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A No. 1408 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-04-2026

CORAM

THE HON'BLE MR JUSTICE SENTHILKUMAR RAMAMOORTHY

**A No. 1408 of 2026
IN C.S(COMM DIV) NO. 78 OF 2026**

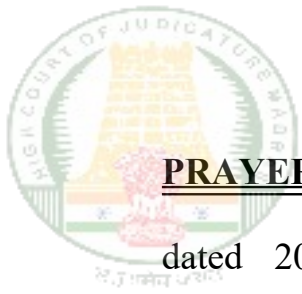
Marketsofl Analytical Marketing Services Private
Limited
Ram Nivas Apart-7, 1st Floor Old No.79, New
No.82, DRT Ranga Road, Mylapore, Chennai- 600
004 Rep. by its Director Mr. Mahadevan Jayaraman

..Applicant(s)

Vs

1. GanitScience Artificial Intelligence and
Analytics (OPC) Private Limited
Having Registered Office at
Xerago Towers, Plot No 80 and 93,
Developed Plots, Industrial Estates,
Perungudi, Chennai-600096
Represented by its Director
Mr. Jayaram Krishnamoorthy Iyer
2. Mahadevan Jayaraman
Residing at Villa B, 2413 7, Dr. Radhakrishnan
Nagar Main Road, Thiruvannamiyur, Chennai-
600 041
3. Pranion Technology Ventures Private Limited
No.73/30, Flat SD, Block 3 Indus Amber
Apartments West Jones Road, Saidapet, Chennai
600 015

..Respondent(s)



PRAYER: Refer the Suit to arbitration under the Terms of Use Agreements dated 20.12.2020, 01.04.2021, 01.04.2022, 01.04.2023, 01.04.2024 and 01.04.2025

For Applicant(s): M/s.K.Harishankar

For Respondent(s): Mr.T.Mohan, Senior Advocate
for M/s.B.Arvind Srevatsa for R1 / Plaintiff
Mr.Vijay Narayan, Senior Advocate
for M/s.Cibi Vishnu for D2 / R2
Mr.N.C.Ramesh, Senior Advocate
for Mr.G.Dhyaneshwar for D3 / R3

ORDER

The plaintiff seeks remedies in respect of alleged breach of the agreement to provide software as a service. Remedies have been prayed for both against the first and second defendants in respect of such breach. Three parties have been arrayed as defendants and the third defendant is said to be the provider of the private cloud wherein the client data is stored.

2. The first defendant has applied under Section 8 of the Arbitration and Conciliation Act, 1996 to refer the dispute for arbitration.

3. Learned counsel for the first defendant submits that services were provided to the first defendant under a contract between the plaintiff and the



said defendant. Without prejudice to the contention that the terms of use included *inter alia* at pages 36 to 45 of the plaintiff's typed set Volume-I was not provided to the first defendant earlier and the person who signed the same on behalf of the first defendant was not duly authorised in that regard, he submits that the said agreement provides for resolution of disputes by arbitration. He adds that the third defendant is the provider of private cloud services and has been added as a party to circumvent the arbitration agreement. He points out that the definition of client in the agreement is wide and embraces any legal entity that accepts the agreement terms. As regards the use of the word 'Court' in clause 12.1, learned counsel contends that it would be applicable only in relation to a dispute involving third parties and not to a dispute between the plaintiff and the first defendant. He emphasizes the fact that the clause states that the dispute shall be finally solved by arbitration.

4. In response, learned senior counsel for the plaintiff submits that the agreement does not contain the unequivocal decision by parties to resolve disputes through arbitration. In the absence thereof, he submits that this Court should proceed with the suit and not refer parties for arbitration. Relying on the judgment of the Supreme Court in *Alchemist Hospitals Ltd. v. ICT Health Technology Services India Pvt. Ltd.*, 2025 SCC OnLine SC 2354, particularly paragraphs 17, 23 and 24 thereof, he submits that the Supreme Court held that the mere use of the word arbitration in a clause of an agreement is not decisive.



He also relied on the judgment in *BGM and M-RPL-JMCT (JV) v. Eastern Coalfields Limited*, 2025 SCC OnLine SC 1471, particularly paragraphs 30 and 31 thereof, to contend that an agreement that merely provides an option for dispute resolution by arbitration does not constitute sufficient reason to refer parties to arbitration.

5. The dispute resolution clause in the agreement between the plaintiff and the first defendant is set out below:

“12. GENERAL PROVISIONS

12.1. GOVERNING LAW AND JURISDICTION

In the event of a dispute, controversy or claim arising out of or in relation to these Agreement Terms, including but not limited to the formation, validity, breach or termination thereof, the parties shall attempt to solve the matter amicably in mutual negotiations, in the event a mutually acceptable resolution cannot be reached within a reasonable time, either party will be entitled to seek all available remedies, including legal remedies subject to the terms and conditions set forth below. Should an amicable settlement between parties not be possible, the dispute shall be finally solved in court or by arbitration as designated in the State of Tamil Nadu, India.

If any part of this provision is ruled to be unenforceable, then the balance of this provision shall remain in full effect and construed and enforced as if the portion ruled unenforceable were not contained herein.

The Client may only resolve disputes with GanitScience on an



individual basis and may not bring a claim as a plaintiff or a class member in a class, consolidated, or representing action.”

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6. As is evident from the above, this clause provides that the “dispute shall be finally solved in Court or by arbitration as designated by the State of Tamil Nadu, India”. Thus, it appears that parties have been given the option of resolving disputes that could not be amicably settled by approaching Court or through arbitration. Courts of law derive authority either from the Constitution or statute. By contrast, an arbitral tribunal derives authority from the contract between the parties. The decision to opt out of the public Court system and resolve disputes through a private forum should therefore be categorically expressed in the agreement. In *Alchemist Hospitals*, the Supreme Court dealt with clause 8.2 of the Contract between the parties. Such clause provided for dispute resolution through arbitration and also provided that parties complaining against such decision may seek remedies through a court of law. In that contractual context, the Supreme Court concluded that the mere use of the word arbitration is not decisive. It was also held that there should be an element of finality for an arbitration clause to be binding. In *BGM and M-RPL-JMCT (JV)*, the Supreme Court dealt with a clause which, in relevant part, stipulated that “the redressal of the dispute may be sought through the Arbitration and Conciliation Act, 1996 as amended by amendment Act of 2015”. In that context, the Supreme Court held as under in paragraphs 30 and 31:



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“30. The argument of the learned counsel for the appellant is that clause 13 provides option to the parties, which include any of one of the parties, to seek dispute resolution through arbitration and, therefore, it is nothing but an arbitration clause. According to him, use of the word “may” in clause 13 does not provide choice to the parties to agree, or not to agree, for arbitration, rather it is a choice given to either of the parties to seek a settlement through arbitration and, therefore, when one party exercises the option, the other party cannot resile from the agreement. In that sense, according to him, clause 13 is an arbitration agreement.

31. We do not agree with the aforesaid submission because clause 13 does not bind parties to use arbitration for settlement of the disputes. Use of the words “may be sought”, imply that there is no subsisting agreement between parties that they, or any one of them, would have to seek settlement of dispute(s) through arbitration. It is just an enabling clause whereunder, if parties agree, they could resolve their dispute(s) through arbitration. In our view, the phraseology of clause 13 is not indicative of a binding agreement that any of the parties on its own could seek redressal of inter se dispute(s) through arbitration. We are, therefore, of the considered view that the High Court was justified in holding that clause 13 does not constitute an arbitration agreement.”

7. Although the arbitration clause in the case at hand does not mirror the clause in the two judgments referred to above, the overarching principle appears to be that the contract should contain the unequivocal intention to adjudicate



disputes through arbitration and such process should not be optional. As noticed earlier, the arbitration clause in this case provides an option to parties to resolve disputes through Court or by arbitration.

8. Besides, the plaintiff has asserted in the plaint, *inter alia* at paragraph 35, that the second defendant is actively taking steps to transition the proprietary material of the plaintiff to a related party, namely, MI Marketing Services Limited in which the second defendant and his wife are Directors. As recorded at the outset, the plaintiff seeks relief not only against the first defendant but also against the second defendant. Whether the second defendant has indicated the intention to be bound by the agreement between the plaintiff and the first defendant, which contains the arbitration clause, is debatable. The third defendant is clearly not a signatory to the agreement containing the alleged arbitration clause.

9. Considering the above facts and circumstances, no case is made out to refer the dispute for arbitration. Therefore, this application is dismissed without any order as to costs.

06-04-2026
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SENTHILKUMAR RAMAMOORTHY, J.

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