terms of directions contained therein.

Background

2. The Petitioner, Adhunik Power and Natural Resources Limited (in short, "APNRL"), had filed this Petition under Section 79 of the Electricity Act, 2003 (hereinafter referred to as the "Act") read with Article 10 of the Power Sale Agreement ("PSA") dated 05.01.2011 executed between Respondent No. 2 and Respondent No. 1, and the Power Purchase Agreement ("PPA") dated 25.03.2011 entered into with Respondent No. 2, seeking directions to the Respondents to make energy charges as pass through based on the actual fuel cost incurred by the Petitioner on account of Change in Law events arising from (i) shortfall in supply of coal under tapering linkage granted pending operationalisation of Ganeshpur captive coal block, and (ii) cancellation of Ganeshpur captive coal block allocation.

3. The Commission, *vide* order dated 29.01.2020 partially allowed the Petition, *inter alia*, holding that (i) Ganeshpur captive coal block was the identified fuel source contemplated under the PSA/PPA, as evidenced by the Minutes of Meeting dated 03.01.2011, Article 2.5 of the PPA/PSA, and contemporaneous correspondence

between the parties (including WBSEDCL's letter dated 30.04.2012 seeking status of coal extraction); (ii) cancellation of allocation of Ganeshpur captive coal block in terms of the Hon'ble Supreme Court's Judgment in *Manohar Lal Sharma v. Principal Secy. & Ors.* did not constitute a Change in Law event under Article 10.1.1(b), (c) or (d) of the PSA/PPA, (iii) the enactment of Coal Mines (Special Provisions) Act, 2015 prescribing the auction route for allocation of coal block constitutes Change in Law if it affected the input cost of APNRL but since it did not become successful in auction process, it cannot take benefit of Article 10.1.1(f) of the PSA/PPA, and (iii) the Petitioner shall be entitled to compensation to the extent of shortfall in tapering linkage granted pending operationalisation of Ganeshpur captive coal block and accordingly, shall approach the Commission through a fresh Petition giving details of tapering linkage granted to it, the reason for the delay and development and operationalisation of captive coal block, and the coal requirement met through e-auction/ imported coal to meet the shortfall in supply under tapering linkage.

4. Aggrieved by the Commission's aforesaid order, both APNRL and WBSEDCL approached the APTEL through Appeal Nos. 143/2020 and 66/2020, respectively. The APTEL, *vide* common judgment dated 04.09.2025, affirmed the findings of the Commission that (i) Ganeshpur captive coal block was the recognised source of fuel under the PPA/PSA, and (ii) APNRL was entitled to compensation to the extent of shortfall in tapering linkage granted pending operationalisation of the captive block, which it met through the e-auction or import of coal, etc. (albeit the APTEL disagreed with the direction to approach through a fresh Petition). However, the APTEL overturned the Commission's findings on coal block cancellation and held that the cancellation of allotment of Ganeshpur captive coal block in pursuance of the Hon'ble Supreme Court's Judgment in *Manohar Lal Sharma v. Principal Secy. & Ors.*, constituted a Change in Law event in terms of Article 10.1.1(b) of the PSA/PPA. The APTEL also held that

APNRL was entitled to the benefit of the enactment of the Coal Mines (Special Provisions) Act, 2015, as a change in Law under Article 10.1.1(f) of the PSA/PPA. Accordingly, the Commission was directed to take up the matter within two weeks from the date of this judgment, seek requisite documents from APNRL with regards to its claim for compensation on account of Change in Law events allowed in the judgment (which shall be effective from 25.08.2014) as well as regarding the extent of coal sourced through e-auction/ import etc. to meet the shortfall in Tapering Linkage and pass a fresh order thereby awarding appropriate compensation along with carrying cost in this regard to APNRL as per Article 10.2 of the PPA/PSA till actual payment is made to APNRL. The relevant portion of the APTEL`s judgment dated 4.9.2025 is extracted as under:

“66. Perusal of these minutes would reveal that the meeting had been held to negotiate the rate of electricity and for finalization of PPA for purchase of power from APNRL by WBSEDCL through PTC. At Sl.No.8 of the salient features of the transactions discussed in the meeting, it is specifically stated that APNRL has a captive coal block at Ganeshpur in Jharkhand, which is a joint venture with M/s Tata Steel Ltd. This would indicate that the negotiations had taken place between the parties while being conscious of the fact that APNRL has been allocated a captive coal block jointly with M/s Tata Steel Ltd. at Ganeshpur from which the fuel for the power project would be sourced. Had the parties not intended so, there was no reason or occasion to mention about the captive coal block in the minutes. Just two days thereafter i.e. on 05.01.2011 PSA was executed between the WBSEDCL and PTC which contains Article 2.5, already discussed hereinabove. Concededly, PSA is the outcome of the minutes of the meeting dated 03.01.2011. Whatever was agreed between the parties in the said meeting dated 03.01.2011 with regards to sale of power by APNRL to WBSEDCL through PTC, has been incorporated in the PSA dated 05.01.2011 as well as in the PPA dated 25.03.2011. Based upon the understanding between the parties that APNRL has been allocated captive coal block at Ganeshpur from where it would source fuel for the power project, Article 2.5 has been incorporated in PSA as well as PPA even though none of the provisions of these two documents specifically state that source of fuel for the power project would be captive coal block. No explanation has come forth either from WBSEDCL or PTC as to why there has been mention of captive coal block at Ganeshpur in the minutes of the meeting dated 03.01.2011 if the parties did not intend it to be the source of fuel for the power project. The only logical conclusion which is deductible from these circumstances as well as from the conduct of the parties as also upon perusal of Article 2.5 of PSA/PPA in conjunction with the subsequent correspondences exchanged between the parties, is that all the parties intended and were aware at the time of execution of PSA/PPA that the source of fuel for the power project of APNRL would be captive coal block at Ganeshpur.

67. In the light of above discussion, we do not find any error in the impugned order of the Commission on this issue.



90. The Commission has, thus, fallen into grave error in not recognizing the Coal Block Deallocation Judgment of the Supreme Court as a Change in Law event in this case in terms of Article 10.1.1(b) of the PPA.

91. Having held the said judgment of the Supreme Court to be a Change in Law event, it is to be noted that due to cancellation of the Ganeshpur coal block, there has been significant change in the economic position of APNRL which is evident from the fact that the total energy charges based on captive fuel sources as per Schedule-A to the PPA is Rs.0.951/kWh whereas total energy charges based on coal from other sources, such as e-auction, open market etc. workout to more than twice the same. Thus, there is no gainsaying that the economic position of APNRL has got affected adversely on account of the said Change in Law event and it is entitled to be suitably compensated for the same.

92. We may also note that subsequent to the Coal Block Deallocation Judgment of the Supreme Court, Government of India enacted Coal Mines (Special Provisions) Act, 2015, thereby changing the process of allocation of coal blocks. As per this newly enacted statute, the allocation of coal blocks is to be done through auction and not by screening committee route or government dispensation route which was earlier practice. The Commission has rightly held that this enactment constitutes Change in Law in terms of Article 10.1.1(f) of the PPA/PSA. However, the Commission has erred in holding that APNRL cannot take benefit of said Change in Law event for the reason that APNRL, though participated in the fresh bidding, did not become successful. Actually, the fact that APNRL did not emerge a successful bidder in the fresh bidding subsequent to the enactment of Coal Mines (Special Provisions) Act, 2015, in itself is sufficient to provide benefit of the said Change in Law to the APNRL. Undisputedly, if there had not been cancellation of the coal blocks including that of APNRL in pursuance to the Coal Block Deallocation Judgment of the Supreme Court and there had not been any fresh bidding in pursuance to enactment of Coal Mines (Special Provisions) Act, 2015 wherein APNRL did not succeed, APNRL would have sourced coal for its power project without any impediment from the captive coal block allotted to it at Ganeshpur. It is only due to the cancellation of the said coal block and rejection of its fresh bid post enactment of Coal Mines (Special Provisions) Act, 2015 that APNRL had to purchase coal from other sources such as e-auction and open market, cost of which is concededly much higher than the cost of coal sourced from captive coal block. The fact that APNRL did not emerge successful bidder in the fresh bidding has evidently impacted adversely the operation of its power project resulting in increase in the cost of power produced from the project.

93. Therefore, APNRL is entitled to benefit of the enactment of Coal Mines (Special Provisions) Act, 2015 as a Change in Law event under Article 10.1.1(f) of the PPA also.

99. In the light of above discussion, we affirm the findings of the Commission that in terms of the provisions of PSA dated 05.01.2011 executed between PTC and WBSEDCL as well as PPA dated 23.03.2011 executed between PTC and APNRL and the correspondences exchanged between the parties, they had recognized that source of fuel for generation and supply of power in the power project of APNRL was captive coal block allocated to APNRL at Ganeshpur.

100. We also hold that cancellation of allotment of Ganeshpur captive coal block in pursuance to the Coal Block Deallocation Judgment of the Supreme Court, constitute Change in Law event in terms of Article 10.1(b) of the PPA/PSA executed between the parties.

101. We also affirm the findings of the Commission that APNRL is entitled for

compensation to the extent of shortfall in Tapering Linkage granted to it pending operationalization of the captive coal block, which it met through e-auction or import of coal etc. for generation of electricity in its power project and supply of the same to WBSEDCL. However, we do not agree with the direction of the Commission that the petitioner should approach the Commission through a fresh petition in this regard giving details of Tapering Linkage granted to it and the details of coal requirement met through e- auction, imported coal etc. to meet the shortfall of the coal in the Tapering Linkage.

102. Resultantly, appeal no.143 of 2020 stands allowed whereas appeal no.66 of 2022 stands dismissed.

103. The Commission shall now take up the matter within two weeks from the date of this judgment, seek requisite documents from APNRL with regards to its claim for compensation on account of Change in Law events allowed in this judgment (which shall be effective from 25.08.2014) as well as regarding the extent of coal sourced through e-auction/import etc. to meet the shortfall in Tapering Linkage and pass a fresh order thereby awarding appropriate compensation along with carrying cost in this regard to APNRL as per Article 10.2 of the PPA/PSA till actual payment is made to APNRL. The Commission is directed to conclude this exercise within three months from date of this judgment”

5. In terms of the above directions, the matter was taken up for hearing on 18.09.2025, 14.10.2025, 25.11.2025, and 23.12.2025, and after considering the submissions of the parties as well as the information/details furnished by them, the Commission passed the consequential order on 11.02.2026.

6. Meanwhile, Respondent No.1, WBSEDCL, had challenged the aforesaid judgment of the APTEL before the Hon’ble Supreme Court in Civil Appeal Nos. 2584-2585 of 2026. The Hon’ble Supreme Court, *vide* judgment dated 27.02.2026, partly allowed the appeals and upheld the findings that (i) Ganeshpur captive coal block was the intended fuel source under PPA/PSA based on contemporaneous minutes and correspondence; and (ii) cancellation of Ganeshpur captive coal block *vide Manohar Lal (supra)* and the subsequent promulgation of Coal Mines (Special Provision) Act, 2015 constituted Change in Law under Article 10 of the PPA/PSA and thereby, APNRL was entitled to Change in Law compensation w.e.f. 25.08.2014, along with carrying costs till the date of actual payment. However, the Hon’ble Supreme Court did not agree with APTEL’s view that the indemnity clause contained in Article 2.5 of the PPA/PSA would be inapplicable in this case as the delay in operationalisation of coal block was not

attributed to APNRL and accordingly, set aside the findings of the APTEL to the limited extent that it granted compensation for procurement of coal through e-auction/import to meet shortfall in tapering linkage granted pending operationalisation of Ganeshpur captive coal block. The Hon'ble Supreme Court, taking note of the fact that the Commission has already passed a consequential order dated 11.02.2026 for the implementation of the APTEL's judgment dated 04.09.2025, directed the Commission to modify it in terms of the directions therein within four weeks from the date of the judgment. The relevant portion of the said judgment dated 27.02.2026 is extracted as under:

"Analysis

19. *The contention advanced by Mr. Sibal, namely that the PPA/ PSA did not expressly stipulate the source of coal i.e. Ganeshpur Captive Coal Block, stands squarely rebutted by the concurrent findings of both CERC and APTEL. Reading Article 2.5 in conjunction with the Minutes of Meeting dated 03.01.2011 and the subsequent letter dated 30.04.2012, APTEL affirmed CERC's finding that PPA/PSA was executed in the backdrop of the minutes drawn on 03.01.2011 wherein one of the salient features of the transaction was as follows:*

"8. APRNL has a captive coal block at Ganeshpur in Jharkhand and this coal block is a joint venture with TISCO."

20. *APTEL also noted that immediately after the execution of the PPA/PSA, WBSEDCL vide letter dated 30.04.2012, had enquired about the status of work related to lifting of coal from the coalmine and transportation of coal from the Ganeshpur coal block allocated to APNRL. We consider it apposite to extract herein the contents of the said letter:*

"Dear Sir,

A PPA has been executed on 05.01.2011 by and between WBSEDCL and PTC India Ltd. As per undertaking of APNRL, it is understood that they have already obtained allocation of Ganeshpur Coal Block in the State of Jharkhand for captive mining of coal block jointly with Tata Steel Limited, on equal sharing, i.e. 50:50 basis. In this context, I would request you to provide us the present status of the work related to lifting of coal from the coalmine and transportation of coal from captive mine, allocated to APNRL, to the coal handling plant, within 10.05.2012."

21. *When Article 2.5 of PPA/PSA is read in light of these correspondences between the parties, there is no escape from the irresistible conclusion that the 'captive coal block' refers to the Ganeshpur Coal Block at Jharkhand.*

22. Mr. Sibal's argument that a written contract between parties cannot be qualified with reference to any prior or subsequent statements/conduct is unfounded. The law in this regard is crystal clear. Ordinarily, when a contract is reduced to writing, its terms must be determined from the document itself.⁵ However, this rule does not put an embargo on looking into such facts which (i) establish a link between terms of the contract and existing facts i.e. attending circumstances,⁶ (ii) impart meaning to a term which may otherwise be meaningless or unworkable.⁷ These principles have been eloquently summarized in **Anglo American Metallurgical Coal Pty. Limited v. MMTC Limited**⁸ wherein this Court observed:

“30.Section 92 of the Evidence Act refers to the terms of a “contract, grant or other disposition of property or any matter required by law to be reduced to the form of a document”. In all these cases, under Proviso (6) read with Illustration (f), any fact may be proven which shows in what manner the language of a document is related to existing facts. Illustration (f) of Section 92 of the Evidence Act indicates that facts, which may on the face of it, be ambiguous and vague, can be made certain in the contextual setting of the contract, grant or other disposition of property. Section 94 of the Evidence Act then speaks of language being used in a document being “plain in itself”. It is only when such document “applies accurately to existing facts”, that evidence may not be given to show that it was not meant to apply to such facts. Likewise, the obverse situation is contained in Section 95 of the Evidence Act, which then states that when the language used in a document is plain in itself, but it is “unmeaning in reference to existing facts”, only then may evidence be given to show that it was used in a peculiar sense.”

23. In the present context, we note that Article 2.5 of the PPA/PSA refers to a ‘captive source’ for coal supply for generation & supply of power and indemnifies WBSEDCL against any additional cost arising from procurement of coal from alternate sources. Though the captive source is not expressly identified in Article 2.5, its identity is clearly discernible from the surrounding circumstances, in particular, the Minutes of Meeting dated 03.01.2011 recording the salient features underlying the PPA/PSA, which specifically note that APNRL had a captive coal block at Ganeshpur. Further, the letter dated 30.04.2012 issued by WBSEDCL enquiring about the status of work relating to lifting of coal from Ganeshpur captive coal block and its transportation to the coal handling plant, reinforces this position. WBSEDCL was a party to these correspondences and has never disputed their contents. In these circumstances, it does not lie in the mouth of WBSEDCL to contend that the PPA/PSA did not prescribe Ganeshpur Coal Block as the captive coal source for generation and supply of electricity.

24. With regard to compensation payable on account of additional coal cost arising due to a Change in Law event i.e. cancellation of Ganeshpur captive coal block vide this Court's decision in **Manohar Lal** (supra) and the subsequent promulgation of the Coal Mines (Special Provision) Act, 2015, we are in wholesome agreement with APTEL that in **Manohar Lal** (supra), this Court interpreted the provisions of Coal Mines Nationalization Act, 1957 (‘CMN Act’) and Mines & Minerals Development and Regulation Act, 1957 (‘MMDR Act’) in a manner different from the interpretation adopted by the Government of India, and consequently cancelled the allotment of coal blocks made by the Screening

Committee as well as through the Government dispensation route. This change in interpretation of the CMN Act, 1957 and the MMDR Act, 1957 by this Court resulting in cancellation of the coal blocks and subsequent promulgation of the Coal Mines (Special Provision) Act, 2015 falls within Articles 10.1.1(b) and 10.1.1(f) of the PPA/PSA. There is no cavil that such Change in Law materially affected the right of APNRL to procure coal from the cancelled coal block, compelling it to source coal from other sources at a higher price. WBSEDCL cannot claim immunity under Article 2.5 of the PPA/PSA. We say so as Article 2.5 and Article 10 operate in different fields. While Article 2.5 indemnifies WBSEDCL against escalation in coal price beyond the levelized price⁹ where coal is procured from sources other than the captive source i.e. the Ganeshpur captive coal block, Article 10 is triggered when a Change in Law event materially affects the right of APNRL to operate the coal block and meet its obligation under the PPA/PSA. Given this situation, APTEL had rightly reversed the findings of CERC vis-à-vis Change in Law event and awarded compensation with effect from 25.08.2014, along with carrying costs until the date of actual payment.

25. However, we are unable to agree with APTEL's view that APNRL would be entitled to compensation for procurement of coal through e-auction/imports to meet the shortfall in tapering linkage prior to the cancellation of the coal block on 25.08.2014. In arriving at this conclusion, APTEL appears to have lost sight of the fact that the Minutes of Meeting dated 03.01.2011 expressly recorded, as one of the salient features, that the Ganeshpur Captive Coal block had been allotted to APNRL in joint venture with TISCO. It was also assured by APNRL that the said coal block would be operational by the time power supply to WBSEDCL commenced. In this factual backdrop, it was incorrect for APTEL to hold that the indemnity clause contained in Article 2.5 of the PPA/PSA would be inapplicable as delay in operationalization of the coal block was attributable to inaction by the lead miner TISCO and/or owing to 'go-no-go' policy of the Ministry of Environment and Forests. Such restrictive interpretation of Article 2.5, in our considered opinion, is untenable, as it would expose WBSEDCL to the vagaries of coal cost escalation due to unforeseen events, save and except a Change in Law event under Article 10 of the PPA/PSA. APTEL's reliance on its earlier decision in GMR Kamalanga Energy Ltd. and Anr v. CERC and Ors.10 is also misconceived. The said decision is clearly distinguishable on facts, inasmuch as the PPA therein did not contain any clause akin to Article 2.5 indemnifying the purchaser against cost escalation arising due to procurement of coal from sources other than the captive source.

Conclusion

26. In light of such discussion, the appeals are partly allowed and the impugned order dated 04.09.2025 passed by APTEL is set aside to the limited extent that it grants compensation for procurement of coal through e-auction/import to meet shortfall in tapering linkage granted to it pending operationalization of the Ganeshpur captive coal block. The remaining portion of the order awarding compensation on account of Change in Law events with effect from 25.08.2014 along with carrying costs till the date of actual payment, is upheld. Though not placed on record during the course of hearing, we have taken note of the fact that CERC has already passed a consequential order dated 11.02.2026 for implementation of the impugned order. We direct CERC

to modify its order in terms of the aforesaid directions within four weeks from the date of this order. No order as to costs.”

7. Accordingly, in compliance with the above directions of the Hon’ble Supreme Court, the Commission hereby modifies its earlier order dated 11.02.2026 as under:

(a) The following sub-Paragraph shall be added at the end of the existing Paragraph 13 of the order:

“ However, subsequently, the Hon’ble Supreme Court in the judgment dated 27.02.2026 in Civil Appeal Nos.2584-2585 of 2026 filed by West Bengal State Electricity Distribution Co. Ltd. has set aside the findings of the APTEL in judgment dated 04.09.2025 to the limited extent that its grants compensation for procurement of coal through e-auction/import to meet the shortfall in tapering linkage granted to APNRL pending operationalization of the Ganeshpur captive coal block. Accordingly, the question of awarding Change in Law compensation towards the shortfall in supply of coal under the tapering linkage does not arise.”

(b) Paragraph 14(b), as well as Paragraphs 15 to 23 of the order, which solely deal with compensation towards shortfall in supply of coal under the tapering linkage, shall stand deleted.

(c) The existing Paragraph 25 of the order shall stand modified as under:

“25. In these circumstances, the Commission finds it appropriate to award the compensation to APRL only towards the cancellation of coal block (w.e.f. 25.8.2014) in accordance with the above.”

8. In terms of the above modifications to the order dated 11.02.2026, the direction of the Hon’ble Supreme Court in the judgment dated 27.2.2026 stands implemented.

9. Petition No. 305/MP/2015 is disposed of in terms of the above.

**sd/-
(Ravinder Singh Dhillon)
Member**

**sd/-
(Harish Dudani)
Member**

**sd/-
(Ramesh Babu V.)
Member**

**sd/-
(Jishnu Barua)
Chairperson**

