

**IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)
APPELLATE SIDE**

Present:

The Hon'ble Justice Krishna Rao

WPA No. 12186 of 2025

Sunil Kumar Agarwal

Versus

Serious Fraud Investigation Office and Others

Mr. Sabyasachi Chaudhury, Sr. Adv.

Mr. Aritra Basu

Mr. Karan Dhudhewala

Mr. Subhadeep Adhikari

Mr. Deepesh Sharma

Mr. S. Ali

Mr. Mrinmay Mukherjee

.....For the petitioner.

Mr. Dhiraj Trivedi, Ld. DSGI

Mr. Ajit Choubey

Ms. Mary Datta

Mr. Soumavo Ghosh

Ms. Isbella Pal

Mr. Prabhat Kumar

Ms. Ritika Paipalwa

.....For the respondent nos. 1 & 2.

Hearing Concluded On : 05.01.2026

Judgment on : 15.01.2026

Krishna Rao, J.:

1. The petitioner has filed the present writ petition praying for Look Out Notice, if any, issued against the petitioner be quashed and to allow the petitioner to travel abroad.
2. The petitioner was one of the managerial personnel of one Company engaged in the business of the construction in India including its specialization in the infrastructure construction segment which includes buildings and highways. The State Bank of India had filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 before the National Company Law Tribunal, Cuttack Bench. The Company was admitted in Corporate Insolvency Resolution Process (CIRP) on 30th November, 2021. During the CIRP, the Resolution Professional has been in charge of the affairs of the Company. At the instance of the Resolution Professional, a Transaction Audit Report was prepared by a Forensic Auditor dated 30th July, 2022. The Auditor did not find any fraud in the transaction carried out by the Company through its Board of Directors.
3. Mr. Sabyasachi Chaudhury, Learned Senior Advocate representing the petitioner submits that despite the Transaction Auditor appointed by the Resolution Professional already reported that there is no fraud in the business transactions by the Company through its erstwhile Board of Directors, the respondent no.1 has proceeded on the basis of an ex-

parte Report in the form of an order prepared behind the back of the petitioner under Section 208 of the Companies Act, 2013, being Order No. 3/67/2109/CL-II(ER). He submits that there is no act of fraud committed by the company or the petitioner. There is no record of fraud against the petitioner or the Company or the Suspended Board.

4. Mr. Chaudhury submits that on 11th December, 2024, Anil Agarwal, an erstwhile Director of the Company tried to embark on a visit to Nepal, the Immigration Authority upon perusing passport and other identification documents stopped Anil Agarwal to travel to Nepal and informed that on the basis of the complaint of the respondent no.1, a Look-Out Circular is issued in the name of Anil Agarwal.
5. Mr. Chaudhury submits that the petitioner has received a summons dated 8th January, 2025, from the office of the respondent no.1 under Section 217 of the Companies Act, 2013 for the purpose of investigation into the affairs of the Company. He submits that the respondent no.1 invoked the provisions of Section 212 of the Companies Act, 2013. On 11th March, 2025, the petitioner has received another summons from the respondent no. 1 under Section 217 of the Companies Act, 2013 for the purpose of investigation and accordingly the petitioner has cooperated with the investigation.
6. By an order dated 10th July, 2025, this Court directed the Serious Fraud Investigation Office (SFIO) to file report by way of an affidavit disclosing all the facts and figures. The Deputy Director, Serious Fraud

Investigation Office, has filed affidavit. In the said affidavit, the SFIO has not disclosed any Look-Out Circular and subsequently the Learned Deputy Solicitor General of India has placed a sealed cover envelope containing Look-Out Circular.

- 7.** Mr. Chaudhury submits that as per the Look-Out Circular relied by the respondent nos.1 and 2, the same was issued as per the order of the Ministry of Corporate Affairs dated 19th July, 2022, being File No. 3/67/2019/CL-11(ER). He submits that from the said Look-Out Circular, it does not reveal that whether any cognizable offence is made out against the petitioner or not.
- 8.** Mr. Chaudhury has brought to the notice of this Court to Clause 4 of the Look-Out Circular with respect to relevant information and instructions wherein it is categorically mentioned that all LOCs (Other than those specifically mentioned in para 6(J) of the consolidated guidelines), which have completed one year, would automatically lapse after a year of opening unless reviewed and recommended for retention of the originator.
- 9.** Mr. Chaudhury has relied upon Clauses 6 (H) and (I) of the Office Memorandum dated 22nd February, 2021 and submits that 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. He submits that

Clause 6 (I) says that 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.

10. Mr. Chaudhury submits that issuance of the LOC has resulted in consequence of curtailing the right of the petitioner to travel under Article 21 of the Constitution of India. The proceeding initiated against the petitioner is still at the stage of investigation and till date no cognizable offence is made out against the petitioner.
11. Mr. Chaudhury in support of his case, has relied upon the judgment in the case of ***Vishambhar Saran Vs. Bureau of Immigration and Others*** reported in ***2021 SCC OnLine Cal 3074*** and submits that in the said case also the respondents have failed to show as to why departure of the petitioner from India would, in any manner, be detrimental to the sovereignty or security or integrity of India or to the bilateral relations with any country or to strategic and/or economic interests of India as a whole.
12. Mr. Chaudhury further relied upon the judgment in the case of ***Vishambhar Saran Vs. Bureau of Immigration and Others*** reported in ***MANU/WB/0692/2023*** and submits that in the said case the Coordinate Bench of this Court held that personal liberty and the fundamental right of movement guaranteed by the Constitution cannot

be curtailed at the behest of Bank of Baroda when the conditions precedent for making such request for opening of an LOC did not exist.

- 13.** Mr. Dhiraj Trivedi, Learned Deputy Solicitor General of India representing the respondent nos. 1 and 2 submits that as per the family tree disclosed by the petitioner, the petitioner is the Chief Executive Officer (CEO) of the Company and the key person in finalizing the decision of taking huge loans from the banks and financial institutions. He submits that the Company has an outstanding claim amount of Rs. 3,897 crores and the secured creditors have filed their claims before the Learned National Company Law Tribunal.
- 14.** Mr. Trivedi submits that Ministry of Corporate Affairs by invoking provisions of Section 212 (1)(a) and (c) of the Companies Act, 2013 assigned investigation into affairs of Company to the Serious Fraud Investigation Office by an order dated 19th July, 2022. During investigation, it was found that the petitioner has played his pivotal role with respect to manipulation of financial statement and siphoning of funds of the Company, creditors and other stakeholders of the Company.
- 15.** Mr. Trivedi submits that the case involves public interest at large and large amount is involved, accordingly, Look-Out Circular was issued against the petitioner in the economic interest. He submits that during investigation, it appears to be a fraud which is charged under Section 447 of the Companies Act, 2013 which is cognizable offence and is

punishable with imprisonment which may extend to 10 years and shall also be liable to fine which may extend to three times of the amount involved in the fraud.

- 16.** Mr. Trivedi submits that LOC was opened due to the pending investigation and the investigation is still going on. If at this stage, the petitioner is granted permission to travel beyond India, the petitioner will remain beyond India by which the investigation will be adversely effected and will cause severe detriment to public interest which is the consideration for the Central Government to direct investigation by the SFIO. He submits that the Companies Act, 2013 being a special statute has an overriding effect on the Code of Criminal Procedure, 1973 and the SFIO is a specialized agency to investigate into frauds committed under the Companies Act, 2013. He submits that there is no mandatory timeline to complete investigation with respect to SFIO.
- 17.** Mr. Trivedi relied upon the judgment in the case of ***Hemanta Kumar Banka Vs. Union of India and Ors.*** reported in ***2023 SCC OnLine Cal 2441*** and submits that the Hon'ble Division Bench of this Court held that there can be no second opinion that the health of a public sector banks is a vital qua in Indian economy. The Public Sector Banks play vital role in the growth and expansion of our country's financial system.
- 18.** Mr. Trivedi relied upon the judgment in the case of ***Chaitya Shah Vs. Union of India & Others*** reported in ***2021 SCC OnLine Bom 3967***

wherein the Division Bench of the Hon'ble Bombay High Court held that investigation of SFIO overrides the investigation by other investigating agencies. Therefore, the recourse to LOC was not unfounded as the petitioner has definite connection with the investigation.

- 19.** Mr. Trivedi further relied upon the judgment in the case of ***Ghanshyam Pandey Vs. Union of India and Another*** reported in **2023 SCC OnLine Del 936** and submits that in the said case also an amount of Rs. 1400 to Rs. 1700 crores was involved which belongs to public Sector banks and financial institutions are at stake and the Delhi High Court held that it would be larger public interest and also economic interest of India.
- 20.** As per the order of the Ministry of Corporate Affairs dated 19th July, 2022 a Look-Out Circular was issued against the petitioner. By an Office Memorandum dated 22nd February, 2021 lays down the guidelines for issuance of LOCs. The petitioner has relied upon the Clauses 6(H) and (I) of the said guidelines and the respondents have replied Clause 6(L) which reads as follows:

“6. (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 be 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.

(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 of 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.”

- 21.** As on date there is no cognizable case under the Indian Penal Code initiated against the petitioner. The respondents have invoked provisions of Section 212(1)(a) and (c) of the Companies Act, 2013. It is the case of the respondents that the matter primarily appears to be a fraud under Section 447 of the Companies Act, 2013.
- 22.** As per Section 212(4) of the Act, the Director, Serious Fraud Investigation Office shall cause the affairs of the Company to be investigated by an Investigating Officer who shall have the power of the Inspector under Section 217.
- 23.** As per Section 212(5) of the Act, the Company and its officers and employees, who are or have been in employment of the Company shall be responsible to provide all information, explanation, documents and assistance to the investigating officer as he may require for conduct of the investigation.

- 24.** Section 212(1) provides that the Central Government may direct SFIO to investigate into the affairs of a company inter alia upon a receipt of the report of the Registrar, on intimation of a special resolution passed by a company, in public interest or on request from any department of the Central Government or the State Government.
- 25.** Section 212(11) provides that SFIO must submit an “interim report” to the Central Government, if SFIO is directed to do so by the Central Government.
- 26.** Section 212(12) requires SFIO to submit an “investigation report” to the Central Government only upon “completion of the investigation”. Therefore, an “investigation report” cannot be submitted at any time prior to the completion of the investigation, whereas an “interim report” under Section 212(11) can be submitted at any stage.
- 27.** Under Section 212(14), the Central Government has been empowered to direct SFIO to initiate prosecution against a company or its officers, if the Central Government considers it necessary after examination of only the “investigation report” issued under Section 212(12) i.e. after completion of the investigation.
- 28.** Section 212(14) permits the Central Government to take legal advice when examining the “investigation report”, which itself gives colour to the word “examination” and shows that the Central Government is to properly apply its mind to the “investigation report” before directing

initiation of prosecution i.e. not to do so mechanically or for collateral purposes.

- 29.** Section 212(14-A) provides that where the report under Section 212(11) or 212(12) stated that fraud has taken place and has been taken advantage of by a Director, key managerial personnel or other officer, the Central Government may file an application before NCLT for appropriate orders for disgorgement of asset and for holding such person liable personally.
- 30.** Under Section 212(15), it is only the “investigation report” submitted only upon completion of the investigation which is filed with the Special Court is deemed to be police officer's report under Section 173 of the Criminal Procedure Code, 1973 (CrPC). Significantly, Section 212(15) is a deeming fiction that is limited to only making investigation report under Section 212(12), to be the police officer's report under Section 173CrPC.
- 31.** It is therefore clear that the legislature has envisaged two distinct kinds of reports, with its own specific purpose. The first kind of report is under Section 212(11) which report is an “interim report” and can be issued at any point of time during the course of investigation by SFIO. The second kind of report is an “Investigation Report” which can be issued only after completion of the investigation by SFIO. Only the “Investigation Report” can be considered by the Central Government under Section 212(14) for the purposes of commencement of

prosecution. On the other hand, an action before NCLT under Section 212(14-A) can be brought on based on either the Investigation Report or even the interim report.

- 32.** It is further clear that the Central Government, under Section 212(14) is required to apply its mind, seek legal opinion (if required) and only thereafter decide whether or not a sanction order is to be issued i.e. if in its opinion prosecution is to be initiated based on the “Investigation Report”. Further, only such “Investigation Report”, which is considered by the Central Government for the initiation of prosecution under Section 212(14), is to be the police officer's report under Section 173CrPC.
- 33.** Look-Out Circular issued in terms of the order of the Ministry of Corporate Affairs dated 19th July 2022. Admittedly, investigation is still going on. The respondents are not sure whether the offence alleged against the petitioner is fraud under Section 447 of the Companies Act, 2013. As per Section 212(11) SFIO must submit an “interim report” to the Central Government, if SFIO is directed to do so by the Central Government. Section 212(12) requires SFIO to submit an “investigation report” to the Central Government only upon “completion of the investigation”. Therefore, an “investigation report” cannot be submitted at any time prior to the completion of the investigation, whereas an “interim report” under Section 212(11) can be submitted at any stage.

- 34.** Neither interim investigation nor investigation report is submitted to the Government. Under Section 212(14), the Central Government has been empowered to direct the SFIO to initiate prosecution against the Company or its officers, if the Central Government considers it necessary after examination of only “investigation report” issued under Section 212(12) i.e. after completion of the investigation.
- 35.** In the case in hand, it is admitted by the respondents in their report stating that “*since the matter primarily appears to be a fraud which is charged under Section 447 of the Companies Act, 2013*”. It is also admitted that investigation is going on. No interim report is submitted. Thus, this Court failed to appreciate under what basis the LOC is issued against the petitioner.
- 36.** The contention of the respondents that the present case involves the interest of the public at large and involves huge outstanding amount, similar issue was raised in the case of ***Vishambhar Saran vs. Bureau of Immigration & Ors.*** reported in ***2021 SCC OnLine Cal 3074*** and the Coordinate Bench of this Court held that:

“50. *The limited grounds, as it stands amended, as mentioned in the relevant Office Memorandum are as follows:*

“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 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 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.”

51. *None of the above criteria are satisfied in the present cases. The mere quantum of alleged default cannot be a basis for the extreme measure of restricting the personal liberty of the petitioners to travel inside or outside India. In the absence of any such ground, the LoC was ex facie vitiated.*

52. *In the event the authorities seek to resort to the quantum of alleged default for restricting citizens' departure outside the country, it is obvious that the quantum is relative and the amount of Rs. 350 crores can be exorbitant or meagre, depending merely on the whims of the authorities or the perspective of the judge. As such, in the absence of any stipulation in that regard in the relevant Office Memorandum, no cut-off line can be drawn between an amount which is detrimental to the sovereignty or security or integrity of India or to the economic interests of India and one which is not.”*

37. In the case of **Vishambhar Saran vs. Bureau of Immigration & Ors.** reported in **MANU/WB/0692/2023** another Coordinate Bench of this Court held that :

“59. *In my opinion, personal liberty and the fundamental right of movement guaranteed by the Constitution cannot be curtailed at the behest of BOB when the conditions precedent for making such request for opening and LOC, did not exist in this case. The affidavit-in-opposition does not disclose that the Managing Directors/Executive Officers had applied his mind or had received information or input from any investigation of intelligence agency to come to the conclusion that the petitioner was trying to flee from India in order to evade the legal consequences of such default. It*

is also a matter of record that the proceeding with regard to willful default is still pending and the bank has not disclosed any material to show that any other proceeding under any applicable law be it civil or criminal, has been initiated. Non-payment of the loan and the dues of the bank, cannot be equated to an act of destabilizing or affecting the economic interest of the country. The freedom of movement of a citizen of India is a valuable right and cannot be infringed except by imposing reasonable restrictions. The court does not find any reasonableness in the action of BOB. The lead bank, PNB failed in its attempt to restrict the movement of the petitioner. No subsequent development has taken place which would justify a further request by BOB, on the self-same set of facts.”

- 38.** The judgment relied by the respondent in the case of ***Hemanta Kumar Banka (supra)*** is distinguishable from the facts of the present case. Against the appellant in the said case, criminal case was initiated at Singapore under Section 400 of the Singapore Act, 2018 and the Hon’ble Division Bench was of the view that if the appellant is permitted to travel to Singapore, he will be detained in Singapore and cannot leave the said country.
- 39.** In the case of ***Chaitya Shah (supra)*** the Hon’ble Division Bench of the Bombay High Court finds that the petitioner had dual citizenship and in case he decides not to return to India it would become very difficult to bring him back.
- 40.** In the case of ***Ghanshyam Pandey (supra)***, the Delhi High Court finds that the entire family resides abroad and there is every possibility that the petitioner may not return to India.

- 41.** In the present case the respondents have not brought anything on record to show that if the petitioner is allowed to travel outside India, there is no chance of the petitioner to return back to India.
- 42.** This Court did not find any justification to the assertion made by the respondents that the ongoing investigation will be adversely impacted and will cause severe determent to public interest.
- 43.** In view of the above, the Look-Out Circular issued as per the direction of Ministry of Corporate Affairs, dated 19th July, 2022, against the petitioner, is set aside and quashed.
- 44. WPA No. 12186 of 2025 is allowed.**

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)