

Vidya Amin

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

COMMERCIAL ARBITRATION APPLICATION NO. 90 OF 2020

Khurana Constructions

.. Applicant

Vs.

IOT Infrastructure and Energy Services Ltd. & Ors. .. Respondents

Mr. Shailendra S. Kanetkar for the applicant.

Mr. Anish Khandekar for respondent nos.1 and 2.

CORAM : G.S. KULKARNI, J.

DATE : JUNE 8, 2022.

PC.:

1. I have heard learned counsel for the parties on this application filed under Section 11 of the Arbitration and Conciliation Act, 1996 (for short “the Act”). It is correctly objected on behalf of the respondents that the applicant has filed this application without issuing a notice invoking arbitration, which, in my opinion in the facts of the case, would be entitled to be issued by the applicant, in view of the arbitral award being set aside by this Court by its order dated 5 February, 2019, thereby holding that the arbitral tribunal was not correct in coming to the conclusion that Claim nos. 3 to 10 as made by the applicants were not arbitrable. Also Mr. Kanetkar, learned counsel for the applicant would be correct in his contention that when such finding was recorded by this Court in the Section 34 proceedings, the applicant was entitled to seek appointment of an arbitral tribunal. However, for such purpose the sine qua non was an invocation of the arbitration agreement in a

manner known to law. In absence of any such invocation, certainly this Court would not have jurisdiction to entertain any application under section 11 of the Act.

2. Accordingly, this Application is disposed of with liberty to the applicant to invoke the arbitration agreement consequent to the findings as recorded in paragraph 9 of the order dated 5 February, 2019 passed by this Court in Commercial Arbitration Petition No. 12 of 2015.

3. All contentions are kept open.

4. No costs.

[G.S. KULKARNI, J.]