Sr. No. 08

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CJ Court

Case: Arb P No. 6/2026
Date of pronouncement: 06.03.2026
Uploaded on : 09.03.2026

TPF Getinsa Eurostudios SL Joint Venture with Rodic Consultants Pvt. Ltd. ….. Appellant/Petitioner(s)

Through: Mr. Laksh Puri, Advocate.

Vs

Jammu Smart City Ltd. ….. Respondent(s)

Through: Mr. Anchit K Sharma, Advocate.

CORAM: HON'BLE THE CHIEF JUSTICE

ORDER

(ORAL)

01. The present petition has been filed under *Section 11(6) of the Arbitration and Conciliation Act, 1996* (for short '**the Act'**) seeking appointment of the nominee arbitrator of the respondent in respect of the Contract dated 06.03.2019.

02. The petitioner is an unincorporated Joint Venture of TPF GETINSA EUROSTUDIOS SL ('Lead Member') with Rodic Consultants Private Limited in association with fortress infrastructure advisory services, which was formed for the purpose of the Contract Agreement.

03. The respondent-Jammu Smart City Ltd. (**JSCL**) issued a Request for Proposal (**RFP**) for Selection of Project Management Consultant (**PMC**) to Design, Develop, Manage and Implement Smart City Projects under SMART CITY MISSION (**SCM**) in Jammu under Reference No. 01 JSCL dated 02.11.2017, with the last date of submission of bid 01.12.2017, extended up to 09.12.2017 and lastly up to 26.12.2017 vide extension notice dated 09.12.2017 and the last date for opening of bid (online) was extended to 29.12.2017. A letter of intent (**LOI**) dated 28.01.2019 requesting (i) the acceptance of the LOI within 7 days from the date of issuance, and, (ii)

submit PBG for 10% of Contract value within 14 days, was issued in favour of petitioner and a Contract Agreement dated 06.03.2019 was entered into between the parties for providing Project Management Consultancy Services for a total contract amount of ₹38,587,314/- (excl. GST) for a period of 36 months, valid up to 06.03.2022, validating the said PBG up to 01.05.2022 unless a claim or a demand in writing was made upon the petitioner, in default, all of the Petitioner's liability under the said PBG was to cease.

04. On mobilizing its team, the petitioner commenced the work and in terms of Clause 6.3(a) of General Conditions of Contract (**GCC**), the monthly invoice accumulated to ₹7,00,17,958/- (incl. GST) for the services provided, were furnished to the respondent for its payment under Clause 6.3(b) of the GCC. The respondent on 29.10.2019 made a partial payment of ₹2,00,00,000/- (incl. GST). As the contract agreement was expiring on 06.03.2022, the petitioner sought extension, which was granted up to 06.04.2022. Subsequently, the respondent established a committee comprising of its officials, to facilitate handing over and taking over the project records from the petitioner and in compliance, the petitioner demobilized all its resources from the Project Office except Team Leader. It is submitted that after holding the multiple meetings between the parties the total outstanding amount was summed up at ₹39,64,44,222/- (incl. GST), out of which payment of ₹ 22,54,01,360/- was released. The petitioner was constrained to issue 'Notice of Dispute' dated 26.02.2024 in accordance with Clause 8.1 of the Contract Agreement requesting for release of ₹28,86,15,134/-. Before responding to the said Notice, respondent scheduled a meeting under the Chairmanship of CEO, JSCL on 22.03.2024 and vide letter dated 04.03.2024 directed the petitioner to resubmit/ validate the PBG before any request for any subsequent payments. In addition, in terms of letter dated 19.07.2024, raising allegations and assertions, the petitioner firm was declared ineligible for the payment demanded. After making repeated requests for release of the payment, a meeting was convened in this regard on 04.10.2024, without yielding any resolution. Accordingly, vide 'Notice for Invocation of Arbitration' dated 22.10.2024, the Petitioner sought reference of the dispute to arbitration, with respect to:

(i) non-release of Performance Bank Guarantee valued at ₹3,85,87,314/-,

(ii) non-payment of outstanding invoices amounting to ₹17,10,42,863/- (incl. GST) and

(iii) cost of funds calculated at 18% per annum on the delayed payments, amounting to ₹12,90,43,858/-.

Additionally, Hon'ble Justice Shri. D K Jain (Former Judge, Supreme Court of India) was also nominated to be appointed as Arbitrator on behalf of the petitioner.However, despite notice, the respondent failed to nominate their Arbitrato0r or respond. Owing to the rejection of the requests, the petitioner has been constrained to approach this Court in terms of Section 11(6) of the Act. Hence, the petition at hand.

05. Before proceeding any further, it would be apposite to refer to the arbitration clause of the agreement which reads as under:

> "***8. <u>SETTLEMENT OF DISPUTES</u>***
>
> ***8.1 Amicable Settlement:*** *Performance of the contract is governed by the terms & conditions of the contract, in case of dispute arises between the parties regarding any matter under the contract, either Party of the contract may send a written Notice of Dispute to the other party. The party receiving the Notice of Dispute will consider the Notice and respond to it in writing within 30 days after receipt. If that party fails to respond within 30 days, or the dispute cannot be amicably settled within 60 days following the response of that party, clause GC 8.2 shall become applicable.*
>
> ***8.2 Arbitration:*** *In the case of dispute arising upon or in relation to or in connection, with the contract between the Employer and the Consultant, which has not been settled amicably, any party can refer the dispute for Arbitration under (Indian) Arbitration and Conciliation Act, 1996. Such disputes shall be referred to an Arbitral Tribunal consisting of 3 (three) arbitrators, one each to be appointed by the Employer and the Consultant, the third arbitrator shall be chosen by the two arbitrators so appointed by the parties and shall act as Presiding Arbitrator. In case of failure of the two arbitrators, appointed by the parties to reach a consensus regarding the appointment of the third arbitrator within a period of 30 days from the date of appointment of the two arbitrators, the Presiding arbitrator shall be appointed by the Secretary of the Ministry/ Department. The Arbitration and*

Conciliation Act, 1996 and any statutory medication or re-enactment thereof, shall apply to these arbitration proceedings."

06. Pursuant to the notice issued by this Court on 13.02.2026, the respondent had caused appearance and sought time to file response. However, no objections/ response have been filed.

07. However, learned counsel for the respondent vehemently disputes/denies the claim that is sought to be made by the petitioner being misconceived and untenable. Further, he submits that from a bare analysis of the case set out in the petition, it is apparent that no arbitral dispute exists between the parties.Thus, the petition deserves outright rejection.

08. That being so, even learned counsel for the petitioner, on instructions, submits that Hon'ble Ms. Justice R. Banumathi, Former Judge Supreme Court of India, may be appointed as an arbitrator on behalf of the petitioner.

09. But, as always, he fairly concedes the existence of the arbitration clause, as aforesaid, and its invocation by the petitioner vide notice dated 22.10.2024.Accordingly, having argued the matter at some length, he, on instructions, submits that let Hon'ble Mr. Justice Tashi Rabstan, Former Chief Justice of High Court of Jammu & Kashmir and Ladakh, be appointed as the nominee Arbitrator on behalf of the respondent. Subject, however, with liberty to the respondent to raise all permissible pleas and objections before the Arbitral Tribunal to be appointed under Clause 8.2 **(ibid.**)

10. In the wake of the position sketched out above and in terms of the statements made by the learned counsel for the parties, as also the clause contained in the agreement itself, **Hon'ble Ms. Justice R. Banumathi, Former Judge Supreme Court of India,**is appointed as the nomineee Arbitrator on behalf of the petitioner. And similarly **Hon'ble Mr. Justice Tashi Rabstan, Former Chief Justice of High Court of Jammu & Kashmir and Ladakh,** is appointed as the nominee Arbitrator on behalf of the respondent.

The above two arbitrators shall appoint the third arbitrator who shall act as the Presiding Arbitrator.

12. Thereupon, the duly constituted Arbitral Tribunal shall, in accordance with the Act, proceed with the reference. And, to make an award within the

time provided in the Act itself after charging the prescribed fee along with incidental expenses to be shared by the parties. The respondent is at liberty to raise all the objections as regards the subject matter before the Arbitral Tribunal.

8. Disposed of accordingly.

9. Registry to communicate the copy of this order to the learned arbitrators.

(ARUN PALLI)
CHIEF JUSTICE

Jammu
06.03.2026
Sunita.

SUNITA KOUL
2026.03.09 10:37
I attest to the accuracy and
integrity of this document