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

Date of decision: 24th AUGUST, 2023

IN THE MATTER OF:

+ **W.P.(C) 8324/2022**

RUCHI GARG ..... Petitioner

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

versus

UNION OF INDIA & ANR. ..... Respondents

Through: Ms. Nidhi Raman, CGSC with Mr. Chetanya Puri, GP, Mr Zubin Singh, Mr. Akash Mishra and Mr. Anand Awasthi, Advs. for UoI.
Mr. Irfan Ahmed and Ms. Vaishali Kakra, Advs for R-2/SBI.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

1. The Petitioner, by way of the present Writ Petition, seeks to challenge a Look Out Circular (LOC) issued against her at the instance of Respondent No.2/State Bank of India.

2. It is stated that one Apple Commodities Pvt. Ltd. & Apple natural Resources Pvt. Ltd. (*hereinafter referred to as 'the Companies in question'*) availed credit facilities amounting to Rs.100 crores from Respondent No.2/State Bank of India. The said facilities were secured by way of a mortgage of immovable properties, bearing A-248, Defence Colony, New

Delhi and 65, Maulsari Road, DLF Phase-3, New Delhi, as well as Personal Guarantee of the Petitioner herein.

3. It is stated that in 2014 the loan account of the Companies in question was declared as Non-Performing Asset (NPA) by Respondent No 2 Bank. Thereafter, proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (*hereinafter referred to as 'the SARFAESI Act'*) were initiated against the companies. A demand notice under Section 13(2) of the SARFAESI Act was issued to the companies for repayment of its outstanding dues. The Respondent No 2/Bank also issued a demand notice to the Petitioner herein invoking the personal guarantee given by it.

4. It is stated that the Respondent No.2/Bank took the possession of the properties which had been mortgaged and were sold under the SARFAESI proceedings.

5. It is stated that on 21.05.2022 when the Petitioner along with her family members were going on a vacation trip to Dubai, she was stopped from boarding her flight by the Immigration Officials at the IGI Airport, New Delhi purportedly stating that an LOC had been issued against her.

6. The Petitioner has approached this Court by filing the instant Writ Petition challenging the issuance of Look Out Circular against her at the instance of Respondent No.2/Bank.

7. Notice was issued in the Writ Petition on 25.05.2022. Counter affidavit has been filed by Respondent No.2/Bank. It is stated in the counter affidavit that Apple Group of Companies owed about Rs.882.95 Crores to the Respondent No.2/Bank in the year 2022. It is further stated in the counter affidavit that the Petitioner herein is the wife of the Director of

Apple Group of Companies and had stood as a guarantor and mortgagor in respect of the credit facilities availed by the Companies in question. It is stated in the Counter Affidavit that the because of various fraudulent activities, the account of Apple Group of Companies was declared as fraud on 23.05.2019 and in terms of the RBI's Master Circular on Fraud a complaint was lodged with the CBI against the Apple Group of Companies. It is stated that a Writ Petition, being W.P.(C) 10968/2019 was filed by the Apple Natural Resources Pvt. Ltd. against the RBI before this Court and this Court *vide* Order dated 15.10.2019 had directed the CBI not to take any coercive action against the Petitioner and her husband. It is stated that in view of the order passed by this Court, Respondent No.2/Bank was not able to lodge any FIR against the Petitioner herein. It is stated that as per Forensic Audit Report dated 06.03.2019, Apple Commodities Private Limited & Apple Natural Resources Pvt. Ltd. have been found guilty of siphoning of funds through transfer of funds to other bank accounts, unusual transactions, utilization of short term working capital funds for long term purposes not in conformity with the terms of sanction, routing of funds through any bank other than lender bank etc.

8. It is stated by the learned Counsel for the Petitioner that the Petitioner was only a guarantor and was not involved in the management of affairs of the borrowing company. He states that there is no allegation against the Petitioner that she was involved in siphoning off of any amount from the company and in fact no FIR has been filed against the Petitioner indicating that she was involved in any kind of crime or in any kind of siphoning off of any amount to a third party. It is further stated that the Office Memorandums on the issue of LOC clearly specifies that LOC cannot be issued against a

person against whom no cognizable offence under the Indian Penal Code is pending. Learned Counsel for the Petitioner further states that it is well settled that Look Out Circular cannot be opened by the Banks only for recovering the money from its creditors. He states that opening of Look Out Circular is a complete abuse of the process of law which has tarnished the reputation of the Petitioner and also impeded the movement of the Petitioner. 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. Learned Counsel for the Petitioner has taken this Court through several Judgments to show that the underlying belief behind issuance of an LOC is that the person who has taken any loan from the bank and had siphoned off the same or has usurped the amount might leave the country and would never come back which would be detrimental to the economic interest of the country. He states that none of the factors enumerated in the counter affidavit indicates that the departure of the Petitioner would be detrimental to the economic interest of the country. He contends that the opening of the Look Out Circular against the Petitioner is a mere blackmailing and arm-twisting tactics adopted by the Bank, and the Respondent No.2/Bank only wants to keep the Petitioner, who is a guarantor, as a hostage in the country till the money is paid.

9. *Per contra*, learned Counsel appearing for Respondent No.2/Bank, seeks to sustain the Look Out Circular by contending that the presence of the Petitioner is necessary to ensure that money is returned. He also contends that Forensic Audit has revealed that there is siphoning off of the funds. He

contends that since there is a possibility that the Petitioner might be arrayed as an accused, she should not be permitted to leave the country.

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

11. 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. Look Out Circulars are being opened without any proper assessment as to whether request made by the Banks for opening of Look Out Circulars was only a tool to recover money or the persons against whom the Look Out Circular are sought to be opened have acted against the economic interest of the country. It is well settled that Opening of Look Out Circulars is a coercive measures to ensure that a person, against whom allegations have been made of having committed an offence, co-operates with investigation and surrender before the Investigating Agency or court of law.

12. Ministry of Home Affairs issued an Office Memorandum dated 27.10.2010 laying down the guidelines for issuance of Look Out Circulars. Under the said Office Memorandum dated 27.10.2010, Look Out Circulars could not be opened at the instance of Banks. It was noted that persons, after taking huge money siphoned off the money out of the country and fled the country. To prevent the same, 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.*
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> *Instead of:*
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> *"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."*

13. 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.

14. 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)***
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> *Dear Sir / Madam,*
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> *Kindly find enclosed the following, for necessary action:*
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> *"(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 apening of Look Out Circulars (LOCs).*
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> *(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.*
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> *2. In this context, it may kindly be noted that:*
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> *"(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, <u>may be strictly complied with henceforth</u>, 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."*

15. By virtue of the aforesaid Office Memorandums and their amendments from time to time, banks can request for opening of Look Out Circulars.

16. The Look Out Circulars cannot be opened merely on the request of the banks for recovery of money. There has to be some application of mind by the authority concerned for 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.

17. 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:

"36. Upon a perusal of these clauses in OM dated 27-10-2010 and 22-2-2021, what emerges is, that while the petitioner is justified in urging that as per the OM dated 27-10-2010, a LOC, once issued was valid only for one year, unless the same was specifically renewed; this position has however, radically changed after the issuance of OM dated 22-2-2021. Under clause "J" of the guidelines issued on 22-2-2021, the position has been reversed, and now a LOC once opened, remains

in force, till a request for deletion is made. The concept of an automatic deletion of a LOC no longer exists. No doubt, Respondent 3, the originating agency in the present case, is expected to periodically review the LOCs issued at its behest. However, the fact remains, that in the present case, it is the respondents' categoric stand that the LOC opened in February 2019, was in force on 20-2-2021, when the new guidelines were issued. The petitioner has failed to show anything to the contrary. There is, therefore, absolutely no reason to disbelieve the respondents' plea that the impugned LOC was extended from time to time, and was in existence on 22-2-2021 when these consolidated guidelines came into effect.

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.*

18. Another Co-ordinate Bench of this Court in the case of <u>Jitendra Kejriwal vs. Union of India and Others</u>, **2023 SCC OnLine Del 2173** has observed as under:

> *13. Undoubtedly, a Look-out-Circular, has the effect of curtailing the free movement of a person. The right to travel is also a recognized and protected right in several decisions of the Supreme Court and of Coordinate Benches of this Court. Recently, this Court had the occasion to consider the legal issues arising in the context of issuance of LOCs. In WP(C) 3454/2022 titled 'Ghanshyam Pandey v. Union of India' decided on 15th February 2023, the Court has observed as under:*
>
> > *"28. LOCs impinge upon the individual's right to travel which is recognised as a Fundamental Right. However, the rights and interest of the investing public would also be a relevant consideration which cannot be ignored. Challenge to LOCs can be raised by way of a writ petition and the Court has to determine whether the extraordinary writ jurisdiction is to be exercised or not in*

> *favour of a person seeking relief. While LOCs cannot be resorted to for every case involving a loan transaction, the facts of the present case reveal that a large amount of public funds of public sector banks and financial institutions are at stake. The question as to whether the LOC would be valid or not would have to be determined in the facts and circumstances surrounding each case."*

19. 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.*
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> *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.*

20. 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.

21. Material on record does not disclose or indicate that the Petitioner was in anyway responsible for the affairs of the company or that the Petitioner was involved in siphoning off of the loan amount which had been advances by the Respondent No.2/Bank to the company.

22. Before opening an LOC there has to be a proper application of mind and valid justification has to be given as to why an LOC has to be opened. LOCs cannot be opened by Banks without there being any material that the person, against whom LOC is to be opened, is a wilful defaulter. In the present case, the Petitioner is only a guarantor. The Petitioner, therefore, cannot be called as a wilful defaulter and since there is no material at this juncture that the Petitioner has indulged in any crime by siphoning off the money given by the bank, the LOC opened by the Bank cannot sustain. It is needless to state that if any material is unearthed against the Petitioner indicating that the Petitioner has been an accomplice in diversion and

siphoning off of funds or that she is in possession of the money which has been diverted or that she is in possession of any property purchased by proceeds of crime, it is always open for the Respondents to issue a fresh LOC against the Petitioner. It is made clear that the Petitioner shall make herself available as and when called by the Investigating Officer and shall co-operate with the investigation and if required produce all materials and details of all her money and properties in India as well as outside India.

23. The Writ Petition is disposed of. Pending applications, if any, also stand disposed of.

SUBRAMONIUM PRASAD, J

AUGUST 24, 2023
Rahul