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

Date of decision: 15th DECEMBER, 2023

IN THE MATTER OF:

+ **W.P.(C) 6933/2022**

RESHMA MITTAL

..... Petitioner

Through: Mr. Manohar Malik and Ms. Astha Gumber, Advocates.

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Anurag Ahluwalia, CGSC with Mr. Kritagya Kumar Kait, GP and Mr. Kaushal Jeet Kait, Mr. Jatin Yadav, Mr. Daksh Gupta and Mr. Parimal Bhatia, Advocates for UOI. Mr. Irfan Ahmed and Ms. Shweta Saini, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT(ORAL)

1. The Petitioner has filed the instant writ petition with the following prayers:-

"a. Issue a writ of certiorari quashing the office memorandum bearing No. 25016/10/2017-IMM (Pt) dated 22.02.2021, issued by the Respondent No.1 i.e., Immigration Department, Ministry of Home Affairs, Government of India for being unconstitutional on the vice of Article 14 & 21 of the Constitution and;

b. Issue appropriate writ for setting aside and



quashing of the Look Out Circular issued by the Respondent No.2 qua the Petitioner for being unconstitutional on the vice of Article 14 & 21 of the Constitution."

2. Learned Counsel for the Petitioner states that he does not seek to challenge the validity of the Office Memorandum bearing No.25016/10/2017-IMM (Pt) dated 22.02.2021 issued by Respondent No.1 but restricting his case only to the issuance of Lookout Circular (LOC) issued against the Petitioner.
3. It is stated that the Petitioner was a Director of M/s Zinc Global Private Limited from 04.01.2011 to 01.07.2014 and certain credit facilities were availed by the Company from Respondent No.2/State Bank of India and Punjab National Bank. It is stated that the account of the Company was declared as an NPA on 28.01.2014.
4. It is stated that proceedings under Section 13(2) of the SARFAESI Act were initiated and notice dated 17.05.2014 was issued demanding a sum of Rs.67,00,26,840/-. It is stated that the entire group of company owes a sum of Rs. 383 crores to Respondent No.2/Bank.
5. It is stated that the Petitioner is Director only in one company and, therefore, this Court is not concerned with the group liability with which the Petitioner has no concern at all.
6. Material on record further discloses that proceedings under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, were also initiated against the Petitioner. In execution of the order of the decree by the Bank and in pursuance to the other proceedings under Section 13(4) of the SARFAESI Act, properties belonging to the company and the



Petitioner have been sold.

7. Material on record discloses that till now, there is no criminal case against the Petitioner or against the company either under the IPC or any other criminal proceedings. The parties are *ad idem* that no proceedings under the PMLA Act has been initiated against the Petitioner or the company. The present case is, therefore, a clear case of recovery of money.

8. The lookout circulars are governed by various Office Memorandums issued by the Ministry of Home Affairs from time to time.

9. Office Memorandum bearing No.25016/10/2017-Imm (Pt.) dated 22.02.2021 was issued by Ministry of Home Affairs by which fresh guidelines have been issued for opening of LOCs in respect of the Indian Citizens and Foreigners. The relevant portion of the guidelines reads as under:

“6. The existing guidelines with regard to issuance of Look Out Circulars (LOC) in respect of Indian citizens and foreigners have been reviewed by this Ministry. After due deliberations in consultation with various stakeholders and in supersession of all the existing guidelines issued vide this Ministry's letters/O.M. referred to in para 1 above, it has been decided with the approval of the competent authority that the following consolidated guidelines shall be followed henceforth by all concerned for the purpose of issuance of Look Out Circulars (LOC) in respect of Indian citizens and foreigners:-

(A) The request for opening an LOC would be made by the Originating Agency (OA) to the Deputy Director, Bureau of Immigration (BoI), East Block- VIII, R.K. Puram. New Delhi - 110066 (Telefax: 011-26192883, email: boihq@nic.in) in the enclosed Proforma.



(B) The request for opening of LOC must invariably be issued with the approval of an Originating Agency that shall be 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 (Ops.) in 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 Indirect Taxes and Customs; or*
- (viii) Assistant Director of Intelligence Bureau/ Bureau of Immigration (Bol); or*
- (ix) Deputy Secretary of Research and Analysis Wing (R&AW); or*
- (x) An officer not below the level of Superintendent of Police in National Investigation Agency; or*
- (xi) Assistant Director of Enforcement Directorate; or*
- (xii) Protector of Emigrants in the office of the Protectorate of Emigrants or an officer not below the rank of Deputy Secretary to the Government of India; or*
- (xiii) Designated officer of Interpol; or*
- (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); or*
- (xv) Chairman/ Managing Directors/ Chief Executive of all Public Sector Banks.*

(C) LOCs can also be issued as per directions of any



Criminal Court in India. In all such cases, request for opening of LOC shall be initiated by the local police or by any other Law Enforcement Agencies concerned so that all parameters for opening LOCs are available.

(D) The name and designation of the officer signing the Proforma for requesting issuance of an LOC must invariably be mentioned without which the request for issuance of LOC would not be entertained.

(E) 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. Originator shall also provide the following additional information in column VI of the enclosed Proforma to ensure proper communication for effective follow up action:-

- (i) Two Gov/ NIC email IDS*
- (ii) Landline number of two officials*
- (iii) Mobile numbers of at least two officials, one of whom shall be the originator*

(F) 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 viz. name & parentage, passport number or Date of Birth 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. Details of Government identity



cards like PAN Card, Driving License, Aadhaar Card, Voter Card etc. may also be included in the request for opening LOC.

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

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

(I) In cases where there is no cognizable offence under IPC and 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.

(J) The LOC opened shall remain in force until and unless a deletion request is received by BoI from the Originator itself. No LOC shall be deleted automatically. Originating Agency must keep reviewing the LOCs opened at its behest on quarterly and annual basis and submit the proposals to delete the LOC, if any, immediately after such a review. The BOI should contact the LOC Originators through normal channels as well as through the online portal. In all cases where the person against whom LOC has been opened is no longer wanted by the Originating Agency or by Competent Court, the LOC deletion request must be conveyed to BoI immediately so that liberty of the individual is not jeopardized.

(K) On many occasions, persons against whom LOCs



are issued, obtain Orders regarding LOC deletion/ quashing/ suspension from Courts and approach ICPs for LOC deletion and seek their departure. Since ICPs have no means of verifying genuineness of the Court Order, in all such cases, orders for deletion/ quashing/ suspension etc. of LOC, must be communicated to the BoI through the same Originator who requested for opening of LOC. Hon'ble Courts may be requested by the Law Enforcement Agency concerned to endorse-/convey orders regarding LOC suspension/ deletion/ quashing etc. to the same law enforcement agency through which LOC was opened.

(L) In exceptional cases, LOCs can be issued even in such cases, as may 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) above, 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.

(M) 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 shall be brought to the notice of law enforcement agencies like the police. The Superintendent of Police (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 clause (B) above.

(N) For effective and better interception of LOC subjects, following guidelines shall be followed by the Originator:-

(i) Specific action to be taken by the Immigration authorities on detection must be indicated in the filled LOC proforma

(ii) In case of any change in parameters/ actions/ investigating officer/ Originator contact details or if any court order is passed in the case, the same should be brought to the notice of the Sol immediately by the originating agency concerned for making necessary changes in the LOC.

(iii) For LOCs originated on court orders, the concerned PS/ 10 should send the identifying parameters of the subject to the BoI as court orders contain only name and parentage of the subject.

(iv) In case an LOC is challenged and stayed by the concerned court or a court issues any directive with regard to the LOC, the originator must inform the BoI urgently and accordingly seek amendment/ deletion of the LOC.

(v) Whenever the subject of LOC is arrested or the purpose of the LOC is over, a deletion request shall be sent by the Originator immediately to the BoI.



(vi) The Originator must respond promptly whenever the subject/ likely match is detected at the ICP. The confirmation regarding the identity of the subject and action to be taken must be informed immediately to the ICP.

(vii) The BOI would form a team to coordinate matters regarding the LOC. This team would contact the LOC issuing agencies to get the status of LOC updated.

(viii) Each LOC Originating Agency referred in pars 6 (B) above will appoint a Nodal officer as indicated in Annexure-I for coordination/updation of LOC status with Bol. The said team of BoI [as mentioned in pars 6 (N) (vii)] would remain in constant touch with this Nodal Officer.”

10. Clause 6 of the Office Memorandum of 2021 states that an LOC can be issued at the instance of the Bank if the authorities are of the view that letting the person depart from the country will be detrimental to the economic interests of India. The scope of the term ‘detrimental to the economic interest of India’ has been dealt with by the various High Courts in various judgments. The Apex Court in Prateek Chitkara vs. Union of India and Others, **2023 SCC OnLine Del 6104** has observed as under:

48. The question before this court is, whether Clause L of the OM of 2021 would be legally valid, especially in respect of the phrase ‘detrimental to the economic interests of India’ and in respect of other clauses which permit indefinite continuation of LOCs, non-communication of reasons either prior or post issuance of the LOC and extension of LOC to such individuals who in the opinion of the authorities ought not to be permitted to travel on the ground of it being detrimental to the economic interests of India.

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58. In Mr. Chaitya Shah v. Union of India [2021 : BHCAS : 16392-DB], a ld. Division Bench of the Bombay High Court was dealing with a case where a substantial amount had been invested in a company called M/s. Gitanjali Gems of Rs. 50 crores and various banking operations and transfer of money was found. The Court observed that the words 'economic interest of India' and 'larger business interest' are not empty words. The relevant paragraph of the said judgment is extracted below:

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32. In the present case the SFIO is investigating into the affairs of the aforementioned companies and its investigation overrides the investigations by other investigating agencies. Therefore recourse to LOC was not unfounded as the Petitioner has definite connection with the investigation as discussed hereinabove. From the facts of the case it is clear that Clause (L) of these Guidelines clearly covers the Petitioner's case as it is detrimental to the “economic interests of India” and that his departure ought not be permitted in the larger public interest. The words “economic interests of India” and “larger public interest” are not empty words in the context of the present case because as mentioned earlier the Petitioner is directly involved and was concerned with considerable share-holding of M/s. Gitanjali Gems Limited. It involves huge amount of almost Rs. Fifty Crores which requires serious explanation from the Petitioner in the background of the allegations that the money belonged to Mr. Mehul Choksi, who has left India and has not returned back. This transaction is an important part of the entire fraud involving huge amount. Sheer magnitude of the offence and its spread through various banking operations and transfer of money through different modes and different countries shows that it has definitely affected the economic interests of India and the larger public interest is



definitely involved and affected. Therefore, we do not find that issuance of LOC against the Petitioner was unnecessary.”

59. *In Vishambhar Saran v. Bureau of Immigration [WP No. 10241(W) of 2020, decided on 24th December 2021] [2021 SCC OnLine Cal 3074], the Calcutta High Court held that vague allegations of a persons travel being detrimental to the economic interest of the country or the quantum of the alleged default (Rs. 351 crores in this case), is not sufficient to issue a LOC thereby restricting the personal liberty of a person to travel. In the said petition, no civil or criminal proceedings were initiated against the Petitioner and thus the Petitioner was allowed to travel. This view was echoed in Vishambhar Saran v. Bureau of Immigration [WPA No. 6670 of 2022, decided on 31st January 2023]*

60. *In Vikas Chaudhary v. Union of India [W.P.(C) 5374/2021, decided on 12th January 2022], the Petitioner was a businessman engaged in the export of garments to a number of foreign countries. A LOC was issued against the Petitioner on the ground of undisclosed foreign assets and interests in foreign-entities liable for penalty and prosecution under the Income Tax Act, 1961, the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 as also the proceedings under the Prevention of Money Laundering Act, 2002 having been commenced against the Petitioner. The Petitioner did not hold any foreign assets and any undisclosed assets.*

61. *In Vikas Chaudhary (supra), the Court primarily dealt with the question as to whether an LOC could be interfered with in a writ petition and what would be the circumstances which could be held to be detrimental to the economic interests of the country.*



62. *The Court noted that the phrase ‘detrimental to the economic interests of India’ was introduced for the first time in the Office Memorandum (hereinafter “OM”) dated 5th December, 2017. The said phrase did not exist in the previous OM dated 27th October, 2010. However, it continues to exist in all the subsequent OM's. In this context, the Court observed as under:*

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*36. 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.....***

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39. Merely because the OM dated 05.12.2017 permits the issuance of a LOC, in exceptional circumstances, even when the individual is not involved in any cognizable offence under the IPC or any other penal law, it has to be remembered that this power is meant to be



used in exceptional circumstances and not as a matter of routine, it must therefore, be interpreted in a manner that indicates an offence of such a magnitude so as to significantly affect the economic interests of the country. Mere suspicion of a person opening bank accounts in other countries and of investing in a foreign company cannot, in my view, be accepted as the basis for holding that the petitioner being allowed to travel abroad would be 'detrimental to the economic interest of India', when it is undisputed that this suspicion has remained a suspicion for such a long period of almost three years"

63. Thus, the conclusion of the Court was that exceptional circumstances could exist even if a person was not involved in any cognizable offence under the Penal Code, 1860 or under any other penal law. In the said petition, the LOC was quashed by the Court.

64. However, this judgment was subsequently challenged in **LPA 78/2022** dated **3rd February 2022** titled **Income Tax Dept. v. Vikas Chaudhary**, wherein it was argued by the Income Tax Department that there was an investigation into the offences under the Black Money Act, 2015 which was ongoing and that an FIR, is not a prerequisite for the commencement of an investigation under special enactments such as this Act. The relevant paragraph is set out below:

"Mr. Zoheb next contends that assessment for two Assessment Years being 2018-2019 and 2019-2020 for the individual is complete while the same is pending with respect to the companies. Ongoing investigation has revealed that there are proposed additions upwards of Rs. 14,83,93,68,371/- and penalties upwards of Rs. 2,66,13,000/-. It is also submitted that the Appellant is investigating into the offences under the Black money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 and has submitted FT&TR references to the authorities in Dubai and under special enactments



such as this Act, an FIR is not a pre-requisite for commencement of the investigation and on a complaint being filed, it is treated as a complaint case.

It is thus urged by the learned counsel for the, Appellant that if the impugned judgment quashing the LOC is not stayed, grave prejudice shall be caused to the investigation and if Respondent No. 1 is permitted to travel abroad, it shall be detrimental to the core economic interests of the country and will be a contravention of the very object for which OM's dated 05.12.2017 and 22.02.2021 have been issued. It is emphasised that the OM dated 05.12.2017 was issued by the Government of India, Ministry of Home Affairs-Foreigners Division (Immigration Section), amending the OM dated 27.10.2010 and expanding its scope to issue LOCS against persons impacting the economic interests of India and the OM dated 22.02.2021 was issued laying down fresh Guidelines for issuance of LOCS and it is clearly stipulated therein that no LOC shall be deleted automatically and shall remain in force till a deletion request is received from the Originator.

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83. The term 'detrimental to economic interest' used in the OM is not defined. Some cases may require the issuance of a LOC, if it is found that the conduct of the individuals concerned affects public interest as a whole or has an adverse impact on the economy. Squandering of public money, siphoning off amounts taken as loans from banks, defrauding depositors, indulging in hawala transactions may have a greater impact as a whole which may justify the issuance of LOCs. However, issuance of LOCs cannot be resorted to in each and every case of bank loan defaults or credit facilities availed for business etc. Citizens ought not to be harassed and deprived of their liberty to travel, merely due to their participation in a business, whether in a professional or a non-executive



capacity. The circumstances have to reveal a higher gravity and a larger impact on the country.”

(emphasis supplied)

11. Further in the case of Apurve Goel vs. Bureau of Immigration and Another, **2023 SCC OnLine Del 5917**, the LOC was quashed by this Court as it was not detrimental to the economic interest of India and no pre-existing condition was involved. Relevant portion of the said Judgment reads as under:

“23. A Co-ordinate Bench of this Court in the case of Vikas Chaudhary v. Union of India, (2022) 1 HCC (Del) 124 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 v. 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.

12. In the present case, since there is no criminal case against the Petitioner and the facts of the case reveal that it is only a case of recovery of money and non-payment on account of the Petitioner to return the money to the bank, the lookout circular cannot be sustained. No extraordinary circumstances have been shown. The lookout circular is, therefore, quashed. However, if it is found that the Petitioner is involved in siphoning off the money or that has indulged in any kind of fraud and if such facts are revealed in the forensic audit that is undertaken it is always open for the bank to make one more recommendation to the concerned authorities for issuing fresh LOC.

13. The petition is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

DECEMBER 15, 2023

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