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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

COMMERCIAL ARBITRATION PETITION NO. 409 OF 2021

Ingram Micro India Private Limited

....Petitioner

V/s.

Mohit Raghuram Hegde

....Respondent

Mr. Kedar Wagle a/w Mr. Sagar Wagle i/b Riddhi A. Pandit and Sujit Keshri
for Petitioner.

Mr. Chaitanya Sanjay Patel i/b Meghraj and Associates for Respondent.

CORAM : K.R.SHRIRAM, J.

DATED : 29th JULY 2021

P.C. :

1. This is a petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 (said Act). Petitioner is an unpaid vendor having sold various computers to respondent including Mac Book against invoices raised. Petitioner has raised a total 11 invoices for Rs.2,48,40,593/-. Copies of the invoices can be found at Exhibit B to Exhibit B-10 annexed to the petition. Though respondent has been appearing from 28/06/2021 no reply has been filed. Mr. Patel i/b Meghraj and Associates for Respondent states that he will file vakalatnama within one week. Mr. Patel states that his senior is unwell since three months and hence reply could not be filed. Petition has been lodged on 06/04/2021 and respondent had appeared first time on 28/06/2021. Therefore, the reason given for not even filing an appearance or reply is unacceptable.

2. Invoices have been raised on Creative Infotech and its sole proprietor is respondent. Invoices raised by petitioner on its face provides for arbitration. So also the terms and conditions printed overleaf on the invoice provides that the courts in Mumbai shall have exclusive jurisdiction and further states that Arbitrator shall be appointed by petitioner and the Arbitration shall be conducted as per the provisions of the Act. Therefore, I am satisfied that there is Arbitration Agreement as covered by the invoices.

3. Mr. Wagle took me through the documents annexed to the petition from which it does appear that respondent has admitted that an amount of about Rs.2.50 Crores is due and payable to petitioner. The total principal amount payable under the invoices is Rs.2,48,40,003/-. The invoices also provide for interest @ 2% per month, i.e., 24% per annum. Interest as on 26/03/2021 works out to Rs.1,75,76,273/-. Respondent had also issued a cheque on 16/05/2019 for Rs.2,48,40,003/- which came to be dishonoured for insufficiency of funds. Petitioner has commenced prosecution under Section 138 of the Negotiable Instrument Act which is still pending. From the communication annexed to the petition it is also evident that respondent is in deep financial crisis and even banks are not supporting respondent.

4. In the circumstances, I am satisfied that grave prejudice will be caused to petitioner if protective orders are not passed. Hence, I hereby

grant prayer clause (c) and (d) which reads as under :

(c) In the alternative to prayer clause a) above, pending arbitral proceedings and passing of the award and its execution, the Hon'ble High Court be pleased to restrain the Respondent, Respondent employee/servants, agents and/or any person/persons claiming through or under the Respondent, by an Order and injunction, restraining them from in any manner dealing with, by way of sale, transfer, alienation, mortgage or parting with property or in any other way creating any third party rights in the said property and assets (moveable/immoveable) or interest therein of the Respondent.

(d) Pending the hearing and final disposal of the arbitration proceedings between the Petitioner and the Respondent, this Hon'ble Court may be pleased to direct the Respondent/Said concern to disclose on oath and/or an affidavit, the property (moveable/immoveable) belonging to them.

5. Respondent shall file an affidavit within two weeks from today annexing thereto copies of his and of Creative Infotech audited Balance Sheet, Profit and Loss Account and annual returns filed for the period beginning 01/04/2018 to 31/03/2021, bank account details, immovable assets, vehicles and other movable assets etc., to be certified as true copy by his Chartered Accountant. For the year ending 31/03/2021, if unaudited, respondent shall certify it as true copy.

6. Mr. Wagle states he will take steps to commence arbitration proceeding by issuing notice of invocation of arbitration within four weeks from today.

7. Petition stands disposed. The rights of petitioner to seek the remaining reliefs in the petition from the arbitrator is kept open.

(K.R. SHRIRAM, J.)