

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP-12712-2022 (O&M)
Reserved on:14.09.2022
Date of Decision:28.09.2022**

Vikas Aggarwal and another

.... Petitioners

Vs.

Union of India and others

.... Respondents

**CORAM: HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MR JUSTICE HARKESH MANUJA**

Present: - Mr.Anand Chhibbar, Sr. Advocate assisted by
Mr. Nitin Kaushal, Mr. Tanuj Sud, Mr. Ajay Kumar and
Mr. Harshita Ahluwalia, Advocates,
for the petitioners.

Mr.Satya Pal Jain, Additional Solicitor General of India with
Ms.Shweta Nahata, Advocate,
for respondents No.1 & 2-UOI.

Mr.Gaurav Goel, Advocate,
for respondents No.3&4-Bank of Baroda.

Mr.D.K. Gupta, Mr.Abhay Gupta and
Mr.J. Shivam Kumar, Advocates,
for respondent No.8-State Bank of India.

सत्यमव जयते

M.S. RAMACHANDRA RAO, J.

In this Writ Petition the petitioners have challenged the Look Out Circulars [LOC] issued and extended by respondent No.2 at the behest of respondents No.3 to 6 & 8 preventing them for travelling abroad.

Respondent No.1 in the Writ Petition is the Ministry of Home Affairs, Union of India; respondent No.2 is the Bureau of Immigration, New Delhi; respondent No.3 is the Bank of Baroda, Corporate Financial Services (Large Corporate) Branch, New Delhi; Respondent No.4 is Bank of Baroda, Deira Branch, Dubai, UAE; respondent No.5 is Additional Director, National

Central Bureau (NCB) (Interpol), India; respondent No.6 is Additional Director (Investigation), Serious Frauds Investigation Office, New Delhi; respondent No. 7 is the Managing Director and CEO, Bank of Baroda, Mumbai; and respondent No.8 is the Chairman, State Bank of India, Corporate Center, Mumbai (for short' SBI').

It is not in dispute that both petitioners are Directors of the company by name M/s Asian Ispat FZ LLC (AIF) based in UAE and the said company had borrowed loan from the Bank of Baroda, Deira Branch, Dubai and the SBI, Dubai, UAE. The petitioners had stood as guarantors for the said loan.

Both of them are also Directors of company by name M/s AGR Steel Strips (P) Ltd., India (for short 'AGR') and M/s Asian Colour Coated Ispat Limited, India (for short 'ACCIL').

As against the petitioner No.1, the LOCs had been issued as under: -

<i>Sr. No.</i>	<i>Issued by</i>	<i>Date of Issuance</i>	<i>Basis of Issuance</i>
1	<i>MD & CEO, Bank of Baroda/Respondent No.3</i>	<i>26.08.2019 [Continued in the year 2020 and 2021]</i>	<i>Promotor/guarantor of Asian Ispat FZ LLC ("AIF")</i>
2	<i>Chairman, State Bank of India /Respondent No.8</i>	<i>18.11.2019 (Continued in the year 2020 and 2021)</i>	<i>Promotor/guarantor of AIF</i>
3	<i>Additional Director, SFIO/Respondent No.6.</i>	<i>04.08.2021</i>	<i>Crucial role in the running of Asian Colour Coated Ispat Limited ("ACCIL")</i>
4	<i>AD Interpol, Central Bureau of Investigation/ Respondent No.5</i>	<i>15.01.2021</i>	<i>Amounts owed to the AIF, UAE.- dishonour of cheques</i>

As against petitioner No.2, the LOCs had been issued as under:-

<i>Sr. No.</i>	<i>Issued by</i>	<i>Date of Issuance</i>	<i>Basis of Issuance</i>
1	<i>MD & CEO, Bank of Baroda/Respondent No.3</i>	26.08.2019	<i>Promotor/guarantor of AIF</i>
2	<i>Chairman, State Bank of India/Respondent No.8</i>	<i>18.11.2019 (Continued in the year 2020 and 2021)</i>	<i>Promotor/guarantor of AIF</i>
3	<i>Additional Director, SFIO/Respondent No.6.</i>	04.08.2021	<i>Crucial role in the running of Asian Colour Coated Ispat Limited (“ACCIL”)</i>
4	<i>AD Interpol, Central Bureau of Investigation/ Respondent No.5</i>	<i>03.04.2019 and 06.09.2021</i>	<i>Amounts owed to the AIF, UAE - dishonour of cheques</i>

AGR had borrowed loans from the Bank of Baroda and the South Indian Bank but OTS had been sanctioned by the said Banks to the said companies on 25.02.2021 and 03.03.2021 and thereafter “No Dues Certificates” have been issued by the said Banks after payment of entire OTS amount and the charge held by the lenders on the assets of the said company as well as the guarantees furnished by the petitioners stood released. The mortgages on the secured assets located in the State of Haryana belonging to the petitioners and their family members also stood released.

As regards ACCIL, India, a Corporate Insolvency Resolution Process was initiated by the SBI by filing an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short “the IBC”) before the NCLT, Principal Bench, New Delhi. It was admitted on 20.07.2018 and the Resolution Professional admitted the debt owed by the said company to all respondents including the SBI, as financial debt. It is not in dispute that a

resolution plan was submitted by M/s JSW Steel Coated Products Ltd. on 08.03.2019 and the Committee of Creditors approved the same on 17.06.2019 by 79.3% majority and the said resolution plan was also approved by the NCLT, New Delhi by order dt. 19.10.2020. It is not in dispute that the SBI entered into a debt assignment agreement dt. 27.10.2020 with M/s Hasaud Steel Ltd. and the SBI had also issued a “No Due Certificate” on 23.11.2020 in favour of the principal borrower clearly stating that no debt or payment is due or outstanding as on the said date from the principal borrower.

Contentions of the counsel for the petitioners

(i) RE: National Central Bureau (Interpol) , India (Respondent No.5)

It is contended by petitioners that respondent No.5 could not have requested for issuance of an LOC against them on the ground that there was a cheque dishonour case in the UAE in respect of cheques issued to AIF, UAE by the petitioners which ended in a conviction since the Office Memorandums issued by the Ministry of Home Affairs do not enable it to do so.

(ii) RE: Serious Fraud Investigation Officer (SFIO) (respondent no.6):

Petitioners contend that by virtue of final resolution plan, the entire debt of the principal borrower ACCIL, India alongwith the interest stood assigned to M/s Hasaud Steel Ltd and there is no debt in the books of the SBI and other lenders and so no remedy or recourse is available to SBI to exercise with respect to the debt extended to the said company.

Copy of the order dt. 04.02.2022 passed by this Court in CWP No.1156-2022 and CWP No.1160-2022 prohibiting continuation of proceedings before the NCLT, New Delhi and DRT II, New Delhi to enforce the personal guarantees given by the petitioners to the loans given by the lenders to the ACCIL is placed before us.

It is contended that even though the SFIO (respondent No.6) might have been ordered by the Ministry of Corporate Affairs, Govt. of India under Section 212 (1) (c) of the Companies Act, 2013 to investigate into the affairs of ACCIL, it is a futile investigation in view the resolution of debt of ACCIL in the NCLT, New Delhi as mentioned above, and SFIO therefore could not have requested for issuance of an LOC to respondent No.2 on the said ground.

(iii) RE: Bank of Baroda (Respondent no.7) and the SBI (Respondent no.8)

The petitioners contend that the Bank of Baroda, Mumbai (respondent No.7) and the SBI, Mumbai (respondent No.8) could not have made any request for issuance of LOC in respect of dues of M/s. AIF, UAE to the Deira Branch of the Bank of Baroda (respondent No.4) and the Deira Branch of SBI, both at Dubai, UAE since the said entities are distinct and separate from the Indian entities; that LOCs cannot be issued in this manner at the instance of the Indian entities of Bank of Baroda and SBI for the benefit of their UAE incorporated and based sister entities; and that the UAE had decriminalized the offence of dishonour of cheques and cancelled punishments imposed *in absentia*, and so on that count LOCs issued cannot be sustained.

They rely on the decisions of this Court in ***Poonam Paul Vs. Union of India***¹ and in ***Noor Paul Vs. Union of India***² and contend that the right of the petitioners to travel abroad (which is guaranteed by Article 21 of the Constitution of India as per the decision of the Constitution Bench of the Supreme Court in ***Maneka Gandhi Vs. Union of India***³), cannot be taken away by the respondents in an arbitrary and illegal manner and in violation of

¹ 2022 SCC Online P&H 1176 (DB)

² CWP-5492-2022 dt.05.4.2022 (DB)

³ (1978) 1 SCC 248

the Office memorandums issued by the Ministry of Home Affairs from time to time.

The stand of respondents No.1, 2, 5 and 6

(a) Stand of respondent no.s 1 and 2:

In the reply filed by the respondents No.1 and 2, which has also to be treated as that of respondents 5 and 6, they contend that as per LOC Guidelines issued by the Ministry of Home Affairs, Govt. of India, an LOC is a secret document and the same cannot be shared with an accused or any unauthorized stakeholder.

Further, the LOC cannot be provided or shown to the subject of LOC at the time of detention by respondent No.2/BOI, as it defeats the purpose of LOC for which it was got issued by the LOC Originator (respondent No. 3 to 8) for various reasons as mentioned in the LOC Guidelines.

That accused/subject of LOC cannot be provided any opportunity of hearing before the issuance of LOC, as a LOC is issued by various law enforcement agencies and respondent No.2 (BOI) can only act upon the requests made by the concerned agencies for issuance of LOC.

The Bureau of Immigration (BOI)/respondent No.2, Ministry of Home Affairs issues Look Out Circular (LOC) on the basis of guidelines vide MHA's office Memorandum No.25016/31/2010 Imm dt. 27.10.2010 and subsequent amendments.

The legal liability of the action taken by immigration authorities in pursuance of LOC rests with the originating agency (in the present case respondent Nos. 3 to 8)

In accordance with the existing instructions, LOC can be modified/deleted/withdrawn by the Bureau of Immigration (BOI) only on the specific request of the authorized originator on whose request the LOC was issued by respondent No.2.

According to Mr. Satya Pal Jain, Additional Solicitor General of India, request dt.04.08.2021 for issuance of LOC was made by the Serious Fraud Investigation Office (SFIO), Ministry of Corporate Affairs, Government of India (respondent No.6) to respondent No.2 which has taken up an investigation into the affairs of ACCIL, India under Section 212(1)(c) of the Companies Act, 2013. According to him, the said investigation is still going on.

Though he placed before the Court the LOC issued against petitioners at the instance of the National Central Bureau (NCB) through the Additional Director, Interpol (respondent No.5), without furnishing a copy to counsel for the petitioners, the request by the said respondent No.5 to the respondent No.2 for such issuance is not placed before the Court. In the said LOCs, in the remarks column, it is stated that there was a “cheque dishonor” case against petitioners and the requesting country was the UAE. He did not make any submissions supporting the issuance of the said LOC on the request of respondent No.5.

He however has produced before this Court, without furnishing a copy to the petitioners’ counsel, copies of the requests for issuance of LOCs made by the Bank of Baroda and the SBI (respondents No.7 and 8) to the respondent no.2 *and* the LOCs issued by respondent No.2 at the request of respondents No.7 and 8.

The stand of respondent No.3,4 and 7 i.e the Bank of Baroda

The respondent No.4 filed a reply along with Annexures. Though no separate reply/response is filed on behalf of respondent No.s 3 and 7, the reply filed by respondent No.4 is being treated as a reply by them as well.

Annexure R11 to the reply filed by respondent no.4 is the letter dt.24.08.2020 addressed to respondent No.2 by nodal officer of the Bank of Baroda requesting for retention/continuance of LOCs opened against both the petitioners.

In the said letter it is alleged by respondent No.4 that the petitioners are Directors/Promotors/Guarantors of M/s AIF, UAE which had been granted credit facilities from the Bank of Baroda, Deira Branch, UAE; that the loan accounts had turned NPA on 27.06.2016 and outstanding amount of ₹290.62 crores has to be recovered from the said entity. It is also stated that the said entity had committed fraud and cheque bounce cases had been filed in Dubai against petitioner No.2 and he was convicted by a Dubai Court with imprisonment for three years and a commercial suit was also filed in Dubai which is awaiting judgment. It is stated that both petitioners had fled UAE and are staying in Delhi, India and they may leave India at any point of time to avoid legal actions and may not return to India; and so they should not be allowed to leave India by opening LOCs against them. It is stated that LOCs were opened against them on 26.06.2019, that they were due to expire on completion of one year validity, and they should be extended/continued against them. Reliance is placed on a letter dt.22.11.2018 of the Department of Financial Services advising that Chairman/Managing Directors/Chief Executives of all Public Sector Banks had been empowered to issue request

for opening of LOCs against all persons covered under Office Memorandum dt.27.10.2010 of the Ministry of Home Affairs including fraudsters and persons who take loans and willfully default/launder money and then escape to foreign jurisdictions to avoid paying back so that they can be restricted from escaping India. This request was made by the Nodal Officer/Managing Director and CEO of Bank of Baroda, Mumbai, India and LOCs issued against the petitioners were extended by respondent No.2. The petitioners' contention that respondents 3 to 8 cannot be restricted by the Immigration authorities in India to travel abroad for the reason that no part of course of action has arisen in India or Indian Authorities do not have *locus standi* to deal with him is refuted in the following manner:-

“That any foreign decree could be executed in India against the persons residing over here under Section 44-A of the Civil Procedure Code (CPC) which states that such decrees can be executed provided the treaty between the said country and India (as reciprocating country) is already in existence. In the instant matter, Union of India have already issued a notification dt. 17.01.2020 declaring “United Arab Emirates” (UAE) as reciprocating country for the purpose of Section 44A of the Code of Civil Procedure 1908 (CPC). In effect the Notification allows Civil Decrees/ Judgments passed by the UAE Courts to be directly executed in India in a manner akin to a decree of an India District Court. Copy of the Notification dt. 17.01.2020 issued by Government of India is annexed as Annexure R-10.”

It is contended that if an LOC is not issued, there is a possibility that petitioners might flee to a third country in order to keep themselves away

from the reach of the respondent No.4 who has obtained a money decree in UAE against them, and criminal proceedings are pending in Dubai for dishonour of cheques.

According to respondent No.4, financial defaults are within the purview of LOCs after the latest amendment in 2019 to the original notification of 2010. It is contended that the presence of the petitioners in India is required to take steps to recover its dues.

Stand of the State Bank of India (respondent No.8)

Respondent No.8 filed a reply raising a technical objection about this Court entertaining the Writ Petition with regard to the LOCs contending that merely because petitioner No.1 is a resident of Faridabad, Haryana, he cannot invoke the jurisdiction of this Court, and only the Delhi High Court would have the jurisdiction. *But the counsel for respondent No.8 Mr.Ankur Mittal did not make any oral submissions on this point.*

According to respondent No.8 certain facilities had been granted by its Dubai branch to AIF, UAE with ACCIL, India as *corporate guarantors* and with the petitioners as *personal guarantors*. It is stated that the accounts of the borrower remained irregular and they were declared an NPA on 08.04.2016 and a demand notice dt.21.03.2017 was issued to the borrower to pay \$20,457,963.

It is stated that application under Section 7 of the IBC, 2006 had been filed against ACCIL and vide order dt.20.07.2018, the Corporate Insolvency Process commenced and a resolution plan submitted by the resolution applicant M/s JSW Steel Coated Products Limited was approved by the NCLT, New Delhi on 19.10.2020. It is stated that notwithstanding the

same, the liability of the petitioners continues in respect of the personal guarantees executed by them for securing the loan liabilities.

It is stated that a criminal complaint was also filed in Dubai on 28.11.2019 and is pending.

It claimed that since the petitioners were not cooperating with it and they had fled from UAE in order to avoid their civil as well as criminal liabilities, request for issuance of LOCs was issued against the petitioners by respondent No.8 on behalf of the State Bank of India, DIFC, Dubai Branch.

Reliance is placed on the decision of a learned Single Judge of the Telangana High Court in the case of **Garikapati Venkateswara Rao Vs. Union of India⁴**.

The points for consideration

From the above contentions of the parties, the following points arise for consideration:

- (a) *Whether this Court has territorial jurisdiction to entertain this Writ Petition?*
- (b) *Whether respondents No.7 and 8, which are Indian entities of the Bank of Baroda and the State Bank of India can make a request for issuance of LOC to respondent No.2 in respect of dues owed to their sister entities incorporated in the UAE as per the Office Memorandums issued by the Ministry of Home Affairs from time to time?*
- (c) *Whether respondents No.5 and 6 are entitled to seek LOC against the petitioners?*
- (d) *Whether the petitioners are entitled to any relief?*

⁴ WP 6892 of 2022 dt. 06.06.2022 (Single Judge)

Consideration by the Court

Point (a):

We shall first consider the point (a):

Whether this Court has territorial jurisdiction to entertain this Writ Petition?

The objection as to territorial jurisdiction of this Court to entertain the Writ Petition was not raised by respondent no.1 and 2 in their reply. It was raised only by the Bank of Baroda (respondents No.3, 4 & 7) and the SBI (respondent No.8) in their pleadings but their counsel advanced no arguments on the aspect. Sri Satya Pal Jain, learned Additional Solicitor General appearing for respondent Nos 1,2,5 and 6 did not make any submissions on the point.

But since it was raised in the pleadings by the Bank of Baroda and the SBI, we shall deal with it.

In Kusum Ingots and Alloys Ltd. Vs. Union of India and Another⁵, the Supreme Court held, by placing reliance on Clause (2) of the Article 226 of the Constitution of India and also Section 20(c) of the CPC, that even if a small fraction of cause of action accrues within the jurisdiction of the High Court, it would have jurisdiction in the matter.

It is not in dispute that for the loans taken by AGR, India from the Bank of Baroda, Sansad Marg, New Delhi, properties belonging to the petitioners located in the State of Haryana had been mortgaged as can be seen from Annexure P24 dt.31.03.2021 which is a 'No Due Certificate' issued by it. Also the petitioners claim to the residents of Faridabad in the State of Haryana.

⁵ (2004) 6 SCC 254

It is the case of the respondents that money decree granted by by the Dubai court (Annexure R-9) against petitioners and M/s AIF, UAE will be enforced in India invoking Sec.44A of the CPC and the notification dt.17.1.2020 issued by the Govt. of India declaring the UAE to be a reciprocating country for purposes of Sec.44A CPC. So the decree holders intend to proceed against the properties of the petitioners located in the State of Haryana and also against the petitioners stated to be resident of Faridabad, State of Haryana.

Therefore, though the respondents may be based outside Haryana, part cause of action arises within the jurisdiction of this Court and this Court has territorial jurisdiction to entertain this Writ Petition under Clause (2) of Article 226 of the Constitution of India.

Therefore, the decisions cited by respondent No.4 and 8 are inapplicable to the instant case.

The Supreme Court in *Popatrao Vyankatrao Patil v. State of Maharashtra*⁶, has held that Government and Statutory Authorities should not put forth technical and unjust contentions to defeat legitimate claims of citizens. It held:

*“14. This Court, has time and again held, that the State should act as a model litigant. In this respect, we can gainfully refer to the following observations made by this Court in **Urban Improvement Trust, Bikaner v. Mohan La**⁷ : (SCC pp. 515-16, paras 6-9)*

“6. This Court has repeatedly expressed the view that Governments and statutory authorities should be model or ideal litigants and should not put forth false, frivolous, vexatious, technical (but unjust) contentions to obstruct the path of justice. We may refer to some of the decisions in this behalf.

⁶ (2020) 19 SCC 241, at page 246

⁷ (2010) 1 SCC 512

7. In *Dilbagh Rai Jarry v. Union of India*⁸ this Court extracted with approval the following statement [from an earlier decision of the Kerala High Court (*P.P. Abubacker*⁹ case*, AIR pp. 107-08, para 5)] : (SCC p. 562, para 25)

‘25. ... “5. ... The State, under our Constitution, undertakes economic activities in a vast and widening public sector and inevitably gets involved in disputes with private individuals. But it must be remembered that the State is no ordinary party trying to win a case against one of its own citizens by hook or by crook; for the State's interest is to meet honest claims, vindicate a substantial defence and never to score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such an opportunity. The State is a virtuous litigant and looks with unconcern on immoral forensic successes so that if on the merits the case is weak, Government shows a willingness to settle the dispute regardless of prestige and other lesser motivations which move private parties to fight in court. The layout on litigation costs and executive time by the State and its agencies is so staggering these days because of the large amount of litigation in which it is involved that a positive and wholesome policy of cutting back on the volume of law suits by the twin methods of not being tempted into forensic showdowns where a reasonable adjustment is feasible and ever offering to extinguish a pending proceeding on just terms, giving the legal mentors of Government some initiative and authority in this behalf. I am not indulging in any judicial homily but only echoing the dynamic national policy on State litigation evolved at a Conference of Law Ministers of India way back in 1957.” ’

8. In *Madras Port Trust v. Hymanshu International*¹⁰ this Court held : (SCC p. 177, para 2)

‘2. ... It is high time that Governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a Government

⁸ (1974) 3 SCC 554

⁹ AIR 1972 KERALA 103

¹⁰ (1979) 4 SCC 176

or a public authority takes up a technical plea, the Court has to decide it and if the plea is well founded, it has to be upheld by the court, but what we feel is that such a plea should not ordinarily be taken up by a Government or a public authority, unless of course the claim is not well founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable. ’

9. In a three-Judge Bench judgment of *Bhag Singh v. State (UT of Chandigarh*¹¹ this Court held : (SCC p. 741, para 3)

‘3. ... The State Government must do what is fair and just to the citizen and should not, as far as possible, except in cases where tax or revenue is received or recovered without protest or where the State Government would otherwise be irretrievably be prejudiced, take up a technical plea to defeat the legitimate and just claim of the citizen.’

For the aforesaid reasons, Point (a) is answered accordingly in favour of the petitioners and against the respondents.

Point (b):

We shall next consider the following point:

“Whether respondents No.7 and 8, which are Indian entities of the Bank of Baroda and the State Bank of India can make a request for issuance of LOC to respondent No.2 in respect of dues owed to their sister entities incorporated in the UAE as per the Office Memorandums issued by the Ministry of Home Affairs from time to time?”

The issuance of the LOCs in respect of the Indian citizens and foreigners was initially governed by an Office Memorandum No.25016/31/2010-Imm dt.27.10.2010. In this Office Memorandum reference is made to certain judgments of the Delhi High Court and it stated *inter alia* as under:

- a) Recourse to LOC can be taken by investigating agency in cognizable offences under IPC or other penal laws, where the

¹¹ (1985) 3 SCC 737

accused was deliberately evading arrest or not appearing in the trial court despite NBWs and other coercive measures and there was likelihood of the accused leaving the country to evade trial/arrest.

- b) The Investigation Officer shall make a written request for LOC to the officer as notified by the circular of Ministry of Home Affairs, giving details & reasons for seeking LOC. The competent officer along shall give directions for opening LOC by passing an order in this respect.
- c) The person against whom LOC is issued must join investigation by appearing before IO or should surrender before the court concerned or should satisfy the Court that LOC was wrongly issued against him. He may also approach the officer who ordered issuance of LOC and explain that LOC was wrongly issued against him. LOC can be withdrawn by the authority that issued and can also be rescinded by the trial court where case is pending or having jurisdiction over concerned police station on an application by the person concerned.
- d) LOC is a coercive measure to make a person surrender to the Investigating agency or Court of law. The subordinate Courts jurisdiction in affirming or cancelling LOC is commensurate with the jurisdiction of cancellation of NBWs or affirming NBWs.

The said Office Memorandum mentioned a list of Officers of various Departments of the Government who can make a request for opening of the LOCs.

Clause (h) of the above circular is relevant. It states:

“(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.”

Thus, LOCs were permitted to be opened essentially against persons involved in cognizable offences and who were evading arrest and not appearing in the trial Court despite NBWs or other coercive measures and there was a likelihood that they would leave the country to evade trial/arrest. It was intended as a coercive measure to make a person surrender to the investigating agency or Court of law. But where the subject of the LOC is not involved in any cognizable offence, he 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.

The Office Memorandum stated that the LOC would be valid for a period of one year from the date of issue.

There were subsequently amendments made to the Office Memorandum from time to time.

Paragraph 8(j) was inserted in the office memorandum dt. 27.10.2010 through another Office Memorandum dt. 05.12.2017 which states:

“Para 8(j):

..... 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 India or that the same is detrimental to the bilateral relations with any country or to 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 of time.”

Initially, Managing Directors and Chief Executive Officers of the Public Sector Banks were not authorized to make requests for opening of LOCs, but later an Office Memorandum dt.04.10.2018 was issued to include them also in the list of authorities who can seek LOCs. This was done in view of Paragraph 8(j) being inserted in the Office Memorandum dt. 27.10.2010 to enable LOCs to be issued against the persons who are fraudsters/persons who wish to take loans, willfully default/launder money and then escape to foreign jurisdictions, since such actions would not be in the economic interests of India, or in the larger public interest.

But the threshold of the default by a person which would not be in the economic interests of India, or in the larger public interest is not mentioned in the said Office Memorandum.

However taking advantage of the said Office Memoranda, requests for LOCs are being made by Public Sector Banks against persons defaulting in payment of loan dues to them.

The following are facts to be taken note of while considering whether respondent No.7 and 8 could have made a request for issuance of LOCs to respondent No.2:

(i) Admittedly, the underlying debt in India with respect to Indian Public Sector Bank i.e. Bank of Baroda (respondent No.3) is already settled. Fraud declaration by respondent No.3 is challenged in CWP-34297-2019 and it has been stayed on 28.11.2019 (Annexure P8). There is no 'Willful Defaulter' or 'Fugitive Economic Offender' declaration against the petitioners. No investigation has been initiated or is continuing against the petitioners at the behest of respondents No.3 & 4.

(ii) Respondent No.4 is not a Public Sector Bank or a Scheduled Commercial Bank registered with the Reserve Bank of India. Even so it had benefitted from the LOC issued and extended in the garb of and through its sister concern/branch, respondent No.3.

(iii) No FIR is registered in India against the petitioners and it is not the case of the respondents that they are accused of any cognizable offence under Indian Laws.

Respondent No.3-Bank's Branch at Mumbai and respondent No.8-Bank's branch at Mumbai were the ones which had issued to respondent No.2, the request for issuance and of extension of the LOCs alleging loan defaults by AIF, Dubai to the Deira Branch of the Bank of Baroda at Dubai and to the SBI, Dubai; and the respondent No.2 had acceded to the said requests and issued LOCs. This is impermissible for the following reasons:

(a) Firstly, the Office Memorandums issued by the Union of India cannot have extra-territorial operation and apply to loan defaults caused to a UAE incorporated Bank by a UAE based business entity like AIF, UAE. This

is because even laws made by Parliament normally have no extra-territorial operation as held in ***GVK Industries Ltd. v. ITO***¹². It was held:

“Further, inasmuch as Article 245, and by implication Articles 246 and 248, specify that it is “for the whole or any part of the territory of India” that such legislative powers have been given to Parliament, it logically follows that Parliament is not empowered to legislate with respect to extra-territorial aspects or causes that have no nexus whatsoever with India.”

So Office Memorandums issued by the respondent No.1 cannot be made applicable to lenders established and operating in foreign territories in the absence of express legal provisions to such effect as no Indian law has extra-territorial effect unless the law itself so provides and it is ratified by the foreign territory where such law purports to be applicable.

(b) Secondly, it is not in dispute that the Bank of Baroda, Deira Branch, Dubai and the SBI, Dubai are incorporated in the UAE under the laws of the said country and at best they can be termed as sister concerns of the Indian entities of the said Banks. By no stretch of imagination can it be said that the dues of Bank of Baroda, Dubai and SBI, Dubai are the dues of their Indian sister concerns. This is because the Dubai entity and the Indian entity have separate and distinct personalities.

The Ministry of Finance, Department of Financial Services has no doubt issued an Office Memorandum No. F.No.6/3/2018 on 04.10.2018 (Annexure R-1, filed along with the reply of respondent No.8) empowering Heads of Public Sector Banks to issue request for opening of LOCs to respondent No.2 against economic offenders/defaulters.

It is not the case of the respondents No.1 to 5, 7 and 8 that Dubai entities of the Bank of Baroda and SBI, which are incorporated in UAE, and

¹² (2011) 4 SCC 36, at page 62

are governed by the laws of the said country, would come within the ambit of the term “Public Sector Banks of India”. It is not their case that funds of the Government of India are invested in the Dubai entities of the Bank of Baroda and the SBI, for them to come under the umbrella of the term “Public Sector”.

(c) In the Office Memorandum dt.22.11.2018 (Annexure R-3), there is a reference to the earlier Office Memorandum dt. 27.10.2010 and it's amendments from time to time and in particular to paragraph 8 (j) of the said Office Memorandum which states as under:-

“Para 8(j):

*..... 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 India or that the same is detrimental to the bilateral relations with any country or to 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 of time.”*

Though a feeble argument is raised by the respondents that economic interests of India are affected by the actions of the petitioners, how such a thing can happen if a foreign incorporated Company M/s AIF, UAE owes money to UAE based entities of the Bank of Baroda and the SBI, is not explained by any of the respondents.

On the basis of the material placed on record, in the instant case, we are satisfied that no exceptional case or any adverse effect on the economic interests of India has been made out by the said Banks. So recourse

could not have been taken for a coercive process like issuance of LOC interfering with the right to travel abroad.

(e) The right to travel abroad has been recognized by the Supreme Court of India in the case of **Maneka Gandhi** (3 Supra) and **Satish Chandra Verma Vs. Union of India**¹³, as falling within the scope of personal liberty enshrined under Article 21 of the Constitution of India.

(f) Though the counsel for the respondents harped upon the quantum of loan default by AIF, UAE to the Dubai based entities of Bank of Baroda and SBI, the Office Memorandums issued by the Union of India, Ministry of Home Affairs do not themselves draw any line about the quantum of default by a borrower to a financial institution which would be considered detrimental to the economic interests of India (assuming for the sake of argument without conceding that it is affected at all) and a quantum of default which would not fall in the said category.

(g) Merely because the word ‘public’ is used in the exception clause in the OM, it does not elevate a mere default to an exceptional plane. It cannot be said that the departure of the petitioner from the country would adversely impact the economy of the ‘country as a whole’ and destabilize the ‘entire economy’ of the country.

(h) Since the right to travel abroad flows from Article 21 of the Constitution of India, a very high threshold is mandated by the Office Memorandums themselves to deny such a right to an Indian citizen. Such a threshold is not met in the instant case.

It also appears that respondent No.2 has not applied its mind to the request for issuance of LOC made by the Indian entities of Bank of

¹³ 2019 SCC online SC 2048

Baroda and the SBI and did not consider whether the grounds disclosed by them fall within the four corners of the OMs issued in that regard, though it may not be able to go into the merits/demerits of the allegations made against the petitioners by the said entities. It appears that mechanically the respondent No.2 had issued the LOCs at the instance of the Indian entities of the Bank of Baroda (respondent No.7) and the SBI (respondent No.8).

Similar views have been expressed by this Court in **Noor Paul** (2 Supra) and **Poonam Paul** (1 Supra). It was further held in those decisions that non supply of the LOC to the subjects of the LOC at the time of issuance of the same and denial of opportunity to the subjects of the LOC, a post decisional hearing to explain why such LOC issued against them should be withdrawn/cancelled by the Bureau of Immigration (respondent No.2), is arbitrary and illegal, and it cannot be said to have followed fair, just and reasonable procedure to deprive the subject of the LOC of his or her fundamental right to travel abroad.

We follow the said decisions rendered by the Division Benches of this Court and hold that respondents No.7 and 8, which are Indian entities of the Bank of Baroda and the State Bank of India, cannot make a request for issuance of LOC to respondent No.2 in respect of dues owed to their sister entities incorporated in the UAE as per the Office Memorandums issued by the Ministry of Home Affairs from time to time.

The decision of Telangana High Court in **Garikapati Venkateswara Rao** (4 Supra), in our opinion, does not represent the correct legal position. So we decline to follow it.

Point (b) is answered accordingly in favour of the petitioners and against the respondents.

Point (c):

We shall now consider point (c):

“Whether respondents No.5 and 6 are entitled to seek LOC against the petitioners?”

RE: LOCs issued at the instance of National Central Bureau (respondent No.5)

Sh. Satya Pal Jain, counsel for respondents No.1, 2, 5 and 6, has placed before us only the LOC copy issued at the instance of respondent No.5, but not the request for issuance of LOC made by respondent No.5 to the respondent No.2. This LOC No. 2019411204 mentions in its remark column that the requesting country is ‘UAE’ and the charge is “uttering an unfunded cheque” (sic).

In the additional pleadings filed by the petitioners details of some of the decisions rendered in criminal cases involving cheques issued in bad faith are furnished by the petitioners. But it is not disputed that all these decisions wherein petitioners were convicted and sentenced to imprisonment for three years for issuing cheques which have been dishonoured appear to have been pronounced *in absentia*. Also none of these cases have originated or had been adjudicated in India and therefore cannot serve as the basis for issuance of LOCs.

According to the petitioners, issuance of a cheque in bad faith or dishonour of cheque is no longer a criminal offence in the UAE as per Federal Decree Law No.14 of 2020 (amending the provisions of Federal Law No.18 of 1993 as issued by Sheikh Khalifa bin Zayed Al Nahyan on September 27, 2020 and published in Issue No.687 (Supplement) of the Official Gazette on September 30, 2020) with effect from January 2, 2022 and criminal sanctions may only be used in case of specific acts added by the Federal Decree by virtue of Article (641) Bis (2) and Article (641) Bis (3) added to the Federal

Law No.(18) of 1993 concerning Commercial Transaction Law. Such specific acts added by the Federal Decree by virtue of Article (641) Bis (2) are as follows:

- i. Ordering or asking the drawee, prior to due date, not to pay the value of a cheque he has issued.
- ii. Closing the amount or withdrawing all available fund therein before issuing the cheque or before presenting the cheque for payment or if the account has been frozen; and
- iii. Deliberately writing or signing the cheque in a way that makes it unpayable.

The Federal Decree Law No.14 of 2020 which came into force on 02.01.2020 is filed as **Annexure A2** by petitioners No.1&2.

Petitioners contend that as per the aforesaid Federal Decree, issuance of a cheque in bad faith has been decriminalized and is therefore no longer a criminal offence in UAE, apart from the exceptions added.

In the present case, Petitioners No.1&2 do not fall within any of the exceptions provided above.

According to the petitioners the amendment results in abrogation of the erstwhile provisions of the Penal Code governing the offence of bounced cheque.

Petitioners have also filed Circular No.9 of 2021 dt. 19.12.2021 issued by the office of the Attorney General of the UAE as **Annexure A4** which deals with disposing cases for giving a cheque in bad faith and refusing to pay, for which the criminalization is abolished. As per the Attorney General Circular, travel ban and the embodied punishment is to be dropped for criminal orders passed *in absentia*, in cases of giving a cheque in bad faith,

that are not executed i.e. where arrest has not been made. The said circular states that where a final judgment has been passed, the Execution Division of the Court in UAE is required to put in place a mechanism to *cancel* enforcement of the judgment (including *cancellation* of the order for arrest and travel ban).

None of the respondents have chosen to refute the above contentions of the petitioners.

Therefore, on the basis of the Federal Decree Law No.14 of 2020 and Circular No.9 of 2021 dt. 19.12.2021 issued by the office of the Attorney General of the Emirate of Dubai, the contentions of the petitioners regarding decriminalization of the offence of issuance of cheques in bad faith, and cancellation of judgments/orders of criminal Courts imposing sentence of imprisonment *in absentia which are not executed*, deserve to be accepted.

Therefore, respondent No.5 cannot insist on extension of any LOC issued against the petitioners and prevent them from travelling abroad and any such extension of the LOC after issuance of the Federal Decree Law No.14 of 2020 which came into effect on 02.01.2022 and the Circular No.9 of 2021 dt.19.12.2021 issued by office of the Attorney General, UAE cannot be sustained.

Therefore the LOCs dt.03.04.2019 and 06.09.2021 issued and extended by respondent No.2 at the instance of respondent no.5 cannot be sustained.

Admittedly, Office Memorandum dt.27.10.2010 issued by the respondent No.1, LOC can be issued by the Respondent No.5 (amongst other authorities) for cognizable offences under the Indian Penal Code, 1860 or any other penal laws, where the accused deliberately evades arrest or does not

appear before the trial courts despite non-bailable warrants or there is likelihood of the accused to leave the country to evade trial/arrest.

As per Indian Law, offence of dishonour of cheques is a non-cognizable offence.

As per Clause (h) of the Office Memorandum dt.27.10.2010 extracted above (clause (I) of the latest Office Memorandum No.25016/10/2017-IMM dt.22.02.2021), *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.

In the instant case, when the petitioners are not alleged to have committed any cognizable offence, they could not have been prevented from leaving the country by respondents by issuing LOCs and such action is clearly violative of the Office Memorandums dt.27.10.2010 and dt.22.02.2021.

RE: LOCs issued at the instance of SFIO (respondent No.6)

Coming to the case of the Serious Fraud Investigation Office (SFIO) (respondent No.6), it is said to be conducting an investigation into the affairs of M/s ACCIL, India, a company in which the petitioners are Directors and Guarantors for loans advanced by several lenders including SBI.

The said investigation is only under Section 212 (1) (c) of the Companies Act, 2013 initiated on 04.10.2019 by the Ministry of Corporate Affairs.

The debt of the said company has admittedly got resolved pursuant to an order dt. 19.10.2020 of the NCLT, New Delhi which had approved the resolution plan submitted by the resolution applicant M/s JSW

Steel Coated Products Ltd. on 08.03.2019. Thereafter the SBI had entered into a debt assignment agreement dt.27.10.2020 with M/s Hasaud Steel Ltd. and had also issued a No Due Certificate on 23.11.2020 to ACCIL.

This Court has held in its order dt. 04.02.2022 in CWP No.1156 of 2022 and CWP No.1160 of 2022 that the said Bank and other lenders prima facie cannot continue proceedings before the NCLT, New Delhi and the DRT-II, New Delhi against the petitioners and has stayed proceedings in the said fora.

Once the debts of ACCIL are resolved by Corporate Insolvency Resolution Process, which is also approved by the NCLT, New Delhi, and the entire debt of the principal borrower stood assigned, petitioners contend that its account, which was earlier declared NPA by lenders, stands free of all exposures towards lenders and proceedings to enforce even guarantees against the petitioners cannot continue.

This issue is subject matter of CWP No. 1156 of 2022 and CWP No. 1160 of 2022.

But even if there is an investigation into the affairs of ACCIL, there is no report as of date adverse to the petitioners and there is no FIR filed against them in India. So no request for issuance of LOC could have been made by the SFIO to respondent No.2.

No provision of any Office Memorandum issued by the Ministry of Home Affairs empowering the SFIO to seek a LOC on the pretext of such investigation under Section 212(1) (c) of the Companies Act, 2013 is brought to our notice by Sh. Satya Pal Jain, the learned Additional Solicitor General of India or any of the respondents' counsel.

Therefore, it has to be held that neither respondent No.5 nor respondent No.6 were entitled to approach the respondent No.2 for issuance of an LOC or its extension in the facts and circumstances of the case.

Point (c) is answered accordingly.

Point (d):

In view of the above reasoning, the LOCs issued against the petitioners at the instance of respondents No.3 to 8 by respondent No.2 and which are said to have been extended at their request and are said to be subsisting as on date are all set aside; respondents No.3 to 8 shall communicate this order to respondent No.2; and officials/employees of respondents No. 1 & 2 are restrained from preventing the petitioners from travelling abroad. Writ Petition is allowed accordingly. No costs.

Pending application(s), if any, shall stand disposed of.

**(M.S. RAMACHANDRA RAO)
JUDGE**

सत्यमेव जयते

28.09.2022

Vivek/Ess Kay

**(HARKESH MANUJA)
JUDGE**

1. Whether speaking/reasoned? :
2. Whether reportable? :

Yes/No
Yes/No