Sr. No.

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP (C) No. 3731/2025

Eduspark International Pvt. Ltd. ..... Petitioner(s)

Through :- Mr. Rahul Pant, Sr. Advocate with
Mr. Rahul Sharma, Advocate &
Mr. Sunil Tilokchandani, Advocate

v/s

Union of India and others .....Respondent(s)

Through :- Mr. Raman Sharma, AAG for R-2 and 3

CORAM: HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

ORDER
30.04.2026

1. The petitioner herein is a company registered and incorporated under The Companies Act 1956. The respondent No.1 is having superintendence and control over Deen Dayal Upadhyay Gramin Kaushalya Yojana(DDU-GKY). Respondent No.3 is the Chief Operating Officer of Himayat Mission Management Unit, Jammu and Kashmir State Rural livelihood mission under the administrative control of Department of Rural Development and Panchayati Raj, Government of Jammu and Kashmir.

2. This petition has been preferred by the petitioner by invoking the extraordinary writ jurisdiction of the Court vested under Article 226 of the Constitution of India, challenging the action of respondent No.3 in issuing impugned notice of imposition of penalty dated 10th November, 2025 against the petitioner, to pay a penalty of 2% of the amount released in favour of the petitioner, amounting to Rs.5,65,048/-. The petitioner has also challenged the recovery notice issued by respondent No.3 dated 10th November 2025, under which respondent No.3 has to recover the entire

amount of Rs.2,82,52,397/-released in favour of the petitioner along with interest @10% per annum.

3. The petitioner through the medium of instant petition has sought for the following reliefs-:

> "i) issue a writ of certiorari and/or any other writ in the nature of certiorari thereby quashing and setting aside the Impunged Penalty Notice dated 10th November, 2025 bearing Reference No.COO/JKSRLN/HMMU/25/2019/2868-2879 issued by respondent No.3 (Annexure-I to the Petition).
>
> ii) issue a writ of certiorari and/or any other writ, order or direction in the nature of certiorari thereby quashing and setting aside the Impugned Recovery Notice dated 10th November, 2025 bearing Reference No./COO/JKSRLM /HMMU/25/2019/2879-2889 issued by respondent No.3 (Annexure-I to the petition);
>
> iii) issue Writ of Mandamus and/or any other writ, order or direction in the nature of Writ of Mandamus thereby directing respondent No.3 to forthwith withdraw and/or cancel the impugned Penalty Notice dated 10th November, 20225 bearing Reference No.COO/JKSRLN/HMMU/ 25/2019/2868-78 issued by respondent No.3.
>
> iv) issue Writ of Mandamus and/or any other writ, order or direction in the nature of Writ of Mandamus thereby directing respondent No.3 to forthwith withdraw and/or cancel the Impunged Recovery Notice dated 10th November, 2025 bearing Reference No. No.COO/JKSRLM /HMMU/25/2019/2879-2889 issued by respondent NO.3 being Annexure-I to the petition.
>
> v) to declare that the petition has not committed any acts of default that would render the petitioner liable to any major or minor penalty;
>
> vi) Any other just and equitable order that this Hon'ble Court deems fit be granted."

4. On 29–12–2025, an objection with regard to the maintainability of the instant petition has been raised by the Court, on account of the fact that

the Memorandum of Understanding duly signed by the petitioner company and the respondents contains an arbitration clause, which for facility of reference is reproduced hereunder-:

> "9. **Arbitration and Applicable Laws:**
>
> 9.1. The parties hereby agree that any controversy, claim or dispute arising in connection with this MoU, and which cannot be resolved amicably, shall be referred to the Chief Secretary (Chairman of the Executive Council of Jammu and Kashmir State Rural Livelihoods Mission in the State), whose decision shall be final and binding on all parties.
>
> 9.2. All disputes shall be resolved as per the Government of India policies and applicable Indian/State Laws.
>
> 9.3. If case is filed for judicial remedy, where the Ministry of Rural Development is the First Party, the case shall be filed in New Delhi. In case for judicial remedy, where the First Party is Himayat Mission Management Unit, Jammu and Kashmir State Rural Livelihoods Mission, the case shall be filed in the respective court in the State Headquarters."

5. Learned counsels for the parties were directed to file affidavits, which stand filed by the counsels.

6. Mr. Pant, learned senior counsel appearing for the petitioner- Company, states that Clause 9 of the MOU does not amount to an arbitration agreement within the meaning of Section 2(b) and Section 7 of the Arbitration and Conciliation Act, 1996. He has relied upon **Alchemist Hospitals Ltd. v. ICT Health Technology Services India (P) Ltd., 2025 SCC Online SC 2354** to strengthen his argument that the Clause 9 of memorandum of understanding is not decisive of the parties, it only contemplates the possibility of going for Arbitration, possibility of the parties agreeing to Arbitration. Moreover, the Chief Secretary (chairman

of the executive Council of Jammu and Kashmir, State Rural Livelihood Missions in the UT) being an instrument of the state and an interested party, cannot be considered as a **private terminal,** as such cannot adjudicate upon the dispute in an impartial manner; Clause 9 neither specifies the procedure for adjudicating the disputes, nor does it specify the seat of arbitration under the rules; Clause 9.3 of MOU expressly provides an option to the parties to pursue judicial remedies before the court of law. Learned senior counsel appearing for the petitioner has placed reliance on the following judgments:

1. **Raichurmatham Prabhakar v. Rawatmal Dugar, (2004) 4 SCC 766;**
2. **Jagdish Chander v. Ramesh Chander and others, (2007) 5 SCR 720; and**
3. **Perkinds Eastman Architects DPC and another v. HSCC (India) Ltd.**

7. Mr. Pant would also argue that in terms of section 12 (5) of Arbitration and Conciliation Act 1996, Chief Secretary, who is also the Chairman of the State Rural Livelihood Mission, is ineligible to be appointed as an arbitrator regardless of any prior agreement entered into between the parties. For facility of reference, Section 12(5) of the Arbitration and Conciliation Act, 1996 and 7th Schedule of the Act is reproduced hereunder:

> **"12. Grounds for challenge---**
>
> ……………….
>
> ……………………..
>
> (5) Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject-matter of the dispute, falls under any of the categories

specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator."

THE SEVENTH SCHEDULE

[See section 12(5)] Arbitrator's relationship with the parties or counsel

1. The arbitrator is an employee, consultant, advisor or has any other past or present business relationship with a party.

2. The arbitrator currently represents or advises one of the parties or an affiliate of one of the parties.

3. The arbitrator currently represents the lawyer or law firm acting as counsel for one of the parties.

4. The arbitrator is a lawyer in the same law firm which is representing one of the parties.

5. The arbitrator is a manager, director or part of the management, or has a similar controlling influence, in an affiliate of one of the parties if the affiliate is directly involved in the matters in dispute in the arbitration.

6. The arbitrator's law firm had a previous but terminated involvement in the case without the arbitrator being involved himself or herself.

7. The arbitrator's law firm currently has a significant commercial relationship with one of the parties or an affiliate of one of the parties.

8. The arbitrator regularly advises the appointing party or an affiliate of the appointing party even though neither the arbitrator nor his or her firm derives a significant financial income therefrom.

9. The arbitrator has a close family relationship with one of the parties and in the case of companies with the persons in the management and controlling the company.

10. A close family member of the arbitrator has a significant financial interest in one of the parties or an affiliate of one of the parties.

11. The arbitrator is a legal representative of an entity that is a party in the arbitration.

12. The arbitrator is a manager, director or part of the management, or has a similar controlling influence in one of the parties.

13. The arbitrator has a significant financial interest in one of the parties or the outcome of the case.

14. The arbitrator regularly advises the appointing party or an affiliate of the appointing party, and the arbitrator or his or her firm derives a significant financial income therefrom. Relationship of the arbitrator to the dispute

15. The arbitrator has given legal advice or provided an expert opinion on the dispute to a party or an affiliate of one of the parties. 16. The arbitrator has previous involvement in the case. Arbitrator's direct or indirect interest in the dispute

> 17. The arbitrator holds shares, either directly or indirectly, in one of the parties or an affiliate of one of the parties that is privately held.
>
> 18. A close family member of the arbitrator has a significant financial interest in the outcome of the dispute.
>
> 19. The arbitrator or a close family member of the arbitrator has a close relationship with a third party who may be liable to recourse on the part of the unsuccessful party in the dispute.
>
> Explanation 1.—The term "close family member" refers to a spouse, sibling, child, parent or life partner.
>
> Explanation 2.—The term "affiliate" encompasses all companies in one group of companies including the parent company.
>
> Explanation 3.—For the removal of doubts, it is clarified that it may be the practice in certain specific kinds of arbitration, such as maritime or commodities arbitration, to draw arbitrators from a small, specialized pool. If in such fields it is the custom and practice for parties frequently to appoint the same arbitrator in different cases, this is a relevant fact to be taken into account while applying the rules set out above."

8. In the affidavit filed by learned counsel for the respondent Nos.2 & 3, Mr. Raman Sharma, it is stated that the MOU read with Sanction order and applicable DDU-GKY SOPs and Guidelines provide a structured and comprehensive mechanism for imposition of penalty and for filing of an appeal against such penalty being imposed. It is stated that the Recovery Notice dated 10.11.2025 along with SF 10.3E, Notice of Penalty arose from project closure assessment upon expiry of tenure and non-achievement of mandatory placement benchmarks as stipulated under DDU-GKY Guidelines. According to the respondents, the earlier penalty related to submission of forged documents for financial disbursal, where recovery pertains to independent assessment of non-performance and failure to meet sanctioned milestones at closure stage. It has further been stated that the contractual relationship between the parties is governed by the Sanction Order and the MOU. While the MOU contains an arbitration

clause for adjudication of disputes, therefore, present writ petition is not maintainable. It is further stated that Clause 10.03.02 clearly provides for suo motu imposition of penalty and filing of appeal against such penalty. For facility of reference, Clause 10.3.2 of the DDU-GKY Guidelines is reproduced hereunder:-

> "10.3.2 Suo Motu Imposition of Penalty
>
> Notwithstanding the process delineated in 10.3.1 above, in exceptional cases (for example, diversion or funds, fraudulent practices, persistent defaults, actions that affect the safety of candidates), the competent authority may decide to impose penalty suo motu on a PIA. In such cases, penalty will be imposed directly on the PIA without issuance of any Alert or Notice. However, the PIA will retain the right to appeal against the penalty, and the appeal process will be followed as described above."

9. Heard learned counsel for the parties and perused the material on record.

10. Learned senior counsel appearing for the petitioner has fairly conceded that in terms of clause 10.3.2 (supra) there is a provision for filing of an appeal against the impugned penalty notice dated 10.11.2025, before the competent authority, as such petitioner-company would not press upon relief No. (i) and (iii) made in the prayer part of the writ petition, for that petitioner would avail the remedy available in terms of clause 10.3.2 of DDU-GKY Guidelines. **Ordered accordingly**.

11. As far as appeal preferred by the petitioner against the penalty order dated 22.04.2022 by way of an Appeal dated 13.05.2022 is concerned, the same is presently pending before the Appellate Authority on account of petitioners continued failure to comply with the mandatory directions issued during the appellate proceedings. The earlier penalty imposed in the year 2022 was on account of submission of forged placement

documents for the purpose of financial dispersal, however, the subsequent action taken in the year 2025, which culminated into issuance of notice of imposition of penalty and recovery notice dated 10.11.2025, arose out of a separate and an independent assessment conducted at the time of project closure, upon expiry of project tenure and evaluation of overall performance.

12. Learned counsel for the respondent has stated that the MOU dated 30. 08. 2018, read with the sanction order dated.19.07.2018, the applicable DDU – GKY SOPs and guidelines provide a structured and comprehensive in-house mechanism under clause 9 of the Arbitration and applicable laws, as such on account of alternate efficacious remedy available to the petitioner, writ petition under Article 226 would not be maintainable.

13. Clause 9.1 of the MOU clearly states that if the parties agreed that any controversy, claim or dispute arising in connection with the MOU, which can't be resolved amicably, shall be referred to chief secretary, who is also the Chairman of the Executive Council of Jammu & Kashmir State Rural Livelihood Mission of the State, whose decision shall be final and binding.

14. Mr Pant, learned counsel for the petitioner states that clause 9 of MOU doesn't amount to arbitration agreement within the meaning of section 2(b) and section 7 of the arbitration and conciliation act, 1996.

15. Learned counsel for the petitioner as well as respondent has relied upon **M/s Alchemist** (supra) wherein it has been held that the clause of Arbitration must show a clear, unequivocal intention to arbitrate, to be

valid under section 7 of the Arbitration and Conciliation Act, 1996. The use of word arbitration is not sufficient if the process lacks finality or binding effect. The complaining party shall seek amicable settlement remedies inter se rather than a definitive submission of arbitration, failing, which the party has the option to proceed to the Courts of law. It has further been held that the individuals designated as arbitrator under the clause are the respective chairman of the parties themselves. Ordinarily, Arbitration contemplates reference to a neutral third party, a process supported by Section 12 with Seventh Schedule of Arbitration and Conciliation Act, which ipso facto disqualify the Clause from being an arbitration agreement. Since this may be waived under the proviso to section 12 (5), it remains a significant circumstance in discerning the true intention of the parties. It is further held that once the view has been taken that there is no agreement, then the only option available to the parties is to approach Courts of law.

16. Mr Pant has also relied upon judgment of Chhattisgarh High Court, in case titled **Shri Om Prakash, Bansal Educational and Social Welfare trust v. Union of India of India, 2023:CGHC:33076**, which has been upheld by Supreme Court. Paragraph No.18 of the judgment, is relevant for our purposes and set out below:

> "18. From perusal of Clause 8 of the MOU, it is evident that there is no clause for referring the disputes between the parties to the Arbitrator and it only provides for a mechanism to resolve the dispute amicably and the order passed by the State Government shall be binding. The judgments cited by the learned counsel for the applicant are not applicable to the facts of the case in hand and on the contrary, the

> decision rerndered by the Supreme Court in **Mahanadi Coalfields Ltd. and another v. IVRCL AMR Joint Venture, 2022 SC Online SC 960**."

17. Supreme Court in **Central Organisation for Railway Electrification v M/S ECI SPIC SMO MCML (JV) A Joint Venture Company, 2024 INSC 857,** which is a constitutional Bench judgment, has held that unilateral, appointment of a sole arbitrator is biased and violate principles of independence and impartiality. In public-Private contracts, excessive control by government body over arbitrator's selection violates the constitutional right of equality under article 14 of the Constitution of India. This judgment has considered the Perkins Eastman (supra) and **TRF Limited. V/s Energo Engineering Projects Limited, (2017) 7 SCR 409** wherein it was held that the test to determine the possibility of bias is directly relatable to the interest the person appointing an arbitrator has in the outcome of the dispute, a person having an interest in the dispute cannot and should not have any role in charting out any course of dispute resolution by having the power to a point and arbitrator. Paragraph No.56 of the **Central Organization for Railway Electrification** (supra) is relevant and is reproduced hereunder:

> "56. With these findings and observations, I summarise my conclusions as follows:
>
> I. Dispute resolution through arbitration encompasses two independent yet interdependent principles: contractual freedom as party autonomy and statutory obligation as duty to constitute an independent arbitral tribunal.
>
> II. Party autonomy in making of an arbitration agreement is an essential feature of arbitration. It commences with choosing the members of the arbitral tribunal, extends to the procedure that would apply for its conduct, and

concludes with the method by which an award could be challenged before a court. It is thus a brooding and guiding spirit of arbitration. Party autonomy is sufficiently incorporated in the Arbitration Act, along with a restraint on judicial intervention.

III. The moment parties choose arbitration over ordinary civil proceedings for dispute resolution, their duty to establish an independent and impartial tribunal arises. The substitution of arbitration in place of civil courts as an exception under Section 28 of the Contract Act is only for a forum and not for contracting out of the most essential feature of a dispute resolution, i.e., independence and impartiality must exist in every forum. This essential feature is the inviolable public policy consideration under Section 23 of the Contract Act from which the parties cannot opt out. Arbitration agreements which are not compliant of this public policy consideration are void under Section 23 of the Contract Act. Thus, there is a statutory incorporation of duties of the parties to the arbitration agreement.

IV. If an arbitration agreement is considered by the court as not enabling constitution of an independent and impartial tribunal, any submission that the said agreement is a binding contract, or it is in exercise of party autonomy is not tenable as such an agreement will be against public policy and as such not an enforceable contract.

V. In view of the statutory incorporation of these duties, it is not necessary to apply public law principles evolved in constitutional and administrative laws.

Sourcing these duty obligations from Contract Act and Arbitration Act is important to maintain the integrity of the party autonomy and restraint of judicial institutions.

VI. The power to ensure that the arbitration agreement is compliant of the public policy requirement of establishing an independent and impartial tribunal is always of the Court. This principle is recognised and statutorily incorporated in the Contract Act and the Arbitration Act. It is the duty of the court to ensure that the arbitration agreement inspires confidence and it will enable establishment of an independent and impartial arbitral tribunal.

VII. Neither public policy considerations under the Contract Act or the Arbitration Act restrain the parties to the arbitration from maintaining a panel of arbitrators in any

> manner. However, arbitration agreements enabling one of the parties to unilaterally constitute arbitral tribunal do not inspire confidence of independence and may violate the public policy requirement of constituting an independent and impartial tribunal. The court will, therefore, scrutinise the agreement and hold them to be invalid if it considers it appropriate.
>
> VIII. The occasion for the court to examine the constitution of the independent and impartial tribunal under the arbitration clause will arise when one of the parties makes an application under Sections 11, 14 or 34. It is not permissible for the court to give an advance declaration that all such agreements which enable one of the parties to unilaterally constitute the arbitral tribunal would be void per se. No two agreements are the same and it is necessary for the court to examine the text and context of the agreement.
>
> IX. All applications pending before the courts challenging the unilateral appointment clauses will be disposed of applying the test as to whether such a clause enables establishment of an independent and impartial tribunal."

18. From the above, it becomes quite clear that Clause 9 of the MOU is only an in-house mechanism subject to the consent of the parties, as such is not covered in terms of section 2(b) and Section 7 of the Arbitration and Conciliation Act of 1996. The appointment of chief secretary as arbitrator who is also the chairman of the executive council of Jammu & Kashmir State Rural Livelihood Mission of the State is also not in consonance with Section 12 (5) of the Act read with Seventh Schedule of Arbitration and Conciliation Act of 1996.

19. Petitioner company has availed remedy under Article 226 of the Constitution of India against Union of India, through Ministry of Rural Development, However, as per clause 9.3, in case of judicial remedy against Ministry of Rural Development case has to be filed in New Delhi only. With the consent of learned counsel for the petitioner respondent no.

1 i.e. Union of India through Ministry of Rural Development (Respondent No.1) is deleted from the array of respondents.

20. Registry is directed to update memo of parties and delete prayer no (i) and (iii) made in the writ petition.

21. In view of above, this Court is of the opinion that in absence of arbitration clause strictly in terms of Section 2(b), Section 7 and Section 12 (5) read with Seventh Schedule of Arbitration and Conciliation Act, 1996, this writ petition is maintainable under Article 226 of the Constitution of India.

22. Learned counsel for official respondent is directed to file reply within four weeks. Registry to issue notice to private respondent.

23. Meanwhile, subject to objections till next date of hearing, impugned recovery notice dated 10-11-2025, shall remain stayed. Alteration/ vacation/ modification on motion.

24. List on 29th June, 2026.

(Moksha Khajuria Kazmi)
Judge

JAMMU
30.04.2026
Manan

Whether the order is speaking : Yes/No
Whether the order is reportable : Yes/No