



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 25th DAY OF JUNE 2021

THE HON'BLE MR. JUSTICE N.SATHISHKUMAR

O.P.No.376 of 2021

In the matter of Arbitration and
Conciliation Act, 1996

and

In the matter of Arbitration
dispute between EQX
ANALYTICS PRIVATE
LIMITED and FULLERTON
INDIA CREDIT COMPANY
LIMITED under Service
Agreement dated 06.12.2018
("Agreement").

EQX Analytics Private Limited,
Having Its Registered Officer at
60, Third Floor, Arjun Nagar,
Kotla Mubarakpur, New Delhi – 110 003.

. . . Petitioner

Versus

Fullerton India Credit Company Limited,
Having its Registered Officer at :
Megh Towers, 3rd Floor, Old No.307,
New No.165, PH Road, Maduravoyal,
Chennai, Tamil Nadu – 600 095.

. . . Respondent

Original Petition praying that this Hon'ble be pleased to appoint an
arbitrator in accordance with Clause 18 of the Service Agreement dated
<https://hcservices.ecourts.gov.in/hcservices/>
06.12.2018 to adjudicate upon the disputes that have arisen between the



parties in relation to the Agreement as outlined in the notices dated 08.12.2020.

This Original Petition coming on this day before this court for hearing in the presence of Ms.M.Vidya, Advocate for the Petitioner herein and Mr. Balasubramani Velan, Advocate for the respondent herein, and upon reading the petition and the affidavit of Bhupesh Goyal filed herein, and this court having observed that the Service Agreement entered between the parties has a specific clause for having the arbitration proceedings at Mumbai, the present petition before this Court is not maintainable and the same is liable to be dismissed.

It is ordered as follows:-

That the O.P.No.376 of 2021 be and is hereby dismissed.

2. That the petitioner herein shall be at liberty to approach the High Court of Mumbai for appointment of an Arbitrator.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 25th DAY OF JUNE 2021.

Sd./-

ASSISTANT REGISTRAR (O.S.II)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.



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SK-24.08.2021

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O.P. No.376 of 2021

ORDER :-
DATED : 25.06.2021

THE HON'BLE MR.JUSTICE
N.SATHISHKUMAR

FOR APPROVAL:25.08.2021

APPROVED ON: 25.08.2021



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THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 25.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

O.P.No. 376 of 2021

EQX Analytics Private Limited,
Having Its Registered Officer at
60, Third Floor, Arjun Nagar,
Kotla Mubarakpur, New Delhi – 110 003.

. . . Petitioner

Versus

Fullerton India Credit Company Limited,
Having its Registered Officer at :
Megh Towers, 3rd Floor, Old No.307,
New No.165,PH Road, Maduravoyal,
Chennai, Tamil Nadu – 600 095.
Respondent

. . .

PRAYER : Petition filed under Sections 11 [6] [a] of the Arbitration and Conciliation Act, 1996 to appoint an arbitrator in accordance with Clause 18 of the Service Agreement dated 06.12.2018 to adjudicate upon the disputes that have arisen between the parties in relation to the Agreement as outlined in the notices dated 08.12.2020.

For Petitioner : Ms.M.Vidya

For Respondent : Mr.Balasubramani Velan

ORDER



the dispute that had arisen out of the Service Agreement dated 06.12.2018 entered between the parties.

2. The main objection of the respondent is that when the parties had specifically agreed in the agreement entered between the parties that the arbitration proceedings shall be at Mumbai and when there is a specific clause in the agreement to that above effect, the arbitration has to be held at Mumbai.

3. A perusal of the Service Agreement entered between the parties indicate that the parties have agreed to have arbitration at Mumbai. When the parties having agreed to have arbitration proceedings at Mumbai, now it cannot be said that they can have arbitration at Chennai. Clause 18 of the Service Agreement entered between the parties read as follows :

“In the event of disputes, controversies, differences, of opinion and claims out of or in connection with this Agreement or in any way relating hereto or any term, condition or provision herein mentioned or the construction or interpretation thereof or otherwise in relation hereto, the parties shall first endeavor to settle such differences, disputes, claims or questions by friendly consultation and failing such settlement, the same shall be resolved by arbitration by a sole arbitrator to be appointed by both parties. Such arbitration shall be held in accordance with the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof for the time being in force and shall be held



in Mumbai and be conducted in English Language”

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4. When the parties have agreed to a particular place as the seat of arbitration, entire process of arbitration has to be commenced in the Court where the parties agreed in the agreement. In this regard, the Honourable Apex Court in a judgment in BGS SGS Soma JV Vs. NHPC Limited reported in 2020 [4] Supreme Court Cases 234 has held as follows :

“Given the fact that if there were a dispute between NHPC Ltd. and a foreign contractor, clause 67.3(vi) would have to be read as a clause designating the “seat” of arbitration, the same must follow even when sub-clause (vi) is to be read with sub-clause (i) of Clause 67.3, where the dispute between NHPC Ltd. would be with an Indian Contractor. The arbitration clause in the present case states that “Arbitration Proceedings shall be held at New Delhi/Faridabad, India...”, thereby signifying that all the hearings, including the making of the award, are to take place at one of the stated places. Negatively speaking, the clause does not state that the venue is so that some, or all, of the hearings take place at the venue; neither does it use language such as “the Tribunal may meet”, or “may hear witnesses, experts or parties”. The expression “shall be held” also indicates that the so-called “venue” is really the “seat” of the arbitral proceedings. The dispute is to be settled in accordance with the Arbitration Act, 1996 which, therefore, applies a national body of rules to the arbitration that is to be held

