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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**ARB No.71 of 2019 (O&M)
Date of Decision: 17.11.2022**

RAJESH BALA

.....Petitioner

Vs

M/S INDUS TOWERS LTD. AND ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Parminder Singh, Advocate
for the petitioner.

None for the respondents.

RAJ MOHAN SINGH, J.(Oral)

The petitioner has preferred this petition under Section 11(6) of the Arbitration and Conciliation Act, 1996 for appointment of an independent Arbitrator to settle the dispute between the parties arising out of lease deed dated 12.09.2017.

As per clause (f) of the lease deed, there is a stipulation that in case of any dispute or difference out of or relating to the scope, operation or effect of this lease deed or the validity or the breach thereof shall be settled by arbitration, by a sole arbitrator to be appointed by the lessee in accordance with the Arbitration and Conciliation Act, 1996.

Perusal of Annexure P-3 would show that the petitioner

has pleaded its claim for the payment of Rs.4,50,000/- by way of further endorsement that in the event of non-payment of the same, the petitioner shall launch legal proceedings against the respondents in the competent Court of law.

In the pleadings of this petition, the petitioner has tried to improve the scope of legal notice dated 21.04.2018 (Annexure P-3) to label it as a notice of invocation of arbitration clause by adding prayer for appointment of Arbitrator to resolve the dispute.

Bare perusal of the arbitration clause would show that in case of differences, the same shall be settled by arbitration by a sole Arbitrator to be appointed by the lessee. The arbitration clause was required to be involved before the lessee and in the event of failure on behalf of the lessee, the petitioner was entitled to rake up the issue. In the event of failure on behalf of the lessee to make the appointment of the Arbitrator within a period of 30 days from issuance of notice of invocation, the cause of action would accrue to the petitioner.

The respondents have taken a specific plea in the written statement that the present petition is pre-mature as the petitioner has not issued any notice of invocation in compliance of Section 21 of the Arbitration and Conciliation Act, 1996. No notice of invocation was ever served upon the respondents. Issuance of notice under Section 21 of the said Act is

mandatory and cannot be dispensed with.

The limitation would start from when there will be failure on behalf of the respondents to appoint the Arbitrator in compliance of notice of invocation. After issuance of notice of invocation, the period of limitation would start.

Evidently, there is no notice of invocation issued to the petitioner. No interference is called for in the present petition. The same is dismissed. However, the petitioner would be at liberty to avail her legal remedies in accordance with law.

November 17, 2022	(RAJ MOHAN SINGH)
<i>Atik</i>	JUDGE
Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No