

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

COMPANY PETITION No.128 of 2015

ORDER:

Petitioner Company filed this Company Petition for winding up of respondent Company with regard to non-payment of a sum of Rs.21,33,283/- due to it.

The facts of the case are that for the purpose of meeting the requirement of power for its Commercial Complex located at Ameerpet, Hyderabad, the respondent Company desires to purchase power from the petitioner Company which in turn agreed to supply the same to it on the terms mutually agreed to between them. The terms agreed were culminated in a Power Purchase Agreement, dated 9.11.2004, as per which, the petitioner Company had agreed to supply about 12,00,000 units of power, per annum, subject to availability and shall issue bills from month to month and the same shall be paid by the respondent. There is no dispute that bills from time to time were raised and they have in fact been paid. While so, in 2014, the petitioner had raised various bills including Fuel Surcharge Adjustment (FSA) charges for a sum of Rs.21,33,283/- and it addressed a letter, dated 28.10.2014, by enclosing a consolidated

statement for the period from October, 2010 to March, 2013, to the respondent Company demanding a sum of Rs.21,33,283/- towards FSA charges. As there was no response, the petitioner Company got issued a legal notice to the respondent Company on 21.02.2015 demanding to pay the amount, failing which, appropriate legal proceedings for winding up of it would be initiated under the provisions of the Companies Act, 1956.

The respondent Company submitted its reply vide its letter, dated 12.03.2015 while asserting that the bills raised by the petitioner Company have been paid from time to time without there being any liability, much less, FSA charges and TOD, denied the very liability to pay FSA charges and TOD.

Heard Sri P. Sri Harsha Reddy, learned counsel for the petitioner Company and Sri D. Srinivas Prasad, learned counsel for the respondent Company.

There is no dispute that the bills raised by the petitioner Company from time to time were paid which did not include FSA charges and TOD which have been claimed for the first time in 2014. Whether FSA charges and TOD are in terms of the Power Purchase Agreement or not is in dispute, as the respondent

Company has specifically denying its liability to pay the same. For deciding this issue, the Power Purchase Agreement, dated 09.11.2004 requires to be interpreted both on facts as well as under law. However, in Clause No.26 of the Power Purchase Agreement, there is a mention with regard to reference of the disputes to arbitration under the provisions of the Arbitration and Conciliation Act, 1996 for resolving the same. In view of the same, this Court is not inclined to entertain this Company Petition.

In those circumstances, the Company Petition is closed, leaving it open to the petitioner Company to workout its remedies as available under law.

12th APRIL, 2018.

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CHALLA KODANDA RAM, J