Update

Open Access, Closed Network: Supreme Court Clarifies the status of Indian Railways as a 'Deemed Distribution Licensee' under the Electricity Act, 2003

Background

On 8 May 2026, the Supreme Court of India ("**SC**"), delivered a landmark judgement in *Indian Railways* v. *West Bengal State Electricity Distribution Company Limited & Ors.*[1] addressing a long-standing dispute regarding the status of the Indian Railways ("**Railways**") under the Electricity Act, 2003 ("**Electricity Act**"). The dispute concerned whether the Railways could be treated as a "*Deemed Distribution Licensee*" ("**DDL**") under the third proviso to Section 14 of the Electricity Act[2] and, consequently, whether it could procure electricity through open access without incurring cross-subsidy surcharge ("**CSS**") and additional surcharge ("**AS**") liabilities.

The issue assumed significance because the Railways is among the largest electricity consumers in India and increasingly relies on inter-state procurement arrangements to optimise traction power costs. In 2015, the Railways sought connectivity to procure 100 MW of electricity through inter-state open access for certain traction substations. Open access, in broad terms, refers to the statutory right of an eligible consumer or licensee to use existing transmission and distribution infrastructure to procure electricity directly from a generator or supplier of its choice, rather than solely from the local distribution company ("**DISCOM**").

Under the Electricity Act, distribution licensees are generally exempt from payment of cross-subsidy surcharge ("**CSS**") and additional surcharge ("**AS**") while availing open access. These surcharges are intended to compensate DISCOMs for the migration of high-paying consumers and the resulting recovery gap in respect of cross-subsidy burdens and stranded fixed costs. As a result, classification as a DDL carries significant commercial implications, particularly for large electricity consumers such as the Railways, whose operational costs are materially affected by power procurement economics. Given the scale of the Railways' electricity consumption, exemption

1 Civil Appeal No. 4652 of 2024 and Civil Appeal Nos. 4653-4659 of 2024.

2 Proviso 3 to Section 14 of the Electricity Act reads: "*...Provided also that in case an Appropriate Government transmits electricity or distributes electricity or undertakes trading in electricity, whether before or after the commencement of this Act, such Government shall be deemed to be a licensee under this Act but shall not be required to obtain a licence under this Act.*"

from CSS and AS would also have had substantial revenue implications for state distribution utilities.

The dispute therefore raised broader questions regarding the scope of the DDL framework under the Electricity Act and the circumstances in which entities operating internal electricity networks may claim the regulatory and commercial benefits ordinarily available to distribution licensees

Procedural History

In 2015, Maharashtra State Electricity Transmission Company ("**MSETCL**") refused to grant connectivity sought by the Railways for procurement of electricity through inter-state open access, pursuant to which, the Railways approached the Central Electricity Regulatory Commission ("**CERC**"). MSETCL principally contended that Railways could not claim the status of a DDL merely on the basis of a communication issued by the Ministry of Power *vide* Letter No. 25/19/2004-R&R dated 06.05.2014[3] ("**MoP Letter**") without satisfying the statutory framework governing distribution licensees under Sections 14, 15 and 16 of the Electricity Act.

Before the CERC, the Railways argued that its electricity infrastructure used for traction systems, substations and railway operations constituted a "*distribution system*" within the meaning of the Electricity Act. It further relied upon Section 11 of the Railways Act, 1989 which recognizes the Railways' authority to establish and maintain "*distributing installations*" in connection with railway operations. The Railways also relied upon the MoP Letter recognizing it as a DDL under the Electricity Act.

The CERC accepted the Railways' position and held that the Railways Act, 1989 operated as a self-contained framework permitting the Railways to maintain and operate distribution infrastructure without requiring a separate license under the Electricity Act. The CERC accordingly ruled in favor of the Railways.

The dispute thereafter expanded across multiple jurisdictions, with several DISCOMs, including the West Bengal State Electricity Distribution Company Limited ("**WBSEDCL**"), challenging the Railways' position before various State Electricity Regulatory Commissions ("**SERCs**"). Most SERCs concluded that the Railways did not qualify as a DDL for purposes of exemption from CSS and AS liabilities.

Appeals arising from these proceedings were subsequently consolidated before the Appellate Tribunal for Electricity ("**APTEL**"). The DISCOMs principally argued that Section 11 of the Railways Act, 1989 merely permits the Railways to operate "*distributing installations*" for its own operations and cannot be equated with "*distribution*" under the Electricity Act, which necessarily contemplates supply of electricity to consumers. Reliance was also placed on *Sesa Sterlite Limited* v. *Orissa Electricity Regulatory Commission*[4] ("**Sesa Sterlite Judgment**") to contend that surcharge exemptions cannot be claimed merely on the basis of formal DDL status where electricity is procured predominantly for self-consumption.

In February 2024, APTEL overturned the CERC's decision and held that the Railways did not undertake distribution of electricity in the manner contemplated under the Electricity Act and therefore remained liable to pay CSS and AS. APTEL further held that the MoP Letter was merely an administrative direction issued under Section 107 of the Electricity Act and did not conclusively determine the Railways' legal status under the statutory framework.

The Railways challenged APTEL's ruling before the SC in May 2024. While issuing notice, the SC granted interim relief directing that CSS and AS would not be payable and that open access should not be denied on that basis pending final adjudication.

Analysis of the SC's Judgment on 8 May 2026

The SC's analysis proceeds on a functional and purposive interpretation of the Electricity Act, with particular emphasis on the statutory meaning of "*distribution*". The SC observed that Section 14 read with Section 2(17) of the Electricity Act contemplates two inseparable elements in relation to a distribution licensee: (i) operation and maintenance of a distribution system; and (ii) supply of electricity to consumers within an area of supply. According to the SC, these requirements must be read conjunctively and not disjunctively.

3 The communication was issued by the Ministry of Power to State Commissions/JERCs and State/UT Energy Departments, after consultation with the Department of Legal Affairs, Ministry of Law & Justice. It clarified that: *"Indian Railways is a "deemed licensee" under the third proviso to Section 14 of the Electricity Act, 2003."*

4 AIR 2014 SC 2037.

Applying this framework, the SC held that the Railways operates a closed and self-contained electricity network catering exclusively to its own traction systems, locomotives, signalling infrastructure and station facilities. Since electricity was not supplied to independent third-party consumers, the SC concluded that the Railways was not undertaking "*distribution*" in the manner contemplated under the Electricity Act. The mere existence of extensive electrical infrastructure or "*distribution installations*" was therefore held to be insufficient to confer DDL status.

The SC further held that the Railways squarely falls within the definition of a "*consumer*" under Section 2(15) of the Electricity Act, since it procures electricity exclusively for its own operational requirements. Consequently, CSS and AS liabilities were held to be applicable.

The SC also rejected the Railways' argument that Section 11 of the Railways Act overrides the Electricity Act by virtue of its non-obstante clause. According to the SC, an overriding effect can arise only where there exists a direct and irreconcilable inconsistency between the two statutes, which was absent in the present case. While Section 11 authorises the Railways to establish and maintain "*distributing installations*" in connection with railway operations, it does not dispense with the statutory requirements governing distribution licensees under the Electricity Act.

Similarly, although the SC accepted that the Railways falls within the ambit of "*Appropriate Government*" under the Electricity Act, it clarified that such status alone does not automatically result in recognition as a DDL. The Court observed that the third proviso to Section 14 does not exempt an entity from satisfying the substantive characteristics of a distribution licensee under the Electricity Act.

An important aspect of the judgment is the SC's reliance on the functional approach adopted in the Sesa Sterlite Judgment. The SC reiterated that formal designation or nomenclature cannot, by itself, determine exemption from surcharge liabilities under the Electricity Act. Accordingly, even if the Railways could claim some form of deemed licensee status, the SC held that such status would not negate CSS and AS liabilities where electricity is procured entirely for self-consumption.

The SC also referred to the Draft Electricity (Amendment) Bill, 2025[5] ("**Draft Bill**"), which contemplates a phased withdrawal of CSS and AS for entities such as Railways and Metro Rail systems. Although the Draft Bill does not carry the force of law, the SC relied upon it to reinforce the position that no such exemption presently exists under the existing statutory framework. The SC additionally observed that the Railways, as an instrumentality of the Central Government, could not simultaneously rely upon a proposed legislative exemption while contending that such exemption already exists under the current law.

Practical Implications and Conclusion

The SC's judgment on 8 May 2026 has implications extending beyond the Railways and is likely to materially influence the commercial and regulatory treatment of open access procurement structures involving large infrastructure and Government-linked consumers. With retrospective surcharge liability now crystallised and future procurement through open access remaining subject to CSS and AS, the financial impact on the Railways alone is expected to be substantial. Set out below are few of the key practical implications:

5 Ministry of Power, Draft Electricity (Amendment) Bill, 2025 (Notice dated October 9, 2025); *Available here*.

Implication	Description
Retrospective Surcharge Liability	The SC has directed computation of outstanding CSS and AS liabilities for periods during which the Railways availed open access without payment of surcharges. Such determination is to be undertaken by the relevant utilities/commissions after affording the Railways an opportunity of hearing. Given the scale and geographical spread of railway electricity procurement, the resulting exposure is expected to be commercially significant.
Impact on Railway Procurement Strategy	The judgment materially alters the economic assumptions underlying the Railways' long-term open access procurement strategy. Initiatives such as the Ministry of Railways' "Mission 41K", which targeted substantial savings through direct power procurement and network electrification reforms, may require recalibration in light of continuing surcharge liabilities.
Strengthening of DISCOM Position	The judgment significantly strengthens the position of DISCOMs in ongoing and future disputes involving surcharge exemptions. Utilities are likely to increasingly challenge structures where entities rely upon internal distribution infrastructure or deemed licensee classifications to minimise CSS and AS exposure despite electricity being consumed within a closed operational network.
Implications for Private Network and Infrastructure Models	The SC's emphasis on actual downstream supply to independent consumers may affect entities operating private or closed electricity networks, including industrial parks, SEZs, integrated townships, ports, airports and similar infrastructure arrangements. The Court's distinction between the Railways and entities such as the Military Engineering Services which supplies electricity to separate consumer units, suggests that the existence of genuine third-party supply relationships may become increasingly relevant in future DDL disputes.
Broader Impact on Government-linked Consumers	The reasoning adopted by the SC may also affect other public infrastructure entities procuring electricity through open access for operational consumption, including metro rail corporations, airport operators and port authorities. Such entities may now face greater difficulty in asserting DDL-based surcharge exemptions where electricity is predominantly used for internal operational requirements.
Reduced Reliance on Executive Clarifications	The judgment signals that executive communications or administrative recognitions are unlikely to override the substantive requirements of the Electricity Act in determining DDL status or surcharge liability. This may result in increased regulatory scrutiny of legacy practices and structures historically operating on the basis of administrative exemptions or sector-specific understandings.
Potential Policy and Legislative Response	Although the SC rejected the Railways' claim under the existing statutory framework, the judgment may accelerate policy discussions around rationalisation of surcharge burdens for large infrastructure and public utility consumers. The Court's reference to the Draft Electricity (Amendment) Bill, 2025 indicates continued policy awareness of the tension between DISCOM revenue protection and facilitating large-scale direct power procurement through open access.

Shardul Amarchand Mangaldas
A DECADE YOUNG, A CENTURY STRONG

Ultimately, the judgment marks a significant shift in the interpretation of the "*deemed distribution licensee*" framework under the Electricity Act and materially narrows the circumstances in which entities operating internal electricity networks can claim exemption from surcharge liabilities. By prioritizing the functional reality of supply to consumers over formal status, executive recognition or ownership of electrical infrastructure, the SC has reinforced the principle that the commercial benefits available to distribution licensees cannot be claimed in the absence of actual downstream distribution activity contemplated under the statutory framework.

From a market perspective, the ruling substantially strengthens the position of DISCOMs in open access disputes and is likely to influence the structuring, pricing and regulatory assessment of large-scale power procurement arrangements across infrastructure, transportation and industrial sectors. While the judgment settles the present legal position applicable to the Railways under the existing framework, it simultaneously highlights the continuing policy tension between protecting DISCOM revenues and facilitating efficient direct power procurement for large consumers. As a result, although the legal controversy may now stand resolved, the broader commercial and policy debate surrounding surcharge rationalization and open access reforms is likely to continue.

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