

D/L. 1.
March 14, 2024.
MNS.

WPA No. 2002 of 2024

Ajay Sureka
Vs.
Union of India and others

Ms. Noelle Banerjee,
Mr. Dipak Dey,
Ms. Sucheta Mitra

... for the petitioner.

Mr. Pinaki Ranjan Chakraborty,
Ms. Anamika Pandey

...for the Union of India.

Mr. Soumya Roy,
Ms. Benajir Kaji

...for the respondent nos. 9 and 10.

1. Learned counsel for the respondent-bank, that is, the State Bank of India, as per previous directions, hands over a copy of the request made for the issuance of Look Out Circular (LOC) against the petitioner. Let the copy of the request be kept on record.
2. It transpires from the documents handed over in court today that there is no specific caption designated as grounds for the request. However, Row Nos. 16 and 17 of the said purported request are relied on by learned counsel for the Bank. Row No. 16 is captioned to be brief particulars of the fraud

committed by the borrower etc. It is indicated that “Sundry Debtors (including related parties) have been adjusted with other parties without receipt of amount. Submission of inflated stock statements to avail higher drawing power/credit facilities. Inconsistency in stock statement viz-a-viz actual stock/inventories and book debt levels.” Thirdly, “preferential transactions with related parties which are not at arm’s length leading to losses”.

3. In Row No. 17 is captioned to be whether the fraud alleged to have been committed/perpetrated against the bank by the borrower has been *prima facie* established during the investigation conducted by the bank. Against the same, it is stated that commission of fraud established through Forensic Audit/Special Audit Report provided by M/s. M.C. Bhandari and Company during CIRP under IBC, 2016.
4. It is well-settled that the grounds as per the Government Memoranda and Circulars related to issuance of LOCs is on an extremely high ground. The economic interests of the country or the public interest of the nation are to be affected in general in to issue an LOC.

5. In the present case, certain allegations have been levelled against the petitioner by the bank as per their internal investigation. The bank is neither a criminal court nor an investigating agency and as such does not have the power to adjudicate the issue as to whether the petitioner is guilty of fraud.
6. In any event, the reasons given in the request for issuance of LOC is the perception of the bank are not sufficient for attracting the clauses of the Government Circulars. It is to be noted that in Row No. 18, it has been stated that the account has been declared as fraud on January 31, 2019 and in Clause 19 that draft copy of complaint to be filed with CBI has been vetted by Law Department and Vigilance Department at Corporate Centre on June 7, 2019 and complaint "will be" filed with CBI within a fortnight.
7. Thus, the request made by the bank is on the premise of fraud declaration and, at best, an intention of the bank to file a complaint with the CBI.
8. It is also stated there that the actual request for opening of LOC will be submitted to the Bureau of Immigration only after filing of complaint with CBI against the said borrower. Thus, it is evident from the purported request

that the same is not even a request in the true sense but is a precursor of such request.

9. The request of the bank itself shows that the present request is premature and the “actual request” will be submitted only after filing of complaint with CBI. In the absence of any complaint at the relevant juncture and/or pendency of criminal case, I do not find that any high ground has been made out by the bank of issuance of LOC against the petitioner as envisaged in the concerned Government Circulars.

10. Accordingly, the entire exercise of issuance on request and the consequential issuance of LOC against the petitioner have no legs to stand on.

11. Hence, WPA No. 2002 of 2024 is allowed on contest, thereby setting aside the purported request of issuance of LOC of the bank as well as the consequential LOC issued by the Bureau of Immigration against the petitioner. All steps pursuant to the issuance of LOC stand hereby reversed and the respondent authorities shall immediately take necessary steps to intimate the same to the relevant authorities and ensure that the petitioner is not restrained from leaving the country on the basis of the quashed LOC.

12. There will be no order as to costs.

13. Urgent photostat certified copies of this order,
if applied for, be made available to the parties
upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)