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

\+ W.P.(C) 5927/2024 & CM APPL. 24622/2024

SEETHAYYA KADIMCHERLA .....Petitioner

Through: Mr. Tarun Johri, Mr. Ankur Gupta, Mr. Vishwajeet Tyagi, Advocates

versus

THE UNION OF INDIA & ORS. .....Respondents

Through: Mr. Ashish K. Dixit, CGSC with Mr. Shivam Tiwari, Ms. Urmila Sharma, Ms. Deepika Kalra, Ms. Venni Kakkar, Advocates for R-1

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% 12.12.2024

1. The present petition seeks to quash the Look Out Circular[1] issued against the Petitioner at the instance of Indian Bank, Respondent No. 3.

2. Despite several opportunities granted to Respondent No. 3, no counter affidavit has been filed. There is also no appearance on behalf of Respondent No. 3 today. Counsel for Petitioner has been heard who has put forth the following facts:

2.1. The Petitioner served as the Senior Vice President of Athena Demwe Power Limited[2] from October, 2007 to 03rd August, 2009. In December, 2009, the Petitioner was appointed as a Managing Director of the Company

[1] "LOC"
[2] "the Company"/ "ADPL"

initially for a period of 5 years i.e. from 2009 to 2014, which was then extended for another period of 3 years from 2014 to 2017.

2.2. ADPL availed credit facility from Respondent-Bank amounting to INR 200 Crores. However, on 13th May, 2024 the loan account of ADPL was declared as a Non-Performing Asset and Respondent No.3 issued a notice under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Securities Act, 2002,[3] against the Company.

2.3. On 6th March, 2016, the Petitioner resigned from the post of Managing Director of ADPL and since then, Petitioner is associated as the President of the Company.

2.4. Subsequently, Respondent No. 3 issued a show cause notice dated 21st March, 2016 to ADPL and its Directors, including the Petitioner, calling upon them to explain as to why they should not be classified as a "Wilful Defaulter". This was followed by demand notice dated 22nd March, 2016 which were duly replied by the Petitioner through response dated 19th February, 2018.

2.5. Thereafter, Respondent No.3 initiated proceedings before the Debt Recovery Tribunal-I, New Delhi, through Original Application No. 218/2016, which was allowed through decision dated 17th December, 2018. Further, the Respondent-Bank also filed a company petition C.P. (IB) 244/ND/2017 under Section 7 of the Insolvency and Bankruptcy Code, 2016[4] before the National Company Law Tribunal,[5] New Delhi.

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[3] "SARFAESI Act"
[4] "the Code"/ "the IBC"
[5] "the NCLT"

2.6. During the said proceedings, Resolution Plans were submitted by Sikkim Power Investment Corporation Limited[6] and Navayuga Engineering Company Limited[7] and the Resolution Plan of SPICL was approved by the Committee of Creditors through minutes of meeting dated 25th June, 2018. However, NECL after getting disqualified by the Committee of Creditors under Section 29A of the Code, challenged the decision before the NCLT and consequently, the National Company Law Appellate Tribunal,[8] Principal Bench. However, through order dated 16th February, 2024, NCLAT dismissed NECL's application.

2.7. In the meantime, on 27th May, 2019, Respondent No.3 declared Petitioner as a Wilful Defaulter.

2.8. On 10th February, 2024, during his travel to Kathmandu, Nepal, Petitioner was apprised of the LOC issued against him at the request of Respondent No.3.

3. Against the afore-noted factual backdrop, counsel for Petitioner contends that the impugned LOC restricts the Petitioner's fundamental right to travel abroad. He states that the impugned LOC has been issued in the absence of any criminal case pending against the Petitioner; no FIR or criminal proceedings are pending against the Petitioner in connection with the loan facility granted to ADPL. He further states that the Petitioner is neither a guarantor or surety nor a borrower in default for the loan facility availed by the Company.

4. The Court has considered the afore-noted contentions of the parties.

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[6] "SPICL"
[7] "NECL"
[8] "the NCLAT"

5. Indeed, there is no complaint/criminal proceedings pending against the Petitioner. There is also no material placed before the Court to suggest Petitioner's criminal culpability which could indicate that he is intending to abscond. Therefore, mere apprehension of default cannot be a basis for opening an indefinite LOC against him, thereby restricting the movement of a citizen who has a right to travel abroad which is acknowledged to be a fundamental right under Article 21 of the Constitution of India, 1950, as observed in the landmark judgments of ***Maneka Gandhi v. Union of India***[9] and ***Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer and Ors***.[10]

6. The Ministry of Home Affairs,[11] which is the nodal ministry responsible for issuing guidelines for international travel, has noted that an LOC can be issued in cases of cognizable offences under the Indian Penal Code and other penal laws and only in exceptional circumstances, can its scope be expanded. At this juncture, it would be apposite to reproduce Clause 'J' of the Office Memorandum dated 27th October, 2010 and the amended Clause in Office Memorandum dated 05th December, 2017, which reads as follows:

> *"**Office Memorandum dated 27th October, 2010***
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> *"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*

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9 (1978) 1 SCC 248
10 AIR 1967 SC 1836
11 "MHA"

informed about the arrival/departure of the subject in such cases.

xx ... xx ... xx

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."

Office Memorandum dated 27th October, 2010, as amended on 5th December, 2017

"Amendment-

"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 Indian 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 against CI suspects, terrorists, anti/national elements etc. in larger national interest."

7. Thereafter, MHA released Office Memorandum bearing No. 25016/10/2017-Imm (Pt.) dated 22nd February, 2021 which consolidates the existing LOC guidelines as follows:

"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 suppression 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:-

xx ... xx ... xx

(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."

8. The above makes it clear that only in exceptional cases can an LOC be issued without fulfilling the parameters. This is because a person's right to travel freely is an expression of their fundamental right to personal liberty enshrined under Article 21 of the Constitution of India. Therefore, such a right can only be restricted under strict parameters and in accordance with

the procedure established by law.

9. Furthermore, as has been held by the Coordinate Bench of this Court in ***Prateek Chitkara v. Union of India***,[12] the scope of the term "detrimental to the economic interest of India", as mentioned in Clause 'L' of the Office Memorandum dated 22nd February, 2021, must be narrowly construed. The relevant extracts of the judgement are as follows:

> *"**82.** The term "detrimental to economic interest" used in the Office Memorandum is not defined. Some cases may require the issuance of a look-out circular, 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 look-out circulars. However, issuance of look-out circulars cannot be resorted to in each and every case of bank loan defaults or credit facilities availed of 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."*

10. The idea behind issuing an LOC is to restrict a person from crossing international borders and going beyond the jurisdiction of domestic Indian authorities, in case there are reasonable and cogent grounds to believe that such a person has committed a serious transgression and is a flight risk.

11. It is also well settled in law, as has been held in multiple judgements by this Court, that mere inability to repay dues to a bank without there being any criminal penalty, cannot be a reason to take away the fundament right to travel guaranteed under Article 21 of the Constitution of India. Reliance in this regard is placed on ***Vikas Goel v. Union of India***.[13]

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[12] 2023 SCC OnLine Del 6104

[13] W.P.(C) 14837/2022, decided on 12th July, 2024

12. As noted above, the impugned LOC has been issued against the Petitioner solely for the reason that the company for which he acted as a Managing Director and later the President, was unable to repay its debts. The Petitioner is not an accused in any cognizable offence and there are no criminal proceedings pending against him. Further, there are no allegations that the Petitioner was instrumental in defalcation or siphoning off the money given as loan. It is also to be noted that the Bank has initiated the requisite steps under the SARFAESI Act and the IBC against the Petitioner and the Company. Therefore, banks should not be permitted to use an LOC as a means to recover debts from an individual who has no allegations of fraud or siphoning off or defalcation of the loan amount. In such circumstances, there is no material on record which can justify Respondent No. 3 to insist that the Petitioner's right to travel should be restricted and he should not be allowed to depart from the country.[14]

13. Moreover, this Court is apprised that one of the erstwhile Directors who stood as a personal guarantor for the loan availed by ADPL, also challenged the LOC issued against him before the High Court for the State of Telangana at Hyderabad, in W.P.(C) 43132/2022, wherein through judgment dated 11th September, 2024, the Court quashed the LOC against the Petitioner therein.

14. Thus, having regard to the afore-noted facts and the judgments referred above, in the opinion of the Court, the LOC issued against Petitioner by Respondent No.3 cannot be sustained and accordingly, the same is quashed.

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[14] See also: ***Rajesh Kumar Mehta v. Union of India***, 2024:DHC:4548

15. With the above directions, the present writ petition, along with pending application, is disposed of.

SANJEEV NARULA, J

DECEMBER 12, 2024/Ab