



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

Date of decision: 17th AUGUST, 2023

IN THE MATTER OF:

+ **W.P.(C) 9841/2022 & CM APPLs. 29064/2022, 30677/2023**

NIPUN SINGHAL

..... Petitioner

Through: Mr. Nipun Singhal, Mr. Nikhil Singhvi, Mr. Bilal Ikram and Ms. Vidhi Jain, Advocates.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Anurag Ahluwalia, CGSC for R-1/UoI.
Mr. Kush Sharma, Advocate for R-2/Bank of Baroda.
Mr. Nikhil Goel, SPP for CBI with Mr. Kartik Kaushal and Ms. Siddhi Gupta, Advocates for R-3/CBI.
Mr. Vipin Datta, Advocate for R-4.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

1. The instant writ petition under Article 226 of the Constitution of India has been filed by the Petitioner for quashing of the Look Out Circular (LOC) issued against the Petitioner at the instance of Respondent No.2/Bank of Baroda.

2. It is stated that the Petitioner was employed with a Company-Lloyd Electric and Engineering Limited from the year 2010 to 2017. It is stated that in the year 2013, the Petitioner was asked to become a part of the Board of the company as a Director. It is stated the being a Director, the Petitioner's responsibility was only to deal with the consumer durable



business of the company. It is stated that the said consumer durable business was sold to Havells (India) Limited on 18.02.2017 and the sale was effectuated on 08.05.2017 and on the same day the Petitioner resigned as a Director. It is stated that the Petitioner attended the last Board Meeting on 18.02.2017. It stated that after about 18 months of the Petitioner's leaving, the company was declared as Non-performing asset (NPA) on 28.11.2018. It is stated that on 14.01.2022, the Petitioner received a Show Cause Notice dated 07.01.2022 from the Bank of Baroda whererin it was stated that the Petitioner was declared as a wilful defaulter. It is stated that the basis of the transactions as mentioned in the Show Cause Notice pertains to the period post resignation of the Petitioner. It is stated that the Petitioner gave a reply to the Show Cause Notice. It stated that, thereafter, the Petitioner received a notice under Section 91 of Cr.P.C from the Respondent No.3/Central Bureau of Investigation (CBI) informing that a regular case bearing No. RCBD12021E0011 has been registered against the company and three Directors and sought details pertaining to certain transactions entered into by the Company. It is stated that the Petitioner co-operated with the investigation and had informed the CBI that he resigned from the company on 08.05.2017 and was not in any event operating as a key managerial personnel and, therefore, was not responsible for the day-to-day affairs of the company. It is stated that Petitioner was travelling to Spain but when he arrived at the Mumbai Airport, he was informed that a Look Out Circular has been issued against him and, therefore, he cannot travel.

3. The Petitioner, thereafter, has approached this Court challenging the Look Out Circular issued by the Bank of Baroda.

4. Notice was issued in the writ petition on 04.07.2022. The Respondent No.2/Bank of Baroda has filed its counter affidavit in the matter. In the



counter affidavit filed by Bank of Baroda, it is stated that the Petitioner being a Director of the company was also a key managerial personnel in the company and had worked with the company as a whole time Director from the year 2013-14 till 08.05.2017. It is stated that since the Petitioner was a whole time Director of the company, he comes under the definition of “Key Managerial Personnel” as per Section 2(1) of the Companies Act, 2013. It is further stated in the counter affidavit that the Company-Lloyd Electric and Engineering Limited was engaged in the business of manufacturing of refrigeration/air conditioning heating systems with six manufacturing and assembly units and the company was sanctioned the credit facility to the tune of Rs.1075 crores by the consortium of banks. It is stated that the company was declared as NPA by the Bank of Baroda on 19.12.2018. It is stated that despite the sale of consumer durable business segment of the company to M/s Havells India Ltd, the company substantially increased purchase of raw material in the financial year 2017-18 by Rs.258.47 crores and corresponding increase in creditors by Rs.2019.18 crores on credit basis by using fake invoices. The relevant portion of the counter affidavit filed by the Respondent No.2/Bank of Baroda which highlights the Forensic Audit Report conducted by M/s KRA & Co. which was engaged to conduct Forensic Audit for a period of 2 years i.e., from 01.01.2017 to 31.12.2018 reads as under:

“10. That the Forensic Auditor in its report had observed the following facts:

a. The company sold their COB business to M/s Havells India Ltd. substantial investment was seen in Plant and Machinery which points towards diversion of funds by way of booking fake procurement or plant and machinery. (Out of total sales of Rs.3024.41



Crores in FY 2016-17 business by CDB segment constituted Rs 1885.00 crores i.e, 62.33%). Even high court had passed judgement dated 12.03.2019 that states that as the company was allegedly not doing any business since July 2017, there is no ground for fresh investment in plant and machinery.

b. It has been observed that CD had extended an additional loan to its subsidiary company Noske Kaesar Rail and Vehicle Germany GmbH to the tune of Rs 8.44 Crores during the year 2017-18. It is to be noted that the complete investment amount of Rs 12.54 Crs (including opening balance of Rs 4.10 Crs) was written off as doubtful loan and the value of investment in the company amounting to Rs 3.75 Crs was written off as impairment loss during the year.

c. Despite sale of CDB segment to M/s. Havells India Ltd and decrease in employee benefit expenses (thereby indicating reduction in operations or the company), the Company substantially increased purchase or raw material in FY-2017-18 by Rs. 258.47 Crores and corresponding increase in creditors by Rs. 219.18 Crore shows the purchase were made on credit basis, thereby suggesting probability of using of fake invoices.

d. It was observed that significant loan has been extended to M/s LEEL Coils Europe to the tune of Rs 7.47 crores as on March 2018. The total loan balance was increased to Rs. 21.26 crores as on September 2018. There is a possibility that this loan has been extended to a related party as observed from earlier trends. The credit rating report issued by CARE also mentions that the company has significant exposure as receivables from foreign subsidiaries.

e. Investment to the tune of Rs. 38.39 crores as suspected to be overstated as on 31.03.2018 as there is considerable reduction in investment by the same



amount for the period 31.03.2018 to 30.09.2018(reduced significantly from Rs. 103.28 crores as on 31.03.2018 to Rs. 67.91 crores as on 30.09.2019.)

f. Trade receivables reduced by Rs. 256.45 crores as on 30.09.2017 within a period of 6 months which again rose to Rs. 658.79 crores as on 31.03.2018. The net increase of Rs. 221.64 crores could not be accounted for as there was no business operations since July 2017. This again indicates a possibility of booking fake invoices to divert the funds.

g. It is observed that cash and cash equivalents reduced drastically from Rs. 89.64 crores as on 31.03.2017 to Rs 1.92 crores as on 30.09.2018. This may indicate a possibility of misappropriation/ diversion of funds.”

5. A perusal of the abovementioned Forensic Audit Report indicates that almost all the transactions mentioned in the Report are post May, 2017.
6. It is pertinent to mention that on 03.07.2023, the Ministry of Corporate Affairs filed a reply to the applications filed by the Petitioner for permission to travel abroad. The relevant portion of the reply as adopted in the Order dated 03.07.2023 reads as under:-

“h) That the 11.78 crores amount was diverted to Mr. Nipun Singhal (KMP) and his Private Ltd Companies. The money was transferred to Mindage Solutions Pvt Ltd against Bogus / fake consultancy bills through banking channels. The management of the company divided and booked these bogus / fake consultancy bills in LEEL Electricals Limited ("LEEL") and Fedders Electric and Engineering Ltd (R -10 in the Company Petition filed by MCA) formerly known as Fedders Lloyd Corporation Limited. ("FEEL").

<i>S No</i>	<i>Particulars</i>	<i>Amount</i>	<i>Remark</i>
-------------	--------------------	---------------	---------------



1	Bill no.1 dated 06.04.17 paid through SBI branch 04109 on 21.04.17 of B R Punj (MD) through Anita K Sharma	2,26,88,350	Booked in FEEL
2	Bill no. 2 dated 04.05.17 paid through SBI branch 04298 on 10.05.17 under instruction of B R Punj (MD) through Anita K Sharma	2,23,85,900	Booked in FEEL
3	Bill no. 6 dated 03.06.17 paid through SBI branch 04109 on 03.06.17	1,15,00,000	Booked in FEEL
4	Bill no. 4 dated 18.05.17 paid through SBT-CC-67301694273 on 24.05.17 under instruction of B R Punj (MD) through Anita K Sharma	1,90,90,000	Booked in LEEL
5	Bill no. 5 dated 27.05.17 paid through SBT-CC-67301694273 on 03.06.17 under instruction of B R Punj (MD) through Anita K Sharma	1,15,00,000	Booked in LEEL
6	Bill no. 15 dated 14.11.17 paid through SBT-CC-67301694273 on 17.11.17	2,36,00,000	Booked in LEEL
	Total	11,07,64,250	
7	Incentive paid to Mr. Nipun Singhal in his personal name	70,00,000	Booked in LEEL
	Total	11,77,64,250	

7. Learned Counsel for the Respondent No.3/CBI has stated in the Court that the Petitioner is not an accused at present in any FIR.

8. The short question, therefore, arises for consideration is whether Look Out Circular which has been opened at the instance of Bank of Baroda can be sustained or not.



9. In the instant case most of the transactions have taken place post the Petitioner's resignation and the Petitioner is being sought to be held as a hostage in the country only for the purpose of recovery of money which is payable by the Company-Lloyd Electric and Engineering Limited. The Petitioner's movement has been severely impeded from June, 2022 i.e., for more than one year when the Petitioner is not even an accused in any FIR. The counter affidavit filed by the Ministry of Corporate Affairs also discloses the transactions barring one transaction which took place on 06.04.2017. A mere probability/possibility that a person might ultimately be made an accused cannot be the sole basis for opening a Look Out Circular which has the effect of impeding the movement of a citizen and which takes away its right to travel abroad which has been elevated as a fundamental right under Article 21 of the Constitution of India [Refer: Maneka Gandhi v. Union of India, (1978) 1 SCC 248 and Satwant Singh Sawhney v. D. Ramarathnam, Assistant Passport Officer and Ors., AIR 1967 SC 1836]

10. A Look Out Circular is a measure which is taken to make a person surrender before the Investigating Authorities or a Court of law. The Look Out Circular can be issued only when there are sufficient reasons, and if there is a condition precedent for issuance of such Look Out Circular, it must be provided in the Look Out Circular. It is well settled that legality of a valid Look Out Circular has to be considered keeping in view the circumstances prevailing on the date on which the request for issuance of the Look Out Circular was made.

11. In the present case, on the day when the Look Out Circular was issued, the Petitioner was not an accused in any case. In fact, material on record does not even show that the arrest of the Petitioner was even



contemplated by the Enforcement Agencies and even today it is stated by learned Counsel for the CBI that the Petitioner is not an accused in the case.

12. At this juncture, it is necessary to reproduce the relevant Clauses of the Office Memorandum dated 27.10.2010 as well as the amended Office Memorandum dated 05.12.2017 by which clause 'J' of the Office Memorandum was amended reads as under:

“Office Memorandum dated 27th October, 2010

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

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."

13. The abovementioned provisions make it clear that unless and until, the conditions in these Clauses are satisfied, a Look Out Circular cannot be opened. There is nothing in the present case which can justify that the Enforcement Agency has received any input that the departure of the Petitioner herein is detrimental to the economic interest of India or that his departure from the country should not be permitted in the larger interest. Phrases like "detriment to the economic interest of India" cannot be permitted to be used without there being any substantial material before the Look Out Circular is opened and definitely the Banks cannot use Look Out Circulars only as a measure of recovering money because the remedy as available under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and Insolvency and Bankruptcy Code, 2016 (IBC) is not sufficient and that opening of Look Out Circular will result in a faster remedy to recover money from the creditors.



14. In view of the above, the Impugned Look Out Circular is, therefore, wholly unsustainable and deserves to be quashed and is hereby quashed.

15. The writ petition is allowed. Pending applications, if any, stand disposed of.

SUBRAMONIUM PRASAD, J

AUGUST 17, 2023

S. Zakir

HIGH COURT OF DELHI



भारत्यमेव जयते