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

\+ W.P.(C) 8095/2024

MR RUDRA SEN SINDHU & ANR. .....Petitioners

Through: Mr. Sumit Goel, Ms. Sonal Gupta, Mr. Satish Kumar Sharma, Ms. Pratyusha Priyadarshini and Ms. Apurba Pattanayak, Advocates.

versus

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

Through: Ms. Radhika Bishwajit Dubey, CGSC with Ms. Drishti Rawal and Mr. Kritarth Upadhyay, Advocates for R-1 & 2.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **22.07.2024**

CM APPL. 40522/2024 *(for preponement of date of hearing)*

1. For the grounds and reasons stated in the application, pointing out that the instant matter is covered by the decision rendered by this Court on 12th July, 2024 in W.P.(C) 11506/2023, the application is allowed. With the consent of the counsel, the main writ petition is taken up for hearing today itself.

2. The application is allowed and disposed of.

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3. Petitioner No. 1 is the Executive Chairman and Petitioner No. 2 is the

Managing Director of ACB (India) Ltd.[1], which is engaged in the business of coal beneficiation and power generation. ACBIL availed multiple term loans from various banks and financial institutions, including State Bank of India (SBI), for multiple operations and working capital requirements.

4. Due to the outbreak of COVID-19 pandemic, the business of the company had suffered and ACBIL planned for restructuring of its debt under the 'Resolution Framework for COVID-19-related Stress' dated 06th August, 2020 read with RBI Circular dated 7th September, 2020. Accordingly, ACBIL entered into a Master Restructuring Agreement with its lenders, including SBI, on 29th May, 2021, for which the Petitioner was one of the guarantors.

5. Since the company was not in a position to honour the agreement, the account of ACBIL was declared as Non-Performing Asset (NPA) and a Lookout Circular (LOC) dated 26th May, 2022 was opened against the Petitioners at the instance of SBI. In such circumstances, the Petitioner has approached this Court by filing the instant writ petition seeking quashing of the said LOC.

6. It is stated that none of the lenders including the State Bank of India has initiated any proceedings against ACBIL except the Canara Bank which initiated proceedings under Section 13(2) of the SARFAESI Act. Further, the Petitioners place reliance on various judgments passed by this Court to contend that since no criminal proceedings have been initiated against the Petitioners, the mere inability of the company to repay its debts in which the Petitioners are the Executive Chairman/ Managing Director, LOC cannot be opened against the Petitioners as the same is violative of their Fundamental

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[1] "ACBIL"

Right to travel abroad under Article 21 of the Constitution of India, as held by the Supreme Court in ***Maneka Gandhi v. Union of India***[2].

7. The Court's attention has been drawn to the fact that, at the instance of Mr. Ajay Mrig, who was the Promoter-Director of ACBIL, this Court had previously considered the overall facts and circumstances involved in the present case in ***Mr. Ajay Mrig v. Union of India & Ors.***[3]**.** Upon reviewing the position of law on the issuance of LOCs at the instance of Banks, and by placing reliance on the judgment of the Bombay High Court in ***Viraj Chetan Shah v. Union of India & Anr.***, the Court observed that LOCs cannot be resorted to in every case of bank loan defaults. It was noted that the fundamental right of citizens to travel abroad cannot be curtailed merely on account of an inability to pay a bank loan, especially where there is no criminal case registered against the person against whom the LOC is issued. Accordingly, the Court granted relief in favour of Mr. Ajay Mrig by quashing the LOC opened against him.

8. Considering the aforenoted facts and circumstances, this Court is of the opinion that Petitioners herein are similarly situated to Mr. Ajay Mrig. There is no criminal case registered against them and they have not been arrayed as an accused in any offence for misappropriation or siphoning off the loan amounts. In view thereof, the failure to repay the bank loans cannot, in and of itself, form the sole basis for taking away their fundamental right to travel abroad. Accordingly, the LOC issued against the Petitioners is hereby quashed.

9. With the above directions, the present writ petition, along with

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[2] (1978) 1 SCC 248

[3] Judgment dated 12th July, 2024 in W.P.(C) 11506/2023; Neutral Citation No.- 2024:DHC:5206

pending application(s), if any, stands disposed of.

SANJEEV NARULA, J

JULY 22, 2024
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