IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

CIVIL APPELLATE JURISDICTION

ORIGINAL SIDE

RESERVED ON: 16.08.2023
DELIVERED ON: 24.08.2023

CORAM:

THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

A.P.O.T NO. 38 OF 2021

(I.A. NO. G.A./01/2021)

HEMANTA KUMAR BANKA

VERSUS

UNION OF INDIA AND OTHERS

Appearance:-
Mr. Jishnu Chowdhury, Sr. Adv.
Mr. Sarva Priya Mukherjee, Sr. Adv.
Mr. Sanjukta Gupta, Adv.
Mr. Arnab Sardar, Adv.
Mr. Abir Lal Chakravorti, Adv.

....for the Appellant.

Mr. Sabyasachi Choudhury, Sr. Adv.
Mr. Rajarshi Dutta, Adv.
Mr. Sourjya Roy, Adv.
Mr. Arjun Mookerjee, Adv.

.....for the Respondent.
(Advocate for Bank)

JUDGMENT

(Judgment of the Court was delivered by T.S. Sivagnanam, CJ.)

1. This intra court appeal by the writ petitioner is directed against the order dated February 23, 2021 in WPO No. 53 of 2021. The said writ petition was filed by the appellant praying for issuance of writ of a mandamus to direct the authorities namely the Ministry of Home Affairs, Government of India and UCO Bank to show cause as to why the look-out notice issued against the appellant, impugned in the writ petition, should not be rescinded forthwith. The appellant also sought for a direction upon the respondent to desist and/or forebear from preventing the appellant from travelling abroad. The learned single bench by the impugned order dismissed the writ petition holding that it does not lie in the mouth of the appellant to say that his right to travel touches upon the liberty under Article 21 of the Constitution of India and that Article 21(6) is the sufficient handle to curtail such a right, since the individual right of the appellant has to give way to the public interest of India. Aggrieved by such order, the appellant has preferred the present appeal.

2. Mr. Jishnu Chowdhury, learned advocate appearing for the appellant submitted that the learned writ court had principally erred in coming to four wrong conclusions. The first of which being that the court erroneously held that there was sufficient justification for the apprehension of the respondent bank that the appellant might escape from India thereby defeating any effort to recover the huge amounts of loan due from him, which led to the request for issuance of look-out circulars (LOC). The second incorrect finding was that although the orders were passed by the Singapore High Court under

the Singaporean law such orders utterly jeopardized financial standings and integrity of the appellant which was sufficient to raise the apprehension that the appellant might not be in a position to repay the loan. Thirdly, it is submitted that the scope and ambit of the office memorandums issued by the Ministry of Home Affairs, Government of India dated 27.10.2010, and dated 04.10.2018 have been referred to and relied on without taking into all the relevant clauses in the said office memoranda.

3. The learned counsel elaborated his submissions on the aforementioned three contentions. It was submitted that the provisions of the Passports Act, 1967 were not appreciated by the learned single bench as also the rights enshrined to the appellant under Articles 14, 19 and 21 of the Constitution of India. It is submitted that the learned writ court ought not to have relied upon the clause 8(j) of the office memorandum dated 27.10.2010 without considering clause 8(h) which provides that no persons can be detained or prevented from leaving the country, if no cognizable offence under Indian Penal Code or other penal laws is pending against such person.

4. It is submitted that there are no criminal proceedings are pending against the appellant nor any cognizable offence under any penal provision or IPC has been registered against the appellant and therefore the learned writ court ought to have set aside the LOC issued by the respondent. Further the office memorandum dated 04.10.2018 which amended the office memorandum dated 27.10.2010 including willful defaulters will not apply to the appellant as the appellant has not been held to be a willful defaulter by the respondent bank, nor the appellant has been declared as a fraudster. The office memorandum dated 27.10.2010 as modified from time to time is

not applicable to the appellant and there was no question of economic interest of India or larger public interest being affected if the appellant is permitted to travel outside India. The appellant is not a criminal but a bankrupt person and has no intention to abscond to a foreign jurisdiction. On the contrary, if the appellant is not allowed to travel overseas, the appellant will be deprived of his only opportunity to earn his livelihood. It is submitted that the learned writ court failed to appreciate that the appellant as a citizen of India has fundamental right to freedom of movement as guaranteed under Article 19(1)(d) read with Article 21 of the Constitution of India which includes the right to travel abroad.

5. It is submitted that unless a litigant misuses the liberty granted to him, liberty to move freely within the territory of India and abroad cannot be interfered by a court of law. In this regard, reliance was placed on the decision of the Hon'ble Supreme Court in ***Mrs. Maneka Gandhi Versus Union of India and Another*** [1]. Reliance was also placed on the decision in the case of ***Vishambhar Saran Versus Bureau of Immigration and others*** [2], decision of the Division Bench of the Punjab and Haryana High Court reported in ***Poonam Pual Versus Union of India and Others*** [3] and the decision in the case ***Vishambar Saran Versus Bureau of Immigration and others*** [4]. Reliance was also placed on the order passed by the High Court of Judicature at Bombay in WP(L) No. 295 of 2020 dated 06.02.2020, ***Attaluri Venkateswara Prasad and another Versus The Bureau of Immigration, Ministry of Home Affairs, Delhi and Others*** On the above

---

[1] (1978) 1 SCC 248
[2] 2021 SCC Online Cal 3074
[3] 2022 SCC Online P7H 1176
[4] MANU/WB/0692/2023

grounds, the learned senior advocate sought for setting aside the order passed by the leaned single bench and consequently set aside the LOC issued against the appellant.

6. Mr. Sabyasachi Choudhury, learned advocate appearing for the third respondent bank after referring to the office memorandums dated 27.10.2010, 19.09.2018 and 04.10.2018 submitted that in terms of clause (c) of office memorandum dated 04.10.2018, LOC against the economic offenders/defaulters can be issued in exceptional cases and two of the factors to be reckoned are strategic interest and/or economic interests of India. It is submitted that the third respondent bank would bring their case under the category of "strategic interest" considering the facts and circumstances of the case. It is submitted that the need for amendment to the office memorandum brought about during 2018 was post the bank fraud and scams which were committed in the country and outside the country and the Managing Directors and Chief Executive Officers of all public sector banks were empowered as originating agency to make a request for issuance of LOC. It is submitted that the appellant is a citizen of India, who established the business in Singapore, availed financial assistance from the third respondent bank which is a public sector bank in India amenable to the Reserve Bank of India and Government of India and the financial assistance was extended to the appellant through the overseas branch of the third respondent at Singapore. The appellant was a director of a company which has been wound up by the Singapore High Court and the appellant has been declared as an insolvent by the Singapore High Court and as per the laws of Singapore, the appellant having been declared as insolvent

cannot leave Singapore. In this regard, the learned advocate referred to the Insolvency, Restructuring and Dissolution Act, 2018 enacted by the Republic of Singapore. Further after referring to the various documents which were executed by the appellant including the personal guarantee and the indemnity bond, it is submitted that the appellant is amenable to both the laws in India as well as Singapore.

7. It is submitted that the overseas branch of the third respondent bank at Singapore while reviewing the NPA accounts as per the policy of the third respondent were conscious of the fact that the appellant was residing in India and periodically travelling overseas for carrying on business and the appellant having been declared bankrupt in Singapore and his Company M/s. HBG Trading Pte Limited having been wound up, the appellant does not have any realizable assets in Singapore. Further it is submitted that the appellant has no intention of repaying the dues and the appellant might escape his liability by absconding to a foreign jurisdiction, given the past conduct of the appellant in avoiding his liabilities in Singapore. Therefore, overseas branch of the third respondent at Singapore proposed that LOC be issued against the appellant, who was designedly exiting the country so as to be out the reach of law. It is further submitted that the non-repayment of dues to the third respondent bank affects the economic interest of India and subsequent absconding would result in economic offences. It is submitted that proof of debt has been submitted to the liquidators of M/s. HBG Trading Pte Limited as well as before the Bankruptcy Trustee of the appellant and the dues payable by the appellant to the third respondent bank stands at USD1,746,287.88 which is approximately Rs. 12.71 crores

as per the exchange rate prevailing during February 2021. It is further submitted that the proposal submitted by the overseas branch of the third respondent at Singapore was reviewed by the Committee of the third respondent constituted for the purpose of recommending issue of LOC as per the policy of the third respondent bank and the recommendations for initiation of LOC against the appellant was placed before the Managing Director and Chief Executive Officers of the third respondent bank who is competent to take decision and decision was taken by the said competent authority pursuant to which LOC was issued. It is further submitted that the appellant being an Indian obtained loan from overseas branch of a bank registered in India and was amenable to the laws of Singapore as well as laws of India which is clear from the various documents signed by the appellant with the third respondent bank and therefore the necessity to issue the LOC is well founded with the view to protect the strategic interest of India and to ensure that the appellant does not defraud the third respondent bank. In support of his contention, the learned advocate placed reliance on the decision of the High Court of Karnataka in ***Dr. Bavaguthu Raghuram Shetty Versus Bureau of Immigration, Ministry of Home and Others*** [5] and the decision of the High Court of Delhi in ***Ghanshyam Pandey Versus Union of India and Another*** [6].

8. The learned advocate for the respondent submitted that by office memorandum dated 22.02.2021 issued by the first respondent, the guidelines which were issued earlier were summed up and consolidated

[5] ILR 2021 KAR 4855
[6] 2023 SCC Online Del 936

guidelines for issuance of LOC in respect of Indian citizens and foreigners were issued and in terms of the said office memorandum, the LOC once open shall remain in force until and unless a deletion request is received from the Bureau of Immigration from the originator itself and no LOC shall be deleted automatically. Thus, it is submitted that the learned single bench after taking into consideration the facts of the case had rightly rejected the prayer to set aside the LOC issued against the appellant.

9. We have elaborately heard the submissions of the learned advocates on either sides and carefully perused the materials placed on record.

10. The following facts are required to be noted much of which is not in dispute. The third respondent bank is an Indian Public Sector Bank under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, it is a Government of India undertaking and primarily carries its banking business from its head office at Kolkata as well as other branches located throughout the territory of India with two overseas branches located at Singapore and Hongkong. The overseas branch at Singapore of the third respondent bank commenced its operations from 21.04.1951 and since then has been functioning continuously as a fully licensed bank with a Domestic Banking Unit and Asian Currency Unit granted by the Monitory Authority of Singapore. The branch at Singapore being an overseas branch of an Indian public sector bank is subject to the regulatory framework of the Reserve Bank of India as well as Monitory Authority of Singapore. The overseas branch facilitates the credit and trade finance with a view to support Indian community internationally. It is not in dispute that the third respondent bank has its headquarters in Kolkata and it's Singapore branch is its

overseas branch which is also a Government of India undertaking. The appellant holds an Indian passport and has been travelling to various destinations in India and to Singapore and back till 18.03.2020 after which he is primarily stationed in India. The appellant has been issued a Singapore permanent resident card which is stated to have been valid till 15.11.2021. The appellant was the Director of M/s. HBG Trading Pte Limited which was incorporated in Singapore on 18.10.2012. The third respondent bank originally sanctioned credit facilities with a limit of USD 2.7 million on 17.03.2017, approximately Rs. 19.65 crores as per the exchange rate. The credit facility was renewed from time to time and lastly renewed in terms of the sanction advise dated 14.03.2019. Pursuant thereto, the appellant executed a Facility Agreement and Personal Guarantee on 26.06.2019 together with executing other documents to secure the interest of the third respondent bank. The appellant and the company committed default in repayment of the loan and the demands made by the respondent bank for regularization of the trade facilities and clearance of dues were not adhered to. It is not in dispute that the appellant did not pay the dues nor honored the repayment obligations fastened on him. The account of M/s. HBG Trading Pte Limited was classified as a Non-Performing Assets (NPA) on 23.06.2020 and the overseas branch of the third respondent adjusted the cash margins (fixed deposits under lien) as against the overdues and the balance amount outstanding payable by M/s. HBG and the appellant who was a guarantor stood at USD 1,679,108 which is approximately Rs. 12.15 crores as per the exchange rate as on 23.06.2020. The appellant had not returned to Singapore since 18.03.2020 and in the meantime his creditors launched proceedings both against the appellant in his personal capacity as well as the company. M/s. Income Pte Limited filed winding up proceedings during May 2020 against M/s. HBG Trading Pte Limited which was subsequently pursued by M/s. Maersk Trading Finance. The Hon'ble High Court of the Republic of Singapore by order dated 09.10.2020 directed winding up of M/s. HBG Trading Pte Limited and liquidators were appointed. The third respondent bank has filed its proof of debt with the liquidators on 21.10.2020. M/s. Maersk Trade Finance initiated bankruptcy proceedings against the appellant before the High Court at Singapore during May 2020 and an order was passed on 19.11.2020 declaring the appellant as bankrupt and appointing the trustee over the appellant's estate. The third respondent bank has submitted its of proof of debt/claim against the appellant with the said trustee on 30.11.2020.

11. The fact that the appellant has been travelling to several countries including United Republic of Tanzania for business purposes appears to be not in dispute. In the given fact situation, the third respondent bank had a reasonable apprehension that the appellant has an intention of escaping the arm of law and his creditors by escaping to a foreign jurisdiction and upon review on account of the appellant which was declared as NPA as also the fact that the company was wound up and the appellant was declared bankrupt and the appellant having no intention of repaying the dues to the third respondent bank and the non-repayment of the dues would have an economic impact on the country, the overseas branch of the third respondent bank forwarded a proposal to the third respondent which

appears to have been reviewed by a Committee constituted by the third respondent to consider such recommendations for issuance of LOC and being satisfied had placed its recommendations before the competent authority namely the Managing Director and Chief Executive Officer of the third respondent who had communicated his decision to the appropriate authority of the Government of India pursuant to which the LOC impugned in the writ petition was issued.

12. The Hon'ble Supreme Court in ***Mrs. Maneka Gandhi*** held that the Hon'ble Supreme Court in ***Satwant Singh Sawhney Versus D. Ramarathnam*** [7] held that personal liberty within the meaning of Article 21 includes within its ambit the right to go abroad and consequently no person can be deprived of this right except according to procedure prescribed by law. It was further held that prior to the enactment of the Passport Act, 1967, there was no law regulating the right of a person to go abroad and that was the reason why the order of the Passport Officer refusing to issue passport to the petitioner in ***Satwant Singh's*** case was struck down as invalid. Further it was held that from the language of Article 21 where the protection it secures is a limited one. It safeguards the right to go abroad against executive interference which is not supported by law and law here means enacted law or state law. It was further held that no person can be deprived of his right to go abroad unless there is a law made by the State prescribing the procedure for depriving him and the deprivation is affected strictly in accordance with such procedure.

---

[7] (1967) 3 SCR 525

13. Bearing this legal principle in mind, we now proceed to examine the matter before us. The earliest of the office memorandum pertaining to the issuances of LOC in respect of Indian citizens and foreigners was governed by the memorandum dated 05.09.1979 and 27.12.2000. In the memorandum dated 05.09.1979, it has been stated that apart from the Government of India in the Ministry of Home Affairs, circulars are issued by various authorities for keeping a watch on arrival/departures of Indians and foreigners. These authorities includes the Ministry of External Affairs, the Customs and Income Tax Departments, Directorate of Revenue Intelligence, Central Bureau of Investigation, Interpol, Regional Passport Officers, Police authorities in various states etc. It has been further stated that unless otherwise specified in the warning circulars itself, the circulars issued by any of the various authorities specified above will be regarded as invalid, if it is more than one year old and the card will be wedded out. For the future, it is considered that whenever any authority issues a warning circular to the immigration authorities the period of validity should be clearly specified in the circular. In the office memorandum dated 27.12.2000, the Ministry of Home Affairs, Government of India specifies the steps required to be taken for opening an LOC in respect of Indian citizen. It has been mentioned that in the said office memorandum that the request for opening LOC in respect of an Indian citizen is required to be made to all immigration check posts in the country in a prescribed format. It has been further stated that the request for opening of LOC must invariably be issued with an approval of an officer not below the rank of Deputy Secretary to the Government of India/Joint Secretary in the State Government/ concerned Superintendent

of Police at District level. The period of validity of LOC was one year and in case no request for extension of LOC is received before the expiry of one year period, the LOC will automatically be closed by the immigration officer concerned after the expiry of one year period.

14. While issuing the office memorandum dated 27.10.2010, the Ministry of Home Affairs, Government of India took note of the decision of the High Court of Delhi in ***Shri Vikram Sharma Versus Union of India and other WP (Civil) No. 10180 of 2009*** dated 26.07.2010 and issued the following guidelines:-

> *a) The request for opening en LOC would be made by the originating agency to Deputy Director, Bureau of Immigration (Bol), East Block- VIll, R.K. Puram, New Delhi - 66 (Telefax: 011-2619244) in the Proforma enclosed..*
>
> *b) The request for opening of LOC must invariably be issued with the approval of an officer not below the rank of*
>
> *i. Deputy Secretary to the Government of India; or*
>
> *ii. Joint Secretary in the State Government; or*
>
> *iii. District Magistrate of the District concerned; or*
>
> *iv. Superintendent of Police (SP) of the District concerned: or*
>
> *v. SP in CBI or an officer of equivalent level working in CBI; or*
>
> *vi. Zonal Director in Narcotics Control! Bureau (NCB) or an officer of equivalent level (including Assistant Director (Headquarters of NCB): or*
>
> *vii. Deputy Commissioner or an officer of equivalent level in the Directorate of Revenue Intelligence or Central Board of Direct Taxes or Central Board of Excise and Customs; or*
>
> *viii. Assistant Director of IB/Bol: or*
>
> *ix. Deputy secretary of R&AW; or*
>
> *x. An officer not below the level of Superintendent of Police in National Investigation Agency*

xi: Assistant Director of Enforcement Directorate

xii. Protector of Emigrants in the office of the Protector Emigrants or an officer not below the rank of Deputy Secretary of the Government of India; or

iii. Designated officer of Interpol

Further, LOCS can also be issued as per directions of any Criminal

Court in India.

c: The name and designation of the officer signing Plan for requesting issuance of an LOC must invariably be mentioned which the request for issuance of LOC would not be entertained.

d) The contact details of the originator must be provided in column VI of the enclosed Proforma. The contact telephone/mobile number of the respective control room should also be mentioned to ensure proper communication for effective follow up action.

e) Care must be taken by the originating agency to ensure that complete identifying particulars of the person, in respect of whom the LOC is to be opened, are indicated in the Proforma mentioned above. It should be noted that an LOC cannot be opened unless a minimum of three identifying parameters, as given in the enclosed Proforma, apart from sex and nationality, are available. However, LOC can also be issued if name and passport particulars of the person concerned are available. It is the responsibility of the originator to constantly review the LOC requests and proactively provide additional parameters to minimize harassment to genuine passengers.

f) The legal liability of the action taken by the immigration authorities in pursuance of the LOC rests with the originating agency.

g) Recourse to LOC is to be taken in cognizable offences under 1PC or other penal laws. The details in column IV in the enclosed Proforma regarding reason for opening LOC' bust invariably be provided without which the subject of an LOC will not be arrested/detained.

h) In cases where there is no cognizable offence under IPC or other penal laws, the LOC subject cannot be detained/arrested *or prevented from leaving the country. The originating agency can only request that they be informed about the arrival/ departure of the subject in such cases.*

i) The LOC will be valid for a period of one year from the date of issue and name of the subject shall be automatically removed from the LOC thereafter unless the concerned agency requests for its renewal within a period of one year. With effect from 1.1.2011, all LOCs with more than one year validly shall be deemed to have lapsed unless the agencies concerned :specifically request Bol for continuation of the names in the LOC. However, this provision for automatic deletion after one year shall not be applicable in following cases:

> *a. Ban-every LOCs issued for watching arrival of wanted persons which have a specific duration);*
>
> *b. loss of passport LOCs (which ordinarily continue till the validity of the document);*
>
> *c. LOCs regarding impounding of passports;*
>
> *d. LOCs issued at behest of Courts and Interpol*

j) In exceptional cases, LOCs can be issued without complete parameters and for case details against CI suspects, terrorists, and national elements, etc. in larger national interest.

k) The following procedure will be adopted in case statutory bodies like the NCW, the NHRC and the National Commission for Protection of Children's Rights request for preventing any Indian/ foreigner from leaving India. Such requests along with full necessary facts are first to be brought to the notice of law enforcement agencies like the police. The S.P, concerned will then make the request for issuance of an LOC upon an assessment of the situation, and strictly in terms of the procedure outlined for the purpose. The immigration/emigration authorities will strictly go by the communication received from the officers authorized to open LOCs as detailed in the para 8 (b) above.

15. The Ministry of Home Affairs, Government of India by office memorandum dated 19.09.2019 included clause (xiv) to paragraph 8(b) of the office memorandum dated 27.10.2010 to include the Serious Fraud Investigation Office (SFIO). The Clause is as follows:-

xiv) An officer of Serious Fraud, Investigation Office (SFIO), Ministry of Corporate Affairs not below the rank of Additional Director (in the rank of Director in the Government of India)

16. During 2018, the Central Bureau of Investigation addressed the Department of Financial Services vide letter dated 24.08.2018 requesting that appropriate officers of banks be empowered to request for opening LOC against economic offenders/defaulters. Taking note of the same, the Ministry of Finance, Department of Financial Services, Government of India issued office memorandum dated 04.10.2018 which is quoted herein below:-

F No.6/3/2018-80.11
Government of India
Ministry of Finance
Department of Financial Services

3 Floor, Jeevan Deep Building
Sansad Marg, New Delhi-110001
Date: 4 October, 2018

OFFICE MEMORANDUM

Subject: Empowerment of heads of Public Sector Banks to issue requests for opening Look Out Circulars (LOCs)

This is with reference to the Central Bureau of Investigation (CBI)'s letter No. 125/8/H02/BS&FZ/2018 dated 24.08.2018 to the Department of Financial Services (DFS) (copy enclosed), requesting that appropriate officers of banks be empowered to request for opening of Look Out Circulars (LOCs) against economic offenders/defaulters. In this context, it may be mentioned that,

(a) Issuance of LOCs in respect of Indian citizens and foreigners is governed by Instructions contained in the Ministry of Home Affairs (MHAY's OM dated 27.10.2010 as amended by MHA's OM dated 05.12.2017.

(b) Paragraph 8 (b) of MHA's OM dated 27.10.2010 lists those authorities of minimum rank with whose approval the request for opening of LOC must be issued. The list does not include officers of banks at present.

(c) As per the amended Paragraph 8 0) (amended through MHA's OM dated 05.12.2017), 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 interests of India or if such person is allowed to leave, he may potentially indulge in an act of terrorism or offences against the State and/or that such departure ought not be permitted in the larger public Interest at any given point in time.

(d) It is therefore clear that the guidelines enable LOCs against persons who are fraudsters/ persons who wish to take loans, willfully default launder money and then escape to foreign Jurisdictions, since such actions would not be in the economic interests of India, or in the larger public interest.

2. Therefore, as suggested by CBI, MHA is requested to kindly amend the OM dated 27.10.2010 and include in the list of authorities under Paragraph 8 (b) another category as follows:

"(xiv) Chairman (State Bank of India) / Managing Directors and Chief Executive Officers (MD & CEOs) of at other Public Sector Banks."

3. Reference is also invited to DFS's OM of even number dated 30.07.2016, circulating the Minutes of the Meeting of the Committee to discuss issued related to renunciation of Indian citizenship, dual citizenship and validity of passport (copy enclosed), it is again requested that necessary action may kindly be taken urgently by MHA and the Ministry of External Affairs (MEA) on the decisions taken by the Committee, under intimation to DFS.

(Sign)

(Enclosed: As Above) *(Raghav Bhatt)*

Deputy Director (BO.II)

011-23748716

17. By virtue of office memorandum dated 04.10.2018, the Chairman (State Bank of India) Managing Director and Chief Executive Officers of all public sector banks were included as originating agency/authority empowering them to make a request for opening LOC. This was done by inserting clause (xiv) to the office memorandum dated 27.10.2010. Pursuant to the office memorandum dated 04.10.2018 issued by Ministry of Finance, Department of Financial Services, the Ministry of Home Affairs issued office memorandum dated 24.10.2018 referring to office memorandum issued by the Department of Financial Service and accordingly Chairman/Managing Director/Chief Executive Officers of all public sector banks were included under the category of originating agency who would be entitled to request for opening of LOC. All the aforementioned office memorandums have been consolidated and guidelines have been issued by the Ministry of Home Affairs, Government of India dated 22.02.2021. The said memorandum consolidates all the guidelines which have been issued earlier and the terms of conditions mentioned therein having reiterated and with regard to the period of validity of LOC, it has been mentioned that the LOC opened can remain in force until and unless a deletion request is received by the Bureau of Immigration from the originator itself and no LOC shall be deleted automatically.

18. Clause (l) of office memorandum dated 22.02.2021 is a reiteration of the office memorandum dated 04.10.2018. In terms of the said clause, in exceptional cases LOC can be issued even in such cases as may not be covered by the guidelines, whereby departure of a person from India may be declined at the request of any of the authorities mentioned in clause (b) if it

appears to such authorities based on inputs received that the departure of such person is (i) detrimental to the sovereignty or security or integrity of India (ii) is detrimental to bilateral relations with any country or (iii) the strategic and/or economic interest of India or (iv) if such person is allowed to leave, he may potentially indulge in an act of terrorism or offences against the state and/or that such departure ought not to be permitted in the larger public interest at any given point of time.

19. In ***Poonam Paul***, the court discussed the right to travel abroad as enshrined in Article 21 of the Constitution, referred to the decision of the Hon'ble Supreme Court in ***Satwant Singh, Maneka Gandhi*** and the decision of the Division bench of the High Court of Madras in ***Karti P. Chidambaram Versus Bureau of Immigration*** [8] and held that the legality and/or validity of an LOC is dependent upon the circumstances prevailing on the date on which request for issuance of LOC has been made. It cannot be disputed that the validity of LOC has to be tested on the facts on each case and no straight jacket formula can be framed or adopted. Precisely for such reasons, the court in ***Poonam Paul*** examined the merits and it held that the respondents therein have not placed any material to bring the case of the appellant therein within the ambit of an exceptional case to issue an LOC and that the court on facts came to the conclusion that the LOC was mechanically issued and therefore interfered with the same.

20. In the decision reported in ***MANU/WB/0629/2023*** (***Vishambhar Saran Versus Bureau of Immigration and Others***), the court interfered with the LOC which was issued at the behest of the Bank of Baroda. The court after

[8] 2018 SCC Online Mad 2229

taking into consideration the law laid down in various decisions, some of which have been referred above, noted the facts of the case where the lead bank namely Punjab National Bank failed in its attempt to restrict the movement of the petitioner therein Vishambhar Saran and after the action of the Punjab National Bank was set aside by the court, Bank of Baroda took a chance to restrain the freedom of movement of the petitioner therein. The court opined that merely because the accounts of the company was NPA and the petitioner therein was a Promoter Director, the petitioner could not be labeled as a fraudster, who was held in money laundering activities and disrupted the economy of India. Thus, the court on examination of the materials on record was convinced that the conditions which was to pre-exist as per the existing policy of the Government for the opening LOC are absent in the said case. The order of the High Court of Bombay dated 06.02.2020 in ***Attaluri Venkateswara Prasad and Another*** is an interim order which was passed subject to certain conditions and therefore we have not dealt with the same.

21. In ***Dr. Bavaguthu Raghuram Shetty***, the petitioner therein was liable for repayment to public sector banks and the court noticed that the money belonging to India has been utilized by the petitioner therein in a foreign country to run its business and there was no material produced before the court to show that the money lent by the public sector banks to the petitioner therein has resulted in any development of India on the other hand, it has become bad debt and the public sector banks are fighting litigations in India as also in UAE to recover the same. The court added that the person who take public money have a sacred duty to repay the same.

The court took into consideration the argument of the petitioner therein who claimed to be only a guarantor and therefore he should be exonerated and the LOC should be set aside. This argument was rejected on the ground that the guarantor is equally liable to repay the debt.

22. In ***Ghanshyam Pandey,*** Hon'ble Court held that LOCs impinges upon the individual's right to travel which is recognized as a Fundamental Right; However, the rights and interest of the investing public would also be relevant consideration which cannot be ignored.

23. Having noted the legal position, we are required to take into consideration the facts of the instant case. It is not in dispute that the credit facilities were granted to M/s. HBG Trading Pte Limited by the overseas branch of the third respondent bank as could be seen from the approval dated 14.03.2019. The appellant has given his personal guarantee for the said credit facilities. The appellant executed a promissory noted dated 26.06.2019. In terms of the agreement dated 26.06.2019, which is an indemnity agreement, the appellant has indemnified and agreed to keep the overseas branch of the third respondent bank fully indemnified against all claims loss or damage whatsoever arising from any cause in connection with the banking/trade transactions with UCO Bank, Singapore branch. Further the indemnity agreement states that the said agreement shall be unlimited as to amount or duration and it shall be binding upon the parties, their successors, and personal agents and representatives as per laws of Singapore or India. The appellant had executed Letter of Set-Off dated 26.06.2019 which empowers the respondent bank to set off any of the money's whatsoever whether in Singapore currency or any other currency.

The Deed of Personal Guarantee executed by the appellant dated 26.06.2019 clearly mentions that in consideration of the respondent bank making or continue to make loans or advances to M/s. HBG Trading Pte Limited whether through the bank branches or in Singapore or elsewhere, the guarantor, the appellant, has unconditionally agreed to the terms of the personal guaranteed agreement. The personal guaranteed agreement empowers the bank to initiate and take action or proceedings or otherwise against the appellant in the Republic of Singapore or elsewhere in jurisdiction selected by the bank. Thus, it is evidently clear that the credit facilities were extended through the overseas branch of the third respondent and the company having been wound up by the orders of the High Court at Singapore and the appellant having been declared as bankrupt, a recommendation was made by overseas branch for issuance of LOC against the appellant. The consequence of an order of bankruptcy passed by the competent court at Singapore is required to be seen. In this regard, the learned advocate for the respondent had referred to the provisions of the Insolvency, Restructuring and Dissolution Act, 2018 issued by the Republic of Singapore.

24. The learned senior advocate appearing for the appellant objected to placing reliance on the said enactment on the ground that the same was not the submission made before the learned single bench. In any event, the court is empowered to take note of any relevant statutory enactments to assess the impact on a person who has been declared as an insolvent in a foreign jurisdiction. Therefore, there is no embargo for the court to look into such statutory provisions.

25. In terms of Section 400 of the Singapore Act, 2018, the disqualification of a bankrupt has been mentioned. In terms of Sub Section (3) of Section 400 any person who acts as a trustee or personal representative while that person is disqualified by virtue of Sub Section (1) of Section 400 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding dollar 10,000 or to imprisonment for a term not exceeding two years. In terms of Section 401(1) (b),a bankrupt must not leave or remain or reside outside, Singapore without the previous permission of the Official Assignee. In terms of Sub Section (3) of Section 401, a bankrupt who fails to comply with Section 401 shall be guilty of an offence and shall be liable on conviction to a fine not exceeding dollar 10,000 or to imprisonment for a term not exceeding two years or both. Thus, the appellant cannot travel to Singapore and if permitted to travel to Singapore will be detained in Singapore and cannot leave the said country. Considering these factors, it is well justified to hold that the case of the appellant is one such exceptional case.

26. The decisions in the case of ***Poonam Paul*** did not involve any transaction with an overseas branch of a public sector bank registered in India. The same is the case in respect of the decision in ***Vishambhar Saran.*** The decision in the case of ***Dr. Bavaguthu Raghuram Shetty*** is closer to facts on hand as because another country was involved in the said financial transaction. Therefore, when an Indian citizen who seeks to carry on business in a foreign country approaches a public sector bank registered in India for grant of financial facilities/credit facilities and the same are provided by the overseas branch of a said public sector bank registered in

India and borrower defaults in payment and seeks to travel from India to another foreign country fully knowing well that if he enters Singapore, there is every likelihood that he will be detained as the appellant had been declared as a bankrupt by the Singapore High Court is undoubtedly an exceptional circumstance. This in our view would definitely fall within an exceptional case warranting issuance of an LOC. Thus, if the appellant's case is one of an exceptional case then the respondent bank based on the inputs which have been received more particularly, the order passed by the High Court of Singapore winding up the appellant's company and the order passed by Singapore High Court declaring the appellant as bankrupt and the respondent bank having filed its affidavit of asset before the liquidators and their claim before the trustees, then it will definitely be in the strategic interest of India/a public sector bank to seek to restrain the appellant from departing from India as it will be detrimental to the strategic interests of India/public sector bank. On an after the office memorandum dated 04.10.2018 and 26.10.2018, when the Chairman/Managing Directors/Chief Executive Officers of the public sector banks were included within the ambit of originating agency, the purposive interpretation to be given to the office memorandum is to take note of the strategic interests of a public sector bank which undoubtedly would be in national interest. It needs to be reiterated that the credit facilities having been sanctioned through the overseas branch of the third respondent, it is undoubtedly a loan sanctioned by a public sector bank registered in India and precisely for that reason the agreements give dual jurisdiction to the respondent bank to take action either under the laws of India or the laws of Singapore to which conditions the appellant has irrevocably accepted. Thus, when the appellant is amenable both to the laws of Singapore and the laws of India, the third respondent bank was fully justified in seeking to restrain the appellant from leaving the country as his exit out of the country more particularly to the Republic of Tanzania would be against the strategic interest of a public sector bank which would mean that it would be against the strategic interest of India.

27. As observed, the respondent bank has sanctioned credit facilities to the appellant taking into account the appellant is an Indian citizen holding an Indian passport desirous of establishing a business in a foreign country and with a view to promote international trade by an Indian, credit has been sanctioned which is from and out of the public funds. Therefore, the right and interest of investing public would also be relevant as the bank operates on investments made by the public more particularly public sector bank like the respondent bank.

28. In the Ministry's letter of 05.09.1979, it was stated that apart from Government of India in the Ministry of Home Affairs, circulars are issued by various authorities for keeping a watch on arrival/departure of Indians and foreigners. These authorities include the Ministry of Affairs, the Customs, Income Tax Department, DRI, CBL, Interpol, RPO, Police authorities, in various State, etc. It was further stated that unless otherwise specified in the warning circular itself the circulars issued by any of the various authorities, specified above will be regarded as invalid if it is more than one year old and the card will be weeded out. After taking note of the office memorandum dated 27.12.2000 and after noting the judgment of the high

court of Delhi in Writ Petition (Civil) No. 10180 of 2009 (***Vikram Sharma Versus Union of India and Others***) and the judgment in WP (GL) 1315/2008 (***Summer Singh Salkan Versus Assistant Director & Ors*** and Crl Ref 1/2006 (Court on its Own Motion Re: ***State Versus Gurnek Singh etc***) Office Memorandum dated 27-10-2010 was issued laying down guidelines regarding issuance of LOCs in respect of Indian Citizens and foreigners. The said guideline has been noted/quoted above. By Office Memorandum dated clause (xiv) way inserted to para 8(b) of the Office Memorandum dated 27.10.2010 including an officer of SFIO, Ministry of Corporate Affairs not below the rank of Additional Director (in the rank of Director in the Government of India) as one Officers who would be empowered request for opening of LOC.

29. The Ministry of Finance issued Office Memorandum dated 4-10-2018 for empowerment of heads of public sector Banks to issue request for opening LOCs, pursuant to request made CBI by letter dated 24.8.2018. In the said OM of Ministry of Finance dated 4-10-2015 clauses (a) to (d) were set out (extracted supra). Considering the suggestion of CBI, Ministry of Finance requested Ministry of Home Affairs to amend OM dated 27.10.2010 and include in the list of authorities under Paragraph 8(b) another category as (xiv), including Chairman (State Bank of India) /Managing Directors as Chief Executive Officers (MD + CEOs) of all Other Public Sector Banks thereby empowered them to request for opening LOC.

30. What would be the cumulative effect of these Office Memorandums is required to be seen. Before making such an exercise it would be relevant to take note of the Governmental / RBI control over Public Sector Banks. The

RBI regulates and supervises Public Sector and Private Sector Banks under the provisions of The Banking Regulation Act, 1949. In terms of Section 35(1A) of the said Act RBI can cause a scrutiny to be made of the affairs of the Bank. Under Section 35A it is empowered to give directions in public interest of the depositors; in the interest of the bank and to secure proper management of the Bank. In terms of Section 35AA of the said Act, RBI can direct the bank to initiate insolvency resolution process in respect of a default, under the provisions of Insolvency and Bankruptcy Code. In terms of Section 36 (1c), RBI can give assistance to any bank by means of the grant of a loan or advance. Thus the powers of RBI are comprehensive and pervasive to deal with various issues and situations / contingencies that may arise /emerge in all Banks, (i.e) the Public Sector and Private Sector owned Banks. Given the deep control/ Governmental Control with particular reference to Public Sector Banks, they undoubtedly, play a very vital role in the economy of India. The objective behind Government nationalizing banks is with a view to ensure economic growth with social justice. Thus banking plays a very significant role in economic development and growth of the country (India). Undoubtedly Public Sector Banks is the fulcrum of the Indian financial structure. PSBs play a very vital role in the economic growth and development of the Country. It is said that about 70 percent of banking activity in the India is through Public Sector Banks and the burden of the social agenda rests on the shoulders of the Public Sector Banks. Therefore, there can be no second opinion that the “health” of a public sector banks is vital qua the Indian economy. The PSBs play vital role in the growth and expansion of our country’s financial system. Only when a PSB functions well only then it benefits in nation- building. The Banking Sector, in particular PSBs provides financial stability to the Indian economy and play an important role in the promoting economic development to our country.

31. In the aforestated background, if we examine the cumulative effect of the Office Memorandums issued by the Government of India and in particular clause (c) of the Office Memorandum dated 04.10.2018 issued by the Ministry of Finance, it has to be read that it exceptional cases LOCs can be issued even in such cases, as would not be covered by the guidelines issued by the Ministry of Home Affairs dated 27.10.2010 where departure of a person from India is detrimental to the strategic and/or economic interests of a Public Sector Bank.

32. In the case on hand, the respondent Bank would justify its stand in issuance of the LOC against the appellant as it is necessary in the "strategic interest" of the Bank and not on economic interest. Cambridge Dictionary defines the adjective "strategic" as relation to the way in which an organization decided what it wants to achieve and plans actions and use of resources over time. Thus, to put something in a strategic portion is to place it cleverly in a position where it will be most effective and useful giving the desired result.

33. The respondent Bank taking note of the facts, the conduct of the appellant the effect of the orders passed by the High Court of Singapore winding up the Appellant's company, declaring the Appellant as an insolvent has made a strategic decision to lead to achieve its object in recovering the outstanding payable by the Appellant. The request for issuance of LOC and

the consequent issue of LOC is one such strategy in restraining the Appellant from leaving India. On facts we are convinced that the move adopted by the Respondent Bank would fall within the ambit of clause (c) of the Office Memorandum of the Ministry of Finance dated 04.10.2018 which refers to amended Paragraph 8(j) as amended by the Office Memorandum of Ministry of Home Affairs dated 05.12.2017.

34. Thus, considering the facts and circumstances of the present case, we are of the clear view that the learned single bench rightly refused to interfere with the lookout circular issued against the appellant.

35. In the result, the appeal fails and the same is dismissed. No costs.

(T.S. SIVAGNANAM, CJ.)

I Agree.

(HIRANMAY BHATTACHARYYA, J.)

(P.A- SACHIN)