

**2026 LiveLaw (SC) 213**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**SURYA KANT; CJI., B.V. NAGARATHNA; J., JOYMALYA BAGCHI; J.  
CIVIL APPEAL NOS.2584-2585 OF 2026; FEBRUARY 27, 2026**

**West Bengal State Electricity Distribution Co. Ltd.**

*versus*

**Adhunik Power & Natural Resource Ltd. & Ors.**

**Electricity – Power Purchase Agreement (PPA) – Change in Law – Cancellation of Coal Blocks – The Supreme Court upheld the grant of compensation to the power generator (APNRL) for additional costs incurred due to "Change in Law" events resulting from the cancellation of the Ganeshpur captive coal block – Noted that the judgment in Manohar Lal Sharma v. Principal Secy. & Ors. (2014) 9 SCC 516 and the subsequent enactment of the Coal Mines (Special Provisions) Act, 2015 constituted a "Change in Law" under Article 10 of the PPA - These events altered the legal regime for coal allocation, thereby entitling the generator to be restored to the same economic position as if the Change in Law had not occurred. [Para 24]**

**Interpretation of Contracts – Admissibility of Extrinsic Evidence – Sections 92 and 94 of the Indian Evidence Act, 1872 – Supreme Court emphasized that when the language of a contract is plain and applies accurately to existing facts, evidence cannot be given to show it was not meant to apply to such facts - under Section 92, factual context and correspondences between parties can be used to make ambiguous terms certain. [Paras 21-22]**

**Shortfall in Tapering Linkage – Indemnity Clauses – Supreme Court set aside the compensation awarded for the period prior to the coal block cancellation (pre-25.08.2014) - It held that Article 2.5 of the PPA/PSA acted as an indemnity clause, stipulating that if coal was procured from alternative sources (e-auction/import) to meet shortfalls in tapering linkage before the captive source became operational, such coal would be deemed to be from the captive source with no separate cost escalation allowed. [Paras 19-23, 25-26]**

*Appearance: Mr. Kapil Sibal, Sr. Adv. Mr. Amit Kapur, Adv. Mr. Pukhrambam Ramesh Kumar, AOR Mr. Akshat Jain, Adv. Mr. Avdesh Mandloi, Adv. Mr. Sayan Ghosh, Adv. Mr. Karun Sharma, Adv. Ms. Anupama Ngangom, Adv. Ms. Rajkumari Divyasana, Adv.*

*Mr. CA Sundaram, Sr. Adv. Mr. Maninder Singh, Sr. Adv. Mr. Deepak Khurana, Adv. Mr. Vineet Tayal, Adv. Ms. Monalika Chaudhary, Adv. Mr. Prateek Yadav, AOR for Respondents.*

**J U D G M E N T**

**Joymalya Bagchi, J.**

1. The appeals are directed against the judgment and order dated 04.09.2025 whereby the Appellate Tribunal for Electricity ('APTEL') modified the order dated 29.01.2020 passed by the Central Electricity Regulatory Commission, New Delhi ('CERC') and directed that Respondent No.1, Adhunik Power and Natural Resources Ltd. ('APNRL'), was entitled to (i) compensation for coal purchased through e-auction/import to meet the shortfall in tapering linkage granted to it pending operationalization of the Ganeshpur captive coal block, and (ii) compensation on account of Change in Law events

with effect from 25.08.2014 as per Article 10.2 of the PPA<sup>1</sup>/PSA<sup>2</sup>, along with carrying costs till actual payment was made.

2. On 05.01.2011, a PSA was executed between the Appellant, West Bengal State Electricity Distribution Company Ltd. ('WBSEDCL') and Respondent No. 3, PTC India Limited<sup>3</sup> ('PTC') for supply of 100 MW of power for a period of 25 years.

3. As a back-to-back arrangement on 25.03.2011, a PPA was executed between APNRL and PTC for onward sale of 100 MW of power to WBSEDCL.

4. The West Bengal Electricity Regulatory Commission vide its order dated 15.12.2011 approved the PPA/PSA.

### **Relevant clauses of the PPA/PSA**

5. Article 10 of the PPA/PSA defines "Change in Law" events that entitle the affected party to compensation through monthly tariff payments in a manner that restores such party to the same economic position as if the Change in Law had not occurred. For better appreciation, Article 10 of the PPA/PSA is extracted hereinbelow:

*"In this Article 10, the following terms shall have the following meanings:*

#### ***I. Change in Law means occurrence of any of the following events:***

*a) the enactment, coming into effect, adoption, promulgation, amendment, modification or repeal (without re-enactment or consolidation) in India, of any Law, including rules and regulations framed pursuant to such Law;*

*b) a change in the interpretation or application of any Law by any Indian Governmental Instrumentality having the legal power to interpret or apply such Law, or any Competent Court of Law;*

*c) the imposition of a requirement for obtaining any Consents, Clearances and Permits which was not required earlier;*

*d) change in the terms and conditions prescribed for obtaining any Consents, Clearances and Permits or the inclusion of any new terms or conditions for obtaining such Consents, Clearances and Permits; except due to any default of the Seller;*

*e) any change in tax or introduction of any tax made applicable for supply of power by the Seller*

*f) any change in law relating to Mining laws and Environment Laws or tax cess or duty affecting input cost or raw material.*

#### ***II. But Change in Law shall not include:***

*a) Any change in any withholding tax on income or dividends distributed to the shareholders of the Seller, or*

*b) Change in respect of UI charges or frequency intervals by an Appropriate Commission.*

#### ***III. Such Change in Law could be but not restricted to any of the following cases where it,***

*a) Results in any change in respect of tax.*

*b) Affects Seller's or PTC's obligation under this Agreement.*

*c) Materially affects the construction, Commissioning or operation of the Project."*

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<sup>1</sup> Power Purchase Agreement.

<sup>2</sup> Power Supply Agreement.

<sup>3</sup> An inter-state trader of electricity.

6. Article 2.2 of the PPA/PSA provides that for sale of power under the Agreement, the buyer shall pay capacity charge, non-escalable energy charge and escalable energy charge in accordance with Table A of Schedule A to the PPA/PSA. Article 2.2 of the PPA/PSA is reproduced hereinbelow:

*“2.2 For sale of power under this Agreement PTC shall pay the Capacity Charges, the NonEscalable Energy Charges and the Escalable Energy Charges only as per Table A of Schedule A.*

*Seller shall be entitled for recovery of the Capacity Charges for a Contract Year in accordance with the formula of Monthly Capacity Charges payable as per charges mentioned in schedule A.”*

7. Article 2.5 of the PPA/PSA stipulates that if the Seller procures coal from alternative sources instead of the designated captive source, it shall not claim any separate escalation in Escalable Energy Charges on that score. Such coal will be deemed to have been sourced from the captive source itself. Article 2.5 of the PPA/PSA is reproduced hereinbelow:

*“2.5 On the ground of sourcing of coal from any other sources by the Seller, **Seller shall not ask for any separate escalation rate for Escalable Energy Charges and it will be considered that such coal has been deemed to be sourced from the captive source only for the purchasing of Power by FTC from the Seller under this Agreement.**”*

*(emphasis supplied)*

### **Relevant Correspondences**

8. Although the PPA/PSA did not specifically stipulate the source of coal for electricity generation by APNRL, the Minutes of Meeting dated 03.01.2011, convened for negotiation of rate and finalization of PPA for purchase of power, record that APNRL had a captive coal block at Ganeshpur, Jharkhand, held in joint venture with M/s. Tata Steel Ltd. ('TISCO').

9. Subsequent to the execution of the PPA/PSA, WBSEDCL vide letter dated 30.04.2012 enquired about the status of work relating to lifting of coal from Ganeshpur captive coal block and transportation of such coal, to coal-handling plants. These materials on record lead to the irresistible conclusion that the source of coal for generating and supplying electricity to WBSEDCL under the PPA/PSA was the captive coal block in Ganeshpur at Jharkhand.

### **Factual trajectory leading to the dispute**

10. As the captive coal block could not be operationalized, APNRL sourced coal under tapering linkage from Central Coalfields Ltd. (CCL) and commenced supply of power to WBSEDCL through PTC. APNRL further contends that it met the shortfall in tapering linkage by procuring coal through e-auction and imports.

11. Through various correspondences, APNRL requested PTC/ WBSEDCL to permit pass-through of the additional coal cost incurred on account of procurement of coal from alternate sources owing to shortfall under tapering linkage. Referring to Article 2.5 of PPA/PSA, such prayers were turned down.

12. Meanwhile, this Court in **Manohar Lal Sharma v. Principal Secy. & Ors.**<sup>4</sup> vide Judgment dated 25.08.2014, cancelled the allotment of coal blocks made by the Screening Committee of the Government of India as well as allotments made through Government dispensation route. This included the Ganeshpur Captive Coal Block allotted

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<sup>4</sup> (2014) 9 SCC 516.

to APNRL. Thereafter, the Government issued the Coal Mines (Special Provision) Ordinance, 2014 followed by the Coal Mines (Special Provision) Act, 2015. Consequently, APNRL unsuccessfully participated in the bid for allocation of Ganeshpur Captive Coal Block.

**13.** In light of such developments, APNRL requested PTC/ WBSEDCL to make payments on the basis of actual energy purchased, as reflected in bills raised since 31.03.2014. Such claim was founded on the contention that cancellation of the coal block constituted a “*change in the interpretation or application of any law by any Indian Government Instrumentality having the legal power to interpret or apply such law, or any competent court of law*” within the meaning of Article 10.1.1(b), and that the enactment of the Coal Mines (Special Provision) Act, 2015, which altered the process of allocation of coal blocks, amounted to “*change in law relating to Mining Laws and Environmental Laws or tax cess or duty affecting input cost or raw material*” under 10.1.1(f). PTC/ WBSEDCL refuted the aforesaid claim.

**14.** In these circumstances, APNRL approached the CERC, New Delhi on 25.10.2017 vide Petition No.305/MP/2015 seeking directions to WBSEDCL and PTC to permit pass-through of energy charges based on the actual fuel cost incurred by it.

### **Findings of the Central Electricity Regulatory Commission**

**15.** Upon hearing the parties, CERC, *inter alia*, held that Article 2.5 of the PPA/PSA was applicable to cases where the captive source of coal was operational. It further held that APNRL was entitled to compensation for procuring coal through e-auction/imports to meet the shortfall in tapering linkage granted to it pending operationalization of the captive coal block. However, CERC did not accept APNRL’s contention that the cancellation of its coal block pursuant to the judgment rendered in ***Manohar Lal (supra)***, and enactment of the Coal Mines (Special Provision) Act, 2015 altering the manner of allocation of coal blocks, constituted a Change in Law event under Article 10 of the PPA/PSA. Accordingly, it directed APNRL to approach CERC through a fresh petition outlining details of the tapering linkage granted to it, reasons for delay in development, operationalization of captive coal block and the coal requirement met through e-auction/imported coal to meet the shortfall in supply under tapering linkage.

### **Findings of the Appellate Tribunal for Electricity**

**16.** Both APNRL and WBSEDCL approached APTEL vide Appeal No.143/2020 and Appeal No.66/2022 respectively. APTEL vide common impugned order dated 04.09.2025, while upholding the direction of the CERC that APNRL was entitled to the actual cost of coal sourced through e-auction/import to meet shortfall in tapering linkage, reversed its finding *vis-à-vis* Change in Law event and held that cancellation of coal block and the subsequent promulgation of the Coal Mines (Special Provision) Act, 2015 constituted Change in Law events within the meaning of Articles 10.1.1(b) and 10.1.1(f) of the PPA/PSA and remanded the matter to CERC for awarding appropriate compensation to APNRL as per Article 10.2 of PPA/PSA, along with carrying costs till actual payment was made.

### **Arguments at the Bar**

**17.** Mr. Kapil Sibal, Senior Counsel for Appellant has premised his challenge to the impugned order primarily on the ground that the PPA/PSA did not expressly stipulate the source of coal i.e. Ganeshpur Captive Coal Block and that Article 2.5 indemnified WBSEDCL against any escalation of price from the levelized tariff specified under Table A of Schedule A to the PPA/PSA on account of procurement of coal from other sources. It

was thus contended that, in the absence of any express stipulation regarding the captive coal block in the PPA/PSA, neither its cancellation pursuant to this Court's judgment in **Manohar Lal** (*supra*) nor the promulgation of the Coal Mines (Special Provisions) Act, 2015 could constitute a Change in Law event materially affecting APNRL's obligations under the Agreement.

**18.** On the contrary, Mr. C.A. Sundaram, Senior Counsel for Respondent No.1 submitted that APTEL vide the impugned order dated 04.09.2025 rightly granted compensation to APNRL towards coal procured through e-auction/import to meet the shortfall in tapering linkage granted to it pending operationalization of the Ganeshpur Captive Coal Block. It was further contended that compensation on account of Change in Law event had also been correctly allowed with effect from 25.08.2014, together with carrying costs till the date of actual payment.

### **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.<sup>5</sup> 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,<sup>6</sup> or (ii) impart meaning to a term which may otherwise

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<sup>5</sup> S.91, The Indian Evidence Act, 1872 (S. 94, The Bharatiya Sakshya Adhiniyam, 2023).

<sup>6</sup> See Proviso (6) and illustrations (f) & (g) to S.92, The Indian Evidence Act (S.95, The Bharatiya Sakshya Adhiniyam, 2023).

be meaningless or unworkable.<sup>7</sup> These principles have been eloquently summarized in **Anglo American Metallurgical Coal Pty. Limited v. MMTC Limited**<sup>8</sup> 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 price<sup>9</sup> where coal is procured from sources other than the captive source i.e. the Ganeshpur captive coal block,

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<sup>7</sup> S.95, The Indian Evidence Act, 1872 (S.98, The Bharatiya Sakshya Adhiniyam, 2023).

<sup>8</sup> (2021) 3 SCC 308.

<sup>9</sup> Specified in Table A of Schedule A to the PPA/PSA.

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.***<sup>10</sup> 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.

**27.** Pending application(s), if any, shall also stand disposed of.

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