

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

RA-CW-189 of 2021 in
CWP No. 2931-2021

Date of decision:- 06.10.2021

POM Hydro Energy Ltd. and anotherPetitioners

versus

State of Haryana and others ...Respondents

**CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE.**

Present:- Mr. Puneet Bali, Sr. Advocate with
Mr. Nilesh Bhardwaj, Advocate,
Mr. Vipin Gupta, Advocate,
Ms. Sheena Taqui, Advocate, for the applicants-petitioners.

Mr. Deepak Balyan, Addl. Advocate General, Haryana.

(The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual Court).

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RAVI SHANKER JHA, CHIEF JUSTICE (oral)

Review of the order dated 10.02.2021 is being prayed for vide
which the Civil Writ Petition No. 2931 of 2021 filed by the applicants was
disposed of by this Court:-

**“After arguing at length, learned counsel
appearing for the petitioners prays for grant of liberty
to invoke the arbitration clause.**

Prayer made for is allowed.

**The petition is accordingly disposed of with
liberty aforesaid”.**

It is averred that infact that there was/is no arbitration
agreement between the parties and therefore, the statement made by the then
counsel for the applicants that petition be disposed of with liberty to invoke
the arbitration clause was erroneous and made purely out of inadvertence
and a mistaken belief.

Notice was issued to the non-applicants-respondents and a response to the review application has since been submitted; that clause 34 of the Memorandum of Understanding (MoU) dated 27.11.2006, postulates that any dispute arising between the parties, in relation to the MoU, shall be resolved in accordance with the provisions of Arbitration and Conciliation Act, 1996. Further, Clauses 15 and 27 of the MoU read with Article 6.1 of the Power Purchase Agreement dated 13.08.2010 irresistibly show that said MoU is still operational and so is the arbitration agreement/clause.

At the out-set, learned senior counsel for the applicants, on instructions, submits that as regards cancellation of project proposal for execution of small hydro project at augmentation canal, Kajouri and Mainmatti, as also the rejection of the request of the applicants for extension of time for execution of enhanced capacity on augmentation canal by the authorities, the applicants be permitted to withdraw the review application as they shall invoke the arbitration clause for redressal of their grievances.

Insofar, as the challenge laid to the NIT dated 01.01.2021 (Annexure P-41) issued by the Irrigation and Water Resources Department, Haryana, he submits that the matter being out of the realms of the contract and being non-arbitral, the applicants be granted liberty to avail such other remedies as shall be admissible in law.

In response, Mr. Deepak Balyan, learned Additional Advocate General, Haryana, submits that the applicants are free to invoke the arbitration qua the disputes that arise in relation to and out of the arbitration agreement/MoU between the parties. However, as regards their grievance, if any, against the NIT, he fairly submits that the same being independent of the contract/MoU and non-arbitral, he would have no objection if the

applicants are granted leave to avail the remedies as shall be admissible in this regard.

In the wake of the above, the order dated 10.02.2021 is modified in terms of the statement made by learned counsel for the parties.

The review application is accordingly disposed of in the above terms.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

06.10.2021
ravinder

Whetherspeaking/reasoned	Yes/No
Whetherreportable	Yes/No