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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on: 17th November, 2022
Decided on: 24th November, 2022

\+ **W.P.(CRL) 2332/2022 and CRL.M.A. 20329/2022**

ATUL PUNJ ..... Petitioner

Through: Mr.Mohit Mathur, Sr. Advocate with Mr.Aditya Dewan and Ms.Himangini Mehta, Advocates.

versus

IDBI BANK AND ORS. ..... Respondents

Through: Mr.Anurag Ahluwalia, CGSC, Mr.Kaushal Jeet Kait, GP, Mr.Arif Ansari, Prosecutor, Mr.Tarun Srivastava, Advocate with Mr.Sandeep Kumar, LC, Mr.Pradeep Ballayn, SR Ad and Mr.Rinku Sharma, AD from SFIO.
Mr.Zoheb Hossain, Sr.Standing Counsel with Mr.Vipul Aggarwal, and Mr.Parth Semwal, Jr.Standing counsels for Income Tax Department.
Mr.Mridul Jain, SPP for CBI with Ms.Vedika Rattan and Ms.Neha Goel, Advocates.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This petition is filed by the petitioner seeking suspension of *Look Out Circular* (LOC), if any, issued against the petitioner for the period between 01.11.2022 to 21.11.2022; to enable him to travel Abu Dhabi, Bahrain, Riyadh and London for his consultancy work related to his business.

2. The learned senior counsel for the petitioner submits the petitioner is unaware whether LOC is in operation against him but since he has an apprehension in the light of investigation being conducted by SFIO and/or on account of proceedings under the RBI fraud declaration circular in relation to the affairs of M/s.Punj Lloyd Limited (PLL) of which the petitioner herein was a promoter/director. No official communication, however, has been received by the petitioner in respect of issuance of any LOC.

3. It is alleged the petitioner herein was a promoter of PLL, engaged in engineering, procurement and construction (EPC) services which includes EPC services in oil, gas and infrastructure sectors and trading of steel outside India.

4. In 2019 the National Company Law Tribunal, PB, New Delhi in CP No.(IB)-731 (PB)/2018 titled as ICICI Bank vs. Punj Lloyd Limited vide order dated 08.03.2019 had directed initiation of corporate insolvency resolution process of PLL under the provisions of IBC. Presently it is under liquidation. Around the same time in exercise of powers conferred under Section 212(1)(c) of the Companies Act, the Central Government vide its order dated 22.05.2019 has also assigned the SFIO to investigate the affairs of *PLL*. Subsequently PLL's account was declared as fraud by the IDBI Bank/respondent no.1 in November, 2020 under the guidelines of RBI's circular/master directions on frauds classifications and reporting by commercial banks and FI dated 01.07.2016 bearing DBS.CO.CFMC.BC.NO.1/23.04.001/2016-17.

5. In W.P.(C) 10796/2020 this Court passed an order directing status

quo be maintained in respect of declaration of the account of PLL as fraud and from taking any further steps pursuant thereto and that in W.P.(Crl.) 735/2021 respondent were directed not to take any coercive measure till adjudication of W.P.(C) 10796/2020. It is submitted the petitioner now requires to visit Abu Dhabi, Bahrain, Riyadh and London from 01.11.2022 to 21.11.2022 and he requires suspension of LOC. He further submits even on earlier occasions he has been allowed to visit abroad by orders of the DRT.

6. The learned counsel for the SFIO on the other hand submits they are investigating the matter qua cheating by the petitioner's company of the banks to the tune of Rs.12,300 crores approx. and gave a list of 38 such banks in its status report. It is alleged the petitioner has been the Managing Director of PLL and has been in direct and indirect control of the affairs of PLL and its subsidiaries, based in India or in overseas jurisdiction and has been associated with more than 100 such like companies.

7. It is alleged the petitioner is not co-operating in the investigation and is giving evasive replies and is shirking from holding any accountability and is deliberately seeking time to provide information. He has admitted his son Mr.Shiv Punj was also associated in the business of PLL.

8. The learned counsel also highlighted the role of the petitioner in M/s.Domus Lloyd Contracting Limited (DLCL) in which PLL has a major stake. He refers to the statement of Mr.Rahul Maheshwari who stated PLL manages to generate liquidity for Mr.Shiv Punj in Dubai and both father and son, the promoters of PLL, have been transferring money outside India viz. transferring it to their own accounts or accounts of their relatives who

would finally on their directions would transfer the money back to the promoters. PLL on the directions of the petitioner has done substantial investment in DLCL, registered in overseas jurisdiction as stated in the status report.

9. It is alleged M/s.Chirag Techno FZCO is in actual control of the petitioner and it is nothing but a camouflage for hiding diverting assets, funds and evading legal and law enforcement consequences after duping public sector banks money borrowed by PLL. It has been found the amount receivable from vendors of PLL has been directly remitted to DLCL instead of receiving such amount in trust and retention account. The reports states the payment to DLCL had been made prior to making the payments to the secured creditors. It has also come to the notice payments of huge amounts have been made to number of entities in the name of consultancy fee in overseas from PLL and its group companies and also to the promoters of PLL i.e., the petitioner and his son. Further it is stated the petitioner is associated with M/s.Cawdor Enterprises Limited registered in British Virgin Islands (BVI), which is a major shareholder of PLL whose beneficiary is the petitioner herein and he has received a huge amount as dividend from PLL.

10. Though the petitioner herein has bank account with the First Abu Dhabi Bank but he had denied having any account related to him. The investigation also reveal infusion of funds through ATM cash deposits to the tune of AED 10,461,076.77 and it has further come to the notice these accounts receive huge value inward wire transfer from many companies including M/s.Uphill Profit Worldwide Limited, wherein the petitioner and

his son are the beneficial owners.

11. Similarly, the Income Tax Department has also found in investigation a quantum of *1.7* million USD being sent to M/s.Trejo Associated SA in British Virgin Islands (BVI). Secondly, an amount of GBP 2,12,907 first parked in the Julius Baer Bank Singapore account of petitioner was transferred to M/s.Uphill Profit Worldwide Limited in which the petitioner and his son are the beneficial owners. It is alleged replies have been received from the competent authority and EOI request is still pending.

12. Thus, it is argued LOC was necessitated by the fact the petitioner has committed multiple violations including a bank fraud of siphoning off funds to offshore accounts thereby creating foreign assets as a mean of escaping the consequences of his actions. His son is staying abroad and has not returned to India in the last two years and the facts do disclose the petitioner and his family have means to sustain outside country. There exist foreign interests which can well take care of their life and livelihood away from the consequences of their actions in India that hold them liable for punishment.

13. It is alleged the LOC has been opened per on dated 05.12.2017 as the petitioner is a flight risk and should not be permitted to go abroad in larger public interest. O.M.25016/10/2017-Imm (pt.) dated 05.12.2017 is as under:

> *"In exceptional cases, LOCS can be issued even in such cases, as would not be covered by the guidelines above, whereby departure of a person from India may be declined at the request of any of the authorities mentioned in clause (b) of the above-referred OM, if it appears to such authority*

> *based on inputs received that the departure of such person is detrimental to the sovereignty or security or integrity of India or that the same is detrimental to the bilateral relations with any country or to the strategic and/or* ***economic interest of India*** *or is such person is allowed to leave, he may potentially indulge in an act of terrorism or offences against the State and/or such departure ought not to be permitted in the larger public interest at any given point in time."*

14. Several Courts have invoked the amended OM of 2017 while upholding the power of issuance of LOC where the economic interests of India are involved, viz. [***Suman Gupta vs. Union of India &Ors. Criminal Writ Petition 1313/2020 Para 6; S. Martin v. Deputy Commissioner of Police 2014 SCC OnLine Mad 426 & GSC Rao v. State of UP (2019) 106 ACC 437***].

15. The issuance of an LOC is in nature of an administrative action and the scope of judicial review is limited. While reviewing administrative action it was held Courts do not substitute the wisdom of the authorities as if it is sitting in appeal *viz* ***Union of India v. G. Ganayutham (1997) 7 SCC 463.***

16. The Income Tax Department (hereinafter "IT Dept.") has for the investigation of offences under the Black Money Act, 2015 (hereinafter "BM Act") issued FT&TR References seeking information from competent authorities abroad.

17. It is alleged Mr. Atul Punj, a citizen of India and a resident for taxation purpose for F.Y. 2018-19, is the beneficial owner of M/s Trejo Associated, SA and Uphill Profit Worldwide Limited. Both entities are registered out of India in British Virgin Islands and the beneficial

ownership details of these entities has not been declared in his ITRs filed in India. Atul Punj is also beneficial owner of the assets of the bank account held in Julius Bear Bank Account, Zurich which is also not been declared in his ITRs filed in India. The beneficial ownership details have been confirmed by Foreign Competent Authorities. He is also liable for consequences under Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 which include criminal prosecution. The offences are cognizable.

18. The Hon'ble Supreme Court in the case of ***Ram Jethmalani v Union of India (2011) 8 SCC 1*** had taken judicial notice of the fact thousands of crores of Indian rupees are stashed away abroad in foreign bank accounts posing a serious threat to the financial health and economy of the country.

19. The factum of foreign assets of the petitioner only came to light in 2019-2020 and therefore his prior travels would make no difference to the present case as offences under the Black Money Act has only been revealed from 2020 onwards and proceedings have been initiated thereunder.

20. Thus, considering the fact the investigation is at initial/crucial stage and the petitioner allegedly is evading queries and has promised to give replies only on 09.12.2022 and millions have been transferred by him to foreign accounts *per* investigation till date, hence the discretion needs to be exercised *cautiously* moreso when the petitioner's son has not returned to India for the last two years and is not co-operating. Thus, considering the allegations of siphoning off huge amounts and the investigation under the Black Money (Undisclosed Foreign income and assets) and Imposition of Tax Act, 2015 being at initial stage I am not inclined to suspend the LOC at

this stage. The petition is thus dismissed. Pending application(s), also stands disposed of.

YOGESH KHANNA, J.

NOVEMBER 24, 2022
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