HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

AA No. 01/2024

Union Territory of Jammu & Kashmir throuhg Chief Executive Officer, State Health Agency, J&K, Directorate of Health Services Kashmir, Bemina, Sgr.

….. Petitioner(s)

Through: Mr. Mohsin S. Qadri, Sr. AAG with
Ms. Maha Majeed, Assisting Counsel.

V/s

IFFCO-TOKIO, General Insurance Company Limited, IFFCO Sadan, C-1 District Center, Saket New Delhi-110017, through its Managing Director.

…..Respondent(s)

Through:

CORAM:

HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE.

JUDGMENT

01. The petitioner vide the present petition under Section 9 of the Arbitration and Conciliation Act, 1996 (Hereinafter referred to as the 'The Act') has sought the following reliefs -

> *A. Respondent be directed to restrain from opting out of the Contract of Insurance duly executed on 10-03-2022 between the Petitioner & Respondent herein for Implementation of Ayushman Bharat- Pradhan Mantri Jan Arogya Yojana & Ayushman Bharat – Pradhan Mantri Jan Arogya Yojana - SEHAT in the Union Territory of J&K beyond 14.03 2024; and/or*

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 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 publicheavily 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 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 & thus restraining the Respondent from removing the blanket cover of insurance from 14-03-2024 onwards.*

F. *Any other relief, which this Hon'ble Court may deem fit and proper as per the facts and circumstances of the case.*

Factual Matrix

02. The following course of events have culminated into the present dispute between the parties and has also led to the filing of the instant petition.

03. Briefly put, the facts in the present petition appear to be that the insurance contract between the Petitioner and Respondent was executed for

a maximum period of three years, commencing from 10th of March, 2022. Ordinarily, the contract agreement would have subsisted till 14th March, 2025, however, IFFCO – TOKIO, General Insurance Company (Hereinafter, Respondent Company) in their letter dated 1st November, 2023 informed that they would like to serve a notice expressing that they are not interested in further renewing the contract after the expiry of the present policy, which ends on 14th March, 2024 as per Clause 9.1c of the contract agreement dated 10th March, 2022.

04. In response to the aforementioned communication by respondent Company, the Chief Executive Officer, State Health Agency, J&K (Hereinafter, CEO, SHA, J&K), vide communication dated 3rd November, 2023 addressed to the CEO/MD of the Respondent Company, requested them to continue as insurer in terms of the Memorandum of Understanding (MOU) signed between the parties. The General Manager of the Respondent Company, in response to this request, informed the CEO, SHA, J&K vide communication dated 16th November, 2023 that they have decided not to accord their consent for the renewal of the contract beyond 14th March, 2024. In the aforesaid communication, the respondent company noted that SHA, J&K has enough time to make alternative arrangements with the view to prevent the beneficiaries from suffering on account of interpretation of the contract.

05. Subsequently, there were multiple correspondence exchanges between the SHA and the Respondent Company, whereby, the SHA requested the company to honour the terms and conditions of the contract. The Respondent Company replied stating that they are merely invoking

clause 9.1 (c) of the contract agreement and in no way are in breach of the terms of the contract.

06. The SHA, J&K, then invoked clause 41.3 of the contract agreement vide communication dated 19th January, 2024 and served notice to the Respondent Company for referring the matter to the Arbitral Tribunal requesting them to nominate an Arbitrator on their behalf. The Dispute Resolution clauses including the Arbitration clause is reproduced hereinunder: -

> ***"41. DISPUTE RESOLUTION:***
>
> *Any dispute or difference whatsoever arising between the Parties, whatsoever arising between the parties to this Contract out of or relating to the construction, meaning, scope, operation or effect of this Contract or the validity of the breach or termination of this Agreement (a "**Dispute**") shall be determined in accordance with the procedure set out in this Clause.*
>
> *41.1 Notice of Dispute and Manner of Dispute Resolution.*
>
> *41.1.1 Either Party may notify the other Party in writing of a Dispute (a "**Dispute Notice**"). The Parties shall attempt to resolve the Dispute amicably in accordance with the amicable resolution procedure set forth in Clause 41.2.*
>
> *41.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.*
>
> ***41.2 Amicable Resolution***
>
> *41.2.1 In the event of any Dispute between the Parties, either Party may require such Dispute to be referred to [CEO of SHA] and the MD & CEO of the Insurer for amicable settlement. Upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute*

41.3 Arbitration

Any Dispute which is not resolved amicably by amicable resolution procedure under Clause 41.2 shall be finally decided by reference to arbitration by a Board of Arbitrators appointed in accordance with Clause 41.3.2. The provisions of the Arbitration and Conciliation Act, 1996 and Rules there under will be applicable and the award made there under shall be final and binding upon the parties hereto, subject to legal remedies available under the law. Such differences shall be deemed to be a submission to arbitration under the Indian Arbitration and Conciliation Act, 1996, or of any modifications, Rules or re-enactments thereof. The seat and venue of such Arbitration proceedings will be held at Jammu/Srinagar, India. Any legal dispute will come under the sole and exclusive jurisdiction of Jammu& Kashmir, India. The language of arbitration proceedings shall be English.

41.3.2. The Board of arbitrators shall consist of 3 arbitrators, with each Party appointing one arbitrator and the third arbitrator being appointed by the two arbitrators so appointed. If the parties cannot agree on the appointment of the Arbitrator within a period of one month from the notification by one party to the other of existence of such dispute, then the Arbitrator shall be appointed by the High Court of Jammu & Kashmir, India

41.3.3 The Arbitrator shall make a reasoned award (the "Award"). Such award shall be implemented by the parties concerned within such time as directed by the Arbitrator in such Award.

41.3.4 The Insurer and the SHA agree that an Award may be enforced against the Insurer and/or the SHA, as the case may be, and their respective assets wherever situated as stated in Arbitration Award. Both the Parties to bear their own cost pertaining to the Arbitration Proceedings.

07. Feeling aggrieved of the same, the petitioner has filed instant petition under Section 9 of the Arbitration and Conciliation Act seeking interim protection from this Court.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

08. Mr Mohsin S. Qadri, the learned Senior AAG, appearing for the petitioner submits that under the insurance contract dated 10th March, 2022, the respondent company was under an obligation to adhere to clause 9.1 (a) to (c). He submits that the respondent company has chosen to selectively honour the contract of insurance upto the second year, but has opted out of the same in its final year, which is impermissible as per the terms of the contract agreement.

09. Mr Qadri further states that clause 9.1 (a) clearly provides that the insurance contract shall be for a maximum period of three years. He further submits that that the use of word "***shall***" connotes the mandatory nature of the said clause and the clauses following thereunder are subservient to the same. As per his submission, by resorting to an erroneous interpretation of the clauses of the contract agreement, the respondent company cannot absolve itself from the mandatory contractual liability entrusted to it.

10. It is further submitted by the learned counsel for the petitioner that while the clause postulates that the agreement is for a period of three years, the same shall be reviewed for renewal after every 12 months from the start date of the policy with reference to the performance criteria laid down in Schedule 12.

Schedule 12 provides for the key performance indicators for both the parties to the contract. He submits that the intent of clause 9.1 (b) is to ensure that sufficient criteria is in place to keep the parties in check, so that the health of public at large is given paramount consideration. Consequently, the sum and substance of the submission made by Mr Qadri is that the arbitrary and unreasoned exit notice served by the respondent company is

not only against its contractual liabilities, but also against the public health and safety at large.

11. Insofar as clause 9.1 (c) is concerned, Mr Qadri submits that the intent of the same is to provide a level playing field for both the parties in the eventuality that one of the party may require certain amendments/changes to meet any exigency, without changing the basic intent of the contract agreement. The invocation of the said clause, for the purpose of exiting from contractual liability, in his submission, is not only illegal and arbitrary, but also reeks of ***mala fide*** on part of the respondent.

12. It is further submitted by the learned Sr. AAG that public health cannot be thrown to the mercy of arbitrary freedom to terminate the contract. He submits that such contract operates in a public field where concerns of public interest must be read into such transactions and is paramount.

13. He further submits that Clause 27.2 of the contract agreement deals with termination of the contract by the SHA who shall have the right to terminate the insurance contract upon the occurrence of any of the following events mentioned in the aforesaid Clause, provided that such event is not attributable to a ***Force Majeure*** Event. The learned counsel further submits that the insurer has a right to terminate the insurance contract in view of the exigencies laid down under Clause 27.3 of the contract agreement and no such exigency has occurred as on date which could be a basis for terminate the insurance contract. The learned counsel further submits that even the exit notice has been issued by the respondent Company by placing reliance on clause 9 of the contract agreement with particular reference to Clause 9.1 (b) & (c) and not under Clause 27.3 of the contract agreement and thus, according to him, the respondent Company is under an obligation to honour

the contract for a period of three years as envisaged under Clause 9.1 (a) of the contract agreement.

14. Lastly, Mr Qadri, the learned Sr. AAG submits that the right of the insurer to wriggle out of the contract would only be limited to the ground such as misrepresentation, fraud, or non-disclosure of material facts, which would have vitiated the insurance. Otherwise, the performance of the contract on part of the insurer cannot be dispensed with.

FIDNINGS AND ANALYSIS

15. In the instant case, the sum and substance of the submissions made by the Ld Senior Counsel is that the petitioner has invoked Section 10 of the Specific Relief Act, 1963 to submit that it was entitled to specific performance of the contract, i.e. the insurance contract dated 10th March 2022. For a proper adjudication of this claim raised by the petitioner, it is pertinent to examine the provision and the bearing it may have on the facts and circumstances of the instant case. Section 10 of the Specific Relief Act is reproduced hereunder:-

> "***CONTRACTS WHICH CAN BE SPECIFICALLY ENFORCED*** *10. Specific performance in respect of contracts.—The specific performance of a contract shall be enforced by the court subject to the provisions contained in subsection (2) of section 11, section 14 and section 16."*

16. Section 10 of the Specific Relief Act, which provides for specific performance of a contract, acts as an enabling provision which a party to a contract may invoke to seek its enforcement with the intervention of the courts. The provision is to be read with Sections 11(2), 14 and 16 of the said Act which provide for situations in which specific performance of a contract

may not be invoked or is barred. It is pertinent to mention herein that relief of specific relief is an equitable relief.

17. Section 10 of Specific Relief Act was amended in the year 2018. After amendment, it reads as under:

> *"10. **Specific performance in respect of contracts**.—The specific performance of a contract shall be enforced by the court subject to the provisions contained in subsection (2) of Section 11, Section 14 and Section 16."*

18. As per the amended Act, the courts no longer have discretionary powers under the Specific Relief Act while granting such a relief. The court may be required to be satisfied on certain tests before granting the relief of specific performance, however, upon fulfillment of the ingredients and satisfaction of the court, a relief of specific performance may mandatorily be granted. To this effect, the Honble Supreme Court in ***Katta Sujatha Reddy v. Siddamsetty Infra Projects (P) Ltd., (2023) 1 SCC 355*** while holding that the amendments brought to the Specific Relief Act in the year 2018 are prospective and not retrospective in nature, observed as under:-

> *"44. We may note that the Specific Relief Act, 1963 is the second legislation, replacing the earlier 1877 enactment of the Specific Relief Act. The 1963 Act was enacted after consideration of the Law Commission in its Ninth Report. The 1963 Act more or less followed the English position on equitable remedy of specific performance. In Common Law, the remedy of specific performance was unknown in the initial days and courts only granted damages for the value of goods if there was any breach of contract. Accordingly English courts, in the early years, granted monetary relief. In order to rectify the harsh stance of law, Courts of Equity in England started granting relief of specific performance if the Court of Equity found that granting damages would be*

inadequate or some special equitable rights of the plaintiff under a trust have been breached. 45. In any case, grant of such relief, which emanated from equitable principles, remained discretionary. This principle is clearly explained by Swinfen Eady M.R., in Whiteley Ltd. v. Hilt [Whiteley Ltd. v. Hilt, (1918) 2 KB 808 (CA)] , in the following manner : (KB p. 819) "… the power vested in the Court to order the delivery up of a particular chattel is discretionary, and ought not to be exercised when the chattel is an ordinary article of commerce and of no special value or interest, and not alleged to be of any special value to the plaintiff, and where the damages would fully compensate." 46. However, this was not the position under the Civil Law. Under the Civil Law of contracts, adherence to the sanctity of contract is enforced with greater rigour by inversing the situation. The reason for choice of damages and specific performance range from legal to economic. It is in this context that the courts cannot engage on the merits of having damages or specific performance or a hybrid. It is best left to the legislature to choose the course best-suited to the economy without sheepishly following the typecast approach in England or Civil Law systems. 48. We do not subscribe to the aforesaid reasoning provided by the High Court for the simple reason that after the 2018 Amendment, specific performance, which stood as a discretionary remedy, is not (sic now) codified as an enforceable right which is not dependent anymore on equitable principles expounded by Judges, rather it is founded on satisfaction of the requisite ingredients as provided under the Specific Relief Act. For determination of whether a substituted law is procedural or substantive, reference to the nature of the parent enactment may not be material. Instead, it is the nature of the amendments which determine whether they are in the realm of procedural or substantive law.

51. In any case, the amendment carried out in 2018 was enacted to further bolster adherence to the sanctity of contracts. This approach was radical and created new rights and obligations which did not exist prior to such an amendment. Section 10, after amendment, reads as under:

***"10. Specific performance in respect of contracts.**—The specific performance of a contract shall be enforced by the court subject to the provisions contained in subsection (2) of Section 11, Section 14 and Section 16."*

52.This provision, which remained in the realm of the courts' discretion, was converted into a mandatory provision, prescribing a power the courts had to exercise when the ingredients were fulfilled. This was a significant step in the growth of commercial law as the sanctity of contracts was reinforced with parties having to comply with contracts and thereby reducing efficient breaches.

53. Under the pre-amended Specific Relief Act, one of the major considerations for grant of specific performance was the adequacy of damages under Section 14(1)(a). However, this consideration has now been completely done away with, in order to provide better compensation to the aggrieved party in the form of specific performance.

54. Having come to the conclusion that the 2018 Amendment was not a mere procedural enactment, rather it had substantive principles built into its working, this Court cannot hold that such amendments would apply retrospectively."

19. In the present case, the "insurance contract" between the parties which is likely to be terminated with effect from 14th March, 2024. Therefore, the issue which remains is whether the petitioner can seek specific performance of a contract which would no longer remain in existence after the said date. To address this preposition, it is pertinent to

refer to Section 14 of the Specific Relief Act, 1963 which deals with the contracts which are not specifically enforceable by a Court and which reads as under:

> "14. **Contracts not specifically enforceable.—** The following contracts cannot be specifically enforced, namely:—
> (a) where a party to the contract has obtained substituted performance of contract in accordance with the provisions of section 20;
> (b) a contract, the performance of which involves the performance of a continuous duty which the court cannot supervise;
> (c) a contract which is so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of its material terms; and
> ***(d) a contract which is in its nature determinable."***

20. Now, the question arises as to whether prima facie "insurance contract" is determinable or not. Clause 9 of the insurance contract specifies the term of the insurance. For facility of reference, Clause 9 reproduced herein under:

> *"9.1 Term of the Insurance contract with the Insurer*
> a. *The insurance contract shall be for a period of maximum 3 (three) years with starting date 10th March 2022.*
> b. *Though the contract period is of three (03) years, it is to be reviewed for renewal after 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."*

21. A holistic reading of clause 9.1 of the contract agreement, *prima facie,* reveals that the contract period is for a ***maximum of three years***, which

is subject to renewal after every 12 months from the start date of the policy. Therefore, upon a bare reading of the clause 9.1 (c) supra, which starts with non-obstante clause, the renewal of insurance contract is subject to mutual agreement between both the parties. This clearly reflects that insurance contract is determinable in nature at the behest of one of the parties without any conditions attached. As such, the insurance contract is not specifically enforceable under Section 14 of the Specific Relief Act.

22. The term ***'determinable in nature'*** though is not defined under any statute, however, in legal parlance, it indicates or suggests 'liable to end upon the happening of a contingency'. Therefore, any contract which provides for renewal based on mutual consent of the parties, ought to be determinable in nature. This also has bearing on injunctions which may be sought by the parties, as Section 41(e) of the Specific Relief Act, 1963, provides *that an injunction cannot be granted to prevent the breach of a contract,* ***the performance of which would not be specifically enforced.***

23. The "insurance agreement" being determinable in nature in view of the above said discussion, thus, in terms of Section 14(d) of the Specific Relief Act, 1963, no injunction can be granted to prevent breach of the contract, the performance of which can not enforced. As noted above, the respondent Company has already terminated the insurance agreement vide termination letter dated 1st November 2023 read with letter dated 16th November, 2023 Thus, where the petitioner is statutorily barred from seeking specific performance of the insurance contract, the petitioner cannot be held entitled to claim interim relief under Section 9 of the Act. In this regard, reference is made to the case of ***Bharat Catering Corporation V.***

India Railway Catering & Tourism Corporation & Ors.; 2009 SCC OnLine Del 3434, wherein Delhi High Court has held that:

> *"The scope of Section 9 does not envisage the restoration of the contract which stands terminated. It is not open to this Court to restore the contract under Section 9 which is meant only for the sole purpose of preserving and maintaining the property in dispute and cannot be used to enforce the specific performance of a contract."*

24. It is pertinent to mention herein that while deciding the petition under Section 9 of the Arbitration and Conciliation Act, the principles enshrined in Civil Procedure Code and Specific Relief Act have to be taken into consideration, the Hon'ble Supreme Court in the landmark judgment of *Adhunik Steels Ltd. v. Orissa Manganese and Minerals (P) Ltd., (2007) 7 SCC 125* with respect to the relief under the Specific Relief Act in a petition under Section 9 of the Arbitration and Conciliation Act has held as under:-

> *"8. There was considerable debate before us on the scope of Section 9 of the Act. According to learned counsel for Adhunik Steels, Section 9 of the Act stood independent of Section 94 and Order 39 of the Code of Civil Procedure and* ***the exercise of power there under was also not trammelled by anything contained in the Specific Relief Act****. Learned counsel contended that by way of an interim measure, the court could pass an order for the preservation or custody of the subject-matter of the arbitration agreement irrespective of whether the order that may be passed was in a mandatory form or was in a prohibitory form. The subject-matter of arbitration in the present case was the continued right of Adhunik Steels to mine and lift the ore to the surface on behalf of OMM Private Limited and until the arbitrator decided on whether OMM Private Limited was entitled to breach the*

agreement or terminate the agreement and what would be its consequences, the court had not only the power but the duty to protect the right of Adhunik Steels conferred by the contract when approached under Section 9 of the Act. ***Learned counsel emphasised that what was liable to be protected in an appropriate case was the subject-matter of the arbitration agreement.*** *Learned counsel referred to The Law and Practice of Commercial Arbitration in England by Mustill and Boyd and relied on the following passage therefrom:*

"(b) Safeguarding the subject-matter of the dispute.

The existence of a dispute may put at risk the property which forms the subject of the reference, or the rights of a party in respect of that property. Thus, the dispute may prevent perishable goods from being put to their intended use, or may impede the proper exploitation of a profit-earning article, such as a ship. If the disposition of the property has to wait until after the award has resolved the dispute, unnecessary hardship may be caused to the parties. Again, there may be a risk that if the property is left in the custody or control of one of the parties, pending the hearing, he may abuse his position in such a way that even if the other party ultimately succeeds in the arbitration, he will not obtain the full benefit of the award. In cases such as this, the court (and in some instances the arbitrator) has power to intervene, for the purpose of maintaining the status quo until the award is made. The remedies available under the Act are as follows:

(i) The grant of an interlocutory injunction.

(ii) The appointment of a receiver.

(iii) The making of an order for the preservation, custody or sale of the property.

(iv) The securing of the amount in dispute."

11. It is true that ***Section 9 of the Act*** *speaks of the court by way of an interim measure passing an order for protection, for the preservation, interim custody or sale of any goods, which are the subject-matter of the arbitration agreement and such interim measure of protection as may appear to the court to be just and convenient. The grant of an interim prohibitory injunction or an interim mandatory injunction are governed by well-known rules and it is difficult to imagine that the legislature while enacting Section 9 of the Act intended to make a provision which was dehors the accepted principles that governed the grant of an interim injunction. Same is the position regarding the appointment of a receiver since the section itself brings in the concept of "just and convenient" while speaking of passing any interim measure of protection. The concluding words of the section,* ***"and the court shall have the same power for making orders as it has for the purpose and in relation to any proceedings before it"*** *also suggest that the normal rules that govern the court in the grant of interim orders is not sought to be jettisoned by the provision. Moreover, when a party is given a right to approach an ordinary court of the country without providing a special procedure or a special set of rules in that behalf, the ordinary rules followed by that court would govern the exercise of power conferred by the Act. On that basis also, it is not possible to keep out the concept of balance of convenience, prima facie case, irreparable injury and the concept of just and convenient while passing interim measures under Section 9 of the Act.*

16. ***Injunction is a form of specific relief.*** *It is an order of a court requiring a party either to do a specific act or acts or to refrain from doing a specific act or acts either for a limited period or without limit of time. In relation to a*

breach of contract, the proper remedy against a defendant who acts in breach of his obligations under a contract, is either damages or specific relief. The two principal varieties of specific relief are, decree of specific performance and the injunction (See David Bean on Injunctions). The Specific Relief Act, 1963 was intended to be "an Act to define and amend the law relating to certain kinds of specific reliefs". Specific relief is relief in specie. It is a remedy which aims at the exact fulfilment of an obligation. According to Dr. Banerjee in his Tagore Law Lectures on Specific Relief, the remedy for the nonperformance of a duty are (1) compensatory, (2) specific. In the former, the court awards damages for breach of the obligation. In the latter, it directs the party in default to do or forbear from doing the very thing, which he is bound to do or forbear from doing. The law of specific relief is said to be, in its essence, a part of the law of procedure, for, specific relief is a form of judicial redress. Thus, the Specific Relief Act, 1963 purports to define and amend the law relating to certain kinds of specific reliefs obtainable in civil courts. It does not deal with the remedies connected with compensatory reliefs except as incidental and to a limited extent. *The right to relief of injunctions is contained in Part III of the Specific Relief Act. Section 36 provides that preventive relief may be granted at the discretion of the court by injunction, temporary or perpetual. Section 38 indicates when perpetual injunctions are granted and Section 39 indicates when mandatory injunctions are granted. Section 40 provides that damages may be awarded either in lieu of or in addition to injunctions. Section 41 provides for contingencies when an injunction cannot be granted. Section 42 enables, notwithstanding anything contained in Section 41, particularly Clause (e) providing that no injunction can be granted to prevent the breach of a*

contract the performance of which would not be specifically enforced, the granting of an injunction to perform a negative covenant. ***Thus, the power to grant injunctions by way of specific relief is covered by the Specific Relief Act, 1963.***

17. In Nepa Ltd. v. Manoj Kumar Agrawal [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 of 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****.*

18. ***The approach that at the initial stage, only the existence of an arbitration clause need be considered is not justified.*** *In Siskina (Cargo Owners) v. Distos*

Compania Navieria SA (The Siskina) [1979 AC 210 : (1977) 3 WLR 818 : (1977) 3 All ER 803 (HL)] Lord Diplock explained the position : (All ER p. 824f-g) "A right to obtain an interlocutory injunction is not a cause of action. It cannot stand on its own. It is dependant on there being a preexisting cause of action against the defendant arising out of an invasion, actual or threatened, by him of a legal or equitable right of the plaintiff for the enforcement of which the defendant is amenable to the jurisdiction of the court. The right to obtain an interlocutory injunction is merely ancillary and incidental to the pre-existing cause of action. It is granted to preserve the status quo pending the ascertainment by the court of the rights of the parties and the grant to the plaintiff of the relief to which his cause of action entitles him, which may or may not include a final injunction." He concluded : (All ER p. 825a-b) "To come within the sub-paragraph the injunction sought in the action must be part of the substantive relief to which the plaintiff's cause of action entitles him; and the thing that it is sought to restrain the foreign defendant from doing in England must amount to an invasion of some legal or equitable right belonging to the plaintiff in this country and enforceable here by the final judgment for an injunction."

21. It is true that the intention behind Section 9 of the Act is the issuance of an order for preservation of the subject-matter of an arbitration agreement. According to learned counsel for Adhunik Steels, the subject-matter of the arbitration agreement in the case on hand, is the mining and lifting of ore by it from the mines leased to OMM Private Limited for a period of 10 years and its attempted abrupt termination by OMM Private Limited and the dispute before the arbitrator would be the effect of the agreement and the right of OMM Private Limited to

*terminate it prematurely in the circumstances of the case. So viewed, it was open to the court to pass an order by way of an interim measure of protection that the existing arrangement under the contract should be continued pending the resolution of the dispute by the arbitrator. May be, there is some force in this submission made on behalf of Adhunik Steels. But, at the same time, whether an interim measure permitting Adhunik Steels to carry on the mining operations, an extraordinary measure in itself in the face of the attempted termination of the contract by OMM Private Limited or the termination of the contract by OMM Private Limited, could be granted or not, would again lead the court to a consideration of the classical rules for the grant of such an interim measure. Whether an interim mandatory injunction could be granted directing the continuance of the working of the contract, had to be considered in the light of the well-settled principles in that behalf. Similarly, whether the attempted termination could be restrained leaving the consequences thereof vague would also be a question that might have to be considered in the context of well-settled principles for the grant of an injunction. **Therefore, on the whole, we feel that it would not be correct to say that the power under Section 9 of the Act is totally independent of the well-known principles governing the grant of an interim injunction that generally govern the courts in this connection. So viewed, we have necessarily to see whether the High Court was justified in refusing the interim injunction on the facts and in the circumstances of the case**.*

24. But, in that context, we cannot brush aside the contention of the learned counsel for Adhunik Steels that if OMM Private Limited is permitted to enter into other agreements with others for the same purpose, it would be unjust when the stand of OMM Private Limited is that it

was cancelling the agreement mainly because it was hit by Rule 37 of the Mineral Concession Rules, 1960. Going by the stand adopted by OMM Private Limited, it is clear that OMM Private Limited cannot enter into a similar transaction with any other entity since that would also entail the apprehended violation of Rule 37 of the Mineral Concession Rules, 1960, as put forward by it. It therefore appears to be just and proper to direct OMM Private Limited not to enter into a contract for mining and lifting of minerals with any other entity until the conclusion of the arbitral proceedings.

25. At the same time, we see no justification in preventing OMM Private Limited from carrying on the mining operations by itself. It has got a mining lease and subject to any award that may be passed by the arbitrator on the effect of the contract it had entered into with Adhunik Steels, it has the right to mine and lift the minerals therefrom. The carrying on of that activity by OMM Private Limited cannot prejudice Adhunik Steels, since ultimately Adhunik Steels, if it succeeds, would be entitled to get, if not the main relief, compensation for the termination of the contract on the principles well settled in that behalf. Therefore, it is not possible to accede to the contention of learned counsel for Adhunik Steels that in any event OMM Private Limited must be restrained from carrying on any mining operation in the mines concerned pending the arbitral proceedings.

26. We think that we should refrain from discussing the various issues at great length since we feel that any discussion by us in that behalf could prejudice either of the parties before the arbitrator or the Arbitral Tribunal. We have therefore confined ourselves to making such general observations as are necessary in the context of the elaborate arguments raised before us by learned counsel.

27. We therefore dismiss the appeal filed by OMM Private Limited leaving open the questions raised by it for being decided by the arbitrator or Arbitral Tribunal in accordance with law. We also substantially dismiss the appeal filed by Adhunik Steels except to the extent of granting it an order of injunction restraining OMM Private Limited from entering into a transaction for mining and lifting of the ore with any other individual or concern making it clear that it can, on its own, carry on the mining operations in terms of the mining lease."

25. Further, in ***Pink City Expressway Private Limited vs. NHAI &Anr, reported as 2022 SCC Online Del 1816 decided on 15th June 2022***, the aforesaid preposition was also considered by a Division Bench of Delhi High Court and the following was observed:-

"19. Law on the scope of interference in a Section 9 petition is no longer res integra. The learned Single Judge has held that the prayer made by the Appellant in the Section 9 petition cannot be granted as that would amount to extending the contract contrary to the decision dated 29.04.2022. **It is well-settled that powers under Section 9 can only be exercised for preservation of the subject matter of the dispute till the decision of the Arbitral Tribunal and cannot be extended to directing specific performance of the contract itself.**

26. The Delhi High Court in a case titled, ***C.V. Rao &Ors. v. Strategic Port Investments KPC Ltd. &Ors. 2014 SCC OnLine Del 4441,*** has held that:

"40…….while exercising jurisdiction under Section 9 of the A&C Act, ***the Court cannot ignore the underlying principles which govern the analogous powers conferred under Order XXXIX Rules 1 & 2 CPC and Order***

XXXVIII Rule 5 CPC. *Not only is the court required to be satisfied that a valid arbitration agreement existed between the parties, but the powers under Section 9 of the A&C Act could be exercised only for orders of an interim measure of protection in respect of the matters specified in Section 9 (ii)(a) to (e) of the A&C Act. In other words, the orders must relate to preservation of the property, which is the subject matter of the dispute, till the Arbitral Tribunal decides the same.* ***The scope of relief under Section 9 of the A&C Act cannot be extended to directing specific performance of the contract itself.****"*

27. As such, the law is settled that by way of a Section 9 petition under the Act, a party cannot seek specific performance of the contract. Since the insurance contract stands terminated, this court cannot intervene under Section 9 of the Arbitration and Conciliation Act to direct specific performance of the contract. Further, as discussed above, the specific performance of determinable contracts is barred under Section 14 of Specific Relief Act, with a necessary corollary, even injunction is barred to be granted under Section 41(e) of the Specific Relief Act, 1963 wherever the contract is not specifically enforceable.

28. In view of the law discussed herein above, coming to the facts of the present case, this court is of the opinion that on the plain reading of Clause 9.1 of Insurance Contract, the contract agreement is prima facie determinable, as such the contract is not specifically enforceable under Section 14 of the Specific Relief Act. Further, injunction under Section 41 (e) of the Act cannot be granted in favour of petitioner since the contract is not specifically enforceable. Even if the petitioner would have passed the

litmus test of Section 14 and Section 41 (e) of Specific Relief Act, as per the law laid down by the Hon'ble Supreme Court mentioned *supra,* the interim relief in the form of directing the respondents to continue with the insurance contract could not have been granted as it will amount to granting of relief of specific performance of contract, which is beyond the scope of Section 9 of the Arbitration and Conciliation Act.

29. The law is well settled that whether the termination/exit notice met the requirement of the contract or not and thus, whether the termination/exit was valid or not, would be questions which are required to be examined and adjudicated upon by the Arbitrator. In light of the aforesaid, the argument of the learned Sr AAG that the exit notice served by the respondent Company was arbitrary and without assigning any reason does not hold ground in the instant petition which has been preferred under Section 9 of the Arbitration and Conciliation Act, 1996 seeking interim relief.

30. This Court is fortified by the view taken by the Division Bench of the Delhi High Court in ***Inter ADS Exhibition Pvt. Ltd.*** v. ***Busworld International Cooperative***, reported in ***2020 SCC OnLine Del 2485,*** the relevant paragraphs whereof read as under:-

> *"**13.** Whether the termination notice dated 15.03.2019, met the requirements of Article 12.4 or not and thus, whether the termination was a valid termination or not, would be questions that have to be examined and adjudicated upon by the learned Arbitrator, to be appointed by the parties to resolve their disputes. It would also be for the learned Arbitrator to reconcile Article 7.1 with the recitals in the JVA-II dated 25.10.2011, as reproduced hereinabove, limiting the agreement to four editions. Under Article 7, termination can be either mutually agreed to under Article 7.2 or at the option of either*

party, on the occurrence of certain events, as listed under Article 7.3, which contemplates a termination with penalty. Again, the question whether the respondent had given 30 days' time to the appellant to make good the default, duly specified in reasonable detail in the communications exchanged between the parties, is not for this court to inquire into. Suffice it is to state that in either event, the agreement was terminable and therefore, the conclusion arrived at by the learned Single Judge that specific performance of the contract could not be granted and nor could any injunction be issued restraining the respondent from giving effect to the notice dated 15.03.2019, as that would in effect amount to enforcement of the contract beyond the said date i.e. 15.03.2019, cannot be faulted.

***15.** Since the contract in the present case was terminable and as the issue of the legality of the action of termination has yet to be determined and further, since wrongful termination can be restituted by awarding of damages, in the event the appellant is able to establish that the said termination was illegal and invalid, the learned Single Judge has rightly declined the reliefs prayed for by the appellant in the Section 9 petition. We do not find any reason to interfere with the view taken in the impugned judgment."*

31. More recently, in 2023, the Delhi High Court in case titled as **C. Gopal Reddy and Company v. National Highways and Infrastructure Development Corporation Ltd.,** reported as ***2023SCC OnLine Del 2393***, has observed that when a contract is determinable and cannot be specifically enforced, no injunction against termination and enforcement of the contract can be issued. It was observed as under:—

"9. Section 41 vide clause (ha) states that an injunction cannot be granted in cases where it would impede or delay the progress or completion of any infrastructure project or

interfere with the continued provision of relevant facility related thereto.

30. Therefore, under Section 14(d) read with Section 41 of the Specific Relief Act, when a contract is determinable, and cannot be specifically enforced, no injunction against termination and enforcement of the contract can be issued.

31. As held in a plethora of judgments including Rajasthan Breweries Ltd. v. Stroh Brewery Co., 2000 SCC OnLine Del 481, Bharat Catering Corpn. v. IRCTC, 2009 SCC OnLine Del 3434 and Inter Ads Exhibition (P) Ltd. v. Busworld International Cooperative, 2020 SCC OnLine Del 351, and as recently held by a Coordinate bench of this Court in the case of, Shubham HP Security Force (P) Ltd. v. Central Warehousing Corpn., (2022) 2 HCC (Del) 264 : 2022 SCC OnLine Del 739, it is a settled position in law that it is not permissible for any party to seek an injunction on the termination of an agreement in the case of a determinable contract. Considering the nature and scope of the present proceedings, such an exercise cannot be undertaken by this Court.

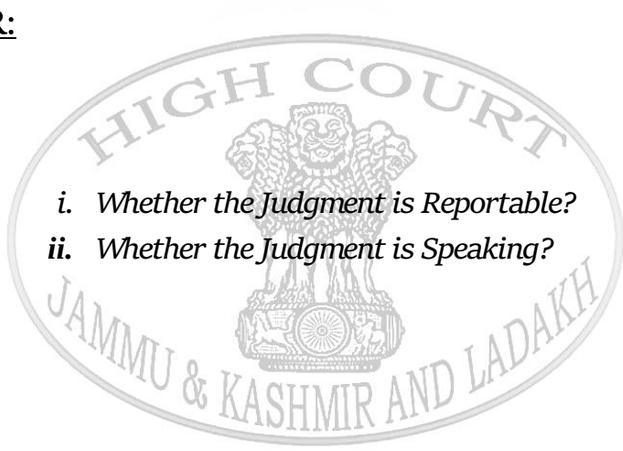
32. Therefore, the petitioner's prayer restraining the Termination of the Contract Agreement by Respondent No. 1, is not sustainable in law. At this stage, granting a stay of termination would necessarily entail this Court first forming an opinion, albeit a prima facie one, that the termination effected by the respondent was misconceived and contrary to the terms of the agreement."

32. Thus, in the light of what has been stated hereinabove coupled with the settled legal proposition of law, the present petition filed by the petitioner under Section 9 of the Arbitration and Conciliation Act, 1996 is held to be without any merit and the same is accordingly, **dismissed** in *limini* along with connected application.

33. However, this Court makes it clear that the observations made in the aforesaid order, both on facts and in law, are only a *prima facie* evaluation undertaken for the purpose of passing this order under Section 9 of the Act, and that the Arbitral Tribunal which is yet to be constituted, shall not be bound by any of the observations made in this order. The Arbitral Tribunal shall deal with the issues raised before it, even if they are the same as raised before this Court, independently, without, being influenced by any of observation made in this order or the findings recorded by this Court, *prima facie*.

(WASIM SADIQ NARGAL)
JUDGE

SRINAGAR:
02.02.2024
"Hamid"



i. *Whether the Judgment is Reportable?* *Yes.*
ii. *Whether the Judgment is Speaking?* *Yes.*