



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

Date of decision: 19th SEPTEMBER, 2023

IN THE MATTER OF:

+ **W.P.(C) 5674/2023 & CM APPLs. 22213/2023, 27602/2023**

APURVE GOEL

..... Petitioner

Through: Mr. Prithu Garg, Mr. Harsimran Duggal, Mr. Aditya Awasthi & Ms. Neha Aggrawal, Advocates

versus

BUREAU OF IMMIGRATION & ANR

..... Respondents

Through: Mr Ajay Digpaul CGSC, Mr Kamal R Digpaul, Ms Swati Kwatra, Advocates.

Mr. Sudhir Makkar, Senior Advocate with Mr Amit Mahaliyan, Advocate for R-2.

+ **W.P.(C) 5675/2023 & CM APPL. 22215/2023**

PRIYANKA GOEL

..... Petitioner

Through: Mr. Prithu Garg, Mr. Harsimran Duggal, Mr. Aditya Awasthi & Ms. Neha Aggrawal, Advocates.

versus

BUREAU OF IMMIGRATION & ANR

..... Respondents

Through: Mr. Balendu Shekhar, CGSC with MR. Rahul Kumar Sharma, GP, Mr. Krishna Chaitanya, Advocates.

Mr. Sudhir Makkar, Senior Advocate with Mr Amit Mahaliyan, Advocate for R-2.



CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioners, by way of the present writ petitions, seek to challenge the Look Out Circular (LOC) issued at the instance of Respondent No.2/Bank of Baroda against the Petitioners.
2. It is stated Sharaji Duplex Board Limited was incorporated under the Companies Act, 1956. The name of the said company was later changed to AAA Paper Marketing Limited and was further changed to AAA Paper Limited (*hereinafter referred to as 'company'*). The company availed credit facilities amounting to Rs.5.25 crores from Respondent No.2/Bank of Baroda. The said facilities were secured by way of mortgage of an immovable property as well as Personal Guarantees of the Promoters/Directors. It is stated that the Petitioners were made to sign a document styled as 'Personal Guarantee Bond' in favour of the Respondent No 2/Bank of Baroda.
3. It is pertinent to mention here that the Petitioner in W.P.(C) 5674/2023 was appointed as a Director of the company in the year 2006. He resigned as the Director of the company in the year 2019. The Petitioner in W.P.(C) 5675/2023 was appointed as a Director of the company in the year 2010 and she resigned as Director of the company in the year 2014.
4. It is stated that the credit facilities were enhanced to Rs.28.50 crores by the Respondent No 2/Bank of Baroda. It is stated that between 2015-2019, the business operations of the company were severely hit due to the introduction of GST and other factors due to which the company was trapped in a vicious cycle of tax complexities. On 31.07.2019, the loan account of the company was declared as non-performing asset (NPA) by the



Respondent No 2/Bank of Baroda. It is stated that, thereafter, proceedings under the SARFAESI Act were initiated against the company and demand notice was issued to the company for repayment of its outstanding dues. The Respondent No 2/Bank of Baroda also issued demand notice invoking the personal guarantees.

5. It is stated that the company and the personal guarantors, including the Petitioners herein initiated proceedings before the Senior Civil Judge, Tis Hazari Court, Delhi by filing Civil Suit No.2182/2021 challenging the invocation of guarantees. It is stated that on 13.12.2021, the Senior Civil Judge partly allowed the application for interim relief and restrained the Respondent No.2/Bank and the Forensic Auditor from taking any action invoking personal guarantees till the disposal of the suit.

6. It is stated that on 01.07.2022, proceedings were initiated by Respondent No.2/Bank against the company before the National Company Law Tribunal, New Delhi for initiation of Corporate Insolvency Resolution Process. On 23.08.2022, the Respondent No.2/Bank issued a demand notice against the Petitioners in Form B under Rule 7(1) of the IBBI (Application to Adjudicating Authority for Insolvency Resolution Process of Personal Guarantors to Corporate Debtors) Rules, 2019.

7. It is stated that the Petitioners along with his family members and a large group of friends and business associates/colleagues planned a leisure trip to Phuket, Thailand but the Petitioners were stopped from boarding their flight by the Immigration Officials at the IGI Airport, New Delhi purportedly on account of an LOC issued against them.

8. The Petitioners, thereafter, have approached this Court by filing the instant writ petitions challenging the opening of Look Out Circular at the



instance of Respondent No.2/Bank of Baroda.

9. Notice was issued in the writ petitions on 02.05.2023. Counter affidavit has been filed by Respondent No.2/Bank of Baroda. It is stated in the counter affidavit that the Petitioners have stood guarantee to the credit facilities obtained by the company from the Bank. The Counter affidavit reflects that Respondent No.2/Bank of Baroda has issued Look Out Circular against the Petitioners on the following grounds:

“8. Thereafter, on the following grounds, the respondent No. 2 Bank had also requested the concerned authorities for issuance of Lock Out Circular against the borrower, its directors and guarantors, including the present Petitioner being guarantor:

1. The account of M/s AAA Paper Limited (Formally known as M/s AAA Marketing Limited) turned NPA on 29.07.2019 having balance outstanding Rs 28.01 Crores with the bank;

2. Unit of Borrower firm is closed.

3. Despite having capacity to pay Borrower has not paid the dues.

4. From Audited Balance Sheet of the borrower, it is observed that the borrower has made repayment of the unsecured loans availed from its related parties to the tune of Rs 379.52 Lakhs in the year 2018 to 2020. Borrower has diverted bank funds.

5. On analysis of Audited Balance Sheet (ABS) as on 31.03.2020, it was observed that there are outstanding trade receivables of Rs 11,283.22 Lakhs as trade receivable by the borrower.



82.75% debtors out of total debtors outstanding or four related parties, i.e., M/s PKM Overseas Private Limited, M/s VPM Overseas Private Limited, M/s Nilkanth Enterprises and M/s Bangalore Paper Stories etc.

6. It is observed that the borrower has given advance to M/s PKA Projects Pvt Ltd of Rs 1,034.23 lakhs which is recoverable as on 31.03.2020. As per Ministry of Corporate Affairs (MCA), Registrar of Company records, it is observed that Mr. Pankaj Mishra is a director in PKA Projects Pvt Ltd., who was also a financial consultant to Borrower Company. He is also a shareholder of Borrower Company. From the above records an inference is drawn that PKA Projects Pvt Ltd is a potentially related party of Borrower Company.

7. Borrower has paid Rs 939.85 Lakhs to Mr Pramod Kumar Verma during the year 2011 to 2013.

8. On comparison of the stock statement submitted by the company with cash credit account, it is observed that there are few parties whose receivables are shown as realized in the Stock Statement. However, there is no corresponding entry of such receipt in cash credit account.

9. Borrower has made significant payment to the tune of Rs 3116.55 Lakhs to its potentially related parties.

10. The Borrower Company/Director and all guarantors were declared as Wilful Defaulter on 22.10.2021.

11. Branch has submitted proposal for declaring this account as Fraud and Red Flagged, the same



is under process.

12. The Directors/Guarantors may escape to foreign jurisdictions to avoid repayment of huge Bank dues and to avoid legal recovery actions taken by the Bank.”

10. It is also stated that litigations are pending between the company, its promoters/directors/guarantors and the Respondent No.2/Bank of Baroda in various forums. It is stated that during the pendency of the litigations, the company approached the Respondent No.2/Bank of Baroda for One-Time Settlement (OTS) with respect to outstanding dues pertaining to the company and a One-Time Settlement was arrived at between the company and the Respondent No.2/Bank of Baroda, and the Respondent No.2/Bank of Baroda sent a letter dated 10-03-2023 whereby an amount of Rs. 25,51,00,000/- (Rupees Twenty Five Crores Fifty One Lakhs Only) was payable by 30-06-2023.

11. The written submissions filed by the Respondent No.2/Bank of Baroda state that time to make the payment have been extended till 30.09.2023. The written submissions also state that even after assurances have been given for withdrawal of the proceedings, the Petitioners have failed to withdraw the proceedings against the Respondent No.2/Bank of Baroda.

12. Learned Counsel for the Petitioners states that the Petitioners were only guarantors and were not involved in the management of affairs of the borrowing company for the last several years. He states that there is no allegations against the Petitioners that they have siphoned off any amount from the company or that they were involved in siphoning off of the money. No FIR has been filed against the Petitioners that they were involved in any



kind of mismanagement/siphoning off of assets of the company. He further states that a One-Time Settlement (OTS) has been entered into between the company and the Respondent No.2/Bank, and the borrower company has time to pay the entire OTS amount till 30.09.2023.

13. Learned Counsel for the Petitioner further states that it is well settled that Look Out Circular cannot be opened only for recovery of money. He states that opening of Look Out Circular is a complete abuse of the process of law which has tarnished the reputation of the Petitioners and also impeded the movement of the Petitioners. He states that right to travel abroad is a fundamental right under Article 21 of the Constitution of India as held by the Apex Court in Maneka Gandhi v. Union of India, (1978) 1 SCC 248, and the Look Out Circular is a complete affront to the constitutional guarantee of Article 21 of the Constitution of India.

14. Learned Counsel for the Petitioner has taken this Court to a several Judgments to show that the formation of a reasonable belief that the departure of a person would be detrimental to the economic interest of the country is a pre-condition for issuing Look Out Circular and none of the factors enumerated in the counter affidavit points out that the departure of the Petitioners would be detrimental to the economic interest of the country. He contends that the opening of the Look Out Circular against the Petitioners is a mere blackmailing and arm-twisting tactics, and the Respondent No.2/Bank only wants to keep the Petitioners, who are guarantors, as hostages in the country till the money is paid.

15. *Per contra*, learned Counsel appearing for the Respondent No.2/Bank of Baroda, seeks to sustain the Look Out Circular by contending that the presence of the Petitioners is necessary in the country to ensure that money



is returned. He also contends that Forensic Audit can only reveal as to whether there is siphoning off the funds or not. He contends that since there is a possibility that the Petitioners being arrayed as accused, they should not be permitted to leave the country.

16. Heard learned Counsel appearing for the Parties and perused the material on record.

17. It is well settled that the right to travel abroad is guaranteed under Article 21 of the Constitution of India which cannot be taken away in an arbitrary and illegal manner [Refer: Maneka Gandhi v. Union of India, (1978) 1 SCC 248]. This Court is now coming across a large number of cases where banks are now insisting on opening of Look Out Circulars only as a measure for recovery of money without initiating any criminal proceedings.

18. Ministry of Home Affairs issued an Office Memorandum dated 27.10.2010 laying down the guidelines for issuance of Look Out Circulars. According to the said Office Memorandum dated 27.10.2010, Look Out Circulars could not be opened at the instance of Banks and, therefore, an amendment was sought to the Office Memorandum dated 27.10.2010 and an amended Office Memorandum dated 05.12.2017 was issued and the Paragraph No.8 (j) of the Office Memorandum dated 27.10.2010 was amended which reads 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 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.

Instead of:

“In exceptional cases, LOCs can be issued without complete parameters and/or case details CI suspects, terrorists, anit-national elements, etc in larger national interest.”

19. Another Office Memorandum dated 04.10.2018 was issued by the Ministry of Finance, Government of India empowering the heads of Public Sector Banks to issue requests for opening of Look Out Circulars. By virtue of this Office Memorandum, Chairman (State Bank of India), Managing Directors and Chief Executives Officers (MD & CEOs) of all Public Sector Banks could request for opening of LOCs against the persons who are fraudsters and persons who wish to take loans and wilfully default or launder money and then escape to foreign jurisdiction as these actions will not be in the economic interests of India on a larger public interest.

20. Further, another Office Memorandum dated 22.11.2018 was issued by the Ministry of Finance, Government of India regarding empowerment of heads of Public Sector Banks to issue requests for opening of Look Out Circulars which reads as under:

“Subject: Empowerment of heads of Public Sector



Banks to issue requests for opening Look Out Circulars (LOCs)

Dear Sir / Madam,

Kindly find enclosed the following, for necessary action:

"(a) A copy of Department of Financial Services (DFS)'s OM No. 6/3/2018-BO.II dated 04.10.2018 to the Ministry of Home Affairs (MHA), vide which DFS had requested MHA to empower the heads of Public Sector Banks (PSBs) to issue requests for opening of Look Out Circulars (LOCs).

(b) A copy of MHA's OM No. 25018/10/2017-Imm dated 12.10.2018, vide which MHA has now made the desired amendment to paragraph 8 (b) of their OM No.25016/31/2010-Imm dated 27.10.2010 by adding sub-paragraph (xv), namely "Chairman/ Managing Directors/ Chief Executives of all Public Sector Banks" in the list of officers competent to request opening of LOCs, thereby empowering the heads of PSBs also, as requested by DFS.

2. In this context, it may kindly be noted that:

"(a) Issuance of LOCs in respect of Indian citizens and foreigners is governed by the instructions contained in MHA's OM dated 27.10.2010, as amended from time to time.

(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. Pursuant to the amendment vide MHA's OM dated 12.10.2018,



the list now includes the Chairman/ Managing Directors/ Chief Executives of all Public Sector Banks.

(c) Paragraph 8 (j) of MHA's OM dated 27.10.2010 (amended through MHA's OM dated 05.12.2017) states that "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 parson 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."

3. It is requested that the instructions contained in MHA's OM dated 27.10.2010 (as amended by MHA's OMs dated 05.12.2017 and 12.10.2018), vide which the heads of PSBs have now been empowered to issue requests for opening of Look Out Circulars, may be strictly complied with henceforth, so that all persons who are covered under the said amended OM of MHA, including fraudsters and persons who wish to take loans and wilfully default or launder money and then escape to foreign jurisdictions to avoid paying back, are restricted from escaping from the country. MHA's Proforma for issue of LOCs is also enclosed."

(emphasis supplied)

21. By virtue of the aforesaid Office Memorandums and their



amendments from time to time, banks can request for opening of Look Out Circulars in exceptional circumstances when it is felt that the permission sought for by the person to go out of the country will affect the economy of the country.

22. The Look Out Circulars cannot be opened merely on the request of the banks. There has to be some application of mind by the authority concerned opening the Look Out Circular since the opening of Look Out Circular results in restraining a person's right to travel abroad. The authority opening the Look Out Circular must satisfy itself that the departure of a person against whom Look Out Circular has been opened would be detrimental to the sovereignty or security or integrity of India or that the same is detrimental to the bilateral relationship with any country or to the economic interests of India or departure of such a person ought not be permitted in the larger public interest at any given point in time.

23. A Co-ordinate Bench of this Court in the case of Vikas Chaudhary vs. Union of India, **2022 SCC OnLine Del** has observed as under:

“37. However, the matter does not end here and the crucial issue which needs to be now determined is as to whether the clause “detrimental to the economic interests of India” introduced vide the amendment in 2017, with a specific rider that the same would be used only in exceptional circumstances, could have, in the facts of the present case, been resorted to, for issuing the impugned LOC, as also whether the impugned LOC could be continued for the last almost 3 years without any proceedings under the IPC or any other penal law being initiated against the petitioner. It has to be kept in mind, that the issuance of a LOC necessarily curtails the rights of an individual to travel abroad and therefore, I am of the view, that for invocation of this clause, which, in any event, is meant to be used only in



exceptional circumstances, a mandatory pre-condition would be a formation of a reasonable belief by the originating authority that the departure of an individual would be “detrimental to the economic interests of India” to such an extent that it warrants curtailment of an individual's fundamental right to travel abroad. Turning to the facts of the present case, what is emerging is that the entire case of the respondents to believe that the petitioner's departure from the country will be “detrimental to the economic interests of India”, hinges on an unsigned draft agreement and some WhatsApp chats, which it is the respondent's own case are not conclusive. The respondents, are therefore, awaiting a response to their FT & TR references to the authorities at Dubai, United Arab Emirates to proceed against the petitioner under the Black Money Act, 2015, Income Tax Act, 1969, and the Prevention of Money-Laundering Act, 2002, which were, in fact, the reasons provided by Respondent 3 itself to Respondent 1, while forwarding its request for issuance of the LOC.

24. The High Court of Punjab and Haryana in the case of Kartik Tayal vs. Central Bureau of Investigation, **2020 SCC OnLine P&H 1618** has observed as under:

13. This answer has also been reproduced in office memorandum dated 27.10.2010 issued by the Ministry of Home Affairs. Thus, there can be no doubt that according to the prevailing instructions, an LOC can be opened against an accused person who is (a) deliberately evading arrest, (b) not appearing in the trial Court despite non-bailable warrants and other coercive measures. Coupled with either of these conditions should be a likelihood of the accused leaving the country to evade trial/arrest. Neither of these conditions exist in the instant case. The petitioner



is not evading arrest. In fact, he has appeared before the investigating agency whenever required to do so and the investigating agency has not thought it proper to arrest him. Since the investigation is still pending and challan has not been presented, there is no question of any trial Court issuing/adopting coercive steps to ensure the presence of the petitioner. This requirement of law has been recognized by the Bombay High Court in the case of Afzal Jaffer Khan, (supra). The fact that the petitioner has travelled abroad on six occasions and has never violated the terms of the permission granted by the CBI Court, shows that the apprehension of the respondent is illusory.

14. In view of the above, it is evident that the conditions which must pre-exist before a request can be made for opening of an LOC, do not exist in the present case. Thus, the continuation of an LOC for more than 3 years against the petitioner is a violation of his fundamental right to life and personal liberty. It is, thus, liable to be withdrawn.

25. A perusal of the above cases shows that there has to be a proper application of mind by the authorities on the facts of each case before opening of a Look Out Circular which not only impedes the right to travel but also cast an aspersion/stigma on the person in the society against whom the Look Out Circular has been opened.

26. In the present case, there is no criminal case against the Petitioners till now and on the date of opening of the Look Out Circular, there was no suspicion or allegation against the Petitioners that the Petitioners have siphoned off funds. Proceedings are pending before various forums and a One-Time Settlement (OTS) has been arrived at between the Respondent No.2/Bank of Baroda and the company. Time to make payment has been extended till 30.09.2023 by the Respondent No.2/Bank of Baroda. The



Petitioners are only guarantors and were not involved in the day-to-day affairs of the company for the last several years. Therefore, the opening of Look Out Circular is not justified against the Petitioners. However, it is made clear that if any material is unearthed against the Petitioners showing that the Petitioners have been an accomplice in diversion and siphoning off funds and the fact that the present petition has been disposed of, the same will not be a bar for opening of a fresh Look Out Circular against the Petitioners. The Petitioners are also directed to co-operate with the investigation and appear before the Investigating Officer as and when required and give all the details as sought for by the Investigating Officer which are in their knowledge and in their possession. This Court has not made any observations on the right of the Respondents to open a fresh Look Out Circular if the company does not honour the One-Time Settlement arrived at with the Respondent No.2/Bank of Baroda.

27. In view of the above, the Impugned Look Out Circular opened against the Petitioners is, therefore, wholly unsustainable and deserves to be quashed and is hereby quashed.

28. The writ petitions are allowed. Pending applications, if any, stand disposed of.

SUBRAMONIUM PRASAD, J

SEPTEMBER 19, 2023

S. Zakir