AGK

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

COMM ARBITRATION APPLICATION (L) NO.19208 OF 2026

Ingram Micro Platform Technology India Private Limited ... Applicant

Vs.

Creator Economy Tech Private Limited ... Respondent

ATUL GANESH KULKARNI

Digitally signed by ATUL GANESH KULKARNI
Date: 2026.09.01 11:53:11 +0530

Mr. Sudhir Kumar with Mr. Siddharth Kumar, Mr. Chetan Yadav, and Ms. Mayuri Thakkar i/by M/s. R.V. & Co., for the Applicant.

Ms. Sakshi Mehley with Ms. Revati Alhat for the Respondent.

CORAM : AMIT BORKAR, J.

RESERVED ON : AUGUST 28, 2026.

PRONOUNCED ON : SEPTEMBER 1, 2026

JUDGMENT:

1. The present Application is filed under Section 11 of the Arbitration and Conciliation Act, 1996. By this Application, the Applicant seeks appointment of a Sole Arbitrator to decide the disputes between the Applicant, Ingram Micro Platform Technology India Private Limited ("IMPTIPL"), and the Respondent, Creator Economy Tech Private Limited ("CETPL"). The disputes relate to the AWS cloud infrastructure services used by the Respondent. According to the Applicant, nine invoices for the

said services, amounting in total to Rs. 7.19 Crores, are still unpaid by the Respondent.

2. The facts which have resulted in filing of the present Application, as stated by the Applicant, are as follows. Ingram Micro India Private Limited ("IMIPL"), being an AWS Distributor, and the Respondent entered into the Ingram Micro Private Pricing Agreement dated 24 July 2023 ("Ingram-Creator PPA"). The said agreement was for the period from 1 August 2023 to 31 July 2026. It provided for the agreed AWS pricing, discounts, spending commitments and payment obligations concerning AWS cloud infrastructure services. On 5 September 2023, the Applicant asked the Respondent to provide KYC and onboarding documents. On 9 October 2023, the Respondent provided the signed KYC documents and onboarding information to the Applicant. Thereafter, in September 2023, the Applicant started providing AWS cloud infrastructure services to the Respondent under the AWS distribution arrangement. From September 2023 to May 2024, the Respondent and extensively used the AWS cloud infrastructure and its resources through the Applicant. This included computational and storage services such as AWS S3 and EC2. The services were used on the basis of actual metered consumption. During this period, the Respondent did not raise any protest or dispute regarding the pricing, access, quality or performance of the services. The total AWS usage during this period was approximately USD 753,579.97. Thereafter, between 24 February 2024 and 10 July 2024, the Applicant raised nine (09) invoices against the Respondent for the said AWS cloud services. The total

amount of these invoices was Rs. 7,19,91,420.07/-. Each of these invoices contained the Applicant's Sales Terms and Conditions and contained an arbitration agreement providing that disputes would be referred to arbitration with Mumbai as the seat of arbitration. Between 9 April 2024 and 24 August 2024, the due dates mentioned in the said invoices expired after completion of the agreed 45-day credit period. Even though the Respondent had received and used the services and had received the invoices, it did not pay any part of the outstanding amount. Between March and May 2024, the Applicant and IMIPL contacted the Respondent through E-Mails and other commercial communications for payment of the outstanding dues. The Respondent, through its Director/CEO, acknowledged that amounts were outstanding and sought time to revert with a payment plan. However, such payment plan was never acted upon.

3. On 29 March 2024, the Respondent, through its Director/CEO Mr. Sameer Sadana, replied to the payment demand made by the Applicant and sought time till 1 April 2024 to respond regarding payment of the dues. According to the Applicant, this showed that the Respondent was aware of and acknowledged the outstanding liability. At the same time, the Respondent did not dispute either the invoices or the services provided. During 2024, AWS raised corresponding bills upon IMIPL for the cloud services consumed by the Respondent. These bills were approximately Rs.7,16,33,358.10/-. IMIPL paid these amounts to AWS., according to the Applicant, because of the Respondent's failure to make payment, the Applicant and its group continued to remain

commercially and financially exposed. On 9 August 2024, as the Respondent continued to remain in default, the Applicant and IMIPL issued a formal Demand Letter. By this letter, payment of Rs.7,19,91,420.07/- was demanded towards the nine overdue invoices. The Respondent neither replied to the demand nor made payment. A demand was issued on 13 August 2024, again calling upon the Respondent to clear the outstanding liability. The Respondent did not reply to this demand and did not make the payment. Because the Respondent continued to remain in default and, according to the Applicant, committed a material breach of its contractual obligations, the Applicant and IMIPL jointly issued a Termination-cum-Demand Notice dated 27 March 2025. By the said notice, the commercial arrangement was terminated and the Respondent was called upon to pay, amongst other amounts, Rs. 8,89,58,804.98 towards the invoice dues, contractual interest and GST thereon, along with compensation and notice charges. The Respondent and its Directors did not reply to the said notice. Since the disputes and differences between the parties remained unresolved, the Applicant invoked arbitration by its Notice dated 10 March 2026. In the said notice, the Applicant relied upon the arbitration agreements contained in the invoices and the Sales Terms and Conditions and proposed names for appointment of a Sole Arbitrator.

4. After the Respondent received the Arbitration Notice, the statutory period of 30 days expired in April 2026. Even during this period, the Respondent did not reply to the notice, did not dispute the claims and did not agree to the constitution of the arbitral

tribunal., the appointment of the tribunal by mutual agreement could not take place. When the present proceedings were filed on 1 June 2026, the Applicant calculated the amount recoverable from the Respondent at approximately Rs. 11,30,33,367.01/-. This amount included the principal outstanding amount of Rs.7,19,91,420.07/- together with contractual interest and GST thereon. The Applicant has filed the present Application under Section 11 of the Arbitration and Conciliation Act, 1996 seeking appointment of an Arbitrator by this Court.

5. Mr. Sudhir Kumar, learned Advocate for the Applicant, submits that under the AWS cloud services distribution arrangement, Ingram Micro India Private Limited ("IMIPL"), as an authorised AWS Distributor, facilitated the supply of AWS cloud infrastructure services through the Applicant. The Applicant acted as the Distribution Seller/Reseller for supplying the services to the Respondent CETPL. According to him, pursuant to the commercial understanding between the parties and the Private Pricing Agreement dated 24 July 2023 entered into between IMIPL and the Respondent, the Applicant supplied AWS cloud services to the Respondent from September 2023 till May 2024. These services were used for running the Respondent's AppX platform. The Respondent used the services and obtained the benefit of such usage. It used the AWS cloud infrastructure extensively and did not raise any protest or dispute in respect thereof till date. For this metered and undisputed usage, the Applicant raised nine invoices amounting in total to Rs. 7,19,91,420.07/-. Each invoice contained the contractual terms of the Applicant and contained an arbitration

agreement providing for arbitration with Mumbai as the seat. According to the Applicant, the contractual relationship between the parties was governed by the arbitration agreements contained in the invoices issued by the Applicant and by the Applicant's online Sales Terms and Conditions available at www.imonline.co.in. These terms were incorporated into the transactions and, according to the Applicant, were accepted and acted upon by the Respondent without any protest. Each invoice provided as follows:

> "Acceptance of Goods and Services under this invoice or making part or full payment or only acknowledgment of this invoice is treated as acceptance of Terms & Conditions printed overleaf and acceptance of Sales Terms & Conditions of Brightpoint available www.imonline.co.in."

6. The invoices contained the following arbitration agreement:

> "Brightpoint India Private Ltd. and the customer agree, in case of any dispute arising out of or in connection with this transaction shall be referred to a sole arbitrator appointed by Brightpoint India Private Ltd. and his decision shall be final and binding on both the parties."

7. In addition to the above, the Applicant relies upon Clause 16 of the 'INGRAM MICRO INDIA PRIVATE LIMITED - SALES TERMS AND CONDITIONS'. According to the Applicant, the said clause was incorporated through the invoices and was available on its website. Clause 16 provides, amongst other things, as follows:

> "Any dispute arising out of or in connection with this Agreement and the matters contemplated therein shall be settled amicably between the Parties. In the event that dispute/s cannot be settled amicably, the same shall be

> referred to the urbitration of a sole arbitrator appointed by mutual consent of Parties. The arbitration shall be conducted in accordance with the provisions of the Arbitration and Conciliation Act, 1996. The arbitration proceedings shall be conducted in English and the venue and the seat of the arbitration shall be Mumbai, India."

8. On the basis of the above provisions, the Applicant submits that there is a valid and enforceable arbitration agreement between the parties in respect of the transactions in question. According to the Applicant, Mumbai is the agreed seat and venue of arbitration. According to the Applicant, all the invoices were delivered to the Respondent. None of the invoices was disputed by the Respondent on the issue of quality or particulars of the services. The Respondent did not dispute the terms and conditions contained in the invoices. The Applicant submits that despite repeated oral and written demands, reminder e-mails, demand notices and the Termination-cum-Demand Notice dated 27 March 2025, the Respondent failed to pay the outstanding dues. The Respondent did not dispute the invoices or deny the Applicant's claims. It continued to withhold the payment even after the contractual credit period had expired. The Applicant invoked arbitration by its Arbitration Notice dated 10 March 2026 and proposed appointment of a Sole Arbitrator in terms of the arbitration agreements referred to above. According to the Applicant, the notice was duly served upon the Respondent. However, the Respondent did not reply to the notice and did not agree to the constitution of the arbitral tribunal within the statutory period. The Applicant submits that disputes and

differences have arisen between the parties and those disputes are required to be decided through arbitration. Hence, the Applicant has filed the present Application under Section 11(6) of the Arbitration and Conciliation Act, 1996 seeking appointment of a Sole Arbitrator by this Court.

9. Ms. Sakshi Mehley, learned Advocate for the Respondent, submits that the Applicant is relying upon the contractual provision printed at the foot of the front leaf of the invoices issued by it, which reads as follows:

> "Brightpoint India Private Limited and the customer agree, in case of any dispute arising out of or in connection with this transaction shall be referred to a sole arbitrator by Brightpoint India Private Limited and his decision shall be final and binding on both the parties."

10. The Applicant is relying upon Clause 16 of the "Ingram Micro India Private Limited-Sales Terms and Conditions" which, according to the Applicant, is available on its website www.imonline.co.in. Learned Advocate for the Respondent submits that the Sales Terms and Conditions link on the "Applicant's" website www.imonline.co.in is not working., the Respondent is relying upon Exhibit-1 reproduced by the Applicant. According to the Respondent, a reading of Exhibit-1 shows that Clause 16, which the Applicant claims was available on its website, is stated to be binding upon Ingram Micro India Private Limited. Ingram Micro India Private Limited is a separate legal entity from the Applicant., according to the Respondent, a clause applicable to a third party cannot bind the Applicant and the Respondent. The

Applicant consequently cannot rely upon the said clause for invoking arbitration against the Respondent because the clause does not bind the Applicant and the Respondent.

11. The Respondent submits that the Applicant's reliance upon the arbitration clause printed at the foot of the front leaf of the invoices is not proper. According to the Respondent, such a clause could become valid and binding only if the parties had acted upon the invoices without protest. In the present case, the Respondent submits that it never acknowledged the invoices and never acted upon them., there was no acceptance or acknowledgment of the invoices. According to the Respondent, there is nothing on record to show that it had ever accepted or acknowledged the invoices issued by the Applicant. It is an admitted position that no payment was made by the Respondent against any of the invoices. The Respondent submits that there was no agreement or purchase order executed between the parties., merely printing an arbitration clause on invoices and unilaterally issuing such invoices, when there is no agreement or purchase order between the parties, cannot bind the Respondent.

12. On the issue of jurisdiction, learned Advocate for the Respondent submits that Clause 16 of the "Ingram Micro India Private Limited- Sales Terms and Conditions" cannot bind the Respondent because the present application has been filed by the Applicant, which is a separate legal entity., according to the Respondent, the only clause which the Applicant can rely upon for maintaining the present application is the clause printed at the

foot of the front leaf of the invoices. Without prejudice to the submission that even this clause is not binding upon the Respondent, the Respondent submits that even if this Court, while exercising jurisdiction as a reference court, were to hold that the validity of the arbitration clause has to be decided by the learned Arbitrator, this Court would still have no jurisdiction to entertain the present application. This is because the said clause does not specify the seat of arbitration.

13. The Respondent submits that, since the arbitration clause relied upon by the Applicant does not mention the seat of arbitration, the question of jurisdiction would have to be decided with reference to Sections 16 to 20 of the Code of Civil Procedure, 1908. According to the Respondent, jurisdiction would lie before the Court where the Respondent resides or carries on business, or where the cause of action has arisen. It is submitted that the Respondent resides and carries on its business in Delhi. The Respondent submits that no part of the cause of action has arisen within the jurisdiction of this Court. The Applicant's statement in paragraph 8 at page 40 of the application, that this Court has jurisdiction because the invoices were generated in Mumbai and the payments were contractually receivable by the Applicant, is disputed. According to the Respondent, merely generating invoices in Mumbai cannot confer jurisdiction upon a Court at a place where no cause of action has arisen. The Respondent submits that the present application is not maintainable and is liable to be dismissed.

14. In support of these submissions, learned Advocate for the Respondent has relied upon the judgment of the Delhi High Court in the case of *Faith Constructions vs. N.W.G.E.L. Church,* Arbitration Petition No.1318 of 2024, decided on 20 March 2025.

REASONS AND FINDINGS:

15. I have considered the present Application, the documents placed on record and the submissions made by Mr. Sudhir Kumar, learned Advocate for the Applicant, and Ms. Sakshi Mehley, learned Advocate for the Respondent. I have considered the arbitration clauses relied upon by the Applicant and the judgment of the Supreme Court in *Glencore International AG v. Sheee Ganesh Metals and Others,* 2025 SCC OnLine SC 1815. At this stage, this Court is not required to finally decide the money claim of the Applicant. The question to be seen is whether, from the material placed before the Court, there is prima facie an arbitration agreement between the parties and whether the requirements of law for appointment of an Arbitrator are fulfilled.

16. The main objection of the Respondent is that there is no arbitration agreement between the Applicant and the Respondent. It is submitted that there is no separate agreement or purchase order signed between the parties. It is submitted that the Respondent never accepted or acknowledged the invoices and no payment was made against any of the invoices., according to the Respondent, merely because an arbitration clause is printed at the bottom of the invoices, the same cannot become binding upon the Respondent. This submission cannot be considered only from the

fact that the invoices were not signed by the Respondent. The conduct of the parties in relation to the whole transaction is required to be seen. The Applicant's case is that the Respondent used the AWS cloud services from September 2023 to May 2024. It is the case of the Applicant that these services were used for running the Respondent's AppX platform and the charges were according to actual metered usage. At this stage, the Respondent has not placed any material to show that it had not used the AWS cloud services. The Applicant has relied upon the KYC and onboarding process and the continuous supply of the services., at this stage, it cannot be said that the invoices were prepared separately without there being any actual transaction or dealing between the parties.

17. The judgment in *Glencore International AG* is relevant on this issue. In paragraph 19, the Supreme Court has observed that "an arbitration agreement can be inferred even from an exchange of letters, including communication through electronic means, which provide a record of the agreement." The Supreme Court has held that merely because a contract is not signed, the arbitration agreement does not for that reason become ineffective, where the conduct of the parties shows that the terms of the contract were accepted and acted upon. The same principle is found in paragraph 27 of the said judgment. While considering the judgment in *Govind Rubber Limited*, the Supreme Court observed that a commercial document containing an arbitration clause should, where the circumstances permit, be understood in a manner which gives effect to the arbitration agreement. The Court

quoted paragraph 16 of that judgment as follows:

> "16. On reading the provisions it can safely be concluded that an arbitration agreement even though in writing need not be signed by the parties if the record of agreement is provided by exchange of letters, telex, telegrams or other means of telecommunication. Section 7(4)(c) provides that there can be an arbitration agreement in the exchange of statements of claims and defence in which the existence of the agreement is alleged by one party and not denied by the other. If it can be prima facie shown that the parties are at ad idem, then the mere fact of one party not signing the agreement cannot absolve him from the liability under the agreement. In the present day of e-commerce, in cases of internet purchases, tele purchases, ticket booking on internet and in standard forms of contract, terms and conditions are agreed upon. In such agreements, if the identity of the parties is established, and there is a record of agreement it becomes an arbitration agreement if there is an arbitration clause showing ad idem between the parties., signature is not a formal requirement under Section 7(4)(b) or 7(4)(c) or under Section 7(5) of the Act.
>
> ……..
>
> 23. It is clear that for construing an arbitration agreement, the intention of the parties must be looked into. The materials on record which have been discussed hereinabove make it very clear that the appellant was prima facie acting pursuant to the sale contract issued by the respondent. So, it is not very material whether it was signed by the second respondent or not."

18. The Respondent has relied upon the fact that no payment was made against the invoices. That fact cannot decide whether an arbitration agreement exists or not. Payment is one manner in

which a transaction may be accepted, but it is not the only manner. The Applicant's case is that the Respondent used the AWS services and received the benefit of those services., the conduct of the parties and the whole transaction have to be looked into. The issue cannot be decided only because no payment was made against the invoices. At the same time, there is substance in the objection raised by the Respondent regarding Clause 16 of the Sales Terms and Conditions of Ingram Micro India Private Limited. The Applicant before this Court is Ingram Micro Platform Technology India Private Limited. The Respondent has pointed out that Ingram Micro India Private Limited is a separate legal entity and that Clause 16 relied upon by the Applicant is stated to govern Ingram Micro India Private Limited. This objection cannot be ignored. From the material before the Court it cannot be finally held that Clause 16 of the website terms, constitutes an arbitration agreement between the present Applicant and the present Respondent.

19. There is difficulty in relying only upon the online Sales Terms and Conditions. The Respondent has stated that the concerned website link is not working and, it is relying upon the copy produced by the Applicant. The question as to when those terms were available on the website, in what manner they became part of the transaction and whether the Respondent accepted them may require examination of evidence. These questions need not be finally decided by this Court at the present stage.

20. The position is different when the arbitration clause printed on the invoices is considered separately. The Applicant relies upon

the particular clause printed on each invoice. It is not merely a reference to some other document. The clause provides as follows:

> "Brightpoint India Private Ltd. and the customer agree, in case of any dispute arising out of or in connection with this transaction shall be referred to a sole arbitrator appointed by Brightpoint India Private Ltd. and his decision shall be final and binding on both the parties."

21. The Applicant's case is that these invoices were raised for AWS services which were supplied to and used by the Respondent. The Applicant says that the invoices were sent to the Respondent. The Applicant relies upon the correspondence exchanged between the parties when payment of the outstanding amount was being demanded. The Respondent says that the invoices were never acknowledged. This submission requires consideration. The material relied upon by the Applicant shows that on 29 March 2024, Mr. Sameer Sadana, Director/CEO of the Respondent, replied to the payment demand and sought time till 1 April 2024 to respond regarding clearance of the dues. The Applicant relies upon this communication as showing acknowledgment of the outstanding liability. The Respondent may explain before the Arbitral Tribunal the exact meaning and effect of this communication and whether it amounted to acceptance of the invoices. However, for deciding the present Application under Section 11, this communication cannot be ignored.

22. Paragraph 24 of the judgment in *Glencore* is relevant in this regard. The Supreme Court has held that before the referral Court, only prima facie proof of existence of an arbitration agreement is required. The referral Court is not required to conduct a mini-trial

regarding the existence or validity of the arbitration agreement. The Supreme Court has observed as follows:

> "the referral Court is not the appropriate forum to conduct a mini-trial by allowing the parties to adduce evidence in regard to the existence or validity of an arbitration agreement, as the same ought to be left to the Arbitral Tribunal."

23. Therefore, at this stage, this Court has to see whether the material on record prima facie shows existence of an arbitration agreement. It is not necessary to finally decide every disputed factual issue at this stage.

24. The principle stated by the Supreme Court in paragraph 19 of *Glencore* is important. The Supreme Court has held that "the conduct of the parties in furtherance of the said contract" may show acceptance of the terms even where the document is not signed. In the present case, the Applicant relies upon several circumstances. These include on boarding of the Respondent, commencement of AWS services, continuous use of those services, actual metered consumption, demands for payment and the communication from the Director/CEO of the Respondent seeking time to deal with the outstanding amount. All these circumstances have to be considered together.

25. The Respondent has submitted that there was no purchase order between the parties. This fact cannot decide the issue. In commercial transactions, merely because there is no formal purchase order, it cannot be said that there was no contract. The conduct of the parties and the documents exchanged between

them have to be considered. The judgment in *Glencore* does not say that an arbitration agreement can exist only when there is a separately signed document containing signatures of both parties. Paragraph 28 of the said judgment, while referring to *Caravel Shipping Services Private Limited*, makes it clear that an arbitration agreement is required to be in writing, but it need not be signed. At the same time, the Applicant cannot seek appointment of an Arbitrator merely by producing invoices containing a unilateral arbitration clause, if there is otherwise no material showing any actual transaction or dealing with the Respondent. But the facts placed before this Court are different. The Applicant has placed its case that the AWS services were supplied and used for several months. The invoices relate to such usage. The Applicant has relied upon correspondence with the Respondent regarding the outstanding amount., there is sufficient material at this stage to satisfy the prima facie requirement.

26. The Respondent has objected to the use of the word "Brightpoint" in the arbitration clause printed on the invoices. According to the Respondent, the Applicant is a different legal entity and a clause referring to Brightpoint India Private Limited cannot constitute an arbitration agreement between the Applicant and the Respondent. This objection requires consideration. The clause printed on the invoice refers to Brightpoint India Private Limited, whereas the Applicant before this Court is Ingram Micro Platform Technology India Private Limited. This difference cannot be treated as having no relevance. However, at the stage of appointment of an Arbitrator, what is required to be seen is

whether this difference destroys the prima facie arbitration agreement. The Applicant relies upon the invoices as invoices raised upon the Respondent for the services in question. According to the Applicant, these invoices formed part of the transactions under which the services were supplied and charges were raised. The identity of the parties and the connection of the invoices with the actual transaction can be considered from the record. Whether the reference to "Brightpoint India Private Ltd." is an old description, trade name, printing mistake or reference to some other entity, and what effect it has upon the arbitration clause, can be considered by the learned Arbitral Tribunal if the Respondent raises such objection. To finally decide this issue at this stage would amount to conducting the mini-trial against which the Supreme Court has cautioned in paragraph 24 of *Glencore*.

27. The Respondent has relied upon the judgment of the Supreme Court in *M.R. Engineers and Contractors Pvt. Ltd.* v. *Som Datt Builders Ltd.* However, in the facts of the present case, the said judgment does not take the Respondent's case. As noticed in paragraph 25 of *Glencore*, that case related to a situation where reliance was placed upon a mere reference to another document for incorporating an arbitration clause. In the present case, the Applicant is not relying only upon a reference to another document. The Applicant relies upon an arbitration clause which is printed on the invoices themselves., the principle concerning mere reference to another document cannot, by, defeat the Applicant's case. The same position applies to the judgment in *NBCC (India) Ltd.* relied upon by the Respondent. Paragraph 26 of *Glencore*

records that an arbitration clause contained in another document cannot become part of the contract unless the parties accepted that clause. In the present matter, the Applicant's main case is that the invoices containing the arbitration clause were connected with the transactions between the parties and that the Respondent received and used the underlying services. Whether such conduct amounts to acceptance is a matter which can be examined by the learned Arbitral Tribunal after its constitution. The material available is sufficient for the limited prima facie finding required at this stage.

28. I now consider the objection of the Respondent regarding the seat of arbitration and the territorial jurisdiction of this Court. The Respondent submits that the arbitration clause printed at the bottom of the invoices does not mention any seat of arbitration. It is submitted that Mumbai cannot be treated as the seat merely because the Applicant says that the invoices were generated in Mumbai. The Respondent submits that, in absence of an agreed seat, jurisdiction would have to be decided with reference to Sections 16 to 20 of the Code of Civil Procedure, 1908 and, according to the Respondent, such jurisdiction would lie in Delhi.

29. There is some force in the submission that the arbitration clause printed on the invoice does not use the words “seat of arbitration”. The said clause reads:

> “Brightpoint India Private Ltd. and the customer agree, in case of any dispute arising out of or in connection with this transaction shall be referred to a sole arbitrator appointed by Brightpoint India Private Ltd. and his decision shall be final and binding on both the parties.”

30. On a plain reading, this clause provides for reference of disputes to a Sole Arbitrator. It does not separately state the place or seat of arbitration. Therefore, it would not be proper to hold that Mumbai is designated as the seat only from this clause. However, that is not the end of the matter. The Applicant has relied upon the Sales Terms and Conditions in which Clause 16 provides that "the venue and the seat of the arbitration shall be Mumbai, India." The Respondent disputes the applicability of those terms on the ground that the said terms are stated to be of Ingram Micro India Private Limited, whereas the Applicant is Ingram Micro Platform Technology India Private Limited. I have found that it would not be proper to finally decide the applicability of Clause 16 as though the issue has been tried on evidence. However, the existence of this clause cannot be ignored while considering the question whether the arbitration agreement provides any indication regarding the place of arbitration.

31. In this context, the judgment of the Supreme Court in *BGS SGS SOMA JV v. NHPC*, (2020) 4 SCC 234, is relevant. In paragraph 82, the Supreme Court considered the distinction between "venue" and "seat" of arbitration. The Supreme Court held that where the arbitration clause states that the arbitration proceedings are to be conducted or held at a particular place, such designation may show that the parties intended to anchor the arbitration proceedings to that place. The Court observed that the expression "arbitration proceedings" covers the proceedings as a whole and is not confined merely to individual hearings.

32. The Supreme Court has observed:

> "82. On a conspectus of the aforesaid judgments, it may be concluded that whenever there is the designation of a place of arbitration in an arbitration clause as being the "venue" of the arbitration proceedings, the expression "arbitration proceedings" would make it clear that the "venue" is really the "seat" of the arbitral proceedings, as the aforesaid expression does not include just one or more individual or particular hearing, but the arbitration proceedings as a whole, including the making of an award at that place."

33. The Supreme Court held that where the agreement provides that the arbitral proceedings "shall be held" at a particular place, such wording indicates that the parties intended to connect the entire arbitral proceedings with that place. In the present case, Clause 16 uses even clearer language by stating that "the venue and the seat of the arbitration shall be Mumbai, India."

34. The Respondent submits that Clause 16 cannot be relied upon because it is stated to be a clause contained in the terms of Ingram Micro India Private Limited, a separate legal entity. This objection has been considered. It may require determination on the basis of the evidence and the actual contract between the parties. But for deciding the present Application, the question is not whether this Court should finally declare Clause 16 to be binding upon the Respondent. The question is whether the objection regarding absence of seat is sufficient to defeat the present Application at the threshold. In my view, it is not.

35. The invoice arbitration clause provides for arbitration of disputes arising out of or in connection with the transaction. The Applicant has placed before the Court the Sales Terms and

Conditions containing a specific stipulation that "the venue and the seat of the arbitration shall be Mumbai, India." Thus, there is material on record which connects the arbitration with Mumbai. Whether Clause 16 is incorporated into the contract between the Applicant and the Respondent and whether the reference to "Brightpoint India Private Ltd." affects the enforceability of the arbitration clause are matters which can be raised before the learned Arbitral Tribunal. They do not remove the prima facie arbitration agreement.

36. The submission of the Respondent that, in the absence of an express seat in the invoice clause, the present Application must necessarily be filed only before a Court at Delhi cannot be accepted at this stage. The absence of the word "seat" in one part of the contract does not mean that Mumbai has no connection with the arbitration. The Applicant has pleaded that the invoices were generated in Mumbai and the payments were receivable by the Applicant at Mumbai. Whether these facts confer territorial jurisdiction is a matter which may require consideration on the complete material. But the Respondent cannot seek dismissal of the Application merely by treating the invoice clause in isolation and ignoring the other material relied upon by the Applicant.

37. The judgment in *BGS SGS SOMA JV* makes it clear that the Court has to examine the language used by the parties and their intention regarding the place to which the arbitral proceedings are anchored. In the present case, there is a material relied upon by the Applicant which states that "the venue and the seat of the arbitration shall be Mumbai, India." This is not a clause which

merely says that witnesses or parties are to meet at Mumbai or that individual hearings may take place there. The language refers to the “seat” of the arbitration., Therefore the contractual intention relied upon by the Applicant is to have the arbitral proceedings seated at Mumbai. I am unable to accept the Respondent's submission that the absence of the word “seat” in the arbitration clause printed on the invoice,, makes the present Application not maintainable before this Court. At the highest, there is a dispute regarding which contractual terms govern the parties and whether Clause 16 can be relied upon. That dispute is distinct from the question whether a prima facie arbitration agreement exists. The material before the Court is sufficient to hold that the Applicant has made out a prima facie case for reference of the disputes to arbitration.

38. The Respondent's reliance upon Sections 16 to 20 of the Code of Civil Procedure does not require dismissal of the Application. Those provisions cannot be applied by assuming at the threshold that there is no agreed arbitral seat when the Applicant has placed material referring to Mumbai as the seat. The question of the final effect of the contract can be considered in the arbitral proceedings in accordance with law.

39. Thus, on an overall consideration of the material, I find that the objection of the Respondent regarding the absence of a seat in the invoice arbitration clause does not defeat the present Application. The invoice clause contains a clear agreement to refer disputes arising out of the transaction to arbitration. The additional contractual material relied upon by the Applicant

identifies Mumbai as the venue and seat. In view of the principle stated by the Supreme Court in *BGS SGS SOMA JV*, the use of the expression "venue and the seat" is significant and, prima facie, indicates the parties' intention to anchor the arbitral proceedings at Mumbai. At the same time, the final question whether Clause 16 is incorporated into the contract between the present Applicant and Respondent, and the effect of the reference to "Brightpoint India Private Ltd." in the invoice clause, are left open. The learned Arbitral Tribunal will be free to consider those objections in accordance with law. At this stage, the Court is only required to determine whether the Applicant has crossed the prima facie threshold for appointment of an Arbitrator. In my view, it has.

40. I have considered the judgment relied upon by the Respondent in *Faith Constructions*. The said judgment cannot assist the Respondent at this stage because the present case has to be considered on the language of the contractual documents and the conduct of the parties placed before this Court. The Respondent seeks a final adjudication on the effect of the absence of an express seat in the invoice clause and on the applicability of Clause 16. Such detailed examination is not required at the stage of Section 11 when the material otherwise discloses a prima facie arbitration agreement. I find that the objection of the Respondent regarding seat and territorial jurisdiction does not warrant dismissal of the present Application. The Applicant has placed sufficient material showing a prima facie agreement to arbitrate and contractual material connecting the arbitration with Mumbai. The question of the final effect and enforceability of the individual

contractual clauses is left open for determination in accordance with law.

41. Another circumstance which is relevant is that the Applicant invoked arbitration by notice dated 10 March 2026 and proposed appointment of a Sole Arbitrator. According to the Applicant, the notice was duly served upon the Respondent. The Respondent did not agree to the proposed appointment., the process for appointment of the Arbitrator by consent did not result in constitution of the arbitral tribunal. The Applicant has consequently approached this Court under Section 11(6) for appointment of an Arbitrator.

42. It is true that the Applicant has claimed Rs.11,30,33,367.01/-, including interest and GST, and that the Respondent disputes the said claim. The Respondent disputes the contractual basis of the arbitration clause. However, these questions cannot be finally decided in the present proceedings. This Court is not required at this stage to decide whether all the nine invoices are finally payable, whether the interest amount has been correctly calculated, whether GST is recoverable or whether the Respondent is liable to pay the entire amount claimed. These matters can be considered in the arbitral proceedings.

43. On considering the entire material, I find substance in the objection of the Respondent regarding Clause 16 of the online Sales Terms and Conditions, to the limited extent that the Applicant has not, at this stage, established that the terms of Ingram Micro India Private Limited, which is stated to be a

separate legal entity, can bind the present Applicant and Respondent., I do not proceed on the basis that Clause 16 constitutes the arbitration agreement between the parties.

44. In view of the above discussion, the objections raised by the Respondent do not require dismissal of the present Application at this stage. The findings recorded herein are for the purpose of deciding the present Application. They shall not be treated as final findings upon the Applicant's monetary claim, the correctness of the nine invoices, the claim for interest and GST, or the final effect and enforceability of the disputed contractual terms. Those issues can be raised and decided in the arbitral proceedings in accordance with law. The finding of this Court is confined to the prima facie existence of an arbitration agreement and the requirement of constitution of the arbitral tribunal.

45. In view of the aforesaid, the present Application under Section 11 of the Act is disposed of in terms of the following order:

> A) Vikramjit Garewal, Advocate of this court is hereby appointed as the Sole Arbitrator to adjudicate upon the disputes and differences between the parties arising out of and in connection with the Agreement referred to above;
>
> Office Address:- 102, Oval House, British Hotel Lane, Kalaghoda, Fort, Mumbai – 400023.
>
> Cell No. 98193 17184
>
> Email ID: vikramjitgarewal@gmail.com

B) A copy of this Order will be communicated to the Learned Sole Arbitrator by the Advocates for the Applicant within a period of one week from today. The Applicant shall provide the contact and communication particulars of the parties to the Arbitral Tribunal along with 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 Act to the Advocates for the Applicant so as to enable them to file the same in the Registry of this Court. The Registry of this Court shall retain the said Statement on the file of this Applicant and a copy of the same shall be furnished by the Advocates for the Applicant to the Advocates for the Respondent;

D) The Learned Sole Arbitrator is requested to forward the statutory Statement of Disclosure under Section 11(8) read with Section 12(1) of the Act to the parties within a period of two weeks from receipt of a copy of this Order;

E) The parties shall appear before the Learned Sole Arbitrator on such date and at such place as indicated, to obtain appropriate directions with regard to conduct of the arbitration including fixing a schedule for pleadings, examination of witnesses, if any, schedule of hearings etc. At such meeting, the parties shall provide a valid and functional email address along with mobile

and landline numbers of the respective Advocates of the parties to the Arbitral Tribunal. Communications to such email addresses shall constitute valid service of correspondence in connection with the arbitration;

F) All arbitral costs and fees of the Arbitral Tribunal shall be borne by the parties equally in the first instance, and shall be subject to any final Award that may be passed by the Tribunal in relation to costs.

46. All issues on merits are kept open to be agitated before the arbitral tribunal appointed hereby.

47. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

(AMIT BORKAR, J.)