

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 3235 of 2022****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE ILESH J. VORA**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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MANOJ MAHENDRA SOMANI**Versus****UNION OF INDIA & ORS.**

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Appearance:**MR SHALIN MEHTA, SENIOR COUNSEL ASSISTED BY MR PRIYAM M SHAH(12095) for the Applicant(s) No. 1****KSHITIJ M AMIN(7572) for the Respondent(s) No. 3****MR RC KODEKAR(1395) for the Respondent(s) No. 2****MS NALINI S LODHA(2128) for the Respondent(s) No. 3****NOTICE NOT RECD BACK for the Respondent(s) No. 1****NOTICE SERVED for the Respondent(s) No. 4****MS CM SHAH, APP for the Respondent(s) No. 5**

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CORAM: HONOURABLE MR. JUSTICE ILESH J. VORA**Date : 08/05/2024****ORAL JUDGMENT****1. The applicant is before this Court calling in question a**

look out circular issued against him which restrains him from travelling abroad.

2. The applicant – Manoj Mahendra Somani, was stopped by the immigration officer at the Ahmedabad Airport, when he was scheduled to travel Dubai on 24.11.2021 and was informed orally that, look out circular had been opened in his name and therefore, he could not be permitted to travel at Dubai.

3. Brief facts that lead to the applicant to file this application, as borne out as pleadings are as follows:

3.1 The applicant was erstwhile Director of Gopala Polyplast Pvt Ltd Company. The company had availed a Cash Credit Facilities from the respondent no. 3 – Bank of Baroda. The applicant was one of the Directors, who had offered guarantee in his personal and individual capacity along with others for the said credit facilities. The company committed default in repayment of credit facilities. The account turned into NPA on 07.11.2019. The bank noticed the instances of diversion of funds. The forensic audit report dated 09.02.2019 was remained inconclusive, as a result, the respondent no.3 Bank sought a second forensic audit report, which was submitted on 08.01.2020. The bank found glaring irregularities in the account as observed by the auditor in his report. Bank issued a show cause notice dated 09.07.2020, declaring

the applicant and others as willful defaulters. Before the aforesaid proceedings, in the month November, 2018, one Bonus Plastic Pvt. Ltd., filed a company petition against the company of the applicant, before the NCLT at Ahmedabad, to initiate corporate insolvency resolution process under the provisions of Insolvency and Bankruptcy Code 2016. By order dated 02.05.2019, the applicant and his company Gopala Polyplast were ousted and replaced by interim resolution professional for managing the affairs of the Company. Before the NCLT, one Plastena India Ltd, amongst the other had submitted EOI which was followed by submission of RP for acquiring the company during CIRP and plan was finally approved by passing order dated 07.08.2020. Pursuant to takeover by the Resolution Applicant, the Gopala Polyplast company came to be renamed as HCP Plastene Bulk Pack Ltd. The said RP approved against the claim of INR 74.01 crores, admitted by the RP, the respondent no.3 has to receive a total amount of approximately INR 71.06 crores by way of direct payment in three tranches (39.93 crores and payment by issuance of Equity Shares (31.30 crores). In addition to that, in the month of September, 2020, the Bank initiated proceedings under the provisions SARFAESI Act as well as the recovery proceedings under the DRT Act, as a result, the symbolic possession of the secured assets valued at about 2 crores was taken over.

3.2 The respondent Bank of Baroda filed a complaint before the Central Bureau of Investigation, Mumbai against the applicant and others on 15.12.2020, which was registered as FIR No. RC0772020E005 for the offence punishable under Section 120B read with Section 420 of the IPC and Section 13(2) read with Section 13(1)(d) of the PC Act, 1881. In the FIR, it is alleged that, during April, 2017 to July, 2019, the applicant accused and others were party to the criminal conspiracy to cheat respondent Bank of Baroda and in pursuant of aforesaid criminal conspiracy, the accused, Directors and Company M/s. GPL diverted the funds other tha82. The term 'detrimental to economic interest' used in the OM is not defined. Some cases may require the issuance of a LOC, 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 LOCs. However, issuance of LOCs cannot be resorted to in each and every case of bank loan defaults or credit facilities availed 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.n it was sanctioned.

3.3 Pursuant to the FIR, the search operation on 17.12.2020 was undertaken at the residential as well as the business places.

3.4 In the aforesaid facts and circumstances, it was apprehended that the promoters/ directors / guarantors may leave India at any point of time and shall not come back with an intention to avoid the legal proceedings, the opening of LOC was recommended by the respondent Bank against the applicant and others based on the letter dated 22.11.2018 of the Department of Financial Services empowering the Chief Executives of all Public Sector Banks against all persons covered under Office Memorandum dated 27.10.2010 of Ministry of Home Affairs.

3.5 The LOC as recommended was opened on 19.11.2019, which was initially valid upto 18.11.2020 and same is continued and as per last guidelines circulated by MHA vide its OM dated 22.02.2021, the LOC opened are to remain in force until and unless the deletion request is received by the Bank and same is presently in existence.

4. In aforesaid set of circumstances, the applicant – the erstwhile Director of the Gopala Polyplast is before this Court, calling in question the issuance of LOC and sought

a direction by issuance of writ in nature of mandamus seeking revocation of the LOC.

5. Mr. Shalin Mehta, learned Senior counsel assisted by Mr. Priyam Shah, learned counsel appearing for and on behalf of the applicant herein has submitted thus:

- (1) The impugned LOC has been issued in gross violation of principles of natural justice, as before issuance of it, neither any show cause notice nor an opportunity of hearing was given, when the applicant was restrained from travelling abroad.
- (2) The issuance of LOC is in violative of Article 21 of the Constitution of India, which provides that, no person shall be deprived of his life and personal liberty, except according to procedure established by law. That, in the present case, the condition precedent as per the latest OM for issuance of impugned LOC are absent, as a result, restricting the applicant to travel abroad is in violation of fundamental rights guaranteed under Article 21 of the Constitution of India.
- (3) Pursuant to registration of FIR, the applicant was never summoned by the police for interrogation, which is evident of the fact that, his personal presence till date is not required because,

the entire case is based on documentary evidence and in view of his non-requirement of his personal presence, there is no reason much less justifiable reason for opening the impugned LOC.

(4) The applicant has cooperated with the investigation. The recovery suit pending before the DRT has been contested by the applicant herein. The declaration as willful defaulter is being challenged by filing Special Civil Application No. 11945 of 2020. In view of the resolution plan approved by the NCLT, the substantial sum of outstanding dues has been recovered. The bank has also taken over the possession of the secured assets valued at Rs.2 crores. The aforesaid facts have been concealed and suppressed in the criminal complaint, wherein, the fraud amount is sought to be portrayed as Rs.72.55 crores. In such circumstances, while issuing LOC at the behest of the Bank, the respondent nos. 2 and 3 have failed to take into account the cooperation extended by the applicant to the Bank for recoveries of outstanding dues.

(5) The ground used for issuance of the LOC against the applicant is evidently, economic interest of India. There is no evidence that, the applicant leaving India for a specific time period would affect

economic interest of India. Nothing brought on record to substantiate that there was likelihood of the applicant - accused leaving the country to avoid the investigation and/or arrest as well as trial proceedings and same has not been considered by the authority concerned while issuing the LOC.

- (6) That the LOC cannot be issued as a matter of course but in exceptional circumstances, after following the guidelines where there are reasons to believe that the default in making a payment was an act detrimental to the economic interest of India. In the facts of the present case, out of 74 crores, the bank has recovered Rs.71 crores and odd and therefore, merely for recovery of the loan amount, the bank authority cannot be permitted for exercising their powers under the OM for issuance of LOC.

6. In view of the aforesaid contentions, the learned Senior Counsel submitted that the issuance of Look Out Circulars preventing a person from travelling abroad cannot be a mode of recovery of dues to a Bank and in absence of any exceptional circumstances like, deliberately evading the arrest, fails in appearing before the Court, instances of applicant - accused leaving the country to avoid trial/arrest, the LOC which infringes the

right of the applicant to travel abroad, as guaranteed under the Constitution of India, deserves to be quashed by supervisory jurisdiction of this Court.

7. Ms.Nalini Lodha, learned Standing Council for the Bank of Baroda – respondent no.3 has made the following submissions:

- (1) The present application is not maintainable as there are two LOCs, one issued at the behest of respondent no.2 – CBI and another was issued at the request of respondent no.3-Bank of Baroda. Thus, there is no any challenge to the LOC issued at the instance of Bank of Baroda.
- (2) On factual aspect, the reason for opening of LOC would diversion of the funds by the Directors of the Company viz. M/s.Gopala Polyplast Limited. The credit facilities were diverted for the purpose other than it was sanctioned. The management failed to repay the amount of credit facilities. The account declared NPA. The applicant accused and others declared willful defaulters. The outstanding was Rs.54,64,78,336/-for which the suit for recovery before the DRT, Ahmedabad is pending. The said amount is after deducting the amount received under the Resolution Plan Approved by NCLT, Ahmedabad. The value of secured assets is

Rs.2,35,09,400/- and thus, the unsecured amount is Rs.52 crores and more as on 06.04.2021.

- (3) In such set of circumstances, as narrated above, by virtue of Office Memorandum dated 22.11.2018, the LOCs were opened, in the larger public interest which also governs the “Economic Interest of India”.
- (4) On the contentions as raised by the applicant that the right to travel abroad is a fundamental right guaranteed under Article 21 of the Constitution of India, it has been submitted that the right to travel abroad cannot be treated as part of right to carry on trade, business, profession or it cannot be regarded as a forming part of Article 19(1)(a) or 19(1)(g) and imposition of restriction by way of LOC also cannot be construed to be void and ultra vires.
- (5) The applicant has been given a right to redress his grievance on the issue of opening of the LOCs before the bank, however, he has not approached the respondent bank for making such representation as provided under the Office Memorandums.
- (6) The respondent – bank is entitled to propose the

authority to open LOCs by virtue of Office Memorandum dated 22.11.2018. In the facts of present case, the act of the applicant is fall under economic offence, which has serious reparation on the Economic Interest of India and thus, in larger public interest, based on the input, the authority after arriving at subjective satisfaction, opened the LOCs. Thus, the respondent bank is a trustee of public fund and it is their duty to adopt all legal permissible methods for recovery of dues including the LOCs.

(7) In the facts of present case, the quantum of default and irregularities committed is in high volume and there is likelihood of the applicant leaving the country and if in any case he would not return back, then there is a substantial financial loss which can be affect the economic interest of the company as a whole.

8. In view of the aforesaid contentions made by learned counsel appearing for the respondent bank, it is submitted that Clause-8(j) of the Office Memorandum dated 27.10.2010 (amended through MHA's, dated 05.12.2017), if the travelling abroad of the person is detrimental to the strategic and/or Economic Interest of India, the LOC could be opened to restrain the persons in the larger public interest. Thus, therefore, she would urge that no case is

made out for exercising extraordinary jurisdiction of this Court to quash the proceedings and LOCs.

9. Mr.R.C. Kodekar, learned Standing Council appearing for respondent no.2-CBI, adopting the submissions made by learned counsel appearing for the bank, has submitted that the applicant and others diverted the funds of the company into their individual accounts as a result the company has suffered a huge loss and misused the bank funds by repaying unsecured loans to various promoters, etc. So far as investigation of the criminal case is concerned, it is submitted that look out circular opened after registration of the FIR and investigation is in progress, for which the presence of the applicant is necessary and there is all apprehension that he may fled away from the country in order to avoid the process of law.

10. Mr.Kshitij Amin, learned Standing Council appearing for and on behalf of Union of India, Ministry of Home Affairs and Bureau of Immigration, would also reiterate the submissions of learned counsel appearing for the originator, to contend that after considering the inputs given by the bank and upon satisfaction arrived at by the authorities, in the larger public interest, the LOCs were opened and till date, it continues because there is no request to revoke it by the bank authority.

11. Heard at length learned counsels appearing for the parties and perused the material placed on record.

12. It is well settled that the right to travel abroad is guaranteed under Article 21 of the Constitution of India which cannot be curtailed in an arbitrary and illegal manner. In *Menka Gandhi Vs. Union of India* (1978(1) SCC 248), wherein the passport of the petitioner was impounded without furnishing reasons. A majority of the Hon'ble Supreme Court Judges of the Bench found that the expression "procedure established by law" did not mean any procedure howsoever arbitrary or fanciful. The procedure had to be fair, just and reasonable.

13. In order to appreciate the submissions, it is germane to notice relevant guidelines operating for issuance of LOC. The Government of India has from time to time issued a certain official memoranda in the form of guidelines for issuance of the LOCs. Look out circulars issued by the Government in order to keep a watch on the arrival/departure of the individuals, at the behest of law enforcement agencies. With the passage of time, the purpose of look out circulars has expanded and in case of public interest, it has been issued against the persons who are suspected to have committed serious crime so that they do not escape from investigation as well as from the process of court of law, by leaving country. The history of look out circular in brief reads thus:

(a) In the year of 1979, the Ministry of Home Affairs permitted the various authorities to keep a watch on the arrival and departure of Indians and Foreigners and if look out circular issued, then, it was valid only for a period of one year;

(b) In the year of 2010, the comprehensive office memorandum i.e. 27.12.2010 was issued;

(c) In view of the decision in W.P. (C) No.10180 of 2009, Vikram Sharma & Ors. Vs. Union of India and Sumersingh Salkan (2010 SCC Online Delhi 2475), the office memorandum of 2010 was issued laying down guidelines regarding the issuance of LOCs. In the said guidelines, the recourse to LOC could be taken in case of registration of cognizable offence or other penal laws, the person named in the LOC cannot be detained or prevented from leaving the country. However, the originating agency can only request that they be informed the arrival/departure of the person in such cases and the validity of LOC was for a period of one year and on completion of the period, the name of the person shall be automatically removed from the LOC unless the concerned agency requests for its renewal within a period of one year;

(d) The office memorandum of 2010 was amended

vide OM dated 05.12.2017. In clause no.8(j) of the office memorandum dated 27.10.2010 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 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 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 interest 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 to 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 public interest."

Thus, as per the OM dated 05.12.2017, detrimental to the economic interest of India was added as a ground for issuance of LOCs;

(e) Again, Ministry of Home Affairs by amending earlier OM, another OM dated 19.09.2018 issued whereby the Officer of Serious Fraud Investigation Office and the Ministry of Corporate Affairs were also added to the list of officers, empowering them to make a request the issuance of LOC and with further OM dated 12.10.2018, the Chairman/Managing Directors/Chief Executives of the all public sector banks permitted to apply for opening of the LOCs;

(f) Recently, the Ministry of Home Affairs by reviewing the earlier guidelines operating in the field, issued consolidated guidelines dated 22.02.2021 which reads as follows:

"The most recent amendment is dated 22nd February 2021 ("2021 OM"). Clause 6(j) now stipulated that LOCs will be automatically renewed, unless the originating agency makes a deletion request, a complete reversal of the earlier one-year lifespan provision. This is found in clause 6(J) of the 'revised guidelines' issued by the MHA. We reproduce the whole of Clause 6 of the 2021 OM.

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:-

(A) The request for opening an LOC would be made by the Originating Agency (OA) to the Deputy Director, Bureau of Immigration (BoI), East Block- VIII, R.K. Puram, New Delhi – 110666 (Telefax: 011-26192883, email: boihq@nic.in) in the enclosed Proforma.

(B) The request for opening of LOC must invariably be issued with the approval of an Originating agency that shall be an officer not below the rank of—

i. Deputy Secretary to the Government of India; or

ii. Joint Secretary in the State Government; or

iii. District Magistrate of the District concerned; or

iv. Superintendent of Police (SP) of the District concerned; or

v. SP in CBI or an officer of equivalent level working in CBI; or

vi. Zonal Director in Narcotics Control Bureau (NCB) or an officer of equivalent level [including Assistant Director (Ops.) in Headquarters of NCB]; or

vii. Deputy Commissioner or an officer of equivalent level in the Directorate of Revenue Intelligence or Central Board of Direct Taxes or Central Board of Indirect Taxes and Customs; or

viii. Assistant Director of Intelligence Bureau/Bureau of Immigration (BoI); or

ix. Deputy Secretary of Research and Analysis Wing (R&AW); or

x. An officer not below the level of Superintendent of Police in National Investigation Agency; or

xi. Assistant Director of Enforcement Directorate; or

xii. Protector of Emigrants in the office of the Protectorate of Emigrants or an officer not below the rank of Deputy Secretary to the Government of India; or

xiii. Designated officer of Interpol; or

xiv. An officer of Serious Fraud Investigation Office (SFIO), Ministry of Corporate Affairs not below the rank of Additional Director (in the rank of Director in the Government of India); or

xv. Chairman/ Managing Directors/ Chief Executive of all Public Sector Banks.

(C) LOCs can also be issued as per directions of any Criminal Court in India. In all such cases, request for opening of LOC shall be initiated by the local police or by any other Law Enforcement Agencies concerned so that all parameters for opening LOCs are available.

(D) The name and designation of the officer signing the Proforma for requesting issuance of an LOC must

invariably be mentioned without which the request for issuance of LOC would not be entertained.

(E) The contact details of the Originator must be provided in column VI of the enclosed Proforma. The contact telephone/ mobile number of the respective control room should also be mentioned to ensure proper communication for effective follow up action. Originator shall also provide the following additional information in column VI of the enclosed Proforma to ensure proper communication for effective follow up action:-

i. Two Gov/NIC email IDs

ii. Landline number of two officials

iii. Mobile numbers of at least two officials, one of whom shall be the originator

(F) Care must be taken by the Originating Agency to ensure that complete identifying particulars of the person, in respect of whom the LOC is to be opened, are indicated in the Proforma mentioned above. It should be noted that an LOC cannot be opened unless a minimum of three identifying parameters viz. Name & percentage, passport number or Date of Birth are available. However, LOC can also be issued if name and passport particulars of the person concerned are available. It is the responsibility of the originator to constantly review the LOC requests and proactively provide additional parameters to minimize harassment to genuine passengers. Details of Government identity cards like PAN Card, Driving License, Aadhar Card, Voter Card etc. may also be included in the request for opening LOC.

(G) The legal liability of the action taken by the immigration authorities in pursuance of the LOC rests with the originating agency.

(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 Bol 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 Bol 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 Bol 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.

(M) The following procedure will be adopted in case statutory bodies like the NCW, the NHRC and the National Commission for Protection of Children's Rights request for preventing any Indian/ foreigner from leaving India. Such requests along with full necessary facts shall be brought to the notice of law enforcement agencies like the police. The Superintendent of Police (S.P.) concerned will then make the request for issuance of an LOC upon an assessment of the situation, and strictly in terms of the procedure outlined for the purpose. The immigration/emigration authorities will strictly go by the communication received from the offences authorized to open LOCs as detailed in clause (B) above.

(N) For effective and better interception of LOC subjects, following guidelines shall be followed by the Originator:-

i. Specific action to be taken by the Immigration authorities on detection must be indicated in the filled LOC proforma.

ii. In case of any change in parameters/ actions/ investigating officer/ Originator contact details or if any court order is passed in the case, the same should be brought to the notice of the Bol immediately by the originating agency concerned for making necessary changes in the LOC.

iii. For LOCs originated on court orders, the concerned PS/IO should send the identifying parameters of the subject to the Bol as court orders contain only name and parentage of the subject.

iv. In case an LOC is challenged and stayed by the concerned court or a court issues any directive with regard to the LOC, the originator must inform the Bol urgently and accordingly seek amendment/deletion of the LOC.

v. Whenever the subject of LOC is arrested or the purpose of the LOC is over, a deletion request shall

be sent by the Originator immediately to the Bol.

vi. The Originator must respond promptly whenever the subject/ likely match is deleted at the ICP. The confirmation regarding the identity of the subject and action to be taken must be informed immediately to the ICP.

vii. The Bol would form a team to coordinate matters regarding the LOC. This team would contact the LOC issuing agencies to get the status of LOC updated.

viii. Each LOC Originating Agency referred in para 6 (B) above will appoint a Nodal officer as indicated in Annexure-I for coordination/updation of LOC status with Bol. The said team of Bol [as mentioned in para 6(N) (vii)] would remain in constant touch with this Nodal Officer."

(g) clause-6(j) of the amended OM dated 22.02.2021, clarified that, LOCs will be automatically renewed, unless the originating agency requests for deletion and/or revocation of it.

14. The issue falls for consideration of this Court as to whether the respondent bank as well as the respondent CBI justified in requesting the respondent nos.1 and 4 to prevent the applicant for travelling abroad by opening LOCs and the same should be quashed on the facts which have been brought to the notice of the Court ?

15. On the facts of present case, it is not in dispute that, the applicant was erstwhile Director of Gopala Polyplast Limited and the company and its directors failed to repay the outstanding amount of Bank of Baroda-respondent

no.3 and the amount was INR Rs.74.01 crores. According to the case of CBI, as born out from the FIR, between April, 27 to July, 2019, the applicant and others being Directors of the company diverted the funds for the purpose other than it was sanctioned by the bank. When the auditor submitted its audit report, the bank noticed the irregularity which was committed by the accused. The account maintained with the bank was declared NPA on 11.07.2019. In the Company Petition under the provisions of IBC Act, the NCLT, Ahmedabad by its order dated 07.08.2020, approved the resolution plan and the company was taken over by resolution applicant and bank had to receive a total amount approximately Rs.7106 crores. Out of Rs.7106 crores, the bank had to receive Rs.39.93 crores in three tranches from resolution applicant and Rs.31.13 crores by equity shares. The bank had also taken over the secured assets valued to Rs.2 crores. The bank has initiated recovery proceedings claiming Rs.54,64,78,336.91 after deducting the amount of Rs.32,32,60,000/-, the share amount as per the resolution plan. On plain reading of the plaint, that the amount of Rs.39.93 crores to be directly received as per the resolution plan having not been mentioned and in affidavit-in-reply, no clarification is being made by the bank on this aspect. It is stated in the reply that, the amount of Rs.54 crores is after deducting the amount whatever received by the bank as per the resolution plan.

In such circumstances, the respondent no.3 bank is silent on the amount of Rs.31 crores which was directed by the NCLT to be paid to the bank by the resolution applicant. In absence of any clarification on this aspect, it can be presumed that the amount has already been received and in that case, it is evident on record that, the bank has received a substantial amount from the defaulter company.

16. It is to be noted that, the FIR by CBI against the applicant and others came to be registered on 15.01.2020. Admittedly, for a considerable time, the applicant was not summoned by the prosecution agency for investigation etc. There is no evidence on record that the applicant did not have cooperated with the investigation and to avoid the outstanding of the bank, there is reasonable apprehension that the applicant was trying to flee the country.

17. In the aforesaid set of circumstances, it will be useful to refer the observations made by the Bench of Calcutta High Court in case of *Manoj Kumar Jain vs. Union of India* (WPA 22748 of 2022) decided on 09.06.2023. Relevant para-10 to 21 reads as follows:

"10. Look Out Circulars are issued where the concerned persons are considered as flight risks, that is, it is apprehended that they will fail to return to India. The originator of a Look Out Circular, which is the entity at whose instance the Circular is issued, usually takes recourse to pending criminal cases against the person or an ongoing proceeding

where the continuous presence of the person is required. The apprehension is that the person concerned cannot be allowed to travel since the person, presumably in search of a safe haven, will not return to India for the logical culmination of the proceedings. The recent trend however is of banks issuing Look Out Circulars as a recovery mechanism for outstanding monetary dues. The reasoning of the Bank is that the person may frustrate settlement of the dues by not returning to India. The logic put forth is that the person's bona fides in repaying the dues is best ensured if the person remains within reach, i.e. in the territory of India.

11. The Banks' apprehension may be founded on a real threat of the person leaving the country forever and the Banks' loans being written off. This reasoning however cannot apply across the board for all borrowers without exception. The criteria for assessing the credit-worthiness of a borrower and his/her bona fides for repayment must be determined on a case-to-case basis. The individual circumstances of a borrower's ability and willingness to pay or the mode and manner of repayment must be assessed before the fundamental right of a person to travel is denied.

12. Look Out Circulars which have the effect of restricting a person's free movement and the right to travel should only be issued in exceptional circumstances. Look Out Circulars cannot be issued at random and at the slightest provocation particularly at the instance of a Bank who seeks restriction on travel as a buffer to payments outstanding to the Bank. The only acceptable logic - albeit with some effort - is that a person may flee the country and not return to repay his/her outstanding loan. This however cannot be the rule across the board and a borrower's credentials and circumstances for making payment must be taken into account.

13. There is something draconian and uncivilised in a person being deboarded from an aircraft without being informed of the reason for such. In most cases, the person concerned is simply handed a piece of paper and told at the last moment to de-plane without being made aware of the reason. This is against the principles of natural justice and fair play in action where the fundamental right to travel and the right to life is inexorably compromised and with impunity. The extreme repercussions of issuing a Look Out Circular must hence be regulated to give it form and certainty and not be made the norm for recovery of outstanding payments to the Bank. Isolated and few-and-far between cases of persons fleeing the country cannot become the uniform rationale for issuing of Look Out Circulars left, right and centre.

14. The petitioners' efforts in the settlement of loans are a sure-shot factor in establishing the petitioners' case for relief. The details of the

efforts made as well as actual payments to the 8 other Banks including the lead Bank of the Consortium has already been stated above. The petitioners have also made payments to Andhra Bank (Union Bank of India) and the IDBI Bank and have made a proposal to the Indian Overseas Bank/respondent no. 8 which is the originator of the Look Out Circular. The Indian Overseas Bank has already realised Rs.86 lacs by selling a property mortgaged by the petitioners and the total value of immovable securities given to the respondent no. 8 is Rs.5.45 crores. Besides this, the petitioner no. 1 was permitted to travel 19 times by the CBI Court and there was no complaint that the petitioner no. 1 had failed to comply with the conditions imposed or return to India on the scheduled date. The petitioner no. 2 is not a party to the CBI proceedings. The petitioners also have assets in India and continue to be Directors (at least one of them) of a company in India. The respondent no. 8 has not denied the fact of the petitioners making part payments to the said respondent or that the petitioners having settled the claims of the remaining banks of the consortium. The argument that the petitioners continue to be a threat to the economic interest of the country is far-fetched and suffers from an absence of a rational basis.

15. Although the quantum due to the respondent no. 8 is disputed, Vishambhar Saran v. Bureau of Immigration; W.P. No. 10241(W) of 2020 and WPA 6670 of 2022 shows that quantum alone cannot be the determining factor for preventing a person from leaving the country.

16. Ghanshyam Pandey v. Union of India; 2023 SCC OnLine Del 936, cited on behalf of the respondent Bank, involved facts which persuaded the Court to accept the contentions of the Bank. The Court noted that the petitioner did not have any assets in India and his travel would impede the ongoing investigation. The petitioner was found to have avoided payments to the Bank and there was reasonable apprehension that the petitioner was trying to flee the country.

17. The consensus arrived at in the decisions shown on behalf of the petitioners is substantially the same, namely, that Look Out Circulars are coercive measures to make a person surrender to the Investigating Agency or a Court of Law : Karti P. Chidambaran v. Bureau of Immigration, Ministry of Home Affairs, Government of India; 2018 SCC OnLine Mad 2229. The decisions of two learned Single Judges of this Court in Vishambhar Saran vs. Bureau of Immigration; W.P. No. 10241(W) of 2020 and WPA 6670 of 2022 proceed on the same basis. Both the decisions rely on the sequence of Office Memoranda from 27.10.2010 – 22.02.2021 where the last version is that LOCs could be issued in exceptional cases not covered by the guidelines in the OM and at the request of the authorities impugned in the OM where the departure of the person concerned would be detrimental to the sovereignty, security or integrity of India or is detrimental to the

bilateral relations with any country or to the strategic and / or economic interest of India or that person may potentially indulge in any act of terrorism or offence against the State if such person is allowed to leave or where travel ought not be permitted in the larger public interest at any given point of time. The expressions used are from the OM dated 22.02.2021 which has been extracted in one of the decisions referred to above.

18. The Look Out Circular in the present case has not been produced by the respondent Bank and hence the Court cannot refer to the contents of the Look Out Circular which has been issued against the petitioners. It is clear from the last Memoranda (presumably the last, since none of the OM's have been placed before the Court) that a Look Out Circular can be issued on the specific grounds stated in sub-paragraph L of the OM of 22.02.2021.

19. The ground used against the petitioners is evidently economic interests of India. There is no evidence that the petitioners' leaving the country for a specific period of time would affect the economic interest of India. The petitioners have not been declared fraudsters or money-launderers or even economic offenders.

20. Apart from the reach of Look Out Circulars to cause immediate and irrevocable violation of a person's fundamental right of movement, Look Out Circulars have an inexplicably long shelf-life. Sub-paragraph J of the OM dated 22.02.2021 mandates that a LOC shall remain in force until and unless a deletion request is received by the Bureau of Immigration from the originator and that no LOC shall be deleted automatically. Although these clauses cast an obligation on the originating agency to review the LOC on a quarterly / annual basis and submit proposals for deletion of the same, this is sadly found to be absent in most cases. Once a Look Out Circular is issued, it remains alive and kicking for almost all times to come. This spells dangerous repercussions on the person's right to freely move across and beyond the country and remain mobile. The Banks have been given untrammelled powers to issue, use and exploit the lock-in power of a Look Out Circular without sufficient recourse being provided in law to the person at the receiving end of it. The expressions "... detrimental... to the economic interest of India" in the concerned OM is sufficient to sharpen the talons of a vindictive Bank to clip the wings of a vulnerable prey (in the metaphoric sense). The Writ Court hence can and should step in to check such unregulated abuse of power by Banks where the facts demand relief.

21. In view of the above reasons, the respondent no. 8 Indian Overseas Bank cannot have any continuing reason to interfere with the petitioners' travel outside the country. The interference sought to be

imposed by way of the Look Out Circular is arbitrary and without any rational basis. The CBI Courts, where the cases are pending, are free to pass orders or impose conditions as the Courts may deem fit. The petitioners have not claimed any reliefs against those proceedings in the writ petition. This Court however sees no reason to allow the impugned Look Out Circular to remain or be used against the petitioners in the absence of any acceptable apprehension, let alone evidence, shown on behalf of the Bank."

18. I may also refer and rely on the decision of *Prateek Chitkara vs. Union of India & Ors.* (2023 LawSuit Delhi 3215). In para-82 of the said decision, the term "detrimental to economic interest" was considered and discussed at length which reads as under:

"82. The term 'detrimental to economic interest' used in the OM is not defined. Some cases may require the issuance of a LOC, 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 LOCs. However, issuance of LOCs cannot be resorted to in each and every case of bank loan defaults or credit facilities availed 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."

19. Recently, the Division Bench of Bombay High Court in a group of matters, delivered in case of *Viraj Chetan Shah & Ors. vs. Union of India & Ors.* (2024 LawSuit Bombay 750), had an occasion to deal with the identical issue and after considering the fundamental right of the person to travel abroad and the constitutional validity of the office memorandums amended from time to time, quashed the

clause-8(b)(xv) of the 2010 amended OM (equivalent to clause-6(b)(xv) of the 2021 consolidated OM) which includes the Chairman, Managing Directors and Chief Executive Officers of all public sector banks as authorities who may request to issue the look out circular has been quashed.

20. So far as case of the applicant is concerned, as discussed above, the case of the applicant would not fall under the “exceptional circumstances” as referred in clause-6(l) of the OM of 2010 (amended OM 2021) as the alleged outstanding dues cannot be said to be detrimental to the economic interest of India. This Court is of considered opinion that the LOCs which have the effect of restricting the applicant’s free movement and right to travel abroad were being opened in violation of fundamental rights as enshrined under Article 21 of the Constitution of India. Thus, this Court see no reason to allow the LOCs to remain or to be used against the applicant in absence of any acceptable grounds or circumstances as the conditions precedent for issuance of the LOCs are absent in the facts of present case.

21. In view of above, the impugned LOCs as referred in the affidavit in reply by the bank and extension thereof issued against the applicant are quashed and set aside. It is however made clear that the observations made hereinabove will not in any manner impact the

investigation of the FIR registered with the CBI and the observations are prima-facie and tentative in nature and confined to the adjudication of the present application.

22. Resultantly, this application is allowed in the aforesaid terms. Direct service is permitted.

TAUSIF SAIYED

(ILESH J. VORA,J)