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

+ **W.P.(C) 3545/2022**

GHANSHYAM PANDEY

..... Petitioner

Through: Mr. Balaji Subramanian, Mr. Pawan
Bhushan & Mr. Akash Kundu, Advs.
(M: 9818828902)

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Anurag Ahluwalia, CGSC with
Mr. Kritgya Kumar Kait, GP, Mr.
Shriram Tiwary, Mr. Abhigyau
Siddhanta and Mr. Salman Razi,
Advocates with IO Mr. Gaurav (A.D.
SFIO) and prosecutor Mr. Nitin
Agnihotri for SFIO.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **15.02.2023**

1. This hearing has been done through hybrid mode.
2. Vide a separate judgment passed today, this petition along with all pending applications, has been disposed of.
3. The documents handed over in the sealed cover, i.e., the statement of the Petitioner taken by the SFIO, which were handed over by ld. counsel for the SFIO during the course of hearing, are returned to ld. Counsel for SFIO.

PRATHIBA M. SINGH, J.

FEBRUARY 15, 2023

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

Date of decision: 15th February, 2023

+ **W.P.(C) 3545/2022 and CMAPPL. 2911/2023**

GHANSHYAM PANDEY Petitioner

Through: Mr. Balaji Subramanian, Adv., Mr.
Pawan Bhushan, Adv. & Mr. Akash
Kundu, Adv. (M: 9911169696)

versus

UNION OF INDIA & ANR. Respondents

Through: Mr. Anurag Ahluwalia along with G.P.
Kritagya Kumar Kait & Mr. Shriram
Tiwari, Advocates. (M-9811418995)

CORAM:

JUSTICE PRATHIBA M. SINGH

JUDGMENT

1. This hearing has been done through hybrid mode.
2. The Petitioner - Ghanshyam Pandey in the present case challenges the issuance of the LOC against him on the various grounds and prays for quashing of the same.
3. The case of the Petitioner is that he and his wife were intending to travel to the U.S.A., however they were stopped at the Indira Gandhi International Airport on 24th November, 2021 and were informed of the LOC which had been issued at the request of the Respondent No.2 - Serious Fraud Investigation Office (SFIO). Until then, the Petitioner had no knowledge of the said LOC. The Petitioner's further case is that by the date when he was stopped at the airport, he had only received one summon from the SFIO in respect of an investigation of a company by the name M/s Shilpi Cable Technologies Ltd (*hereinafter, "Shilpi Cables"*). He had accordingly

appeared before the SFIO, cooperated and given answers to all the questions which were raised. The Petitioner submits that the issuance of the LOC in this manner curtails his freedom to travel and accordingly prays for quashing of the same.

4. Mr. Subramaniam, Id. Counsel appearing for the Petitioner submits that the Petitioner was merely a whole time director of Shilpi Cable between the period 2013-17 and is not related to the family and promoters of the company in any manner. The various allegations against Shilpi Cable and its group companies of siphoning of funds, etc. cannot be saddled as being the Petitioner's responsibility as he was only a professional earning a salary from the said company. He submits that the highest case that can be argued against the Petitioner is that the Petitioner having been a member of the audit committee of Shilpi Cable did not alert authorities to the company's transactions. It is further submitted that since the time of the first summon, the Petitioner had appeared on 11 occasions and had his statement recorded by the SFIO. It is submitted that whatever information was within the knowledge of the Petitioner, he has given the same to the SFIO.

5. Mr. Subramaniam, Id. Counsel places reliance on judgments of ***Brij Bhushan Kathuria v. Union of India & Ors., SCC OnLine Del 2587*** and ***Sumer Singh Salkha v. Asst. Director & Ors., ILR (2010) VI Delhi 706***. Insofar as the cooperation with the investigating authorities is concerned, he relies upon the recent decisions of this Court in ***Lakshmi Satyanarayana Dutt Tadikond v. Union of India & Anr., 2020 (DLT SOFT) 389***, ***Rana Ayyub v Union of India, 2022 SCC Online Del 961*** and ***Bharadwaj Venkataraghavan Thiruvengkata v. Serious Fraud Investigation Office & Ors., W.P.(Crml.) 413/2022***.

6. Ld. Counsel of the Petitioner submits that the Petitioner is not a beneficiary of any of the amounts the allegations of which have been raised against Shilpi Cable and its promoters. The Petitioner has only one immovable property which is in Sarita Vihar, New Delhi and no other assets. He submits that the LOC has seriously impinged on his travel to meet his children and his family, two of whom live in the USA and one in Singapore. It is prayed that the LOC may be quashed as there is no flight risk as the Petitioner does not have any residency or citizenship permissions to live in the U.S.A and he intends to come back to India and continue to cooperate in the SFIO investigation. The final submission on behalf of the Petitioner is that the paragraph (L) of the office memorandum (OM) dated 22nd February, 2021 is not attracted in the present case.

7. On behalf of the Respondents, Mr. Ahluwalia, Id. CGSC under instructions from Mr. Gaurav, Investigating Officer, SFIO submits that the transactions being investigated by the SFIO are a complex maze of transactions involving Shilpi Cable. The said company has had transactions with 8 other related companies based out of Dubai, Abu Dhabi and Singapore. The said transactions show that the company had transferred more than Rs.800 crores to the related companies and loans for the same are outstanding. All these companies registered in Dubai, Abu Dhabi and Singapore were used as shell companies to transfer monies which were lent to Shilpi Cable by banks and public financial institutions in India. According to the affidavit filed by the SFIO, there are more than 15 open charges against Shilpi Cable amounting to approximately Rs.1452 crores. Out of the said charges, 10 charges amounting over Rs.1400 crores are outstanding *qua*

scheduled banks. These figures are also verifiable from the MCA portal and the accounts of Shilpi Cable which are uploaded therein.

8. Mr. Ahluwalia, Id. CGSC submits that though the Petitioner has appeared before the SFIO for recording of statement, he has blatantly not disclosed various facts which were well within his knowledge. Reliance is placed on the facts that the Petitioner was the CEO of Shilpi Cable Technologies from 2006-12, a whole time Director of the company from 2013-17 and was a member of the audit committee from 2011-17. In addition, it is argued that the Petitioner was also the head of the operations of the Abu Dhabi based company - Winston Metal Industries LLC from 2013-16. Mr. Ahluwalia, Id. CGSC submits that this is a case where though the Petitioner may not be the promoter but, he has been actively conniving with the promoters in order to defraud the public institutions in India of a large sum of monies. In addition, it is submitted that out of the two promoters of Shilpi Cables, Mr. Mukesh Kumar Gupta has passed away and Mr. Manish Goel alone lives in Delhi. It is argued that the Petitioner has also not been truthful in his statements made to the SFIO. As an illustration, in statements recorded on 17th November, 2022 by the SFIO, the Petitioner has denied knowledge of various transactions where the e-mails were clearly marked to him. When confronted with e-mails, he simply answered stating that this is only for the purposes of information. Mr. Ahluwalia, Id. CGSC further highlights that the Section 177 of the Companies Act, 2013 imposes several duties on a member of the audit committee and the Petitioner has been completely delinquent as an auditor of the company. Finally, it is submitted that the SFIO's investigation in respect of the fraud is under Section 447 of the Companies Act, 2013 where the definition of fraud itself

shows that it is not necessary for the person to have bought a wrongful gain or wrongful loss. Even if the person found conniving within an intent to deceive and cause wrongful loss to creditors, the same would amount to fraud.

9. Ld. CGSC submits that there are more than 5 lakhs e-mails which are currently being scrutinized by the SFIO. The company Shilpi Cable and its promoters and other persons involved have siphoned off substantial sums of money and had parked the same in foreign countries. The details of the same are not forthcoming from the Petitioner. In fact the Petitioner failed to disclose the details of his own bank account in Abu Dhabi. Thus, there has been complete non-cooperation by the Petitioner. Ld. CGSC also relies on the order dated 28th August, 2019 passed in **LPA No. 219/2019** titled **Union of India v. Savitha Kumar** to submit that prior intimation is not needed in cases of LOC.

Analysis and Findings

10. The question that arises in the present case is whether the Look Out Circular (LOC) issued against the Petitioner is liable to be quashed.

11. The LOC is stated to have been issued under the OM bearing No. 25016/31/2010-Imm, dated 27th October, 2010 issued by the Ministry of Home Affairs (Foreigners Division). The relevant portion of the said OM is as under:

“g) 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.

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 validity shall be deemed to have lapsed unless the agencies concerned specifically request BoI 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-entry 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 /or case details against CI suspects, terrorists, anti- national elements, etc in larger national interest."

12. The said OM has now been consolidated into the OM dated 22nd February, 2021. The OM dated 22nd February, 2021 is stated to be a consolidated document which lays down the guidelines for the issuance of LOCs. The relevant part of the said guidelines as may be required for the present case are as under:

“(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.*
- (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.”*

13. The Petitioner’s prayer for quashing of the LOC against him is to be considered in the light of the aforementioned clauses of the OM dated 27th October 2010 and the now consolidated guidelines dated 22nd February, 2021.

14. The case of the Petitioner is that the company under investigation i.e., Shilpi Cables is not owned or promoted by him and he was merely a wholtime professional director of the company. He has three children, two of whom are living in the USA with their families and one is living in

Singapore. It is stated that during the entire period of the Covid-19 pandemic the Petitioner and his wife could not travel abroad to meet their children. Further, the investigation by the SFIO itself commenced some time in 2020-2021 and no FIR has been registered against the Petitioner till date. Thus, in the absence of any cognizable offence, the LOC cannot be continued against the Petitioner specially for an indefinite period.

15. From the facts which have been presented it is seen that Shilpi Cables was a company against whom Corporate Insolvency Resolution Process (CIRP) proceedings were initiated by one M/s Macquarie Bank Limited before the NCLT. The NCLT, vide order dated 1st May, 2019 ordered liquidation of Shilpi Cables. In the said proceedings an audit was conducted in which it was discovered that there were several preferential and fraudulent transactions causing unlawful loss to the secured creditors of Shilpi Cables. The said secured creditors involved public sector banks as also other financial institutions. The liquidator, made a presentation to the Ministry of Corporate Affairs, Union of India. It was, thereafter, unearthed that a large amount of funds which were lent to Shilpi Cables by banks and public financial institutions were routed through group companies which were located abroad and were siphoned through the said companies. In view thereof, an SFIO investigation was ordered on 10th August, 2020 under Section 212 (1)(c) of the Companies Act, 2013. The said order reads as under:

“Whereas, the Central Government is empowered under Section 212 (1) (c) of the Companies Act, 2013 to order investigation into the affairs of a company. And whereas IBBI has forwarded a list of companies wherein the Resolution Professional (RP) has filed

applications for Avoidance Transactions before NCLT including Shilpi Cable Technologies Limited.

And Whereas, the Liquidator made a presentation and informed that the company had has defrauded the financial creditors by operating bank accounts without the knowledge of the lenders and routing funds to related parties through these accounts and manipulated the record and the Central Government has formed an opinion, on the basis of the presentation and the material placed before it by the RP, to order an investigation into the affairs of Shilpi Cable Technologies Limited under section 212 (1) (c) of the Companies Act, 2013 by Serious Fraud Investigation Office (SFIO), in public interest.

Now, the Central Government hereby orders an investigation into the affairs of Shilpi Cable Technologies Limited under section 212 (1) (c) of the Companies Act, 2013 by Serious Fraud Investigation Office (SFIO), in public interest and authorizes Director, SFIO to nominate Inspector(s) under Section 212 (1) of the Companies Act, 2013 to investigate into the affairs of the above mentioned company. The said investigation shall be carried out by officers of the SFIO as nominated by Director, SFIO.

That the Inspector(s) so appointed shall exercise all the powers available to - him under section 217 of the Companies Act, 2013 including powers conferred under section 219 of the Companies Act, 2013 after seeking prior approval of Central Government where ever required. The inspector shall complete the investigation and submit the report to the Central Government.

This order is issued for and on behalf of the Central Government”

16. Vide order dated 18th September, 2020 issued by the SFIO, three officers were also designated as inspectors to carry out the investigation into

the affairs of Shilpi Cables. The affidavit filed by the Investigating Officer as also a statement of registered charges outstanding against Shilpi Cables as reflected on the MCA portal of the Company, has been placed on record. The said charges are all created in the period between 2008 to 2017. The names of the charge holders are as under:

1. Canara Bank
2. Bank of India
3. Central Bank
4. Syndicate Bank
5. IDBI Bank
6. Punjab National Bank
7. Indian Bank
8. Andhra Bank
9. State Bank of Hyderabad
10. State Bank of India
11. UCO Bank
12. Axis Bank Ltd.
13. Union Bank of India
14. Oriental Bank of Commerce
15. Bank of Baroda
16. Karur Vysya Bank Ltd.
17. Bank of India
18. Hero FinCorp Limited
19. Siemens Financial Services Private Ltd.
20. State bank of Hyderabad
21. Oriental bank of Commerce

22. 3i Infotech Trusteeship Services Limited

17. The charges against each of these banks/ financial institutions runs into crores of rupees. The affidavit filed by the SFIO has computed the same. The relevant part of the affidavit filed by the SFIO is as under:

“9. It is submitted that SCTL had taken loans from banks and collected large sums of money as security premium through public issues even when it was facing losses. It is further submitted that these monies were given as loans and advances to group companies, many of which are situated abroad. It is further submitted that SCTL failed to pay its creditors who initiated the CIRP and SCTL is presently in liquidation. It is further submitted that the monies that have been lent are now not recoverable and appear to have been siphoned out through foreign entities.

10. It is submitted that there are fifteen open charges of SCTL as per the record available on the MCA portal amounting to Rs. 14,52,69,21,000/-. It is further submitted that out of these there are ten charges in favour of scheduled commercial banks amounting to Rs. 14,07,30,00,000/- and the remaining are registered in favour of private financial institutions. A copy of the index of charges of SCIL as available on the MCA portal is annexed herewith and marked as ANNEXURE R-2/4.

11. It is submitted that the liquidator in his application filed under Section 66 of IBC has stated that as per the books of accounts of SCTL, an amount of more than Rs. 1,449 Crores is outstanding and receivable from sundry debtors and an amount of more than Rs. 846 crores is due from foreign entities excluding the debt of related parties. A copy of the application filed in C.P. NO. IB- 64(PB)/2017 before the Hon'ble NCLT, New Delhi Principal Bench under Section 66 of IBC is annexed herewith and marked as ANNEXURER-2/5.”

18. The affidavit filed by the SFIO also avers that Shilpi Cables was engaged in mercantile trade of goods mostly involving foreign entities which were its own group companies that were controlled and managed by the erstwhile employees and management of Shilpi Cables. The *modus operandi* as per the SFIO, was that Shilpi Cables would supply goods to foreign entities who would then default in making payments, as a result of the same, a large number of dues are outstanding in the books of accounts of Shilpi Cables. The funds for trading by Shilpi Cables were provided by secured financial creditors of Shilpi Cables. It is further stated that this trading exercise was carried out by Shilpi Cables for more than five years from the years 2013-2014.

19. Further, as per the latest report dated 28th December, 2021 filed before the NCLT by the liquidator, the claims of financial creditors of Shilpi Cables is to the tune of Rs. 1,770 crores and only around Rs. 6 crores were released by the sale of assets. The aforementioned facts reveal that the SFIO is still investigating into the conduct of Shilpi Cables, its various group companies both in India and abroad. The role of promoters/ management/employees of Shilpi Cables relating to the said is also being investigated.

20. At this stage, it is crucial to discuss the role of the Petitioner. The Petitioner was the CEO of Shilpi Cables between 2006 to 2012. Thereafter, he was a whole time director of Shilpi Cables from 2013 to 2017. He was also a member of the audit committee from 2011 to 2016-2017. It is during this very period that the transactions claimed by the SFIO to be fraudulent transactions have occurred. Apart from the role that the Petitioner played in Shilpi Cables, he was also the head of operations of M/s Winston Metals LLC between 2013 to 2016 and was stationed in Dubai. The said company

is stated to be a step-down subsidiary of Shilpi Cables and a subsidiary of Shilpi Worldwide DMCC, Dubai. It is not disputed that the Petitioner was stationed in Abu Dhabi for several years and also operated a bank account in Abu Dhabi.

21. The above facts insofar as the positions occupied by the Petitioner is concerned, is not in dispute. This Court is thus of the opinion that the Petitioner is not merely a professional director of Shilpi Cables as is claimed to be. He had a much more active role. Even if it is presumed that he was a professional director, as a member of the audit committee of Shilpi Cables, with his qualifications, the Petitioner would have played a key role in the day to day management and administration of not merely Shilpi Cables but also its group companies which were located abroad.

22. The Petitioner has been called by the SFIO on several occasions in the course of the investigation. Some of the statements made by the Petitioner have also been placed on record. The Petitioner has been confronted with several documents. A perusal of these statements and documents shows that the maze of companies, the transactions and the substantial amount of money which is owed to public financial institutions and banks, would require deeper and further investigation. The investigation by the SFIO is recent as compared with the substantial volume of documents, global network of entities involved and amount of funds that are involved. The investigation has commenced only in September, 2020 and a substantial period was also during the pandemic. In a case of this nature where several foreign entities are involved, the collection of information and investigation could take some time.

23. The statement of the Petitioner recorded by the SFIO on 17th November, 2022 which is in the form of questions and answers has also been placed on record. A perusal of the said statement gives the impression that the Petitioner is being evasive rather than candid. In fact, he has even failed to explain contents of emails in which he is one of the recipients.

24. He has also refused to divulge details relating to his bank accounts outside India. On a query by the Court to the Id. Counsel for the Petitioner as to why the details of the Petitioner's own personal bank account in Abu Dhabi were not revealed, the response is that the Petitioner does not remember or recall the details. Such a stand does not inspire the confidence of the Court.

25. In the present case, there is no challenge to the OM of 2010 or the OM of 2021. The entire immediate family of the Petitioner lives outside India. As per the Petitioner, apart from one flat in Sarita Vihar, he does not have any assets. His wife is also accompanying him on his foreign travel. Thus, the question as to whether the Petitioner would pose a flight risk and adversely affect the investigation would have to be considered. From the submissions made by the Id. Counsel for the SFIO, it is clear that the Petitioner would still be required for the purposes of investigation. Until the conclusion of the investigation it cannot be presumed that the Petitioner would not be charged with a cognizable offence. It is observed if fraud is established *qua* the Petitioner, the same would be a cognizable offence under Section 212 (6) read with Section 447 of the Companies Act, 2013. The definition of fraud is broad enough to involve persons such as the Petitioner. The relevant part of the said provision read as under:

447. Punishment for fraud.— Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:

Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

Explanation.—For the purposes of this section—

(i) —fraud in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;

(ii) —wrongful gain means the gain by unlawful means of property to which the person gaining is not legally entitled;

(iii) —wrongful loss means the loss by unlawful means of property to which the person losing is legally entitled.

26. The various decisions cited by the Petitioner would be clearly distinguishable on facts. In the case of **Brij Bhushan Kathuria v. Union of India & Ors.**, SCC OnLine Del 2587, the Petitioner was an independent director of the Company whose role may not be active. In the case of **Bharadwaj Venkataraghavan Thiruvengkata v. Serious Fraud Investigation Office & Ors.**, W.P.Crl. 413/2022, the Petitioner therein was a

Non-Executive Director Investor Nominee and was not involved in the day to day affairs of the company. In the case of ***Lakshmi Satyanarayana Dutt Tadikonda v. Union of India & Anr, 2020 (DLT SOFT) 389***, the Petitioner therein was a resident of UAE and wished to travel to the UAE. In the said case, the Court, while quashing the LOC, imposed the condition that if the Petitioner therein wanted to travel to any location other than Dubai, he was to furnish a detailed itinerary to the investigation officer. The case of ***Sumer Singh Salkan v. Asstt. Director & Ors., W.P.(Crl.) No.1315/2008*** is distinguishable in as much as in the said case the LOC was observed to be issued with *malafide* and ulterior motives by an unauthorised officer. In ***Rana Ayyub v Union of India, [2022 SCC Online Del 961]***, this Court found that the Petitioner therein is a globally renowned journalist and on the ground of human rights the Court permitted her to travel aboard. In view of the same the judgements relied upon by the Petitioner are completely distinguishable in the facts of this case.

27. The Id. Counsel for the Respondents has relied upon the decisions ***Rohit Tandon v. Directorate of Enforcement, (2018) 11 SCC 46*** and ***State of Gujarat v. Mohanlal Jitamalji Porwal & Anr., (1987) 2 SCC 364*** passed by the Hon'ble Supreme Court to submit as to what constitutes economic interest. Recently in ***Vijay Madanlal Choudhary and Others v. Union of India and Others, 2022 SCC OnLine SC 929*** the said two decisions have been reiterated by the Supreme Court as under:

“396. In Mohanlal Jitamalji Porwal, while explaining the impact of economic offences on the community, the Court observed that usually the community view the economic offender with a permissive eye, although the

impact of the offence is way greater than that of offence of murder. The Court held thus:

“5.....The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to books. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National Interest.”(emphasis supplied)

397. In Rohit Tandon, this Court observed as follows:—

“21. The consistent view taken by this Court is that economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. Further, when attempt is made to project the proceeds of crime as untainted money and also that the allegations may not ultimately be established, but having been made, the burden of proof that the monies were not the proceeds of crime and were not, therefore, tainted shifts on the accused persons under Section 24 of the 2002 Act.” (emphasis supplied)

398. Thus, it is well settled by the various decisions of this Court and policy of the State as also the view of

international community that the offence of money-laundering is committed by an individual with a deliberate design with the motive to enhance his gains, disregarding the interests of nation and society as a whole and which by no stretch of imagination can be termed as offence of trivial nature. Thus, it is in the interest of the State that law enforcement agencies should be provided with a proportionate effective mechanism so as to deal with these types of offences as the wealth of the nation is to be safeguarded from these dreaded criminals. As discussed above, the conspiracy of money-laundering, which is a three-staged process, is hatched in secrecy and executed in darkness, thus, it becomes imperative for the State to frame such a stringent law, which not only punishes the offender proportionately, but also helps in preventing the offence and creating a deterrent effect.”

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.

29. The Petitioner did not merely play a role in the management and administration of Shilpi Cables but, being an auditor also owed a duty to report any shortcomings or misconduct within the company. Thus, the

Petitioner cannot be completely absolved of responsibility merely on the ground that he was a mute spectator. Persons like the Petitioners who hold positions of responsibility in such companies do not merely owe a duty to their employer but also owe a duty to the role that they play, especially, if they are involved in crucial role such as auditing. There is a clear possibility, in the facts of this case that the Petitioner may not return to India as his entire immediate family resides abroad. He has not shown any assets in India and thus his travel is likely to impede the investigation.

30. In view of the above discussed factual and legal position, as the funds amounting to approximately Rs.1,400 – Rs. 1,700 crores belonging to public sector banks and financial institutions are at stake, it would be in the larger public interest as also in the economic interest of India to not exercise discretion in favour of the Petitioner. Thus the LOC against the Petitioner is not liable to be quashed, at this stage.

31. In view of the aforementioned facts, the Court is not persuaded to exercise its extraordinary writ jurisdiction under Art. 226 of the Constitution of India. The petition, along with all pending applications is dismissed at this stage. However, if the SFIO investigation is not concluded by the end of this year i.e. December 2023, the Petitioner is free to approach the Court.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 15, 2023

dj/kt