

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU**

Reserved on : 02.05.2024  
Pronounced on : 02.01.2025

Case:- **WP(C) No. 237/2024**  
**CM No. 545/2024**

**M/S SAWALKOTE PROSJEKTUTVIKLING AS**  
**("SPAS") is a Company incorporated under the**  
**Norwegian Companies Registration Act with**  
**Registration No. 982809541, having its**  
**Registered Office in Daelitoppen, 1383 Asker,**  
**through Mr. Sverre Henning Fjeldstad S/o**  
**Sverre Ole Johan C/o Daelitoppen 6 Asker,**  
**Norway, Aged 74 years.**

**Through**

**Jitander Lal Kaul S/o Lt. J.L. Koul,**  
**R/o 39-A/C Gandhi Nagar, Jammu, Age 65 Years**

*.....Petitioner*

Through: **Mr. C. M. Koul, Sr. Advocate with**  
**Mr. Arshad Hussain, Advocate &**  
**Mr. A. R. Bhat, Advocate**

**Vs**

- 1. Union Territory of Jammu and Kashmir**  
**Through Principal Secretary to Govt.**  
**Power Development Department, Govt. of J&K,**  
**Civil Secretariat, Jammu/Srinagar.**
- 2. Jammu and Kashmir State Power Development Corporation Ltd.**  
**(JKSPDC) through Managing Director,**  
**A Company incorporation under the Companies**  
**Act, 1956 having its Registered Office at**  
**Exhibition Ground Srinagar-1 90001.**
- 3. National Hydro-Electric Power Corporation (NHPC) Ltd.**  
**(A Government of India Enterprises)**  
**Through its Chairman and Managing Director**  
**(CMD), Sector-33, Faridabad, Haryana-121003.**
- 4. National Hydro-Electric Power Corporation**  
**(NHPC) Ltd.**  
**(A Government of India Enterprises),**  
**Through Group General Manager,**  
**Sawalkote HE Project, Tanager,**  
**P.O. Dharamkund, District Ramban-1 82144**

*..... Respondents*

Through: Mr. D. C. Raina, Advocate General with  
Mr. Ravinder Gupta, AAG for R – 1 & 2.

Mr. P. N. Raina, Sr. Advocate with  
Mr. J. A. Hamal, Advocate &  
Mr. A. P. Singh, Advocate for R – 3 & 4.

**Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE**

**JUDGMENT**

01. Whether the petitioner-M/s Sawalkote Prosjektutvikling AS has any actual status and locus to be a petitioner to maintain the present writ petition, with respect to purported cause of action forming subject matter of the writ petition, is a preliminary aspect without first dealing with which the adjudication of the writ petition, on its core-cause, may amount to be putting the cart before the horse.

02. It is in said context that this Court came to draw an order dated 15.04.2024 which has led to address of submissions from both sides, in particular from the petitioner's side, with respect to the petitioner's purported status and locus in maintaining the present writ petition.

03. Before this court comes to deal with the effort and energy invested submissions on the part of Senior Advocate Mr. C.M. Koul arguing for the petitioner, the facts of the case in a chronological manner need to be fetched and laid out at first so as to subserve the perspective in which the issue of status and locus of the petitioner-M/s Sawalkote Prosjektutvikling AS has self-popped to invite and engage the court's attention for adjudication.

04. The petitioner-M/s Sawalkote Prosjektutvikling AS (in short “**SPAS**”) introduces itself to be a company incorporated under the Norwegian Companies Registration Statute bearing registration No. 982809541 with its registered office in Daelitoppen, 1383 Asker. In the writ petition itself, there is no averment with respect to the corporate introduction and identity of the petitioner as to when and where it came to be incorporated and in which role and status it has come to bear an alleged cause of action or nexus therewith to come up with the present writ petition. It is only by gathering facts from the pleadings and documents on the record of this writ petition that this court is able to figure out the petitioner’s true character and credentials, which will be adverted to later herein related to its locus.

05. Mr. Sverre Henning Fjeldstad is being introduced to be the Managing Director of the petitioner-SPAS.

06. The petitioner-SPAS, as being a foreign based company, in its individual capacity has come forward with the present writ petition invoking writ jurisdiction of this Court under article 226 of the Constitution of India.

07. The writ petition came to be instituted on 09.02.2024 through Mr. Jatinder Lal Kaul, by virtue of a purported authority letter dated **20/12/2023** authored by Mr. Sverre Henning Fjeldstad wherein Mr. Jatinder Kaul is mentioned to be a local representative in the Union Territory of Jammu & Kashmir. Authority Letter dated 20/12/2023 has been attested by Notary Public Jonathan Haug whose attestation certificate bears reference that Mr. Sverre

Henning Fjeldstad is authorized to sign alone on behalf of Sawalkote Prosjektutvikling AS, enterprise number **982809541**.

08. Acting under the then constitutional status in terms of article 370 of the Constitution of India, the Govt., of erstwhile State of Jammu & Kashmir ( "State of J&K" in short) came to create a corporate entity with respect to power stations and power projects in the erstwhile State of Jammu & Kashmir (now Union Territory of Jammu & Kashmir) and the corporate entity so created is the Jammu & Kashmir State Power Development Corporation Limited (in short "**JKSPDC**") incorporation whereof took place under the Companies Act, 1956 (now repealed) and figures as the respondent No. 2 in the present writ petition.

09. The respondent No. 2-JKSPDC is now re-named as the Jammu & Kashmir Power Development Corporation Limited ("**JKPDC**" in short) with omission of word 'State' from the original name and identification.

10. Before the incorporation of the respondent No. 2-JKSPDC as a corporation, it was the Govt. of J&K's Jammu & Kashmir Power Development Department (in short "**JKPDD**") which used to look after every facet and aspect of electricity and power generation in the State of Jammu & Kashmir right from development, maintenance, operation, transmission, distribution etc.

11. The respondent No. 2-JKPDC conceived setting up of a hydro-electric power project on the stretch of River Chenab, falling in district Doda of the erstwhile State of Jammu & Kashmir (now Union Territory of Jammu & Kashmir), with a capacity of 600-MW

named as 600-MW Sawalkote Hydro-Electric Project (Sawalkote HEP).

12. With respect to its conception and decision to set up 600-MW Sawalkote HEP, the respondent No. 2 – JKSPDC is said to have invited from the interested contractors/concerns, national as well as international, submission of proposal for realization and execution of the said project on turn-key basis and on the basis of financing upto 85% of the project cost.

13. In furtherance of the aforesaid proposal inviting exercise, two foreign based companies namely **Statkraft Anlegg A.S** and **Kvaerner Energy** (“**SA/KE**” in short) combined together to be in joint venture to come forward for carrying out techno-economic study of 600-MW Sawalkote HEP on the basis whereof SA/KE came up with a preliminary proposal with technical and financial estimate submitted in terms of a report dated 08.03.1999 which paved way for the respondent No. 2–JKSPDC to seek a further detailed offer for enabling a decision upon mutually accepted project proposal. Accordingly, a memorandum-of-understanding (MoU) dated **26/07/1999** came to be executed between the respondent No. 2 – JKSPDC and said concern **SA/KE**.

14. Mr. Sverre Henning Fjeldstad, purportedly acting as a Project Director **SA/KE**, came to subscribe his signature for and on behalf of the concern **SA/KE** to said MoU dated 26/07/1999 so made with the respondent No. 2 – JKSPDC. In addition, individually on behalf of **Statkraft Anlegg & Kvaerner Energy** its authorized officers had also joined in execution and signing of said MoU.

15. In terms of said MoU dated 26.07.1999, the respondent No. 2 – JKSPDC reserved a right and authority to negotiate and enter into a contract/contracts with concern **SA/KE** for implementation of the project on turn-key basis to be first based upon a comprehensive bankable and techno-economically feasible project report in the light of which an offer of the concern **SA/KE** was to be examined while meeting the criteria contained in said MoU and to be acceptable to the respondent No. 2 – JKSPDC.

16. Thus, said MoU dated 26/07/1999 was put into effect and operation with an aim of defining the most suitable procedure for fast and purposeful implementation of 600-MW Hydro-Electric Project. The heads of understanding in terms of said MoU arrived at between the respondent No. 2 – JKSPDC and **SA/KE** came to be enlisted.

17. A timeline for submission of a detailed offer along with project report was fixed to be 12 months so as to count as an offer from the concern **SA/KE** to the respondent No. 2 – JKSPDC. The offer to be so made within a period of 12 months from the end of concern SA/KE to the respondent No. 2 – JKSPDC was also to include a draft of a concluded document to form the basis for further negotiations and actions *inter-se* the parties in relation to the project.

18. The respondent No. 2 – JKSPDC reserved the discretion to decline the contract documents accompanying the offer as was to be presented by concern **SA/KE**.

19. For the purposes of formulating and submission of a final offer from its end to the respondent No. 2 – JKSPDC, the concern **SA/KE** was reserved a right under said MoU to associate with and enter into an agreement with any other company, individual or agency, as the case may be, as deemed necessary for the implementation of the project subject to the qualifications and credentials as stated in clause 8 of MoU which also envisaged consultation with the respondent No. 2 – JKSPDC.

20. During the life period of said MoU, the respondent No. 2 – JKSPDC was obligated not to enter into any negotiation or invite any other company or group of companies to give any proposal with respect to the implementation of the project i.e. 600-MW Sawalkote Hydro-Electric Project.

21. It was mutually agreed in terms of clause 10 of said MoU that in the event of the project being finally awarded to concern **SA/KE** for implementation, then no cost to be payable to concern **SA/KE** for the preparation of bankable project report (BPR), whereas in the event of the project being abandoned and/or not proceeded ahead due to events outside the control of the parties and for no fault attributable to concern **SA/KE**, the cost incurred on the preparation of bankable project report (BPR) upon verification by the respondent No.2 – JKSPDC was to be reimbursed to concern **SA/KE**. Twelve(12) months validity period of MoU from the date of its signing was agreed to be extendable or terminable by mutual agreement between the parties to said MoU.

22. In very express terms, the entitlements and benefits envisaged and engraved in said MoU admitted of no assignment by

**SA/KE** without prior written consent of the respondent No. 2 – JKSPDC.

23. Out of the two constituents of concern **SA/KE**, the constituent **Statkraft Anlegg** was recognized to be a group leader but the responsibility with respect to implementation of MoU at the end of **SA/KE** was to be joint and several.

24. On behalf of the respondent No. 2 – JKSPDC, it was the then Managing Director–J. A. Shahmiri who came to subscribe his signatures to said MoU dated 26.07.1999.

25. MoU dated 26.07.1999, being a bilateral document, had recognized the respondent No. 2 – JKSPDC as a party of one part and the concern **SA/KE** jointly as party of second part and, as such, in its said joint status, **SA/KE** was to be deemed to include its successors and permitted assigns.

26. An understanding of facts gatherable from the record of the present writ petition, but without any evidentiary document on record to said effect, would show that **Kvaerner Energy (KE)** as a company is said to have been acquired by **General Electric (GE)** whereas said **Statkraft Anlegg AS** taken over by a company **M/s NCC International AS, Norway**. However, when did the purported transition and takeover of the aforesaid two original constituents namely **Statkraft Anlegg AS** and **Kvaerner Energy AS** of the joint venture concern **SA/KE** come to take place by reference to **M/s NCC International AS, Norway** and **General Electric (GC)** is not gatherable from the record as the same has not been pleaded and set out anywhere.



27. After the expiry of original twelve (12) months' period of validity of MoU dated 26/07/1999, it is **Statkraft Anlegg AS**, as being group leader of **SA/KE**, acting through Mr. Sverre Henning Fjeldstad, had come forward with a letter dated **16.10.2000** to the respondent No. 2 – JKSPDC to extend the validity of said MoU dated 26/07/1999 with respect to 600-MW Hydro-Electric Project up to 30.06.2001.

28. In response to this communication dated 16.10.2000, the Managing Director of the respondent No. 2 – JKSPDC, vide his letter No.PDC/MD/CJ/1453-54 dated 25.11.2000, had called for a revalidated draft of MoU by two of the authorized signatories of **Statkraft Anlegg AS & Kvaerner Energy AS**.

29. It was at this stage that Mr. Sverre Henning Fjeldstad, had come forward with a purported communication for and on behalf of one **M/s NCC International AS (NCCIN)** by referring to its former status as **Statkraft Anlegg** as consortium leader of 600-MW Hydro-Electric Project. A purported revalidated MoU dated 23.10.2000 was self-submitted by **NCC International AS** without anybody from **Kvaerner Energy AS** subscribing and signing the purported revalidated MoU.

30. For the reasons best known to the authorities of the time administering and managing the respondent No. 2 – JKSPDC, it came to entertain new entities under the cloak of **Sawalkote Consortium** with respect to designing, execution and completion of Sawalkote HEP.

31. The new consortium getting introduced and entertained for the project to and by the respondent No. 2 – JKSPDC was consisting of:-

**i) NCC International AS,**

Lysaker Torg 8, N-1326 Lysaker, Norway.

A company existing under the Laws of Norway with its registered office located at 1326 Lysaker, Norway;

**ii) HOCHTIEF Aktiengesellschaft,**

Opemplatz 2, D-45128 Essen Germany.

A company existing under the Laws of Germany with its registered office located at 45128 Essen, Germany.

32. In reference to a letter dated 16.10.2000 of **Statkraft Anlegg As**, Mr. A.M. Mattu, the then MD of respondent No.2-JKSPDC, had addressed a response letter No. PDC/MD/CJ/1453-54 dated **25.11.2000** mentioning therein as to the respondent No. 2-JKSPDC's Board of Directors agreeing to grant extension of MOU dated 26.07.1999 up to 30.06.2001. This response communication was obviously meant for concern **SA/KE** and to no other entity.

33. It is gatherable that a detailed project report, in December 2000, was purportedly prepared and submitted by **Sawalkote Consortium** which got evaluated by the respondent No. 2-JKSPDC from a concern Lahmeyer International.

34. M/s Jai Parkash Industries is reported to have offered for construction contract but its offer was reckoned to be higher to that of **Sawalkote Consortium**.

35. On **19.04.2001**, J&K Govt's Cabinet decision No. 84/7 with respect to construction of Sawalkote HEP is said to have been taken so as to facilitate a course of action in furtherance thereof.

36. An agreement dated **21.04.2001** came to be executed between **J&K State Power Development Corporation (JKSPDC)** through its MD Mr. A.M. Mattu and Director Mr. Ajit Kumar, as party of first part as employer on one hand and a **Sawalkote Consortium** comprised of two companies identified as **NCC International AS**, Lysaker Torg 8, N.1326 Lysaker, Norway represented by Paul Lodoen and **HOCHTIEF Aktiengesellschaft**, Opernplatz 2, D-45128, Essen Germany represented by Dr. Martine Rohr, as party of 2nd part **as contractor**.

37. As per this agreement dated 21/04/2001, the contract work was to design, execute and complete Sawalkote HEP and for that a contract was to come into effect within 12 months' time from date of signing of the agreement dated 21.04.2001 and the contract period was to be 2373 days (6 years 183 days) from the date of order to commence. To this agreement dated 21.04.2001, there are six witnesses, one of them being Mr. Henning Fjeldstad. There is no reference as to the capacity of the HEP found mentioned in the agreement dated 21.04.2001.

38. MoU dated 26.07.1999 of the respondent No. 2-JKSPDC with concern **SA/KE** was deemed to be read and construed as part of the agreement dated 21.04.2001.

39. After having already signed the agreement dated **21/04/2001**, the respondent No. 2-JKSPDC's MD was actually

apprised by a letter No. PDD/ IV/89/2000-II dated **23/04/2001** by the Principal Secretary to Govt., Power Development Department about Cabinet Sanction for execution of Sawalkote HEP of 600 MW through the respondent No. 2-JKSPDC and also about allotment of contract to **NCC led Consortium**. The respondent No.2-JKSPDC was authorized to sign contract with the representatives of the Consortium. Thus, agreement was done prior and sanction confirmation was coming later.

40. It was at this stage of situation in February 2004 that the petitioner SPAS's first time reference and introduction came into picture when **NCC International AS**, as one of two members of the Sawalkote Consortium, is said to have opted to concentrate its activities in its home market and decided at its own to undertake the Sawalkote HEP project through a special purpose vehicle (SPV) and which was the petitioner SPAS. It was for this purpose that **NCC International AS** made a purported agreement dated **29.06.2004** with the petitioner SPAS referred as Special Purpose Company SPC with company registration number 982 809 541 for taking over the project.

41. As a matter of fact, the petitioner SPAS's incorporation, by its very name **Sawalkote Prosjektutvikling AS**, is of 10/11/2000 when even **NCC International AS** alongwith **HOCHTIEF Aktiengesellschaft** as Sawalkote Consortium had itself not come on the scene till making of the agreement dated 21/04/2004. It is very intriguing warranting an observation here that a company getting itself named and incorporated as **Sawalkote Prosjektutvikling AS** in Norway with Mr. Sverre Henning Fjeldstad as its chairman who

on 23/10/2000 was writing, acting and dealing on behalf of **NCC International AS**. It means that the petitioner SPAS was already waiting in the wing to be inducted by **NCC International AS** waiting first for an agreement to get executed with the respondent No.2-JKPDC on **21.04.2001**.

42. On behalf of **NCC International AS**, its Chairman of Board of Directors by virtue of a communication dated 31.08.2004 purportedly apprised Mr. Haseeb Drabu as to the aspect that the Consortium is modified and that project to be pursued by Norwegian Special Purpose Company (SPC) **Sawalkote Prosjektutvikling AS** in cooperation with **Hochtief AG** and further stating in this communication that **Sawalkote Prosjektutvikling AS** is directed by Mr. Henning Fjeldstad.

43. In what capacity Mr. Haseeb Drabu came to be addressed with said communication dated 31.08.2004 by the Chairman of Board of Directors of **NCC International AS**, with a copy to **Hochtief AG**, is not forthcoming from the communication but the fact gets confirmed that the **petitioner SPAS** purportedly as special purpose company (SPC) was already preset to be introduced in the matter purportedly for and on behalf of **NCC International AS** which being one of the two constituents of Sawalkote Consortium.

44. It is gatherable from the record that in September 2004, **Hochtief AG** also purportedly left the Sawalkote Consortium and at that stage two new concerns namely **M/s Ozaltin Construction & Hindustan Construction** which got introduced under the very same cloak of **Sawalkote Consortium**.

45. On **02.02.2005**, a meeting with respect to implementation of Sawalkote HEP came to take place, wherein the new Consortium is said to have been recognized to assist and associate with the respondent No. 2 – JKSPDC and all the terms and conditions of the agreement dated 21.04.2001 were agreed to remain the same with a condition that the new Consortium was to arrange a specific letter from **Hochtief AG** conveying its NOC to transfer of intellectual property to new Consortium. The minutes of meeting of 02.02.2005 came to be signed by Henning Fjeldstad of the petitioner SPAS as its MD, Mr. Mehmet Oner, DGM **Ozaltin Construction** & MD Khatter of **HCC** joined by K. K. Mukherjee, the Marketing Director of **NCC International AS**. To these minutes of meeting on behalf of the respondent No. 2 – JKSPDC it was its then Managing Director (MD) who subscribed his signatures.

46. In the backdrop of this swapping of players by reference to Sawalkote Consortium, a Govt. Order No. 366-PDD dated 21.12.2005 came into picture in terms whereof sanction came to be accorded to the implementation of Sawalkote Hydro Electro Power Project (HEP) 1200 MW installed capacity through the Consortium comprising of **M/s SPAS Norway, M/s Ozaltin of Turkey** and **M/s HCC of India** which came to be referred as new consortium in the memorandum submitted to the Cabinet of the then Govt. of Jammu & Kashmir.

47. Govt. Order No. 366-PDD of 2005 came to be followed by an Addendum No. PDD/IV/38/2003 dated 04.04.2006.

48. In terms of this Govt. Order No. 366-PDD of 2005, revised contract document/addendum to the agreement dated 21.04.2001

was to be signed after acceptance of the recommendation of the specialist to be engaged for the purpose of examining and drawing the contract documents by the Board of Directors of the respondent No. 2 – JKSPDC. The project was to be on a turn-key basis.

49. In said addendum dated 04/04/2006, the project cost came to be mentioned to be Rs. 7,000 crores as against cost of Rs. 1926.25 crores mentioned in the Govt. Order No. 366-PDD of 2005. The engineering, procurement and construction cost of the project (EPC) was to be Rs. 1926.25 crores.

50. In the backdrop of the aforesaid state of development, the then Govt. of J&K came forward with a **Govt. Order No. 212-PDD of 2006 dated 21.11.2006** in terms whereof the Govt. Order No. 366-PDD of 2005 read with Addendum dated 04.04.2006 came to be superseded and Sawalkote Hydro Electric Project was ordered to be implemented through the process of competitive bidding as per the guidelines of the Govt. of India on the subject.

51. This Govt. Order No. 212-PDD of 2006 came to be questioned in a writ petition **OWP No. 854/2006** which resulted in a judgment dated 01.02.2010 whereby the Govt. Order No. 212-PDD of 2006 was held to be issued arbitrarily with undue haste violating the principles of natural justice and the provisions of article 14 of the Constitution of India, and, thus, said Govt. Order no. 212-PDD of 2006 stood quashed.

52. Said writ petition OWP No. 854/2006 was filed by three petitioners, namely, **M/s Sawalkote Prosjektutvikling AS**-the petitioner SPAS herein, **M/s Hindustan Construction Company &**

**M/s Ozaltin Construction Trade & Industry Company (INC), Turkey** identifying themselves as a **Sawalkote Consortium**.

53. Post judgment dated 01/02/2010 of the High Court of Jammu & Kashmir in writ petition OWP 854/2006, a Govt. Order **No. 86-PDD of 2010 dated 15.03.2010** came to be issued thereby constituting a team headed by the Chief Secretary for holding negotiations with **M/s Sawalkote Prosjektutvikling AS and others** with a view to seek necessary clarifications about the then present cost of the project and arrangements identified for obtaining financial closure of the project. The team so constituted comprised of the Chairman, J&K Bank Ltd., Principal Secretary, Power Development Department, Commissioner/Secretary, Planning & Development Department, Commissioner/Secretary Finance Department and Secretary, Law Department. This team was named as Negotiating Team which was asked to report to the Govt. within one month.

54. **Govt. Order No. 86-PDD of 2010 dated 15.03.2010** came to be supplemented vide a **Govt. Order No. 224-PDD of 2010 dated 31.08.2010**.

55. The respondent No. 2 – JKSPDC, acting through its Deputy General Manager, came to address a letter No.PDC/TEC/P-76/3167-71 dated **21.12.2010** to three entities of Sawalkote Consortium i.e. **M/s SPAS Norway, M/s Ozaltin of Turkey & M/s HCC Ltd. of India** sharing with them minutes of 4<sup>th</sup> meeting of Negotiating Committee which was held on 18.12.2010 on Sawalkote HEP. In the minutes of the meeting so shared, it came to be referred that there are differences within the Consortium which has come to



the notice of the respondent No. 2 – JKPDC which is a matter of concern but still the same being internal to the Consortium, the members are supposed to resolve the same at the earliest.

56. In the said minutes of meeting, the representation and participation of the **petitioner –SPAS** was through its Managing Director - Mr. Sverre Henning Fjeldstad, whereas on behalf of **M/s HCC Ltd. of India**- Mr. Vinayak Deshpandey was marked present. However, there was no reference to representation of **M/s Ozaltin of Turkey** in the said minutes of meeting.

57. The developments with respect to Sawalkote HEP, as had happened so far till ending 2010, resulted in issuance of **Govt. Order No. 16-PDD of 2011 dated 14.01.2011** reiterating therein that further action for implementation of Sawalkote HEP to be taken in terms of recommendations of the Committee constituted vide Govt. Order No. 86-PDD of 2010 dated 15.03.2010 read with Govt. Order No. 224-PDD of 2010 dated 31.08.2010 in the light of the five directions set out in Govt. Order No.16-PDD of 2011 dated 14.01.2011.

58. Condition No. V in the Govt. Order No. 16-PDD of 2011 referred to the fact that the respondent No. 2 – JKSPDC to examine the request of the Consortium for payment of the cost of preparation of DPR as even if in any case the contract was not to be awarded, the cost of preparation of the DPR was meant to be reimbursed to the Consortium.

59. From 2011 until May, 2013 there seems to be no state of activity in terms of correspondence *inter-se* the Consortium and the

respondents. It was on 20.05.2013 that the then Govt. of State of Jammu & Kashmir, through its Power Development Department (PDD), resumed correspondence with Mr. Sverre Henning Fjeldstad, the MD of the **petitioner-SPAS** by reference to the committee meeting of 11<sup>th</sup> May 2010 under the Chairmanship of the Chief Secretary of J&K with respect to implementation of 1200 MW Sawalkote HEP.

60. This Court is consciously staying away from making any corresponding observation from its end with respect to manner in which with respect to such a high stake national level project the course of functioning at the end of the then Govt. of Jammu & Kashmir and the respondent No. 2 – JKSPDC was taking place and letter No. PDD/IV/38/2003-II dated 20.05.2013 is a specimen of that, wherein reference is being made to a meeting of 11<sup>th</sup> May, 2010 as if time was a leisure at the disposal of the then Govt. of Jammu & Kashmir in conducting itself with the Sawalkote HEP in a half measure manner and an equivalent unbothered Consortium as to the time lag.

61. In the year 2014, a detailed project report (DPR) generation scheme of Sawalkote HEP 1856 MW in Jammu & Kashmir State came to be submitted to Central Electricity Authority (CEA) to which a final clearance came on **28.06.2017** from the end of said Central Electricity Authority (CEA) with project cost estimated at Rs. 20317.66 crores.

62. For three years period, i.e. 2018, 2019 & 2021, there is found no reference with respect to the course of events between the Consortium on the one hand and the then Govt. of Jammu &

Kashmir and the respondent No. 2 – JKSPDC on the other hand *qua* Sawalkote HEP.

63. On **03.01.2021**, the respondent No. 2 – JKSPDC entered into a Memorandum of Understanding (MoU) dated 03.01.2021 with the respondent No. 3 – **National Hydro Electric Project Ltd. (NHPC)** with respect to execution of four projects identified therein, one of which being Sawalkote (1856 MW) HEP. It is with respect to this development that purported cause of action is said to have set in and finally leading to the institution of the present writ petition.

64. With coming into picture of the respondent No. 3 – NHPC with respect to Sawalkote HEP 1856 MW, trilateral discussions seem to have taken place purportedly involving the Sawalkote Consortium, the respondent No. 2 – JKPDCC and the respondent No. 3 – NHPC as is born out from the record note of discussions of the meeting held on 06.09.2021, which purportedly records the fact that Sawalkote Consortium comprising of **M/s SPAS, Norway, M/s Ozaltin of Turkey and M/s HCC of India** was still in force. In this meeting, the participation of Mr. Sverre Henning Fjeldstad, the Managing Director of the petitioner SPAS along with Executive Director – Mr. Kalyan Mukherjee is recorded without any corresponding representation on behalf of **M/s Ozaltin of Turkey & M/s HCC of India**.

65. An addendum came to be issued to the record note of discussions of the meeting held on 06.09.2021, wherein it came to be registered that the petitioner – SPAS has underlined that the Consortium is not open for discussion on other issues than what is emerging from the J&K High Court's verdict and the subsequent

Govt. Order and for that it will protect its right to negotiate the final contract price based on CEA approved cost and further if the respondent No. 3 – NHPC is unable to undertake the project on its current basis the same be returned to the respondent No. 2 – JKSPDC to avoid further delays.

66. Another round of meeting came to take place in furtherance of meeting of 06.09.2021 and the record note of discussions of the meeting held on **20.09.2021** came to be published on 24.09.2021 wherein it came to be recorded that the Managing Director of the petitioner – SPAS is authorized to speak on behalf of the Consortium. The participation of **M/s Ozaltin of Turkey** and **M/s HCC of India** through their respective representatives Mr. Muzzafer Ozdemir and Mr. Santosh Rai also came to be reflected in the record note of the discussions of the said meeting dated 20.09.2021.

67. The record note of discussions of the meeting of 20.09.2021 came to reiterate the confirmation from the said three constituents of the Sawalkote Consortium that consortium still holds valid and is willing to execute Sawalkote HEP as EPC contractor.

68. Mr. Sverre Henning Fjeldstad, the Managing Director of the petitioner – SPAS, purportedly acting for Sawalkote Consortium, came to address a communication dated 13.10.2021 to the CMD of the respondent No. 3 - NHPC on the subject of speedy implementation of 1856 MW Sawalkote HEP. In this communication, it came to be recited that the Consortium was extensively involved with the respondent No. 2 – JKSPDC during

December, 1997 to March, 1999 to prepare a preliminary offer and after MoU in 1999 worked as per understanding in preparing detailed offer with comprehensive, bankable and techno-economically feasible DPR along with contract document for 600 MW Sawalkote HEP which formed the basic EPC contract signed between the respondent No. 2 – JKSPDC and the Consortium.

69. This communication dated **13.10.2021** further recited that the hydro-electric project was continuously progressing and brought to the execution stage by the Sawalkote Consortium as an EPC contractor to the respondent No. 2 – JKSPDC for a period of 24 years with full faith in the Govt. of Jammu & Kashmir and the respondent No. 2 – JKPDC and now it was up to the respondent No. 3 – NHPC to complete the negotiations in order to establish cost of EPC contract based on CPA appraised project cost.

70. With reference to the respondent No. 3 – NHPC's emergence on the scene, the correspondence dated 13.10.2021 referred it to be a changing of client of the Consortium from the respondent No. 2 – JKPDC to the respondent No. 3 – NHPC in term of the Memorandum of Understanding (MoU) dated 03.01.2021 whereby the Sawalkote HEP was handed over to the respondent No. 3 – NHPC on "as-is-where-is" basis.

71. From the end of the respondent No. 3 – NHPC, its Executive Director (SBD&C) addressed a communication No. NH/SBD&C/2021 dated **06.12.2021** to the Managing Director of the petitioner – SPAS in the backdrop of the meetings on 06.09.2021 & 20.09.2021 and a communication dated 10.10.2021. In this communication dated 06.12.2021, the transfer of the project

of Sawalkote HEP by the respondent No. 2 – JKPDC to the respondent No. 3 - NHPC came to be asserted by reference to a Memorandum of Understanding (MoU) dated 03.01.2021 and consequent taking over of the project taking place shortly from the respondent No. 2 – JKPDC by the respondent No. 3 – NHPC for which the respondent No. 3 – NHPC was ascertaining the various costs already incurred by the respondent No. 2 – JKPDC towards the project and for that an exercise was being done for revision of DPR heads as appraised by the Central Electricity Authority (CEA) and calling upon the Consortium to submit detailed project of intellectual costs incurred by the consortium towards DPR 1856 MW Sawalkote HEP.

72. The petitioner SPAS through its Managing Director - Mr. Sverre Henning Fjeldstad came forward addressing a communication dated 13.10.2021 followed by a communication dated 14.12.2021 under the letter head of Sawalkote Consortium to the CMD of the respondent No. 3 – NHPC wherein it came to be observed that the High court of Jammu & Kashmir had vetted the contract in 2010 and that if the respondent No. 3 – NHPC unilaterally decides to cancel the existing EPC contract it may amount to contempt of court in terms of judgment dated 01.02.2010 in terms whereof the EPC contract was restored to the Consortium for execution of Sawalkote HEP.

73. In the petitioner-SPAS's communication dated 14.12.2021, it came to be recited that 2001 signed EPC contract for Sawalkote HEP is still valid.

74. It is pertinent to mention that the said agreement of 2001 was between the respondent No. 2 – JKSPDC as part of one party as an employer and Sawalkote Consortium comprising of two companies i.e., **M/s NCC International AS** and **M/s Hochtief Aktiengesellschaft** as other part.

75. The communication dated 14.12.2021 from the end of the petitioner-SPAS MD -Mr. Sverre Henning Fjeldstad came to be followed by issuance of a legal notice dated 18.04.2022 purportedly issued on the instruction of Sawalkote Consortium constituents by Sharadul Amarchand Mangaldass & Co. (a law firm) to the CMD of the respondent No. 3 – NHPC.

76. The legal notice, being a long drawn one, reiterates the entire course of development relating to Sawalkote HEP and opens up with a statement that Sawalkote Consortium comprising of the **petitioner – SPAS, M/s Hindustan Construction Company Ltd., and M/s Ozaltin Construction Trade & Industry Company** was awarded contract dated 21.04.2001 by the respondent No. 2 – JKSPDC.

77. Said legal notice further bears a purported statement of fact that 1999 Memorandum of Understanding (MoU) was between the respondent No. 2 – JKSPDC and Sawalkote Consortium. It further bears a statement of fact that as per the High Court of Jammu & Kashmir the contract between the Sawalkote Consortium and the respondent No. 2 – JKSPDC was alive, thriving and binding as upheld, approved and re-affirmed by the judgment of the Jammu & Kashmir High Court and that the High Court of Jammu &

Kashmir had vindicated the Sawalkote Consortium's position under the contract.

78. In said legal notice dated 18.04.2022 it came to be referred that the respondent no. 3 – NHPC has floated a global tender No. 2022\_NHPC\_675668\_1 by way of Notice Inviting Tender (NIT) dated 25.02.2022 for the Sawalkote HEP.

79. Acting purportedly on behalf of Sawalkote Consortium, the Managing Director of the petitioner – SPAS came to address a communication dated 21.07.2023 to the Ministry of Home Affairs, GOI thereby registering the objections to the developing situation in terms of Sawalkote HEP between the respondent No. 2 – JKPDC and the respondent No. 3 – NHPC.

80. On the other hand, separately acting on behalf of HCC of India, its Chairman- Mr. Ajit Gulab Chand came to address a communication dated 11.09.2023 to the Ministry of Power, New & Renewable Energy, Govt. of India on the subject of request for fair and appropriate compensation for works carried out by Sawalkote Consortium with respect to Sawalkote HEP.

81. The tone and tenor of this communication dated 11.09.2023 was as if the HCC of India is acting on its own and stating therein that the right of the Consortium to enforce EPC contract stands affirmed by the High Court of Jammu & Kashmir in its judgment of 2010 and, therefore, asked for constitution of an empowered negotiating committee for a fair and fast-track joint resolution of the long pending matter.



82. It is in the aforesaid placement of facts and circumstances in its entirety that the institution of the present writ petition came to take place on 12.02.2024 by the petitioner- SPAS by purportedly authorizing Mr. Jatinder Lal Kaul to act on behalf of the petitioner – SPAS and Sawalkote Consortium in filing the writ petition related to Sawalkote HEP.

83. Now, it is in this backdrop that with respect to the institution of the present writ petition by the petitioner SPAS, on its stand-alone status, the maintainability of the present writ petition in terms of the status and locus of the petitioner SPAS came to crop up and is to be now addressed for its adjudication.

84. Mr. C. M. Koul, learned Sr. Advocate assisted by Mr. A. R. Bhat, Advocate has very vehemently argued to impress upon this Court that the present writ petition is safely maintainable by reference to the petitioner-SPAS itself and there is no legal deficiency whatsoever attending the petitioner-SPAS in coming forward in maintaining the present writ petition notwithstanding the non-joining of two of the constituents of the Sawalkote Consortium and they being M/s Ozaltin of Turkey & M/s HCC of India. Mr. C. M. Koul, learned Sr. Advocate in support of his oral submissions has also submitted written submissions backed by the relevant citations which this Court would be dealing later on herein.

85. Status of the petitioner-SPAS is to be examined from three aspects so as to figure out and determine its locus in its own name and right to maintain the present writ petition.

86. The first aspect is whether the petitioner SPAS in its own stand-alone status could come forward to maintain the present writ petition for its purported writ cause.

87. 2<sup>nd</sup> aspect is whether the petitioner SPAS, without being co-joined by the NCC International AS, can on its own maintain the writ petition.

88. 3<sup>rd</sup> aspect is whether the petitioner SPAS without being joined by two co-constituents of current Sawalkote Consortium, namely, M/s Ozaltin of Turkey & M/s HCC of India can act solo and maintain the present writ petition.

89. In addition to the aforesaid three aspects, even the very authority of Mr. Jatinder Lal Kaul in filing the present writ petition on the basis of purported authority drawn from Mr. Sverre Henning Fjeldstad is under scanner of this court, *suo moto*, not to be left undealt.

90. The first and second aspects are intertwined and, therefore, taken up together by examining as to whether the petitioner SPAS, as a juristic entity, is relatable to Sawalkote HEP in its own right or in a purported representative capacity and status as being special purpose company SPC of **NCC International AS** which as per agreement of 21<sup>st</sup>, April 2001 was actually one of two constituents of Sawalkote Consortium, the other being **HOCHTIEF Aktiengesellschaft**.

91. As per agreement dated 21/04/2001 with respect to the work of design, execution and completion of a Sawalkote HEP, the party of first part was the respondent 2-JKSPDC and the party of

other part being Sawalkote Consortium of two constituting companies namely **NCC International As** and **HOCHTIEF Aktiengesellschaft**. The above-mentioned agreement is admitted to be still valid, as found expressly admitted in an on-record letter dated 14/12/2021 addressed by Mr. Henning as being MD of the petitioner-SPAS.

92. Now, if that being the position, then any purported cause of action, in terms of and by reference to said agreement dated 21/04/2001 quo Sawalkote HEP, if ever was to accrue or has accrued or is to accrue, then same is to relate, as a matter of claim and entitlement that too jointly to said two constituents namely **NCC International AS** and **HOCHTIEF Aktiengesellschaft** and as a consequence if any writ petition was/is to be filed then the same is and has to be in the name and on behalf of the said two constituents but not by the petitioner SPAS by its own exclusive name and authority.

93. There is no averment *per-se* in the writ petition itself about the status of **NCC International AS** and **HOCHTIEF Aktiengesellschaft** as being first formal consortium vis-à-vis Sawalkote HEP when the agreement dated 21.04.2001 is admitted still valid with respect to Sawalkote HEP.

94. The petitioner SPAS *per-se* is not a successor of **NCC International AS** one of the two constituents of Sawalkote consortium, the other constituent being **HOCHTIEF Aktiengesellschaft**. The petitioner SPAS in terms of its own incorporation, by reference to the Sawalkote HEP, came into being on 10.11.2000 when even **NCC International AS** itself had no legal

status in the matter in view of **MoU dated 26.07.1997** between the respondent No. 2 – JKSPDC and **SA/KE**.

95. Now, if **NCC International AS** is accepted and reckoned, though there is nothing on record to confirm this as a fact, to have stepped into the shoes of **SA** as its successor to be read as joint venture of **NCC International AS/KV**, then it is the **NCC International AS** which continues to be the principal constituent of the Sawalkote Consortium along with **KV** and, accordingly, the cause of action for a writ petition relatable to Sawalkote HEP against the respondents is to ensue in favour of **NCC International AS/KV** and the two being not co-petitioners in the writ petition leaves the present writ petition without its lead actors.

96. In fact, there is nothing on record even to show as to how **KV** came to make an exit from the scene so as to bring **HOCHTIEF Aktiengesellschaft**, be it as a successor or substitute, in its place.

97. Be that as it may, if **HOCHTIEF Aktiengesellschaft** came to replace/substitute **KV**, then the **Sawalkote Consortium** obviously came to be comprised of **NCC International AS** and **HOCHTIEF Aktiengesellschaft** with whom the agreement dated 21.04.2001 came to be executed which is said to be valid and that being so, it is the said Sawalkote Consortium by reference to its said two constituents which ought to have been the petitioner in the writ petition at first place and not the petitioner-SPAS in its own name and right when it, at the best, was and is only a special purpose company SPC purportedly created by **NCC International AS** for the part of its role in the **Sawalkote Consortium** along with **HOCHTIEF Aktiengesellschaft** but that does not and cannot mean that **NCC**

**International AS** has made an exit from the Sawalkote Consortium to surrender the field in favour of the **petitioner-SPAS**.

98. Now, if the situation is to be examined from other side of the coin as being 3<sup>rd</sup> aspect, that the Sawalkote Consortium which actually came to be entertained and accepted at the end of the respondents No. 1 & 2 is the latest one comprising of the **petitioner-SPAS, M/s HCC Ltd. of India & M/s Ozaltin of Turkey**, then in that respect the institution of the present writ petition by the **petitioner-SPAS** to the exclusion of other said two constituents of Sawalkote Consortium self-exposes the defunct *locus-standi* & split status of the petitioner SPAS to come forward and maintain the writ petition.

99. This court cannot entertain the petitioner SPAS as an entity itself to the exclusion of the Sawalkote entity actually comprising of three constituents which were supposed to have been in the writ petition without a miss as, in fact, was the case when writ petition OWP No. 854/2006 was instituted in which all the three said constituents of the Sawalkote Consortium by name and reference figured as the petitioners No.1 to 3 notwithstanding the fact that it is Mr. Henning Fjeldstad who was signing on behalf of other two co-petitioners as well.

100. Doing plain fact reading and speaking, this court is at loss to figure out jugglery and swapping of parties and players in the name of Sawalkote Consortium as to actually with whom the respondents No. 1 & 2 have been dealing with all along given the seriousness of the stakes in the conceived Sawalkote project from

and at the end of the State of J&K as it was then and now being UT of J&K.

101. Be that as it may, this court is fully convinced that the petitioner SPAS in isolation in the writ petition is surely a non-entity to be entertained by this court to be heard as an aggrieved party to seek a writ in the case from this court .

102. In addition to the lack of status and locus of the petitioner in maintaining the writ petition for the purported cause, there is an additional deficit which afflicts the maintainability of the writ petition and that is with respect to the purported authority on which Mr. Jatinder Lal Kaul has come forward to file the writ petition in the name and on behalf of the petitioner SPAS.

103. In this regard, it is worth mentioning here that the authority letter dated 20/12/2023 of Mr. Sverre Henning Fjeldstad in favour of Mr. Jitander Lal Kaul thereby extending him the authority to act in the matter of filing of the present writ petition in itself is an intriguing one suggestive of the fact that Mr. Sverre Henning Fjeldstad as being the Managing Director of the petitioner – SPAS is trying to be clever on words when in said authority letter dated 20/12/2023 he is meaning to say that Mr. Jatinder Lal Kaul is authorized to sign on behalf of the petitioner and Sawalkote Consortium to pursue the litigation before the High Court of Jammu & Kashmir and Ladakh.

104. By so referring to Sawalkote Consortium, Mr. Sverre Henning Fjeldstad obviously intended to cover the said two constituents without any enabling authority being disclosed in the

authority letter having been extended in his favour by the said two constituents of Sawalkote Consortium to act in their name and on their respective behalf as well in the matter of not only filing the writ petition but also sub-delegating the said authority in favour of Jitander Lal Kaul.

105. The petitioner SPAS in itself is a Norway born and based company bearing date of incorporation 10th November 2000. The petitioner SPAS has a board of directors with Mr. Sverre Henning Fjeldstad as its chairman and supposedly competent and authorized to act for and on behalf of the petitioner SPAS so as to represent it in the matters, be it business or legal, concerning it. Therefore, the purported authority given by Mr. Henning to Mr. Jitander Lal Kaul can be seen in the context of the petitioner SPAS only to be taken to be valid one but only to the extent of the petitioner SPAS in the matter of filing the writ petition but for that Mr. Henning was obliged to show an existing written authorization in his favour from the petitioner-SPAS's end for enabling him to sub delegate and authorize Mr. Jitander Lal Kaul to file the present writ petition.

106. In this regard, when this court examines the institution of this writ petition in its present manner by visiting in retrospect the filing of previous writ petition OWP 854 of 2006 in this court wherein it was Mr. Henning Fjeldstad himself signing the writ petition not only on behalf the petitioner SPAS but also co-petitioners namely M/s HCC of India and M/s Ozaltin of Turkey, then an objection comes staring at the face of the petitioner SPAS that when Mr. Jitander Lal Kaul was very much there at said point of time in 2006 but still it was not given to him by Mr. Henning

Fjeldstad to venture and file said writ petition OWP 854/2006, then how come for this writ petition Mr. Jitander Lal Kaul is being made competent to file and prosecute the present writ petition in the name of the petitioner SPAS on the purported authority of Mr. Jennings.

107. Thus, there is a patent deficit of authority attending to Mr. Henning Fjeldstad in authorizing Mr. Jitander Lal Kaul to file writ petition in the name of and on behalf of the petitioner SPAS. The petitioner SPAS, being a juristic person, is an entity in its own right. Mr. Henning Fjeldstad cannot be allowed to say and claim that just being a chairman of the petitioner SPAS he is entitled to self-draw at any given point of time as per his convenience every and any empowerment/authority in the name of the petitioner SPAS to delegate and sub delegate an authority in the legal matters in favour of Mr. Jitander Lal Kaul to file writ petition, swear affidavit etc., without first placing on record an express authority granted and vested by the petitioner SPAS in favour of Mr. Henning Fjeldstad.

108. In his supplementary affidavit filed by Jitander Lal Kaul, the purported authorized representative of the petitioner-SPAS, it is pleaded that this Court while dealing with the writ petition OWP No. 854/2006 adverted to the status of the petitioner as being legal successor. This averment in the supplementary affidavit is a self-serving averment as in the judgment dated 01.02.2010 passed in the writ petition OWP No. 854/2006 the petitioners in the writ petition were three in number, and those being the petitioner-SPAS, M/s Hindustan Construction Company and M/s Ozaltin Construction Trade and Industry Company (INC), and there was no



such occasion before the writ court in said writ petition OWP No. 854/2006 to examine the status of said three petitioners by reference to the Sawalkote Consortium originally comprising of two constituents, namely, NCC International AS, Norway & HOCHTIEF Aktiengesellschaft, Germany in terms of the agreement dated 21.04.2001 and before that originally of Statkraft Anlegg A.S and Kvaerner Energy (SA/KE) in terms of MoU dated 26.07.1999.

109. The petitioner-SPAS in its own right emerged on the scene only serving as special purpose vehicle (SPV) of NCC International AS, Norway which cannot amount to be a status of a successor to NCC International AS, Norway. Thus, there was no merger of NCC International AS, Norway into the petitioner so as constitute the petitioner-SPAS to be successor nor was there any assignment by NCC International AS, Norway in favour of the petitioner-SPAS with due authorization from the respondent No. 2 – JKSPDC so as to bestow the status of successor to the petitioner-SPAS *qua* Sawalkote HEP.

110. In the written submissions purportedly filed on behalf of the petitioner, averments without any factual basis are being made that said Statkraft Anlegg A.S was acquired by NCC International AS, Norway and Kvaerner Energy by General Electric, USA. There is no factual basis in the written submissions as in fact there is no such factual basis in the writ petition itself as to how and in what capacity HOCHTIEF Aktiengesellschaft, Germany came into scene and in whose place and later made an exit in whose favour , in what manner and capacity.

111. In the written submissions, a confused mention and introduction is being made with respect to the characters involved in the name of Sawalkote Consortium without any clarity on record to impress this Court to accept that the petitioner-SPAS is the bearer of and sum of all the characters i.e. SA/KE, NCC International AS, Norway HOCHTIEF Aktiengesellschaft, Germany, M/s HCC Ltd. India & M/s Ozaltin of Turkey, As a matter of fact, the petitioner-SPAS is being referred as a leader of the Consortium thereby admitting that the constituents of the Sawalkote Consortium are indispensable from being left out to join the petitioner-SPAS in its purported status of leader for the present writ petition.

112. Mr. C. M. Koul, learned Sr. Advocate has put reliance upon the following citations to impress upon this Court that the maintainability of the present writ petition at the instance of the petitioner –SPAS is salvageable. However, when this Court goes through the entire set of citations nothing comes supporting the situation of the petitioner –SPAS. Said judgments are as under:-

- **“PSA Ennore Pte. Limited, represented by Kenny Low, its authorized signatory Vs Union of India & others” 2009 SCC Online Mad 198.**
- **“Jashbhai Motibhai Desai Vs Roshan Kumar, Haji Bashir Ahmed and others” 1976(1)SCC 671**
- **“Motilal Padampat Sugar Mills Co. Ltd. Vs State of Uttar Pradesh and others” 1979(2) SCC 409**
- **“Rehmatullah Nail Vs UT of J&K and others” passed in WP(C) No. 1890/2023.**
- **“ABL International Ltd. Vs Export Credited Guarantee Corporation of India Limited” 2004(3) SCC 553**
- **“TATA Cellular Vs Union of India” AIR 1996 SC 11.**
- **“Kumar Shrilekha Vidyarthi & others Vs State of U. P. & others” 1991(1) SCC 212.**

113. Before coming forward with the formal expression of adjudication in holding the writ petition not maintainable at the instance of the petitioner-SPAS, this Court cannot let escape a matter of serious concern on record of this writ petition in the context in which the judgment dated 01.02.2010 of this Court in writ petition OWP No. 854/2006 came to be misquoted, with impunity, out of context without any factual and legal basis for and on behalf of the petitioner so as to color said judgment dated 01.02.2010 of this Court to mean something which at no point of time it ever meant or suggested it to be so.

114. In this regard, this Court would like to put forth the context and contour in which the judgment making was done in adjudicating writ petition OWP No. 854/2006 by the writ court. Before paraphrasing the issue involved in the said writ petition in para 28 of its judgment, the writ court in para 12 of the judgment had registered a caveat in bold letters. For the facility of reference this Court reproduces said para 12 of the judgment as under:-

**“12) In view of the above referred settled legal position, the jurisdiction of Judicial Review, may be considered, for its exercise in the case, only if, the State action was found to be arbitrary, affected by bias or actuated by malafides, for the merits of the decision taken by the State Government, may not be justiciable. The question whether or not the arrangement between the parties had fructified into a concluded Contract or was it only a prelude to a Contract, may also be not gone into by the Court, in that, these questions and issues like that, arise out of the private Law Field and can be appropriately dealt with by the Civil Courts.**

**The petitioners' Writ Petition would thus be maintainable only to the extent it questions the State action as arbitrary, unfair, actuated by malafides and a result of undue haste, for this Court may not have jurisdiction to substitute its views, on the merits of the decision taken by the State Government in the facts and circumstances of the case."**

115. After having first put this clear and categorical understanding of the controversy involved in the writ petition, the writ court in para 28 came to formulate the issue which was begging for adjudication in the said writ petition. This Court reproduces para 28 as follows:-

**"28) The question that therefore falls for consideration is whether the proceedings held by the Cabinet Sub-Committee and the recommendations made by it to the State Government, are vitiated because of the presence of the Complainant-Minister in the decision making Forum.**

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....."

116. At no point of its adjudication in terms of judgment dated 01.02.2010, the writ court ever examined or intended to examine nature of relationship between the three petitioners under the cloak of Sawalkote Consortium with the respondents in the said writ petition from the lens of contractual relationship but Mr. Sverre Henning Fjeldstad and law firm-Sharadul Amarchand Mangaldass & Co. took the liberty of attributing and reading into the said judgment dated 01.02.2010 of the writ court self-serving claim as if the High Court of Jammu & Kashmir had proceeded on the premise that Sawalkote consortium comprising of the petitioner –SPAS, M/s

Hindustan Construction Company Ltd. and M/s Ozaltin Construction Trade & Industry Company (INC) was having a contract in its favour from the JKSPDC's end and the so-called contract was upheld by the High Court as alive, thriving and binding.

117. Para 18, 20, 23, 27, 28 & 32 of the legal notice dated 18.04.2022 issued by Sharadul Amarchand Mangaldass & Co. (a law firm) through its partner Ritu Bhalla carry and make a misconceived and perverted reference to the judgment dated 01.02.2010 of the High Court of Jammu & Kashmir and, therefore, the said misquoting of the judgment of the High Court of Jammu & Kashmir by none else than law firm is a serious matter to be taken with due seriousness as *prima-facie* amounting to a criminal contempt undermining the administration of justice and the authority by this Court and its judgment.

118. Therefore, this Court *suo-moto* takes cognizance of the contents of the said legal notice issued by Sharadul Amarchand Mangaldass & Co., New Delhi for the sake of proceeding against it for the contempt of Court, for which purpose a notice is directed to be issued to Sharadul Amarchand Mangaldass & Co., New Delhi to appear and explain its position in the context of legal notice dated 18.04.2022 issued by it to Chairman & Managing Director (CMD), NHPC Ltd on behalf of Sawalkote Consortium comprising of M/s Sawalkote Prosjektutvikling AS, M/s Hindustan Construction

Company Ltd. & Ozaltin Construction Trade & Industry Company (INC).

119. The Registrar Judicial, Jammu is directed to issue notice to Sharadul Amarchand Mangaldass & Co., New Delhi for its appearance.

120. In view of the aforesaid facts and circumstances and the reasoning drawn therefrom, this Court holds the writ petition filed by the petitioner-SPAS to be without any legal status and locus for seeking issuance of a writ for the purpose of quashment of communication No.NH/SBD&C/2021 dated 06.12.2021 by the Executive Director (SBD&C) along with MoU dated 03.01.2021 between the respondent No. 2 – JKSPDC and the respondent No. 3 – NHPC.



(RAHUL BHARTI)  
JUDGE

JAMMU  
02.01.2025  
Muneesh

Whether the order is speaking : Yes  
Whether the order is reportable : Yes