HIGH COURT OF JAMMU AND KASHMIR & LADAKH
AT SRINAGAR
(Through Hybrid Mode)

AA No. 01 of 2024

Reserved on: 30.07.2024
Pronounced on: 28.08.2024

Union Territory of J&K ...Petitioner

Through :- Mr. P. N. Raina, Sr. Advocate with
Mr. J. A. Hamal, Advocate
Mr. Amit Gupta, AAG
Mr. Arif Sikander, Advocate for Interveners

v.

IFFCO TOKIO General Insurance Company Limited. ....Respondent

Through :- Mr. S. F. Qadri, Sr. Advocate with
Mr. Gopal Singh, Advocate

CORAM: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

INTRODUCTION

1. As factual narration of the present case would unfurl, the Government of Jammu and Kashmir has launched Ayushman Bharat-Pradhan Mantri Jan Arogya Yojana-SEHAT ["AB-PMJAY-SEHAT"] to provide free of cost Universal Health Coverage to all its residents, including the serving and retired employees and their families. The Scheme is intended to provide same benefits those were available under Ayushman Bharat-Pradhan Mantri Jan Arogya Yojana ["AB-PMJAY"], a Government of India Scheme, that is providing annual health insurance cover of Rs.5.00 lacs per family on a floater and cashless basis through an established network of

health care providers. Pertinently, the Scheme came to be introduced by the Government with the object to reduce catastrophic health expenditure and to improve access to quality health care of the domiciles of UT. The eligible beneficiary families, under this Scheme are to be provided the Health Coverage through a network of Empanelled Health Care Providers (EHCPs). The Government decided to implement the Scheme to provide Health insurance to defined categories of families eligible in the UT of Jammu and Kashmir. As a result, bidding process was commenced by the Government, through State Health Agency (SHA) by issuing the tender document and the respondent-company emerged the successful bidder. Consequently, a contract, for maximum period of three years, came to be executed between the parties on 10.03.2022. Since the beneficiary families are to be provided the Health Coverage through a network of EHCPs, a separate Tripartite Agreement also came to be executed between the parties and EHCPs in terms of clause 6 of the contract.

CASE OF THE PETITIONER

2. The case set out by the petitioner is that contract between the parties is to subsist till 14th of March, 2025, but the respondent vide its letter dated 01.11.2023, served a notice that it was not interested in further renewal of the contract after the expiry of the policy period ending 14.03.2024. In response to the aforesaid communication of the respondent, the Chief Executive Officer, SHA, vide communication dated 03.11.2023 requested the respondent to continue as per the MOU signed between the parties. However, the respondent-Insurance company vide communication dated 16.11.2023 reiterated that it has decided not to accord consent for renewal of the contract beyond 14th of March, 2024 and will not issue any new policy

cover beyond the existing policy cover period and requested that SHA had enough time to make arrangement so that beneficiaries may not suffer. The CEO, SHA vide communication dated 07.12.2023 again requested Vice-President of the respondent-company to re-consider its decision, however, the respondent vide communication dated 13.12.2023 informed the CEO that it stand by its decision not to continue. Again the petitioner through CEO, SHA vide letter dated 28.12.2023 requested Vice President of the respondent-Company to adhere to the terms and conditions of the contract in letter and spirit, however, it was conveyed by General Manager of the respondent-Company, vide its communication dated 03.01.2024 that Company is only invoking clause 9.1(c) of the Insurance contract. Ultimately, the SHA, by invocation of clause 41.3 of the contract, vide communication No. SHA/ABPM-JAY/2023-24/5334 dated 19.01.2024 served a notice upon the respondent, for reference of dispute to the Arbitral Tribunal with a request to nominate an Arbitrator on its behalf.

3. According to the petitioner, the insurance contract between the parties, is for a period of three years and the respondent-Company having already extended the insurance cover for the second year, in terms of clause 9 of the contract, cannot turn around and wriggle out of the contract for the third year extension and plunge the people of UT into risk and uncertainty. It is contention of the petitioner that since the law with respect to insurance is part and parcel of a welfare legislation, arbitrary exit notice served by the respondent, is not only against the contractual liabilities, but also against the public health and safety at large.

4. Petitioner has invoked Section 9 of the Arbitration and Conciliation Act, 1996, (Arbitration Act, for short) as amended by the Arbitration and Conciliation (Amendment) Act, 2015, to implore for the following reliefs:

> "A. Respondents be directed to restrain from opting out of the Contract of Insurance duly executed on 10.03.2022 between the Petitioner and respondent herein for implementation of Ayushman Bharat-Pradhan Mantri Jan Arogya Yojana and Ayushman Bharat-Pradhan Mantri Jan Arogya Yojana-SEHAT in the Union Territory of J&K beyond 14.03.2024; and/or
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> B. Respondents be directed to continue the contract upto 14.03.2025 in the interest of patient care and public at large: and
>
> C. Pass order in favour of the petitioner and against the respondent, thereby directing the respondent to undertake its contractual liability and in the interest of patient care, which otherwise at this stage would have serious consequences for the people of the U.T. of J&K as approximately 1200-1500 procedures take place daily in the Union Territory of Jammu and Kashmir and the general public heavily relies on these schemes for adequate treatment, leading to improved and well-organized patient care; and/or
>
> D. Any Writ, order or direction quashing the letter dated 01.11.2023 of respondents; and/or
>
> E. Pass any order in favour of the petitioner and against the respondent, thereby directing the respondent to accept the premium as per the terms of the policy for a further period of one year beginning from 15.03.2024 till 14.03.2025 and thus restraining the Respondent from removing the blanket cover of insurance from 14.03.2024 onwards."

CASE OF THE RESPONDENT

5. It is pertinent to mention that on 14.03.2024, Mr. Qadri, learned Senior counsel for the respondent made a statement at bar that he did not intend to file objections to the present petition, therefore, right of the respondent to file objections came to be closed.

6. Having heard the rival contentions, I have carefully perused the record and given my anxious consideration to the case law cited at bar.

ARGUMENTS

7. Mr. Amit Gupta, learned AAG appearing for the petitioner, while reiterating the grounds urged in the memo of petition, by reference to clauses 9.1 and 6(b) of the contract has argued that since contract between the parties is for a period of three years, the respondent-insurance company having honoured the contract for two years, cannot turn around and opt out of the contract for third year in an arbitrary fashion and without reason. Learned AAG is of the view that clause 27.3 of the contract enables the respondent to terminate the contract only upon the occurrence of eventualities enumerated therein and since it is contingent upon a breach or default of premium, as distinguished from a unilateral power to determine a contract, the insurer cannot wriggle out of the contract without assigning any reason.

8. The sum and substance of the submissions of learned AAG is that the exit notice served by the respondent is not only against the contractual obligations on its part, but also against the health and safety of public at large, which is not permissible under law.

9. *Ex adverso,* Mr. Qadri, learned Senior Counsel, appearing for the respondent, at the foremost has questioned maintainability of the present petition on the premise that since contract between the parties is inherently determinable in view of clause 9.1(c) of the contract and cannot be enforced under section 14 (d) of the Specific Relief Act, 1963 (Specific Relief Act, for short), therefore, petitioner is not entitled to the interim measures prayed for.

10. According to Mr. Qadri, since the reliefs sought in the present petition are dependent upon continuation of the contract, they cannot be akin to final adjudication of the controversy.

11. Learned Senior Counsel has vehemently argued that since the dispute, being adjudicated upon by this Court, arises out of a commercial contract, parties are governed by terms of the contract. According to Mr. Qadri, clauses 9 and 27 of the contract operate in different fields. He submits that clause 27 of the contract can be attracted during the subsistence of the contract and since respondent has invoked clause 9.1(c) of the contract and refused to accord its consent for renewal of the contract beyond 14.03.2024, clause 27 regarding termination of the contract is not applicable to the present case.

12. Mr. Qadri next contended that a petition under Section 9 of the Arbitration Act is to be decided on the principles of Order XXXIX CPC and since contract between the parties is inherently determinable, petitioner has failed to make out a *prima facie* case in its favour. Mr. Qadri submits that since the Scheme in question is a cashless Scheme and petitioner has also entered into an agreement with EHCPs, it cannot be allowed to argue that patient care is suffering and therefore, there is no balance of convenience in its favour. Learned Senior counsel has prayed for dismissal of the petition.

REJOINDER SUBMISSIONS

13. It is pertinent to mention that later Mr. P. N. Raina, learned Sr. Advocate appeared on behalf of the petitioner to make rejoinder submissions.

14. Mr. P. N. Raina, learned Senior counsel appearing for the petitioner, at the foremost, has taken an exception to the primary contention of the

respondent-company that dispute, being adjudicated upon by this Court, arises out of a pure commercial contract. Mr. Raina submits that a contract between the Government and an insurance Company is governed by the Insurance Act, 1938 (for short, "Insurance Act") and the Regulations framed thereunder. According to learned senior counsel, since the insurance business is a regulatory business, regulated under a Statute and the Regulations framed thereunder, the contract between the parties is not purely a commercial contract. Mr. Raina submits that Specific Relief Act, in terms of Section 4, is applicable only for the enforcement of individual civil rights and since object of the contract in question is to provide basic health care to the citizens of UT of J&K and Ladakh and an element of public duty is attached to it, Specific Relief Act has no application to the present case.

15. On determinability of the contract, learned Senior Counsel has reiterated that the only right of the respondent to terminate the contract in question accrues from clause 27.3 of the contract and since the events or exigencies delineated in the said clause have not occasioned, therefore, there is no occasion for the insurer to terminate the contract at its own will and without assigning any reason. Mr. Raina also submits that since contract between the parties is not inherently determinable, Section 41(d) of Specific Relief Act is not attracted to the present case.

16. On Terms of the Contract, learned Senior counsel has emphasized that if clauses 9 and 6(b) of the contract between the parties are read along with the bid document issued by the petitioner and offer given by the insurer, by virtue of which, tripartite agreement amongst the parties and Empanelled Hospitals came to be executed, it is evident that contract is for a period of

three years and insurer cannot opt out of the contract before the expiry of the said period.

17. It is pertinent to mention that EHCPs came to be impleaded as interveners in the present case, by this Court vide order dated 09.07.2024.

ARGUMENTS ON BEHALF OF INTERVENERS

18. Mr. Arif Sikander learned counsel appearing for the intervening hospitals, by and large, has reiterated the submissions made by learned AAG and Mr. Raina learned Sr. Counsel for the petitioner.

19. In addition, learned counsel for the intervener has argued that terms and conditions of the contract between the petitioner and the respondent-company are also applicable to the case of Empanelled Hospitals.

20. Mr. Sikander has informed this Court that pursuant to the status quo order dated 11.3.2024, passed by this Court, SHA came up with an order dated 13.03.2024 by virtue of which bills of EHCPs were directed to be processed. The insurer had hired the services of one M/S MD Indian Company for verifications and processing of bills, to be forwarded for clearance by SHA and the said company, hired by the insurer is processing the bills till date.

21. Learned counsel for the intervener has also submitted that clause 12 of the tripartite agreement provides for termination of the contract and envisage issuance of a prior notice of termination. Learned counsel submits that since neither such notice has been served by the respondent to the petitioner nor to the interveners, therefore, tripartite agreement cannot be deemed to have been terminated.

22. Learned Senior counsels for the parties, learned AAG and learned counsel for the intervener have relied upon a host of citations, to be discussed at appropriate stages of this judgment.

JURISDICTION OF SINGLE BENCH OF HIGH COURT

23. Before a closer look at the grounds urged in the memo of petition, it is pertinent to mention that Mr. Qadri learned Senior counsel for the respondent, at the outset, had questioned jurisdiction of a single Bench of this Court to entertain an arbitration petition pertaining to a commercial dispute for want of commercial division of this Court in terms of Section 4 of the Commercial Court Act, 2015. Mr. P. N. Raina, learned Sr. Counsel for the petitioner, though maintained that non constitution of commercial division of High court would not take away its extraordinary jurisdiction in terms of Section 11 of the Civil Court Act, 1977, however, since the present case had already been heard at length by this Bench, Mr. Raina submitted that it shall be appropriate if it is placed before Hon'ble the Chief Justice for constitution of a commercial division of this Court. Accordingly a reference was made to Hon'ble the Chief Justice for appropriate orders and Commercial Division of this Court came to be constituted by Hon'ble Chief Justice vide order dated 18.07.2024.

ANALYSIS

24. The case set out by the petitioner is that parties entered into the contract for a period of three years i.e. till 14.03.2025. The respondent-insurer, however, vide its letter dated 01.11.2023 served a notice upon SHA that it was not interested in continuation of the contract after the expiry of the policy period ending 14.03.2024. The aforesaid notice served by the

respondent is followed by a series of communications between the SHA and the insurer. While, SHA made repeated requests to the insurer to discharge its obligations, as per the memorandum of understanding (MoU) signed between the parties, the respondent-company refused to oblige SHA and decided to stick to its stand and finally vide communication dated 28.10.2023 conveyed the petitioner that it intended to invoke clause 9.1(c) of the contract. The petitioner was left with no option but to invoke clause 41.3 of the contract and served a notice upon the respondent for reference of dispute to the Arbitral Tribunal. Petitioner has preferred present application for a variety of interim measures, in terms of Section 9 of the Arbitration Act.

25. Learned Senior Counsels for the parties and learned counsel for the interveners have made elaborate submissions, however, the present case revolves around two legal issues:

A. Application of Specific Relief Act; and
B. Import of Section 9 of the Arbitration Act.

Let us discuss one by one.

A. APPLICATION OF SPECIFIC RELIEF ACT

26. The cornerstone of the respondent's affront to the present petition is that since contract between the parties is inherently determinable, in view of clause 9.1.c of the contract and cannot be enforced under Section 14(d) of the Specific Relief Act, therefore no injunction or interim measure as prayed for can be granted in favour of the petitioner in view of express bar contained in Section 41(e) of the Specific Relief Act.

27. Let us have a look at the relevant provisions of Sections 14(d) and 41(e) of the Specific Relief Act:

> **"14. Contract not specifically enforceable.- The following contract cannot be specifically enforced, namely-**
>
> **(a) xxx xxx xxx**
> **(b) xxx xxx xxx**
> **(c) xxx xxx xxx**
> **(d) a contract which is in its nature determinable."**
>
> **"41. Injunction when refused.- An injunction cannot be granted-**
>
> **(a) xxx xxx xxx**
> **(b) xxx xxx xxx**
> **(c) xxx xxx xxx**
> **(d) xxx xxx xxx**
> **(e) to prevent the breach of a contract the performance of which would not be specifically enforced;"**

28. Mr. Qadri, learned Senior Counsel for the respondent has primarily relied upon **Ksheeraabd Construction Pvt. Ltd. v. National Highways and Infrastructure Development Corporation Ltd. and ors.**[1] to submit that *ex facie* examination of various clauses of the contract in question would indicate that it is a determinable contract and since it is a private commercial transaction between the parties, either of the parties could terminate the contract without assigning any reason with a reasonable period of notice, even if it is dependent upon the happening of an eventuality. According to learned Senior Counsel, in case, it is ultimately found that refusal on the part of the insurer to accord consent for renewal of the contract is contrary to the terms and conditions of the contract, the only remedy available to the petitioner would be to seek compensation but not specific performance of the contract.

29. It is pertinent to mention that various authoritative pronouncements regarding determinability of a contract, in particular, **Indian Oil**

[1] Manu/D/3402/2023

Corporation Ltd. v. Amritsar Gas Service and ors.[2]**, T.O. Abraham v. Jose Thomas and ors.**[3]**, Jindal Steel and Power Ltd. v. SAP India Pvt. Ltd.**[4] **and Narendra Hirawat and Co. v. Sholay Media Entertainment Pvt. Ltd. and another**[5]**,** arose for discussion in **Ksheeraabd Construction**[1]**.**

30. Kerala High Court in **T.O. Abraham**[3] dwelling on the expression "a contract which is in its nature determinable", appearing in Section 14(d) of the Specific Relief Act, observed that a contract which can be terminated by either of the parties on their own will, without assigning any reason or without having to show any cause, are determinable. However, if an agreement is shown to be determinable at the happening of an event or on the occurrence of a certain exigency, then it is inelectable that on such event or exigency alone, the said contract would stand determined, otherwise not.

31. The aforesaid observation of the Kerala High Court came to be noticed with approval by the Bombay High Court in **Narendra Hirawat**[5] whereby a Single Bench of the Bombay High Court reiterated the aforesaid principle of law that the expression "a contract which is in its nature determinable" means the contract is determinable at the sweet will of a party i.e. without reference to the other party or without reference to any breach committed by the other party or without reference to any eventuality. In other words, it contemplates a unilateral right in a party to the contract to determine the contract and if a contract is hinged to a breach or a contemplated eventuality, the contract is not "in its nature determinable".

32. The aforesaid findings rendered by Single Bench of the Bombay High Court came to be questioned in an *intra* court appeal, which came to be

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[2] 1991 (1) SCC 533
[3] (2018) 1 KLJ 128
[4] (2015) 221 DLT 708
[5] Manu/MH/0383/2020

allowed and the said findings were over turned by the Division Bench of the Bombay High Court. However, it is pertinent to mention that the verdict of Division Bench of Bombay High Court came to be assailed before the Apex Court, which is reported as **Narendra Hirawat and Co. v. Sholay Media Entertainment Pvt. Ltd. and another; 2022 SCC Online 1678** and pertinently, the decision rendered by Division Bench of the Bombay High Court was set aside by Hon'ble Supreme Court and findings rendered by learned Single Bench of the Bombay High Court, regarding determinability of the contract, discussed above, were upheld.

33. High Court of Delhi in **Ksheeraabd Construction Pvt. Ltd.**[1] seeks to distinguish the aforesaid findings returned by Hon'ble Supreme Court in **Narendra Hirawat** (supra) primarily on the ground that Hon'ble Supreme Court did not appear to have affirmed the enunciation of the legal position relating to Section 14(d) of the Specific Relief Act as appearing in the decision of Single Bench of the Bombay High Court and that what weighed upon Supreme Court was whether Division Bench of the Bombay High Court was justified in interfering with the grant of injunction by Single Bench of the said Court or not.

34. It is pertinent to mention, that it is evident from a perusal of penultimate para of the judgment of Hon'ble Supreme Court in **Narendra Hirawat** (supra) that it upheld the findings of Single Bench of the Bombay High Court predominantly on the ground that appellant had made out a *prima facie* case for grant of injunction and also that balance of convenience lies in his favour. It is worthwhile to underline that Hon'ble Supreme Court has also observed in para-21 of the judgment that the order of Single Judge of Bombay High Court was founded on sound reasoning and there was no

fault in exercise of discretion by the Single Judge in granting the order of injunction. The observation of Hon'ble Supreme Court, regarding unjustified interference by Division Bench of the Bombay High Court, was in addition to the aforesaid observation of the Apex Court that findings recorded by the Single Bench was founded on sound reasoning. In this view of the matter, the findings recorded by Delhi High Court in **Ksheeraabd Construction Pvt. Ltd.**[1] is *per incurium* and cannot be made basis to analyze determinability of the contract in question.

35. Similarly, the reliance paced by learned Sr. counsel for the respondent on **Indian Oil Corporation**[2] is also misplaced for the simple reason that in the said case, clause 28 of the impugned contract gave an unqualified right to the licensor to revoke the license of an individual and determine the contract by giving 30 days notice and it was not hedged upon the happening of any eventuality.

36. The aforesaid principle of law enunciated by the Apex Court in **Narendra Hirawat** (supra) has been reiterated by the Bombay High Court in **Kheoni Ventures Pvt. Ltd. v. Rozeus Airport Retail Limited and another**[6] and Madrass High Court in **A. Murgal v. Rainbow Foundation Ltd. And others**[7].

37. It is manifest from the case law discussed above that it no longer remains *res integra* that the words "a contract which is in its nature determinable" appearing in clause 14(d) of the Specific Relief Act are sufficient to indicate that a contract which is determinable at the option of a party or without reference to any breach committed by the opposite party is

[6] 2024 SCC Online Bom. 773
[7] 2019 SCC Online Mad, 37961

said to be a contract which is in its nature determinable. In other words it postulates that if a party can terminate a contract without assigning any reason, the contract is said to be determinable at will. The necessary corollary of the aforesaid is that if a contract is determinable at the happening of an event or exigency, it cannot be termed as a determinable contract or a contract which in its nature is determinable.

38. If the present case is approached with the aforesaid principle of law, enunciated by the Apex Court, it is manifestly clear that contract in the present case is not in its nature determinable but hinges upon the happening of exigencies adumbrated in the contract.

39. Clause 27 of the contract deals with Term and Termination of the contract. While clause 27.2 empowers SHA to terminate the contract, clause 27.3 empowers the insurer to terminate the contract.

40. Let us have a look at clause 27.3 of the contract:

> **"27.3. State Health Agency Event of Default**
>
> **a. The Insurer can terminate this Insurance Contract upon the occurrence of non payment of instalment premium within 90 days of the due date by the State Health Agency that remains uncured despite receipt of a 15 day cure notice or Preliminary Termination Notice from the Insurer (a State Health Agency Event of Default), provided that such event is not attributable to a Force Majeure Event.**
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> **b. Upon the occurrence of a State Health Agency Event of Default (non payment of instalment of premium within 90 days of from the Premium Due Date), the Insurer may, without prejudice to any other right it may have under this Insurance Contract, in law or at equity, issue a Preliminary Termination Notice to the State Health Agency. If the State Health Agency fails to remedy or rectify the State Health Agency Event of Default stated in the Preliminary Termination Notice issued by the Insurer within 15 days of receipt of the Preliminary Termination Notice, the Insurer will be entitled to terminate this Insurance Contract by issuing a Final Termination Notice.**
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> **c. The SHA or its employees, or representatives engage in any corrupt or fraudulent practices which are prohibited under relevant national and state level Anti corruption laws;**

> **d. The SHA has failed to perform or discharge any of its obligations in accordance with the provisions of the Insurance Contract with Insurer unless such event has occurred because of a Force Majeure event."**

41. It is evident from a plain reading of clause 27.3 of the contract that insurer is vested with the power to terminate the contract upon the occurrence of non-payment of instalment of premium by the SHA within 90 days of the due date, despite receipt of a 15 days cure notice or preliminary termination notice or if the SHA or its employees or representatives are engaged in any corrupt or fraudulent practices which are prohibited under relevant National and State Level Anti Corruption laws or if it has failed to perform or discharge its obligations, as per the provisions of the contract with the insurer. It is clear that respondent-insurer is empowered to terminate the contract in three contingencies i.e. (i) upon occurrence of non-payment of instalment of premium within the stipulated period despite receipt of 15 days cure notice; (ii) SHA or its employees or its representatives are found engaged in corrupt practices prohibited under the National or State Anti Corruption laws; or (iii) the SHA failed to perform its obligations with the insurer, as per the contract. It is none of the case of the respondent that petitioner or SHA is in default in the payment of instalment of premium within the stipulated period or its employees or representatives are engaged in corrupt practices or that it has failed to perform its obligations under the provisions of the contract. Since the contract in question in the present case, is determinable at the happening of exigencies or events afore-mentioned, therefore, it cannot be termed as a contract which is in its nature determinable. In other words, the insurer-respondent in the present case, cannot terminate the contract without reference of breach committed by the

petitioner, in terms of clause 27.3 of the contract. Therefore, since contract between the parties is not determinable in its nature, Sections 14 and 41 of the Specific Relief Act are not attracted in the present case.

42. Learned Senior counsel for the respondent has emphasized that clauses 9 and 27 of the contract operate in different fields and insurer has invoked clause 9 and not clause 27 of the contract, which is applicable, when the existing and subsisting contract is sought to be terminated. Learned Senior Counsel is of the view that since insurer has invoked clause 9 and refused to accord consent for renewal of the contract beyond 14.03.2024, clause 27 of the contract has no application to the present case, because there is no contract in existence on account of non-renewal.

43. The argument of Mr. Qadri learned Senior counsel for the respondent, deserves outright rejection for the reason that though insurer vide its letter dated 01.11.2023 invoked clause 9.1(c) of the contract to convey that it shall not accord its consent for the period beyond 14.03.2024, however, it is evident from the contents of the aforesaid letter that the insurer, in fact, intends to terminate the contract. Letter of the respondent dated 01.11.2023 is nothing but disguised as a termination notice.

44. There is no doubt, however, that clauses 9 and 27 of the contract operate in different fields, but for different reason, to be discussed later.

45. It is pertinent to mention that though respondent did not file any objection to the present petition, however, by virtue of an application bearing CM No. 2383/2024 it placed on record certain documents to indicate that petitioner-SHA after initiation of process of renewal of the contract in question in the previous year, sought consent of the respondent, which came to be accorded in writing, and as a consequence whereof, the contract came

to be renewed by the SHA on 10.03.2023, in terms of clause 9.1(c). Copy of the minutes of the meeting dated 15.12.2022, letter of the respondent dated 22.12.2022 and letter of renewal of contract dated 10.03.2023 have been placed on record by the respondent to allege that petitioner by withholding aforesaid communications from this court being guilty of suppression of material facts is not entitled to seek equitable measures, in terms of section 9 of the Arbitration Act. According to Mr. Qadri, it is evident from the aforesaid sequence of events that impugned contract is though for a maximum period of three years and renewal of the contract, in terms of clause 9.1.b and termination thereof, is absolute domain of the petitioner, however, the impugned contract cannot be renewed every year unless it is mutually agreed between both the parties in terms of sub clause (c) of clause 9.1.

46. Since clause 9.1 of the contract is bone of contention between the parties, it shall be expedient to reproduce the said provision for the facility of reference. It reads as:

> **"9.1 Term of the insurance contract with the Insurer**
>
> **a. This insurance contract shall be for a period of maximum 03 (three) years with starting 15.03.2022.**
> **b. Though the contract period is for three (03) years, it is to be reviewed for renewal after every 12 months from start date of the policy with reference to the performance criteria laid out in the Schedule 12.**
> **c. However, notwithstanding provisions under clause 9.1.b, renewal of Insurance Contract shall be mutually agreed between both the parties."**

47. A plain reading of clause 9.1 of the contract would indicate that contract between the parties is for a maximum period of three years. There is no doubt that, in terms of sub clause (c), renewal of the contract is to be mutually agreed between the parties, notwithstanding, provisions under

clause 9.1(b), however, expression "shall" in sub clause (a) connotes that period of three years is mandatory in nature.

48. It is pertinent to mention that since benefit of the Scheme in question is to be provided through a network of Health care providers and the beneficiary families are to be provided the coverage through a network of EHCPs, a separate tripartite agreement came to be executed between the petitioner, the Insurer-respondent and EHCPs in terms of clause 6(b) of the contract, which reads as under:

> **"6(b) The Agreement of an EHCP shall continue for a period as per duration of <u>at least 3 years</u> from the date of the execution of the tripartite Provider Services Agreement, unless the EHCP is de-empanelled in accordance with De-Empanelment guidelines provided under Schedule 5 and its agreement terminated in accordance with its terms, provided the insurer's contract is extended accordingly.**
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> **(Emphasis supplied)**

49. If the expressions "this insurance contract shall be for a maximum period of three years…." contained in sub clause (a) of clause 9.1 and "agreement of an EHCP shall continue for a period as per duration of **at least three years** from the date of execution of the tripartite providers services agreement", are read in conjunction, *prima facie* the intent of the contract in question, in its entirety, postulates that duration of the contract is three years and the right of the insurer to terminate the contract, as already discussed, is confined to the occurrence of non-payment of instalment of premium of the SHA or engagement of SHA or its representatives in corrupt practices or failure on the part of SHA to perform its obligation, as per terms and conditions of the contract.

50. Learned Sr. counsel for the respondent has also argued that if intent of the contract in question is atleast three years and consent of insurer was not required for renewal, there was no need for the parties to incorporate sub

clause (c) of clause 9.1. Mr. Qadri has emphasized that since clause 9.1.c starts with 'non-obstante clause', there is no manner of doubt that notwithstanding the provisions contained in sub clauses (a) and (b), contract between the parties after every year can only be reviewed and renewed with the consent of both the parties. I am not persuaded to agree with the logic put forth by learned senior counsel for the respondent for the following reasons.

51. It appears that the extent of operation of the 'non-obstante clause', contained in sub clause (c) of clause 9.1, has escaped the attention of learned senior counsel. Sub clause (c) of clause 9.1 reads that "however, notwithstanding provisions under clause 9.1.b ……" It clearly implies that sub clause (c) operates upon clause 9.1.b only and its operation cannot be extended to sub clause (a).

52. The import and construction of 'non-obstante clause' emerged for discussion before High Court of Andra Pradesh in **K. Parasuramaiah v. Pokuri Lakshmamma**[8]**,** whereby it was aptly observed by learned High Court that non-obstante clause is usually read with a provision to indicate that said provision containing the non-obstante clause should prevail, despite anything to the contrary mentioned in the provision. It was further clarified that in case of any inconsistency between the non-obstante clause and rest of the provisions, one of the object of the non-obstante clause is to suggest that it is the said clause which would prevail over other clause(s). Relevant observation reads as under:

> **"10. What is however argued by the learned counsel for the petitioner is that the non obstante clause appearing in Sec. 10(3)(c) must be confined to finding out whether the landlord has any residential or non-residential building of his own in the city or town or village concerned, and nothing mote. We are not persuaded to agree with this contention. The contention**

[8] AIR 1965 AP 220

> **obviously overlooks the extent of the operation of the non obstante clause appearing in Sec. 10(3)(a). It clearly states "notwithstanding anything in clause (a)". This must be understood in its liberal and normal sense. It clearly means that it operates upon the entire clause (a) of Sec. 10(3) and is not restricted in any sense to any portion of that provision. It must be understood that a non obstante clause is usually used in a provision to indicate that that provision should prevail despite anything to the contrary in the provision mentioned in such non obstante clause. In case there is any inconsistency or a departure between the non obstante clause and another provision one of the objects of such a clause is to indicate that it is the non obstante clause which would prevail over the other clause....."**

53. An identical view has been expressed by the Apex Court in **Union of India and ors. v. G. M. Kokil[9],** relied by learned counsel for the intervener, that the non-obstante clause refer to the exempting provisions only. Therefore, if clause 9.1(c) of the impugned contract is understood, keeping in mind the aforesaid principle, there should be no manner of doubt that sub clause (c) of clause 9.1 prevails over or operates upon sub clause (b) only and if sub clause (b) is excluded, clause 9.1 of the contract shall read as "this insurance contract shall be for a maximum period of three years with starting date 10.03.2022 and the renewal of the insurance contract shall be mutually agreed between both the parties". A conjoint reading of sub clauses (a) and (c) of clause 9.1 would clearly suggest that contract in question is for a maximum period of three years and in case, the contracting parties intend to renew the impugned contract, after the expiry of maximum period of three years, it can be renewed, provided it is mutually agreed between both the parties. Therefore, sub clause (c) of clause 9.1 comes into operation only on the expiry of maximum period of three years of the contract and not during the subsistence of the present contract which is clearly and mandatorily to continue for at least three years and during the subsistence of the contract period of three years, none of the parties can wriggle out of the contract, but

[9] 1984 SCC 631

by invocation of relevant provisions of the contract which empowered them to terminate the contract. It is for this reason that clauses 9 and 27 of the contract operate in different fields.

54. I have carefully perused the documents annexed with CM No. 2383/2024. It transpires that respondent company, vide letter dated 01.12.2022 requested the SHA for increase of premium from Rs,1840/- to Rs. 2,850/- per family per year w.e.f 15.03.2024 to 14.03.2024. The SHA in its meeting held on 15.12.2022 rejected the aforesaid request of the respondent-company, however, it was mutually agreed in the meeting that respondent-company shall continue as the insurer for the **next policy period on the existing terms and conditions**, as per clause 9.1(c) of the contract. Pertinently, in response to the aforesaid, the respondent vide its letter dated 22.12.2022, accorded its consent for **renewal of the existing policy** for a further period of one year effective from 15.03.2023 to 14.03.2024. As a result, the SHA, vide communication dated 10.03.2023, on review of the performance of the respondent-company based on the Key Performance Indicators (KPIs) as mentioned in Schedule 12 of the contract, considered request of the insurer for renewal of the "**policy period**" for another one year and decided to renew the contract with the respondent company for a further period of one year. Although SHA in the operative para of the communication dated 10.03.2023 has mentioned that it has decided to renew the contract with the respondent for another year at the same premium rate of Rs. 1840/- per family per year, however, if the aforesaid communications are conjointly read and carefully analysed there is no manner of doubt that it is policy cover which was requested and came to be renewed by the SHA for the previous year on the same premium rate of Rs. 1840/- per family per year

and on the same terms and conditions of the contract. It is manifest from these communications that parties entered into the contract for a period of three years, however, it is the insurance policy which is to be renewed every year by the SHA on review of the performance of the insurer based on the KPIs in terms of Schedule-12 of the contract. Therefore, petitioner is not guilty of suppression of material facts.

55. Since insurer in the present case is empowered to terminate the contract, in terms of clause 27.3 of the impugned contract and since none of the conditions employed in the said clause have occasioned, respondent cannot come out of the contract, before the expiry of the total period of contract, which is three years.

56. Another aspect of the matter which cannot be lost sight off is that SHA, in the present case, had issued tender for a period of three years, which came to be accepted by the respondent for a period of three years and ultimately it translated into the contract in question, which is for a maximum period of three years. True it is, that a bid document is an invitation to tender only and has no sanctity in the contract law after execution of the contract, however, if the bid document, its acceptance by the respondent-company and the bid data sheet are read in conjunction with the Terms and conditions of the contract in question, the sequence of events would indicate that *prima facie* the contract came to be executed between the contracting parties for a period of three years.

B. IMPORT OF SECTION 9 OF THE ARBITRATION ACT

57. Now, a pristine question which arises for consideration of this Court is whether the interim measures sought by the petitioner, in the present case, would be legally sustainable. Learned senior counsel for the respondent has

relied upon **Bharat Catering Corporation v. Indian Railway Catering and Tourism Corporation Limited (IRCTC) and ors.**[10]**, Oil and Natural Gas Corporation Ltd. Mumbai v. Steamline Shipping Co. Pvt. Ltd.**[11] **and Ratnagiri Gas and Power Pvt. Ltd. v. Joint Venture of Whessoe Oil and Gas Ltd. (WOGL) and ors.**[12] to submit that an interim measure sought by a petitioner, in terms of section 9 of the Arbitration Act, cannot be akin to final relief and once the contract is discharged, avoided or terminated, even if termination is illegal or invalid, the only remedy available to the petitioner is to claim damages or compensation.

58. Since elaborate submissions addressed by learned Senior counsels, on rival sides, revolve around the provisions of Section 9 of the Arbitration Act, it shall be expedient to reproduce the said provision, which reads as under:

> **"9. Interim measures etc. by Court- [(1) A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court-**
>
> **(i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or**
>
> **(ii) for an interim measure of protection in respect of any of the following matters, namely;-**
>
> **(a) The preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;**
> **(b) Securing the amount in dispute in the arbitration;**
> **(c) The detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorizing for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purposes of obtaining full information or evidence;**
> **(d) Interim injunction or the appointment of a receiver;**

[10] 164 (2009) DLT 530
[11] AIR 2002 Bom. 420
[12] 2013 (133) DRJ 482

> **(e) Such other interim measure of protection as may appear to the court to be just and convenient,**
>
> **and the court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it."**

59. Section 9 of the Arbitration Act provides that a party may apply to a Court for an interim measure and Court has discretion to grant thereunder a wide range of interim measures of protection, in respect of subject matter of dispute in arbitration, "as may appear to the Court to be just and convenient". If the aforesaid provision is carefully glanced over, it is manifest that Court has been vested with vast powers to grant any interim measure of protection, having due regard to the facts and circumstances before it and pertinently, the concluding words of the provision- "and the court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it", are sufficient to indicate that well known rules and accepted principles, those guide the Courts in the grant of interim measures, are not sought to be ignored.

60. It is trite that Court, while deciding a petition under Section 9 of the Arbitration Act has to keep in mind the basic principles contained in the code of Civil Procedure, 1908 (CPC, for short). It has been held by the Apex Court in **Essar House Private Limited v. Arcellor Mittal Nippon Steel India Limited**[13] that while it is true that ordinarily, the power under Section 9 of the Arbitration Act should not be exercised ignoring the basic principles of CPC, technicalities of CPC cannot come in the way of the Court from securing the ends of justice. Relevant excerpt of the judgment reads as under:

> **"40. While it is true that the power under Section 9 of the Arbitration Act should not ordinarily be exercised ignoring the basic principles of procedural law as laid down in the Code of**

[13] 2022 (4) KLJ 454

> **Civil Procedure, the technicalities of Code of Civil Procedure cannot prevent the Court from securing the ends of justice. It is well settled that procedural safeguards, meant to advance the cause of justice cannot be interpreted in such manner, as would defeat justice."**

61. It is evident from the afore-quoted principle of law that Court in exercise of its wide range of powers in terms of Section 9 of the Arbitration Act, is vested with the power to fashion an appropriate interim order in view of facts and circumstances obtaining the controversy.

62. Hon'ble Supreme Court in **Essar House**[13] has also clarified that Court in deciding application under Section 9 of the Arbitration Act are required to keep in mind the principles of a good *prima facie* case, balance of convenience in favour of the interim relief prayed for and whether the applicant has approached the Court with reasonable expedition or not. The Apex Court, made it clear that in case a strong *prima facie* case is made out and balance of convenience tilts in favour of the interim relief prayed for, the Court in exercise of said jurisdiction should not withhold the relief on mere technicalities. Relevant observation, captured in para-49 reads as below:

> "**49. If a strong prima facie case is made out and the balance of convenience is in favour of interim relief being granted, the Court exercising power under Section 9 of the Arbitration Act should not withhold relief on the mere technicality of absence of averments, incorporating the grounds for attachment before judgment under Order 38 Rule 5 of the Code of Civil Procedure."**

63. It is evident from the aforesaid pronouncement that an application under Section 9 of the Arbitration Act is to be approached on the anvil of tripod test of a strong *prima facie* case, balance of convenience and irreparable injury in the event of denial of injunction.

64. True it is, that a relief beyond final relief as an interim measure cannot be granted and in case, it is proposed to be granted, having regard to

the facts and circumstances of a case, it has to be granted with utmost vigilance. However, in order to ensure that subject matter of arbitration proceedings do not become infructuous and the arbitral award does not become a paper award, the court in exercise of its jurisdiction in terms of section 9 of the Arbitration Act is vested with the power to order mandatory, interlocutory relief, even where it substantially overlaps the final relief, particularly in the combination of the circumstances, where the balance of advantage favours the grant of relief, as held by the Apex Court in **Deoraj v. State of Maharastra and others**[14]. Be it noted that interim measures envisaged under Section 9 of the Arbitration Act, is a step in aid to the fruition of the Arbitral proceedings or in other words, it is a measure to safeguard the fruit of the proceedings until eventual enforcement of the award.

65. No doubt, Division Bench of Delhi High Court in **Bharat Catering Corporation**[10] while dwelling upon the scope and ambit of Section 9 of the Arbitration Act upheld the view of learned Single Judge of the said court that if petitioner is aggrieved by termination of the contract, he is advised to challenge the validity thereof and claim damages by invoking arbitration clause. A similar view came to be expressed by High Court of Bombay in **Oil and Natural Gas Corporation Limited, Mumbai**[11] that under Section 14(e) of the Specific Relief Act, no injunction can be granted to prevent breach of contract, performance of which cannot be specifically enforced.

66. However, Hon'ble Supreme Court in **Deoraj**[14] had an occasion to discuss, when an order tantamounting to a mandamus can be issued by a court at the interim stage. The Apex Court has clearly ruled that

[14] (2004) 4 SCC 697

circumstances of a particular case may warrant grant of a mandamus at the interim stage, if a denial of an interim measure would tantamount to dismissal of the main petition itself; for, by the time the main petition is heard, there is nothing left to be allowed. Relevant Observation of Hon'ble Supreme Court contained in para 12 of the judgment reads as below:

> **"12. <u>Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of the main petition itself; for, by the time the main matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour.</u> In such cases the availability of a very strong prima facie case – of a standard much higher than just prima facie case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of the case totally in favour of the applicant may persuade the court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. The court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the court would not be able to vindicate the cause of justice. Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship. The conduct of the parties shall also have to be seen and the court may put the parties on such terms as may be prudent."**
>
> **(Emphasis supplied)**

67. Again, Hon'ble Supreme Court in **Adhunik Steels Ltd. v. Orissa Manganese Mineral (P) Ltd.**[15] in para 23 has clarified that:

> **"in terms of Order XXXIX Rule 2 of the Code of Civil Procedure, an interim injunction could be granted restraining the breach of a contract**."

68. From the aforesaid observations of Hon'ble Supreme Court, it is manifestly clear that though an interim measure cannot be akin to final relief, however, in case of existence of a strong *prima facie* case and balance of convenience in favour of the petitioner, an interim measure which may

[15] (2007) 7 SCC 125

appear to be just and convenient, can be granted by the Court, to prevent breach of a contract.

69. Mr. Qadri has also relied upon **Inter Ads Exhibition Pvt. Ltd. v. Busworld International Cooperative Vennootschap Met Beperkte Anasprakelijkheid**[16] to contend that validity or otherwise of termination of a contract cannot be called into question in proceedings under Section 9 of the Arbitration Act. The aforesaid case law is distinguishable and is of no help to the respondent for the following reasons.

70. Hon'ble Supreme Court in **Adhunik Steels**[15] has held that for the grant of an interim injunction, court has necessarily to base its decision on the principles underlying relevant provisions of the Specific Relief Act and the law bearing on the subject. Relevant para 17 of the judgment reads as below:

> **"17. In Nepa Ltd. v. Manoj Kumar Agarwal; AIR 1999 MP 57, a learned Judge of the Madhya Pradesh High Court has suggested that when moved under section 9 of the Act for interim protection, the provisions of the Specific Relief Act cannot be made applicable since in taking interim measures under section 9 of the Act, the Court does not decide on the merits of the case or the rights of parties and considers only the question of existence of an arbitration clause and the necessity of taking interim measures for issuing necessary directions or orders. When the grant of relief by way of injunction is, in general, governed by the Specific Relief Act, and Section 9 of the Act provides for an approach to the Court for an interim injunction, we wonder how the relevant provisions of the Specific Relief Act can be kept out of consideration. For, the grant of that interim injunction has necessarily to be based on the principles governing its grant emanating out of the relevant provisions of the Specific Relief Act and the law bearing on the subject. Under Section 28 of the Act 1996, even the Arbitral Tribunal is enjoined to decide the dispute submitted to it, in accordance with the substantive law for the time being in force in India, if it is not an international commercial arbitration. So, it cannot certainly be inferred that Section 9 keeps out the substantive law relating to interim reliefs."**
>
> **(Emphasis supplied)**

[16] 2020 SCC Online Del 351

71. It is manifest from the aforequoted principle of law enunciated by Hon'ble Supreme Court that relevant provisions of the Specific Relief Act cannot be kept out of consideration while deciding a petition under Section 9 of the Arbitration Act. Now, Clause (e) of Section 14 of Specific Relief Act provides that a contract, which is in its nature determinable, cannot be specifically enforced and clause (e) of Section 41 of the Specific Relief Act bars grant of injunction to prevent the breach of a contract, performance of which cannot be specifically enforced. Therefore, in order to decide determinability or otherwise of a contract and a consequential fall out of the same in the light of aforesaid provisions, the Court is vested with the power to lift the veil, and analyze the termination notice, for limited purpose to consider whether a *prima facie* case for grant of interim relief is made out or not.

72. As already discussed, *prima facie* the contract between the parties is for a period of three years from the date of its execution, which in its nature is not determinable, within the meaning of Section 14(d) of the Specific Relief Act and there is an arbitration clause in the contract, therefore, petitioner has made out a strong *prima facie* case in its favour.

73. On the principle of balance of convenience, Mr. Raina, learned Senior counsel for the petitioner in his usual vehemence would contend that since nature of the contract between the parties is service of insurance, the immediate fall out of the same is that it is regulated by the Insurance Act as amended from time to time and the Regulations framed thereunder. Mr. Raina has placed strong reliance upon **United Insurance Company Limited**

v. Manubhai Dharmasinhbhai Gajera and others[17] to submit that though transaction between the parties relating to the payment of premium, may be a commercial component of the contract, however, the impugned contract, as a whole, is governed and regulated by the Insurance Act, the purpose and nature of which is essentially to provide service of health care to its citizens which cannot be ignored or underplayed.

74. Learned Senior counsel for the respondent has taken an exception to the contention of learned senior counsel for the petitioner by contenting that impugned contract between the parties is a pure commercial dispute and since the Scheme in question launched by the SHA is a cashless Scheme in terms of clause (iii) of the contract, SHA cannot be heard to say that patient care is suffering.

75. If the principle of law expounded by Hon'ble Supreme Court in **Manubhai Dharmasinhbhai Gajera and others**[17] is carefully glanced over, I find legal force in the argument of learned counsel for the petitioner.

76. Hon'ble Supreme Court in **Manubhai Dharmasinhbhai Gajera**[17] has clearly observed that since the functions of insurance companies, regardless of the fact as to whether they are operating in public sector or private sector, are governed by a Statute, therefore, insurance sector is regulated under the Insurance Act and the Regulations framed thereunder and having regard to the larger public policy and public interest, an insurance contract must subserve the statutory provisions of the insurance Act. Relevant excerpts of the judgment captured in paras 30 and 31 have been culled out for the facility of reference:

[17] (2008) 10 SCC 404

> **"30. The functions of the insurance companies are governed by statute. A contract of insurance, therefore, must subserve the statutory provisions. <u>It must indisputably be construed having regard to the larger public policy and public interest guiding nationalization of the insurance companies</u>.**
>
> **31. Insurance Sector is regulated. <u>The provisions of the Insurance Act are applicable to all insurance companies irrespective of the fact as to whether they are in public sector or private sector. When a business is regulated, all concerned would be governed thereby</u>.**
>
> **(Emphasis Supplied)**

77. In view of the aforesaid observation of Hon'ble Supreme Court, the argument of learned Senior Counsel for the respondent that respondent-insurance company, being operating in a private sector and involved in pure business, is not obliged to continue with the contract, particularly, after service of notice upon the SHA that it does not intend to continue, cannot be entertained. It is evident from the afore-quoted observation of the Apex Court that all the insurance companies, be in a public or private sector, are governed by the Insurance Act and the Regulations framed thereunder and the insurance contracts are to be construed, keeping in mind the larger public policy and public interest, guiding Nationalization of the insurance companies. Pertinently, the Apex Court also warned that IRDA intends all insurance companies-public and private, to offer a fair deal and that all terms and conditions of their offer must be transparent and there should not be any hidden agenda. It also cautioned that before the IRDA each insurance company has undertaken that they will be fair in their deal.

78. Hon'ble Supreme Court in the aforesaid case has also made clear in para 38 of the judgment that **"when the terms and conditions of a contract of insurance are fixed, the protective umbrella over the interest of the policy holders to become fully open.**"

79. The distinguishing feature of the case law, relied by learned Senior counsel for the respondent is that none of them pertains to the contract of insurance service and they deal with the enforcement of individual rights.

80. Since the nature of the contract between the parties is insurance service, therefore, balance of convenience also leans in favour of the petitioner and against the insurer.

81. The reliance placed by learned counsel for the respondent on **GMR Pochanpalli Expressway Limited v. National Highways Authority of India**[18] is misplaced, because it does not deal with service of insurance and in the said case an attempt was made by the petitioner to obtain a permanent relief of release of an amount in its favour which, according to the petitioner, was illegally deducted by the respondent.

82. The present case is not a case, where the damages which may be suffered by the petitioner-SHA, in general, and the beneficiaries of the Scheme, in particular, on account of alleged breach of contract by the insurer, could be quantified at a future point of time in terms of money or otherwise.

CONCLUSION

83. On overall conspectus of the case, what comes to the fore is that contract between the parties is not in its nature determinable but hedged upon the occurrence of exigencies and eventualities enumerated therein. Therefore, Specific Relief Act is not applicable to the present case. Functions of all Insurance Companies, public and private, are regulated under the Insurance Act and the Regulations framed thereunder. Therefore, an

[18] 2023 LiveLaw (Del) 104

insurance contract is subservient to the statutory provisions of the Insurance Act and must be interpreted and construed having regard to larger public policy and public interest, particularly, when it intends to provide service of health care to the citizens.

84. For what has been observed and discussed, petitioner has succeeded to make out a *prima facie* case for grant of interim measures in terms of Section 9 of the Arbitration Act and since contract between the parties is service of insurance, balance of convenience favours the grant of injunction. The damages, which may be suffered by the State Health Agency, in general, and the beneficiaries of the Scheme, in particular, on account of alleged breach of contract by the insurer, may not be compensated at a future point of time in terms of money or otherwise. Hence, present petition is allowed and respondent is temporarily directed to continue with the existing arrangement as per terms and conditions of the contract agreement pending resolution of dispute by the Arbitrator.

85. With the aforesaid direction, present petition stands disposed of along with connected CM(s).

(RAJESH SEKHRI)
JUDGE

Jammu:
28.08.2024
(Paramjeet)

Whether the order is speaking? **Yes**
Whether the order is reportable? **Yes**