IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION APPLICATION NO.694 OF 2025

Ingram Micro India Private Limited ....Applicant
V/S
Vinod Murlidhar Mulchandani
Prop of AAR VEE Computers ....Respondent

WITH
COMMERCIAL ARBITRATION APPLICATION NO.695 OF 2025

Ingram Micro India Private Limited ....Applicant
V/S
Vinod Murlidhar Mulchandani
Karta of Vinod Murlidhar Mulchandani HUF,
Trade Name G K Web ....Respondent

Ms. Drishti Ojha i/b M/s. Legal Prism *for the Applicant.*
Mr. Sarosh Damania with Ms. Madhura Shah *for Respondent.*

CORAM : SANDEEP V. MARNE, J.
DATE : 7 JANUARY 2026.

P.C.:

1. These Petitions are filed under Section 11 of the Arbitration and Conciliation Act, 1996 (**Arbitration Act**) seeking appointment of a sole Arbitrator to adjudicate the disputes and differences between the Applicant and the Respondents.

2. The Applicant is engaged in the business *inter alia* of distribution and sale of IT hardware and software products,

telecommunication and office automation equipment and other allied services. The Respondents in both the Petitions are also engaged in the business of sale and purchase of IT products. The disputes between the parties have arisen on account of alleged non-payment of invoice amounts by the Respondents to the Applicant towards sale and supply of IT related products by the Applicant to the Respondents.

3. The Applicant relies upon clause 12 printed on reverse of tax invoices which reads thus:

> 12. The transaction under this invoice, shall be subject to laws of India and the Courts in Mumbai shall have exclusive jurisdiction. Any dispute pertaining to transaction under this invoice shall be referred to sole arbitrator appointed by mutually by the parties and the decision of the said Arbitrator shall be final and binding on the parties. The Arbitration shall be conducted as per the provisions of Arbitration and Conciliation Act, 1996 and the seat and venue of Arbitration shall be at Mumbai, India.

4. As the invoices remained unpaid legal notices under Section 21 of the Arbitration Act were issued on 25 September 2025 referring to clause 12 printed on the invoices. The notices are replied by the Respondents on 23 October 2025 *inter alia* stating in paragraphs 2 and 6 as under:

> 2. The invoices relied upon by your Client are unilateral documents generated by them and were never countersigned or acknowledged by our Client in acceptance of the alleged "Terms & Conditions" or the so-called arbitration clause printed overleaf or online. Hence, the alleged arbitration agreement is denied in toto.
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> 6. Our Client categorically denies any fraudulent intent or wilful default. Payments were withheld due to disputes regarding delivery discrepancies, delayed supplies, and debit-note adjustments, details of which are being collated and will be furnished in due course.

5. Thus Respondents described invoices as unilateral documents which are not countersigned or acknowledged by the Respondents in

acceptance of alleged terms and conditions printed thereon including the arbitration clause.

6. However, perusal of the tax invoices would indicate that e same bear acknowledgments including stamps of the Respondents. It also appears that some of the invoices are also paid by the Respondents.

7. The law with regard to enforcement arbitration clause printed on an invoice is no more *res integra.* A Single Judge of this Court (Bharati Dangre, J.) in ***Bennett Coleman & Company Limited vs. MAD (India) Pvt. Ltd.,*** Commercial Arbitration Application No.211 of 2022, decided on 22 December 2022 has considered various judgments on the issue and has held in paragraphs 10 to 15 as under:

> 10 It, therefore, becomes necessary to determine whether the present clause contained in a tax invoice, would be construed as an 'arbitration clause'. The Bombay High Court in case of Lewis W. Fernandez vs Jivatlal Partapshi And Ors. AIR 1947 Bom 65, dealing with the Old Arbitration Act, on being confronted with the issue of existence of arbitration agreement contained in a contract note issued after delivery of the goods, agreeing to submit disputes to arbitration in terms of bye-laws of an association, clearly ruled that the conduct of the parties was relevant and determinative factor. It repelled the contention that in order to construe an arbitration agreement, the agreement must be signed by both the parties. The view of a Division Bench presided over by Rankin, C.J, in case of Radha Kanta Dass vs Baerlein Bros. Ltd AIR 1929, Cal. 97, was gainfully referred to and it read as under :-
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> > "In my judgment, the law is the other way. The Arbitration Act of 1889 and the Indian Registration Act, for the best of good reasons have not required that the agreement to submit should be signed by both the parties"
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> This decision is relied upon by the Delhi High Court in Swastik Pipe Ltd vs. Dimple Verma, (ARBP 100/2021), where it was held as under :
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> > "8. Having heard the learned counsel for the parties, the issue which arises is, whether the tax invoice stipulating an arbitration clause as referred to above can bind the parties and consequently the dispute inter-se be referred to arbitration. The issue is no more res-integra in view of the Judgment of the Division Bench of this court in the case Scholar Publishing House Pvt. Ltd. (supra), wherein this Court in

paragraphs 5 and 6 held as under:

> 5. Learned Senior Counsel for the respondents submitted that the appeal lacks in merit. He relied on the observations in Newsprint Sales Corporation (supra), as well as the decisions reported as Lewis W. Fernandez v Jivatlal Partapshi & Ors AIR 1947 Bom 65 and Ram Chandra Ram Nag Ram Rice & Oil Mills Ltd v Howrah Oil Mills Ltd. and Anr. AIR 1958 Cal 620. The respondent/claimants also urge that the history of transactions between the parties clearly showed that the appellant had accepted by his conduct, the invoices which contained the arbitration clause, and on most occasions honored them. It was therefore, not open for him to contest the existence of an arbitration agreement. Reliance was also placed on the findings and observations of the arbitrator in the award published by him.
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> 6. In the award, while dealing with the question of whether the parties had entered into an arbitration agreement, the arbitrator held as follows:
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> "................The bills filed with the petition clearly show that there is an arbitration clause between the parties and the claimant is the member of the Paper Merchant Association. The bills/invoices issued by the claimant have been duly received and acknowledged by the defendants. The claimant and defendants are working together since 1996 and the opposite party has made payment against the supplies made by the claimant prior to the arising of the present controversy. From 1996 when the business dealings were started the claimant and defendants were duly placing orders and were receiving goods and was
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> making the payments. The bills issued were having arbitration clause as per which this Arbitrator has got power to adjudicate the dispute. The rates and terms mentioned on all the bills have been acknowledged and accepted by the defendants. The statements of accounts have been signed by the Director and confirmed by the defendants. The Debit Notes for interest issued by the claimant were accepted and the required TDS was deducted and TDS certificates were issued. The defendants have never made any objection with regard to the bills, rates and terms or the adjudication of the dispute by this tribunal, thus, it can be easily said that defendants have nothing to say in their defence..........."

11 The Delhi High Court also make a reference to the decision of the Apex Court in case of MTNL vs. Canara Bank, Civil Appeal 6202-6205 of 2019, where the existence of a valid arbitration agreement, came to be reiterated in the following words:-

> 9.2. The arbitration agreement need not be in any particular form. What is required to be ascertained is the intention of the parties to

settle their disputes through arbitration. The essential elements or attributes of an arbitration agreement is the agreement to refer their disputes or differences to arbitration, which is expressly or impliedly spelt out from a clause in an agreement, separate agreement, or documents/correspondence exchanged between the parties.

9.3. Section 7(4)(b) of the 1996 Act, states that an arbitration agreement can be derived from exchange of letters, telex, telegram or other means of communication, including through electronic means. The 2015 Amendment Act inserted the words "including communication through electronic means" in Section 7(4)(b). If it can prima facie be shown that parties are ad idem, even though the other party may not have signed a formal contract, it cannot absolve him from the liability under the agreement.

9.4. Arbitration agreements are to be construed according to the general principles of construction of statutes, statutory instruments, and other contractual documents. The intention of the parties must be inferred from the terms of the contract, conduct of the parties, and correspondence exchanged, to ascertain the existence of a binding contract between the parties. If the documents on record show that the parties were ad idem, and had actually reached an agreement upon all material terms, then it would be construed to be a binding contract.

The meaning of a contract must be gathered by adopting a common sense approach, and must not be allowed to be thwarted by a pedantic and legalistic interpretation.

By relying upon the aforesaid observation, the Delhi High Court with reference to the tax invoices raised against which the payments were made, held that it amounted to an arbitration clause, particularly when the petitioner has not disputed receipt of the tax invoices. Holding that the respondent cannot disown the clear stipulation in the tax invoice with regard to any dispute being referred to arbitration, an arbitrator came to be appointed.

12 A single Judge of this Court (Justice G.S. Kulkarni) on 30/8/2022 in case of Ingram Micro India Pvt. Ltd vs. Mohit Raghuram Hegde, Proprietor Creative Infotech (Commercial Arbitration Application No.235/2021) was dealing with a purported arbitration clause contained in the sale terms and conditions accepted by the respondent, being available on it's website and a specific contention, that the arbitration clause is contained in the invoices raised by the applicant upon the respondent, which are accepted and acted upon. The applicant contended before the Court that in pursuance of acceptance of such conditions which are uniformly applicable to all the customers of the applicant, the respondent entered into regular dealings and accordingly, from time to time, purchase

orders were placed by the respondent for supply of products as specifically set out in the purchase orders. The applicant also contended that these purchase orders were required to be executed as per the terms and conditions as accepted by the respondent which contained an arbitration agreement where the parties agreed to the jurisdiction clause.

Dealing with such a clause where the dispute had arisen under the unpaid invoices which have been received, acknowledged and acted upon by the respondent, which contained the terms of supply and also a process for being referred to arbitration, reliance was placed upon the decision of the Delhi High Court in Scholar Publishing House Pvt.Ltd vs. M/s.Khanna Traders, ILR (2013) V Delhi 3343 and the Supreme Court in Inox Wind Ltd. Vs. Thermocables Ltd, in Civil Appeal No.19 of 2018 (Arising out of SLP (Civil) No.31049 of 2016.

13 After analysing the factual situation, in the backdrop of the decision of the Apex Court in case of Inox Wind Limited vs. Thermocables Ltd (supra), where the Supreme court had held that a general reference to a standard form of contract by one party will suffice for incorporation of arbitration clause, and where the purchase order mention that supply would be as per terms, mentioned therein, contained in standard terms and conditions, which contain arbitration clause, which was not disputed. The Supreme Court had set aside the High Court's order appointing the Tribunal. After making reference to the scope of the powers to be discharged by this Court u/s.11(6) read with sub-section 6-A, the learned Single Judge has observed as under :-

> "Applying such principles the endeavour of the Court would be to examine whether an arbitration agreement exists between the parties. It is quite clear to me and as noted above, that there is sufficient documentary material to discern that there exists an arbitration agreement between the parties, namely, that the respondent subscribing to the KYC and agreeing to the "terms and conditions of sales" on the website of the applicant to be the pre-condition for any transaction with the applicant can be entered. It also appears to be quite clear that the parties, on such terms and conditions were having business transactions for a substantial period of time. Further in discharge of its contractual obligations, the respondent had issued a cheque of Rs.2,48,40,003/- in favour of the applicant which came to be dishonoured. There is no dispute in regard to such cheque being issued by the respondent, as to whether the cheque was issued under the invoices in question or otherwise is a subject matter of evidence in the adjudicatory process. It also clearly appears from the grounds as raised by the respondent in filing an appeal against the order dated 29 July, 2021 passed by the co-ordinate Bench of this Court in Commercial Arbitration Petition No. 409 of 2021 (supra), that it is not the respondent's case that there "does not exist" an arbitration agreement between the parties, when the learned Single Judge in paragraph 2 of the order has clearly

observed that the invoices raised by the 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.

14 Another decision upon which Mr.Kamat has laid his hands is, in case of Skanska Cementation India Ltd Vs. Bajranglal Agrawal, 2002 SCC Online Bom, 1190, decided on 13/12/2002. The facts involved as narrated in the petition would reveal that the petitioners had placed purchase orders on the respondents and the dispute arose as regards the balance unpaid amount and the interest thereon. The petitioners contended that there was no Arbitration clause in the purchase order and when the respondent supplied the goods, it amounted to a contract which had come into force and it was invoked by the provisions of the terms and conditions of the purchase order, which contemplate that in case of any dispute, the decision of the Company shall be final and binding. Merely because the petitioners have signed some documents before the Arbitral Tribunal, was argued, not to confer jurisdiction on the Tribunal. Para-6 prefaces the background and in para-8, on analyzing the factual scenario, the discussion focus upon whether there existed an arbitration agreement. I deem it expedient to reproduce the same.

> "8 The main contention as raised on behalf of the petitioners is based on Clauses 1, 10 and 11 of the purchase order. The purchase order by itself would not be a contract between the parties. It is only on accepting the terms of the purchase order would a contract come into being. Clause 1 of the purchase order does provide that execution of this order shall be deemed to be acceptance of the conditions stated hereinabove. Clause 11 of the purchase order provided that the respondents could draw attention of the company to conditions which they find unacceptable. By the terms contained in the delivery challan the petitionercompany is deemed to have been informed that the condition that their decision was final was not acceptable and that the dispute if any should be referred to Arbitration of the Bharat Chamber of Commerce. As such even though the purchase order was received, the respondents did not accept the purchase order and drew the attention of the company that the term of resolving the dispute was not acceptable by sending the goods under delivery challan which contained Clauses 4 and 7. Clause 4 made it clear, that it is in the nature of counter offer by the respondents to the petitioners for accepting the goods. In other words the respondents had not agreed to Clause 10 of the purchase order. Even otherwise considering Clause 11 the respondent had specifically informed the petitioners that they were sending the goods under the delivery challan with a different condition. The petitioners accepted the goods under the challan without protest. As such pursuant to the counter offer or counter proposal the terms of the delivery stood amended even considering Clause 11 of the purchase order and accordingly the contract apart from the terms

> and conditions of the purchase order which were agreed by the parties would contain additional terms under which the goods were dispatched and accepted by the petitioners. The petitioners also sent invoices. Under the invoices again there was an Arbitral clause. The invoices were accepted, money paid under the invoices without protest. To my mind, therefore, the contract between the parties clearly contemplated a provision for Arbitration, The order dated 1st August, 2001 of the Arbitral Tribunal has taken into account these terms in the delivery challan. To my mind, therefore, the issue having been in issue before the Arbitral Tribunal and the tribunal having taken decision, which it was capable of taking considering the construction of the terms the said view cannot be said to be a view impossible of being taken.

> 15 Since in the present case, it can be clearly seen that the parties have acted upon the invoices and there was no denial of the invoices raised by the applicant, the clause contained in the invoices which clearly stipulate a reference to arbitration, deserve to be construed as an arbitration clause. The decision of this Court in case of Concrete Additives (supra) is delivered in the peculiar facts of the case and the law being well crystallized to the effect that any document in writing exchanged between the parties which provide a record of the agreement and in respect of which there is no denial by the other side, would squarely fall within the ambit of Section 7 of the Arbitration and Conciliation Act, 1996 and would amount to an arbitration clause...

8. In the present case also, parties have acted upon the invoices. Respondent has acknowledged the invoices and has also made part payments in pursuance thereof. In that view of the matter, the clause would clearly fall within the ambit of Section 7 of the Arbitration Act. In my view therefore, there is valid arbitration agreement between the parties.

9. Mr. Damania, the learned counsel appearing for the Respondent submits that the entire liability to make payment by the Respondents has already been discharged and relies on averments made in paragraph 6 of the Criminal Complaint filed by the Applicant in the Court of Metropolitan Magistrate. However, perusal of averments in

paragraph 6 of the said complaint would indicate that Respondents had issued cheques towards discharge of legally enforceable financial liability and that the cheques got dishonoured. It therefore cannot be contended by any stretch of imagination that there is any admission on the part of the Applicant of discharge of liability. In any event, this is an issue pertaining to the merits of the case which cannot be gone into in inquiry under Section 11 of the Arbitration Act.

10. In that view of the matter, the objections raised by the Respondents deserve to be rejected and the Applications deserve to be made absolute by making appointment of the Arbitral Tribunal.

11. Accordingly I proceed to pass the following order:

(A) Ms. Apurva Thipsay, an Advocate of this Court is hereby appointed as Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of the Franchise Agreement referred to above. The contact details of the Arbitrator are as under:

Office Address:-	Chambers of Dr. Birendra Saraf, 302, Oval House, 3rd Floor, Kala Ghoda, Fort, Mumbai.
Mobile No.:-	9892806541
Email ID:-	apurva.thipsay@gmail.com

(B) A copy of this order be communicated to the learned sole Arbitrator by the Advocates for the Applicant within a period of one week from the date of upload of this order. The Applicant shall provide the contract and communication particulars of the parties to the Arbitral Tribunal alongwith a copy of this order.

(C) The learned sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12 (1) of the Arbitration Act to the parties within a period of two weeks from receipt of a copy of this order.

(D) The parties shall appear before the learned sole Arbitrator on such date and at such place as indicated by her, to obtain appropriate direction with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc.

(E) The sole Arbitrator shall be entitled to the fees prescribed under the Bombay High Court (Fee Payable to Arbitrators) Rules, 2018 and the arbitral costs and fees of the Arbitrator shall be borne by the parties in equal portion and shall be subject to the final Award that may be passed by the Tribunal.

12. All issues on merits are expressly kept open to be agitated before the Arbitral Tribunal appointed as above.

13. With the above directions, Commercial Arbitration Applications are allowed and **disposed of**. All rights and contentions of parties on merits are expressly kept open.

(SANDEEP V. MARNE, J.)