

**IA No.1336 OF 2025 IN
APPEAL No.331 OF 2016**

“(a) Allow the present urgent listing Application in terms of the Applicants submissions made hereinabove with respect to the deemed capacity charges for the 2014 period;

(b) Grant liberty to the Applicant to file such supplementary pleadings, documents, data and submissions as may be necessary for effective adjudication of the 2014 claim; and

(c) Pass any such further and other Order(s) that this Hon’ble Tribunal may deem just and proper in the facts and circumstances of the present case.”

2. At the outset, we may express our strong disapproval about the conduct of the appellant in joining two totally distinct prayers in this single application. Though the application has been captioned as “Application on behalf of the Appellant (i.e. Talwandi Sabo Power Limited) seeking urgent listing of the present Appeal” yet above noted prayer (b) has been sneaked in mischievously, which has no correlation with the prayer (a) and about which there is no reference in the caption. The appellant ought to have filed two separate applications with regards to the prayers (a) and (b) respectively

for the reason that both the prayers are totally distinct and have no connection or interdependence with each other. The reason for which prayer (b) has been included in the application is not understandable. Even the learned counsel for the appellant was unable to provide any satisfactory explanation for the same. Though the application merits dismissal on this score only, yet, we refrain from doing so in the interest of justice and proceed to decide the application on merits.

3. With regards to prayer (a) i.e. urgent listing of the appeal, it may be noted that when the appeal came up for hearing on 27.02.2025, it was conveyed by the learned counsels that the remand order passed in earlier appeal by this Tribunal on the same issue is part heard and on the board of Hon'ble Supreme Court in an appeal filed by the respondent No.2 PSPCL. Accordingly, the instant appeal was adjourned *sine die* with the liberty to the parties to get it revived as and when the judgment is passed by the Hon'ble Supreme Court in the appeal filed against the remand order.

4. The said appeal is stated to be still pending disposal before the Hon'ble Supreme Court. Therefore, we are unable to comprehend any reason or occasion for the appellant to seek urgent listing of this appeal, when the issue involved herein is pending consideration before the Hon'ble Supreme Court.

5. According to the appellant, the urgency for early hearing of this appeal has arisen in pursuance to an order dated 31.07.2025 passed by the Arbitral Tribunal on a reference made to it by the Commission (i.e. respondent No.1) vide order dated 07.12.2015 passed in petition No.34 of 2015 filed by the appellant in which the Arbitral Tribunal has held that the appellant's claim for deemed capacity charges on account of *force majeure* events as well as breach of obligation to provide coal to the appellant's power project on the part of 2nd respondent PSPCL, is beyond the scope of referral order dated 07.12.2015 and the said claim of appellant being pending adjudication before this Tribunal in the present appeal.

6. It is argued by learned counsel for the appellant that the arbitral proceedings have reached the stage of final hearing and if the appellant is denied a forum for adjudication of its claim with regards to breach on the part of PSPCL to provide coal to the appellant's power project, the appellant will be left wholly remediless, and therefore, it is imperative for this Tribunal to take cognizance of the said claim within the scope of the present appeal so as to obviate the risk of multiplicity of proceedings and to ensure that appellant's rights are effectively protected.

7. In order to understand the contentions/submissions made on behalf of the appellant raised in the instant application, we find it appropriate to advert briefly to the previous litigation between the parties.

8. The 2nd respondent PSPCL had filed a petition bearing No.11 of 2012 before the Commission seeking to amend the definition of Fuel Supply Agreement (FSA) in the Power Purchase Agreement (PPA) dated 01.09.2008 executed between PSPCL and the appellant. The petition was disposed off by the Commission vide order dated 27.09.2012 directing the appellant to sign the FSA with Mahanadi Coal Fields.

9. Meanwhile, the appellant had filed a petition No.46 of 2012 before the Commission on 10.09.2012 seeking following prayers: -

“(a) Direct the Respondent to arrange (including transportation) adequate quantity of Fuel (domestic coal) of the quality as represented and assured at the time of bidding, upto the Project site, for the lifetime of the period i.e. 25 years, so that the Project can operate at its ultimate capacity of 1980 MW;

(b) *Direct the Respondent to allow deemed generation benefits and to pay capacity charges and incentives thereon to the Petitioner in case the Project cannot operate at its ultimate capacity of 1980 MW due to shortfall in supply of Fuel of the assured quality/grade/origin or non-availability of Fuel for the Project.”*

10. The said petition was disposed off by the Commission vide order dated 24.12.2012 observing/directing, *inter alia*, as under: -

“As regards the prayer for allowing deemed generation benefits and payment of capacity charges and incentives there on to the petitioner in case the project cannot operate at its full capacity due to short fall in the supply of fuel, the same would be as per the terms of the PPA.

The Commission is mandated to strive for maintaining a balance of the equities between the interests of the consumers, the distribution utility and the generators in

the State. The Commission, therefore, holds that the remedies to the issues raised in the petition are duly covered under various Articles of the PPA, which is a comprehensive document, including the Force Majeure and Change in Law provisions. The petitioner is free to approach the competent authorities as per PPA having jurisdiction to adjudicate upon issue(s) at the appropriate time, as and when these arise.

Accordingly, the petition is disposed of without assigning any cost on either party.”

11. The said order dated 24.12.2012 of the Commission was assailed by appellant before this Tribunal by way of appeal No.56 of 2013.

12. At the same time, the appellant also assailed the order dated 27.09.2012 of the Commission (passed in petition no.11/2012) also before this Tribunal by way of appeal No.84 of 2013.

13. Both these appeals (i.e. appeal Nos.56 of 2013 and 84 of 2013) were allowed by this Tribunal vide common judgment dated 07.04.2016 thereby setting aside the orders of the Commission impugned therein with the

direction to the Commission to pass consequential orders in the light of the observations made in the judgment.

14. This order dated 07.04.2016 by this Tribunal has been challenged by 2nd respondent PSPCL before the Hon'ble Supreme Court by way of Civil Appeal Nos.4085-4086 of 2016. Be it noted here that on account of pendency of these appeals, the instant appeal had been adjourned *sine die* vide order dated 27.02.2025.

15. Meanwhile, the appellant had again approached the Commission by way of a fresh petition No.34 of 2015 on 20.05.2015 seeking following reliefs:-

“44. In light of the aforesaid facts and circumstances, the Petitioner therefore most humbly and respectfully prays that this Hon’ble Commission be pleased to:-

(a) Declare that the floods at the plant site, and non-availability of domestic MCL linkage coal continuing insufficiency of domestic MCL linkage coal are Force Majeure events in terms of the PPA;

(b) Direct the Respondent to release short payments of INR 179,26,10,153 (Rupees One seventy nine crores twenty six lacs ten thousand and one hundred fifty three only) for the period from 5 July 2014 to 31 October 2014 being withheld by the Respondent arbitrarily and without any legal and contractual basis along with applicable surcharge as per PPA terms and to which the Petitioner is entitled on account of Force Majeure events;

(c) Approve the claim of the Petitioner for Deemed capacity of 109.66 Million units and direct the Respondent to pay Capacity charges (approximately Rs. 3,20,00,000/) for the period from 3 December 2014 to 25 December 2014 for the said deemed capacity, and

(d) Allow the Petitioner to claim further Capacity charges (based on normative availability) for period after December account of increased cumulative availability, subject to approval of above claims/prayers. 2014 on

(e) Permanently restrain the Respondent from penalizing the Petitioner on account of availability of the Power Plant below 75% for reasons of Force Majeure events;

(f) Stay the imposition/levy of any penalty by Respondent on account of availability of the Petitioner being less than 75% during the FY 2014-15.”

16. Vide order dated 06.11.2015 passed in the said petition, the Commission observed that the matter in dispute can be better resolved through the process of arbitration and accordingly, the disputes were referred to an Arbitral Tribunal vide subsequent order dated 07.12.2015.

17. On 02.06.2016, the appellant filed its submission before the Commission in petition No.46 of 2012 in pursuance to the common judgment dated 07.04.2016 passed by this Tribunal in appeal Nos.56 and 86 of 2013, the relevant extracts of which are reproduced hereinbelow: -

“18. Although TSPL in its monthly power supply bills has claimed energy charges, In accordance with the formula prescribed under Clause 1.2.3 of Schedule 7 of the PPA,

substantial portion of energy charges to the extent of around 25% have been deducted by the Respondent on monthly basis in all monthly power supply bills till date. It is submitted that PSPCL till March, 2016 has wrongfully and incorrectly. Withheld approximately Rs. 336 Crs., which are due on account of various components of 'Energy Charges' including Fuel charges are as detailed below.

TABLE I

<i>Energy charges including Fuel charges for all coals billed to end paid by PSPCL from July, 2014 till March, 2016</i>				
<i>Coal Details</i>	<i>Billed to PSPCL</i>	<i>PAID BY PSPCL</i>	<i>Difference</i>	<i>Approximate payment not made to TSPL BY PSPCL in Rs. Crs.</i>
<i>Wt. average Price for all coals</i>	4744	4364	-380	91
<i>Received (Rs/MT)</i>				
<i>Wt average GCV of all coals received (kCal/kg)</i>	3275	3808	533	245
<i>Total (Rs. Crores)</i>				336
<i>Note</i>				
1.	PSPCL have not paid around Rs. 380/MT of coal on average monthly basis impacting TSPL for around Rs. 91 Crs.			

<i>Energy charges including Fuel charges for all coal billed to and paid by PSPCL from July, 2014 till March, 2016.</i>				
<i>Coal Details</i>	<i>Billed to PSPCL</i>	<i>PAID BY PSPCL</i>	<i>Difference</i>	<i>Approximate payment not made to TSPL BY PSPCL in Rs. Crs.</i>
2.	<i>PSPCL has not paid to TSPL for the GCV actually received at TSPL's site and Instead paid for the Equilibrated Gross Calorific Value (e-GCV) billed by MCL thereby reducing the Energy charges and deducted around Rs. 245 Crs against that.</i>			
3.	<i>Payment deducted is for the period from July' 14 to 31 March' 2016.</i>			

Table II: Heads of wrongful deductions by PSPCL

<i>S. No.</i>	<i>Components on account of which the deductions have been made by PSPCL</i>	<i>Amount deducted (Rs. Crs)</i>	<i>Remarks</i>
1.	<i>Gross Calorific Value (GCV) as received at TSPL site.</i>	245	<i>Difference due to payment on e GCV (ADB GCV for CIL Imported coal) rather than on AFB GCV at TSPL site for all linkage coals. e GCV – Equilibrated Gross Calorific Value ADB GCV – Air Dried Basis Gross Calorific Value AFB GCV – As Received Basis Gross Calorific Value</i>
2.	<i>Transit Loss</i>	20	<i>Loss in coal quantity during Transportation from Mile end to TSPL site</i>

			<i>i.e. difference between loaded and received quantity of coal.</i>
3.	<i>Washing Charges and yield loss for washing of coal</i>	43	<i>Washing of High Ash coal to meet MoEF norms.</i>
4.	<i>Surface Transportation Charges</i>	15	<i>Transportation from Coal Mine to nearest siding or from coal mine to Washery & from Washery to railway siding.</i>
5.	<i>Unloading Finance, shunting Rake escorting charges etc.</i>	13.4	<i>Unloading of coal at TSPL site which includes:</i> <i>a. Diesel and Operating Charges for TSPL Loco.</i> <i>b. Manual Unloading Charges in case of Delay in Unloading due to FM reasons.</i> <i>Finance Charges due to Interest, BG charges paid to bank for advance payment for alienate coal.</i> <i>Shunting Charges Paid to railways for to and fro transportation of rake from sadda Singh wala to transit point at TSPL site</i> <i>Escorting Charges paid to security agency during coal transportation.</i>
6.	<i>Railway Demurrage</i>	0.6	<i>Delay in Unloading of coal due to FM reasons</i>

<i>Approx, Total deductions till March 2016.</i>	<i>336”</i>	
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18. In pursuance to the directions issued by this Tribunal in the common judgment dated 07.04.2016 passed in appeal Nos.56 and 84 of 2013, the Commission passed order dated 06.09.2016 in petition Nos.11 and 46 of 2012 thereby rejecting the claim of appellant amounting to Rs.359crores and stating that no consequential orders can be passed in respect of claim of the appellant from July, 2014 to 30.04.2016. The Commission also directed the 2nd respondent PSPCL to: -

“(i) approach Mahanadi Coalfields Limited (“MCL”) within 7 days of the issue of the Impugned Order and sign Fuel Supply Agreement (“FSA”) forthwith with MCL in substitution of the earlier FSA dated 04.09.2013 signed by TSPL.

(ii) approach the Indian Railways authorities within 7 days of the date of issue of the Impugned Order and sign a separate Fuel Transportation Agreement (“FTA”) forthwith for transportation of Fuel from Mine

to the Appellant's Project in addition to the FSA to be signed with MCL."

19. On 08.09.2016, the Commission amended/modified its previous order dated 06.09.2016 substituting the expression "PSPCL/Procurer cannot be absolved of its obligation to supply fuel" with "PSPCL/Procurer is under obligation to sign the Fuel Supply Agreement with the Fuel Supplier, namely Mahanadi Coalfields Limited".

20. In the instant appeal, the appellant has impugned both these orders dated 06.09.2016 and 08.09.2016 of the Commission. In Paragraph No.1.6 of the Memo of Appeal, the appellant has stated that the impugned orders dated 06.09.2016 and 08.09.2016 are liable to be set aside on the following grounds: -

"(a) The Impugned Order has been passed by Ld. Punjab Commission exceeding the scope of remand. This Hon'ble Tribunal had directed Ld. Punjab Commission vide its Judgement dated 07.04.2016 to pass consequential orders in light of the observations made by this Hon'ble Tribunal in the aforesaid Judgement.

However, Ld. Punjab Commission exceeded the scope of the limited remand and has passed the Impugned Order beyond the scope of the remand.

(b) Ld. Punjab Commission failed to appreciate that as per the directions in this Hon'ble Tribunal's Judgement dated 07.04.2016, the obligation to sign the FSA and supply fuel for the Project vests with PSPCL. It is incorrect to interpret that by merely signing the FSA and FTA and after assigning the same, the obligation of PSPCL to arrange the fuel for the contracted capacity and supply fuel to the Project would be squarely met.

(c) Ld. Punjab Commission's observation that assignment of the FSA by PSPCL to the Appellant after signing the same with MCL will be in consonance with the Bidding Documents, PPA, and the MoU is based on incorrect interpretation of:-

(i) The Bidding Documents, PPA and the MoU; and

(ii) The findings in this Hon'ble Tribunal's Judgement dated 07.04.2016.

(d) Ld. Punjab Commission erred in holding that the Appellant may approach the Ld. Punjab Commission in the eventuality of an established shortage in availability of coal for the Project and the Ld. Punjab Commission shall on being so approached, pass appropriate Order at appropriate stage after considering the reasons. It is submitted that the approach adopted by Ld. Punjab Commission is beyond the scope of the remand, since the obligation to arrange the fuel for the contracted capacity and supply fuel remains with the Respondent No.2 i.e., PSPCL. Merely by assigning the FSA, PSPCL cannot absolve itself of its obligation. It is submitted that in the Judgment dated 07.04.2016, this Hon'ble Tribunal has clearly observed that the responsibility of arranging fuel is that of Respondent No. 2, which implies that whenever there is any shortage of fuel, it will be the obligation of Respondent No. 2 to arrange for the same. However, Ld. Punjab Commission has

erroneously shifted the responsibility of arranging fuel for the Project on the Appellant, by directing that in the eventuality of an established shortage, the Appellant has to approach the Ld. Punjab Commission for passing of appropriate orders at the appropriate stage.”

21. The prayers made in the appeal are as under: -

“21. *Reliefs Sought:* *In view of the facts mentioned in Para 7 above points in dispute and questions of law set out in Para 8 and Submissions in Para 9 and in the interest of justice, the Appellant prays for the following relief(s):-*

(a) Allow the Appeal and set aside the Impugned Order to the extent challenged above, wherein Ld. Punjab Commission has exceeded the scope of the Judgement dated 07.04.2016 passed by this Hon’ble Tribunal in Appeal Nos. 56 & 84 of 2013 while remanding the matter to pass consequential order by Ld. Punjab Commission;

- (b) *Direct Respondent No. 2 to forthwith arrange and execute the Fuel Supply Agreement for the Contracted Capacity of the Project in terms of Judgement dated 07.04.2016 passed by this Hon'ble Tribunal in Appeal Nos. 56 & 84 of 2013;*
- (c) *Direct Respondent No. 2 to pay deemed Capacity Charges for any shortfall of coal required at the Appellant's plant;*
- (d) *Direct Respondent No. 2 to execute all agreements necessary for transportation to ensure availability of coal to the extent of Contracted Capacity at the Appellant's Project site; and*
- (e) *Pass such other or further orders as the Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."*

22. The supplementary pleadings, documents, data and submissions sought to be filed now by the appellant in terms of prayer (b) made in the

application relate to its claim for deemed capacity charges for the periods 06.07.2014 to 04.10.2014 and 03.12.2014 to 25.12.2014 premised on the alleged failure on the part of the 2nd respondent PSPCL to arrange adequate quantity and quality of coal up to the contracted capacity of 1980MW. It is the submission of the learned counsel for the appellant that while the arbitral proceedings shall adjudicate the plea of *force majeure* set up by the appellant but the claim of the appellant qua coal obligation of PSPCL for the year 2014 would remain to be adjudicated on merits, and therefore, squarely falls for consideration of this Tribunal in this appeal. It is argued that unless this Tribunal adjudicates the said claim of the appellant pertaining to year 2014 in this appeal, the appellant will suffer irretrievable prejudice. It is also the submission of the learned counsel for the appellant that PSPCL itself, in its submission before the Arbitral Tribunal, has consistently taken the stand that the appellant's claim for deemed capacity charges pertaining to year 2014 is subsumed in the instant appeal which constitutes a clear and categorical admission on the part of the PSPCL that the scope of instant appeal extends to 2014 claim period.

23. We are unable to countenance the submission of the learned counsel for the appellant. This appeal has arisen out of the orders dated 06.09.2016 and 08.09.2016 passed by the Commission in petition No.46 of 2012 in

pursuance to the remand order dated 07.04.2016 passed by this Tribunal in appeal Nos.56 of 2013 and 84 of 2013 which, in turn, had been filed against the orders dated 24.12.2012 and 27.09.2012 passed by the Commission in petition Nos.46 of 2012 and 11 of 2012 respectively. No prayer was made by the appellant in these two petition Nos.11 of 2012 and 46 of 2012 with regards to its claim for deemed capacity charges pertaining to the year 2014 on account of alleged failure on the part of the 2nd respondent PSPCL to arrange adequate quantity and quality of coal for its power project. Even no such claim or prayer was made by the appellant before the Commission when the matter was taken up again upon remand by this Tribunal vide order dated 07.04.2016 in appeal Nos.56 of 2013 and 84 of 2013. The submissions made by the appellant before the Commission in the remand proceedings have already been extracted in Paragraph No.17 hereinabove and none of those relates to or concern the claim of the appellant for deemed capacity charges pertaining to year 2014.

24. The claim for deemed capacity charges was for the first time made by the appellant in petition No.34 of 2015. As already noted hereinabove, the dispute involved in the said petition was referred by the Commission to the Arbitral Tribunal for adjudication vide order dated 07.12.2015. It is true that vide order dated 31.07.2025 passed by the Arbitral Tribunal, it has been held

that the appellant's claim for deemed capacity charges on account of breach of obligation on the part of PSPCL to provide coal to the appellant's power project is beyond the scope of the referral order dated 07.12.2015. However, that does not give liberty to the appellant to raise such claim in this appeal when there were no pleadings or submissions in this regard on the part of the appellant in the original proceedings before the Commission i.e. in petition Nos.11 of 2012 and 46 of 2012 or during the remand proceedings. It is for the appellant to see as to whether the order dated 31.07.2025 passed by the Arbitral Tribunal is valid and legally sustainable and to take legal recourse against the same if it does not think so.

25. Mere assertion on the part of PSPCL before the Arbitral Tribunal that appellant's claim for deemed capacity charges pertaining to the year 2014 is subsumed in the instant appeal also is totally immaterial and cannot confer power or jurisdiction upon this Tribunal to include the said claim of the appellant in this appeal, when no such claim had originally been made by the appellant in the petitions before the Commission out of which the instant appeal arises. In case, as contended on behalf of the appellant, a false statement in this regard has been made before the Arbitral Tribunal, the appellant may initiate appropriate legal proceedings in this regard, if so advised.

26. Be that as it may, the claim of appellant for deemed capacity charges pertaining to the year 2014 on account of alleged failure on the part of PSPCL to arrange adequate quantity as well as quality of coal for its power project is totally alien to this appeal and therefore, appellant cannot be permitted to file any pleadings/documents/data/submissions etc. with regards to the same in this appeal, as sought vide prayer (b) of the application.

27. Hence, we find the application sans any merit and is dismissed as such.

Pronounced in the open court on this the 3rd day of November, 2025.

(Virender Bhat)
Judicial Member

(Seema Gupta)
Technical Member (Electricity)

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REPORTABLE / ~~NON-REPORTABLE~~

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