AD-12
Ct No.09
16.08.2023
TN

WPA No. 26103 of 2022
IA No: CAN 1 of 2023

Naman Ajitsaria
Vs.
Union of India and others

Mr. Arik Banerjee,
Mr. Arijit Roy,
Mr. Sumit Biswas,
Ms. Rajashree Bhowmick
.... for the petitioner

Mr. Billwadal Bhattacharyya
.... for the UOI

Mr. Avishek Guha,
Ms. Akansha Chopra
.... for the respondent nos. 5 & 6

The present challenge has been preferred against the issuance of a Look Out Circular (LOC) against the petitioner. It is contended that the said LOC was issued without any rhyme or reason at the behest of the respondent-Bank. It is submitted that a challenge was preferred against the *vires* of Sections 95 to 100 of the Insolvency and Bankruptcy Code, 2016 in this court by way of a writ petition, bearing WPA No. 15042 of 2022, which is now pending. By an order dated July 15, 2022 passed in the said challenge, the court was *inter alia* pleased to restrain the petitioner from transferring or alienating or disposing of any of his assets or beneficial interest or legal rights until the matter is heard out. In the same breath, CP(IB) No. 86 (KB)/2022 pending before the NCLT, Kolkata Bench, was also directed to remain stayed in the meantime.

It is argued by learned counsel for the petitioner that the petitioner is not suffering from any order of recovery passed by any tribunal or other forum. That apart, the alleged willful defaulter declaration has not been passed against the petitioner but against the company, where the petitioner was merely a guarantor at one point of time.

Learned counsel for the respondent nos. 5 and 6 files, as per previous direction, a copy of the request sent by the Bank to the Immigration Authorities for origination of an LOC against the petitioner. The said communication is handed over to court directly, in a sealed envelope, in deference to the Circular to the that effect issued by the concerned Ministry of the Union of India, requesting confidentiality to be maintained with regard to such document. The document be made a part of the record.

A perusal of the reason for opening of LOC, as disclosed in the said request by the respondent nos. 5 and 6, however, does not reveal anything which would, in any manner, would disclose any secret source or adversely affect the interest of and/or be to the detriment of safety and security of the country in any manner whatsoever. The limited clause, indicating the reasons for opening of LOC as cited by the respondent nos. 5 and 6, is as such set out below:

*"**M/s. Prithvi Ferro Alloy P Ltd** availed various credit facilities from our CFS, Branch, Kolkata under consortium banking arrangement. The company were into the business of production of ferro manganese alloys/captive power plant. **Mr. Bijay Kumar Garodia**, is the director of the borrower company as well as the guarantor to the limits granted to the borrower company along with **Mr. Naman Ajitsaria**. The account slipped into NPA w.e.f. 01.06.2016 and the balance outstanding dues of our Bank is Rs. 42.86 Crores.*

*The unit of the Company is closed. The company has been declared as Wilful Defaulter on 11.02.2019 and it is apprehended that the director/guarantors are likely to escape from India. Opening of LOC against Mr. Bijay Kumar Garodia and Mr. Naman Ajitsaria will help in preventing their travel abroad and will also put them in pressure when their names are disclosed to the public as defaulter and will tarnish their image before their business groups. Hence opening of LOC against **Mr. Naman Ajitsaria,*** is recommended, which will also create fear in their minds."

As per the concerned Office Memorandum issued by the relevant authorities regarding the issuance of LOCs, two of the grounds may be urged in the present context, being the economic interest of the country being adversely affected and/or public interest being so affected if the petitioner flees the country.

However, nothing in the reasons cited for opening of LOC, as quoted above, show anything which comes directly within the purview of the said grounds. Insofar as the "economic interest" of the country is concerned, the Bank has to establish grounds on a very high footing for restraining the personal liberty of the petitioner, guaranteed by the Constitution.

The mere quantum of the debt-in-question (Rs.42 crore as alleged herein) cannot be a sole factor for considering the threat to the economic interest if a person leaves the country.

In the present case, already an order has been passed by the previous writ court restraining the petitioner from dealing with or disposing of his properties, assets and interests.

Such injunction order, for the time being, is sufficient protection to the Bank, in the event ultimately any order of recovery is passed against the petitioner.

That apart, nothing in the reasons cited by the respondent/Bank contains any immediate threat to the public interest of the country.

It has been well-settled by judgments of several High Courts of the country that the Bank or any other originating authority cannot resort to issuance of LOC as a mere alternative of a recovery proceeding.

In the present case, the respondent no. 6-Bank is, in any event, at liberty to initiate appropriate proceedings and see the same through its logical culmination, for recovery of the debts-in-question.

However, such right is not justification enough to curtail or restrict the individual right of movement and liberty of the petitioner, who is an Indian citizen, insofar as the movement of the petitioner within the country and abroad is concerned.

Hence, the very premise of the issuance of LOC is vitiated and the LOC is required to be set aside.

That apart, the following phrase in the request for LoC betrays a mala fide intent on the part of the Bank :

"Opening of LOC against Mr. Bijay Kumar Garodia and Mr. Naman Ajitsaria will help in preventing their travel abroad and will also put them in pressure when their names are disclosed to the public

as defaulter and will tarnish their image before their business groups."

At this juncture, learned counsel for the Immigration Authorities submits that the fact that the petitioner seeks to leave India allegedly for business purpose to visit UK be recorded as, according to the Immigration Authorities, such purpose is not corroborated by the documents contained in the writ petition, including the VISA of the petitionr.

Learned counsel for the petitioner controverts such contention.

Be that as it may, in view of the reasons given above, the LOC and the respondent-Bank's request for issuance of the same cannot be sustained in the eye of law.

Accordingly, WPA No. 26103 of 2022 is allowed, thereby setting aside the Look Out Circular (LOC) issued against the petitioner and the request of issuance sent by the respondent-Bank, which prompted the issuance of the LOC.

The respondent-authorities are restrained from preventing the petitioner in any manner from leaving the country, subject to the petitioner carrying a valid passport and/or VISA, if the latter is necessary (depending on his destination), on the strength of the LOC which has been set aside by this order.

The respondent nos. 2 and 3 are directed to communicate the gist of this order, accordingly, to all the concerned authorities, to whom the issuance of LOC has been communicated previously, to ensure that the endorsements made on the passport of the petitioner, solely on the strength of the vitiated LOC, do not stand in the way of the petitioner being permitted to board flights and/or leave the country in any legitimate manner whatsoever.

IA No: CAN 1 of 2023 is also disposed of accordingly.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)