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

+ **LPA 117/2024 and CAV 68/2024**

UNION BANK OF INDIA

..... Appellant

Through: Mr. Alok Kumar and Mr. Kunal
Arora, Advocates

versus

HULAS RAHUL GUPTA

..... Respondent

Through: Dr. Ashwani Kumar, Sr. Advocate
with Ms. Sangeeta Bharti, Mr. Ashish
Kumar, Ms. Arushi Makker, Ms.
Saumya Srivastava and Ms. Shefali
Sangwan, Advocates for R-1

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Date of Decision: 21st February, 2024.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ: (ORAL)

Cav. 68/2024

Since learned counsel for the caveator/respondent entered appearance,
the caveat stands disposed of.

CM APPL. 8483/2024 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

**LPA 117/2024**

1. Present appeal has been filed under Clause X of the Letters Patent of the then High Court of Judicature at Lahore, which stands extended to the High Court of Delhi, challenging the judgment dated 20th December, 2023, whereby the learned Single Judge has quashed the Look Out Circular ('impugned LOC'), issued against the Respondent at the request of the Appellant Bank, and accordingly, allowed the W.P. (C) 2063/2023 filed by the Respondent.
2. The facts of the case are that the Respondent was the erstwhile Managing Director and founder of M/s Indosolar Ltd. ('Company'). The Appellant Bank, along with other banks, had extended credit facilities and loans to the said Company. The Respondent and his father stood themselves as the Personal Guarantors for the loan and credit facilities extended to the said Company. The loan account of the Company was classified as Non-Performing Asset ('NPA') on 01st July, 2013; recovery proceedings under Recovery of Debts and Bankruptcy Act, 1993 were initiated against the borrower and guarantors for an outstanding amount of Rs. 280 Crores (approximately), which culminated in a decree in favour of the Appellant Bank for the claim amount with interest.
3. As per record, Insolvency Resolution Process was initiated under Insolvency and Bankruptcy Code, 2016 ('IBC 2016') against the Company. Separately, the Respondent had also initiated his personal Insolvency Resolution Process, wherein a Resolution Plan was approved and report was filed by the Resolution Professional. Pertinently, no criminal proceedings or FIR by any authority are pending against the Respondent.
4. In these facts, on 26th December 2022, the Respondent was stopped at



the IGI Airport, New Delhi while he was travelling to Canada owing to the impugned LOC issued against him at the request of the Appellant Bank. Thereafter, aggrieved by the impediments posed by the impugned LOC, the Respondent had filed the said writ petition seeking quashing of the impugned LOC.

5. Learned counsel for the Appellant Bank states that it is an admitted position that the Respondent is a British National. He states that as per the report of the Resolution Professional ('resolution report') dated 10th October, 2021, in the repayment plan, filed in the Respondent's personal insolvency proceedings before the National Company Law Tribunal, New Delhi, the liability of the Respondent towards the creditors is assessed at Rs.1778 Crores and proposed repayment plan on behalf of the Respondent is a mere Rs.59.10 lakhs. He states that the request for issuance of the impugned LOC was made against the Respondent in view of the apprehension that the Respondent will abscond from the country without repaying his dues to the Appellant Bank, which stand assessed in the recovery proceedings. He states that proceedings initiated by the Appellant Bank for sale of the mortgage property has been objected to by a cousin of the Respondent and the Appellant Bank has been unable to realise the said dues.

6. In reply, learned Senior Counsel for the Respondent states that the Appellant Bank has placed on record the proforma filled in by the Appellant Bank for requesting issuance of an LOC ('proforma for LOC'). He states that the said proforma for LOC suffers from glaring infirmities which evidence that it has been issued without application of mind. In this regard, he relies upon the Office Memorandum ('OM') dated 22nd February, 2021



issued by the Ministry of Home Affairs, Government of India, whereby consolidated guidelines for issuance of Look Out Circulars (LOC) in respect of Indian citizens and foreigners are provided. The relevant guidelines of the OM, relied upon by the Respondent, read as under: -

“(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.

(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.”

(Emphasis supplied)

6.1. He states that for justifying the issuance of an LOC, the reasons for opening the LOC must be set out in the proforma for LOC, together with the name and designation of the officer who signs the proforma for LOC. He states that in the present case, ex-facie, the said details are neither mentioned nor discernible. He further submits that no reasons (whatsoever) for seeking issuance of LOC have been recorded in the proforma for LOC. He further states that even though it is an admitted fact that the Respondent is a British National, the Respondent's nationality is listed as 'Indian' in the proforma for LOC and the proforma is undated. He states in the absence of these material particulars in the proforma for LOC, the issuance of the LOC itself is vitiated as it is contrary to the conditions set out in OM dated 22nd February, 2021.

6.2. He states that though the Respondent is a British National, for all intent and purposes, he resides in India. He states that the Respondent is married and along with his wife and children has been living in India. He states that the Respondent has travelled abroad forty-one times since 2013



(after the recovery proceedings were initiated in the DRT) and therefore, contends that the alleged apprehension of the Appellant Bank in the year 2021 that the Respondent will abscond from the country is devoid of merit.

6.3. He states that no complaint, by any authority, has been filed against the Respondent for any allegation of siphoning off funds or fraud connected with the transaction with the Appellant bank. He states that the Respondent is, admittedly, not a wilful defaulter. In this regard, he relies upon the resolution report dated 10th October, 2021 and the relevant portion of the said report reads as under: -

“4. The Bank has not declared Mr Hulas Rahu1 Gupta as wilful defaulter.

5. No avoidance transaction had been observed/found by the RP of Indosolar Limited and no application u/s 43,45, SO and 66 of IBC 2016 had been filed by the Resolution Professional as given in the Resolution Plan approval order of CD dated 21.04.2022.”

(Emphasis supplied)

6.4. He states that the Respondent’s Fundamental Rights under Article 21 of the Constitution of India have been violated by issuance of the impugned LOC on the basis of a wholly incomplete and deficient proforma submitted by the Appellant Bank, which woefully fails to comply the safeguards enlisted in the OM dated 22nd February, 2021. He states that the Respondent has voluntarily and dutifully participated in the insolvency proceedings of the Company, which is the principal borrower and in his personal insolvency proceedings as well. He states that the Respondent also participated in the recovery proceedings before the Debt Recovery Tribunal, New Delhi. He states that the circumstances in which the business venture failed was for reasons beyond the control of the Respondent and the same consequently, resulted in the loans being declared NPA. He states, however, there was no



wrongdoing by the Respondent in conducting the business.

7. In rejoinder, learned counsel for the Appellant Bank states that the wrong mention of the nationality of the Respondent in the proforma for LOC was for the reason that Appellant Bank, at the relevant time, was not aware that the Respondent is a British National. He states that this fact has been learnt in the writ proceedings. He states that the reasons for non-mention of the reasons in Section IV of the proforma for LOC is that none of those reasons are applicable to the Respondent. He states that the Appellant Bank had issued the proforma for LOC in terms of Clause 6(L) of the OM dated 22nd February, 2021 and there is no column in the proforma for LOC where the said reasons could have been mentioned. He fairly states that no separate sheet was annexed with the proforma for LOC for justifying the reasons as per Clause 6(L).

8. We have heard learned counsel for the Appellant Bank and learned senior counsel for the Respondent.

9. At the outset, we note that the impugned LOC issued in the year 2021 is not available on record. However, the undated proforma for LOC submitted to the Bureau of Immigration ('Bureau') for issuance of an LOC has been placed on record by the Appellant Bank with its counter affidavit in the writ proceedings.

10. Upon a query raised to the learned counsel for the Appellant Bank, he is unable to confirm the date on which the impugned LOC was issued. The impugned order records that the said LOC was issued by the Bureau in the year 2021. The Respondent in the writ petition has stated that he learnt about the existence LOC on 26th December, 2022 when he was stopped by the immigration officers at the IGI Airport, New Delhi. In these facts, the



impugned LOC expired by efflux of time in December, 2022 in terms of the note appended to Section IV (d) of the proforma for LOC. The said note categorically states that LOC will remain valid for ‘at most’ one year. The Appellant Bank has admittedly not submitted a request for renewal or extension of the impugned LOC to the Bureau after December, 2022. Therefore, notwithstanding its quashing on merits by the impugned order, even otherwise, the said LOC ceased to have effect by efflux of time.

11. For quashing the LOC on merits, the learned Single Judge, after duly taking note of the material facts including the Resolution Plan, the report of the Resolution Professional dated 10th October, 2021, has returned a finding that the Appellant Bank has failed to justify its request to the Bureau for opening an LOC against the Respondent. The facts which weighed with the learned Single Judge and the relevant findings returned in the impugned order are as under:

*“12. The facts of the case reveal that the Petitioner and his late father stood guarantee for the credit facilities and loans sanctioned to the company to the tune of Rs.344 crores. The said credit facilities were later enhanced to Rs.460 crores. The working capital consortium agreement was executed between the Consortium of Banks and the Company to provide an enhanced working capital facility to the company and the said credit facilities were further enhanced to Rs.672,13,00,000/-. **The loan account of the Company was classified as Non-Performing Asset (NPA) on 01.07.2013. The proceedings were initiated against the company under the Recovery of Debts and Bankruptcy Act, 1993 and the said proceedings have been culminated by an Order dated 25.07.2022 passed by the Ld. DRT directing the company to pay as a sum of Rs.280,55,35,667.94/- to the Bank. The Petitioner herein being a guarantor was arrayed as Defendant No.4 in the said proceedings.***

13. When the LOC was issued against the Petitioner in the year 2021, no criminal proceedings were pending against the Petitioner and in fact no FIR was filed against the Petitioner and the said position even exists as of today. The civil proceedings against the Petitioner have also culminated.



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19. It is now a settled law that opening of an LOC has a very serious effect on a person's fundamental right to travel abroad which is on the face of Article 21 of the Constitution of India and the said right to travel cannot be curtailed without following due process. It is also settled law that recourse to LOC can be taken by the Investigating Agencies primarily when there is a cognizable offence under IPC or in any other penal laws or where the accused is deliberately evading the arrest and not appearing before Court despite summons being served on him or issuance of non-bailable warrants or when other coercive measures have been taken by the Court to ensure his appearance in the Court and that there is likelihood of the accused to leave the country to evade such trial or arrest.

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25. Applying the law laid down by various Courts to the facts of the present case, it can be seen that there is no criminal case registered against the Petitioner. The loans were given to the company in the year 2008 to 2010. The loan account of the company was declared as NPA in the year 2013, and till the LOC was opened against the Petitioner in the year 2021, there was no allegation of siphoning off money or that the money has been misappropriated either by the company or by the guarantors. Recovery proceedings initiated against the Petitioner on the ground that he is a guarantor and there is nothing on record to show that the Petitioner was involved in the day-to-day affairs of the company. The Petitioner initiated Insolvency Resolution Process against himself which has culminated in the proceedings before NCLT. The civil proceedings initiated by the Bank against the Petitioner have also culminated. Having failed to recover the money by resorting to the various remedies available under law, the Bank cannot now open the LOC. Merely using the phrase that departure of a person will affect the economic interests of the country alone is not sufficient to sustain an LOC and more particularly when the civil proceedings have already culminated.

26. In view of the above, this Court is inclined to quash the Look Out Circular (LOC) issued against the Petitioner.”

(Emphasis supplied)

12. We are in agreement with the findings recorded by the learned Single Judge. The existence of the facts as noted by the learned Single Judge in its order are not disputed by the Appellant Bank. Even before us, the learned counsel for the Appellant Bank fairly admits that the Bank has not declared the Respondent a wilful defaulter and no avoidance transaction has been



observed/found by the Resolution Professional of the Company.

13. The Appellant Bank also admits that no criminal proceedings or FIR were pending against the Respondent in the year 2021 and the said position even exists as of today. So also, the civil proceedings against the Respondent have also culminated. In these facts, as rightly emphasized by the learned senior counsel for the Respondent, Section IV of the ‘proforma for issuance’ of the LOC submitted by the Appellant Bank to the Bureau is blank and therefore, admittedly, there is no criminal case pending against the Respondent.

14. The absence of criminal proceedings or an FIR is a material fact. This is significant, since as per Clause 6(I) of the OM dated 22nd February, 2021, in case, of a person against whom no proceedings for a cognizable offence under IPC and other penal laws is pending, such a person cannot be detained/arrested or prevented from leaving the country. And, in these circumstances the Originator of an LOC, like the Appellant Bank, can only request the Bureau that it be informed about the arrival/departure of the concerned person. Thus, in the facts of this case, as per Clause 6(I) of the OM even otherwise, the Respondent could not have been detained or prevented from leaving the country in pursuance to the impugned LOC on 26th December, 2022. The Clause 6(I) of the OM reads as under:

“(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.”

(Emphasis supplied)

15. The wrong mention of the nationality of the Respondent as ‘Indian’ at Section I (f) in the proforma for LOC submitted by the Appellant Bank



requesting issuance of LOC, belies the grounds in the present appeal alleging that the LOC was requested due to the foreign nationality of the Respondent. The Appellant Bank admits that it learnt about the foreign nationality of the Respondent in the writ proceedings. The said reason was therefore non-existent and could not have formed the basis of the request made by the Appellant Bank in the year 2021.

16. The Appellant Bank admits that no reasons were recorded by the issuer in the proforma for LOC submitted to the Bureau for issuance of an LOC. In the underlying writ proceedings, the Appellant Bank has relied upon Clause 6(L) of the OM dated 22nd February, 2021, to justify making of a request for issuance of LOC. However, it has failed to explain the reasons for the invocation of the said Clause 6 (L) in the proforma of LOC. Even in the reasons mentioned by Appellant Bank, the Respondent could not have been prevented and only information contemplated under Clause 6 (I) could have been provided.

17. Similarly, the OM stipulates at Clauses 6(D) and (E) that the details of the Officer of the issuer requesting for issuance of LOC should be duly disclosed. This is for ensuring compliance of safeguards i.e., checks and balances incorporated in Clauses 6(B) and (G) of the OM dated 22nd February, 2021 to balance the rights of the issuer and the affected person.

18. The proforma for issuance of LOC was woefully deficient and non-compliant with OM dated 22nd February, 2021. The impugned LOC should have not been issued in the absence of these essential details and information as well as reasons, as noted above. This shows that the impugned LOC was issued perfunctorily without the Bureau satisfying itself that the request was complete in all respects and compliant with OM dated



22nd February, 2021. In the absence of any reasons being furnished by the Appellant, the issuance of the impugned LOC in the year, 2021 was unjustified and the Respondent was deprived of his liberty to travel without following the due process of law.

19. The Supreme Court¹ has consistently reiterated that the expression personal liberty which occurs in Article 21 of the Constitution of India includes the right to travel abroad and no person can be deprived of that right except according to procedure established by law. In the facts of this case, the impugned LOC has been issued without complying with the mandatory conditions of the OM dated 22nd February 2021 and therefore, the learned Single Judge has rightly quashed the impugned LOC.

20. We accordingly find no merits in the present appeal and the same is dismissed

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 21, 2024/hp/MG

¹ Maneka Gandhi v. Union of India and Anr., (1978) 1 SCC 248