

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 3251 of 2023**

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BINDU TIBREWAL W/O SUBHASH KEDARNATH TIBREWAL
Versus
JOINT SECRETARY, MINISTRY OF HOME AFFAIRS

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Appearance:

MS PRAGATI BANSAL, ADVOCATE for THAKKAR AND PAHWA
ADVOCATES(1357) for the Petitioner(s) No. 1
BHASKAR SHARMA(9209) for the Respondent(s) No. 2
MR ANKIT SHAH(6371) for the Respondent(s) No. 2
NOTICE UNSERVED for the Respondent(s) No. 1,3

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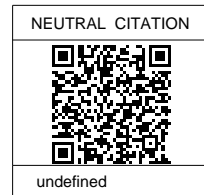
CORAM: HONOURABLE MR. JUSTICE NIKHIL S. KARIEL

Date : 17/08/2023
ORAL ORDER

1. Heard learned Advocate Ms. Pragati Bansal on behalf of the petitioner, learned Advocate Mr. Ankit Shah on behalf of the respondents No. 1 and 3 and learned Advocate Mr. Bhaskar Sharma on behalf of the respondent No.2-Bank.

2. Rule. Learned Advocate Mr. Shah waives service of Rule on behalf of the respondents No.1 and 3 and learned Advocate Mr. Sharma waives service of Rule on behalf of the respondent No.2.

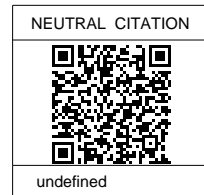
3. By way of this petition, the petitioner has challenged the Lookout Circular issued by the respondent No.1 under instructions of the respondent No.2-Bank as being contrary to Office Memorandum



No.25016/31/2010 – Imm dated 27.10.2010, and whereas it is further the case of the petitioner that the Lookout Circular is also in violation of Articles 14 and 21 of the Constitution of India.

4. Learned Advocate Ms. Pragati Bansal for the petitioner, at the outset, would draw the attention of this Court to an order passed by a learned Co-ordinate Bench of this Court in Special Civil Application No. 13097 of 2020, dated 19.10.2022. Learned Advocate would submit that originally, the said petition had been preferred insofar as the petitioner No.1 therein and the present petitioner as petitioner No.2. Learned Advocate would further submit that as such, the petitioner No.1 of the said petition was the husband of the present petitioner. Learned Advocate would draw the attention of this Court to the observations made by the learned Co-ordinate Bench of this Court at Para No.2 of the order dated 19.10.2022 and would submit that since the present petitioner did not file an affidavit under the High Court Rules, therefore the petition at her instance was not entertained by the Court and liberty was reserved to file separate writ petition. It would appear that the present petition is preferred in the said context.

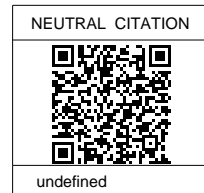
5. Learned Advocate Ms. Bansal would thereafter draw the attention of this Court to the observations made by the learned Co-ordinate Bench



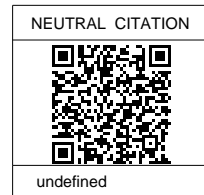
of this Court at Para No. 12 of the said order and would submit that the observations of the learned Co-ordinate Bench of this Court, are applicable in the facts of the present case also and whereas considering the fact that the respondent No.2-Bank has not questioned the said decision by filing a Letters Patent Appeal, therefore this Court also may afford the same benefit as granted to the petitioner of the said petition in favour of the present petitioner herein.

6. As against such submissions, learned Advocate Mr. Bhaskar Sharma for the respondent-Bank would draw the attention of this Court to reply filed on behalf of the respondent-Bank and would submit that the present petitioner has preferred a personal insolvency application before the NCLT, Ahmedabad, and whereas considering the interim moratorium as would be applicable when a personal insolvency proceeding has been preferred, which moratorium ensures that no legal action or proceedings pending, shall be proceeded further, therefore the present petitioner is not entitled to file the present petition and whereas learned Advocate Mr. Sharma would request this Court to reject the present petition.

7. Heard learned Advocates for the respective parties and perused the documents on record.



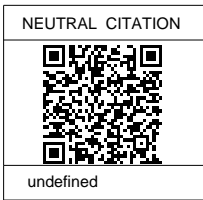
8. Insofar as the submissions made by learned Advocate Mr. Sharma, a perusal of Section 96 of the Insolvency and Bankruptcy Code, 2016 (for short “the Code”) inter alia reveals that the upon the moratorium coming into effect ‘any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed’. From a bare perusal of Section 96 of the Code, more particularly Section 96(1)(a), it would appear that upon an application being filed under Section 94 or Section 95, an interim moratorium shall commence in relation to ‘all the debts’. Section 96(1)(b) (i) inter alia envisages that during the interim moratorium, any legal action or proceeding pending in respect of any debt shall be deemed to have been stayed. Section 96(1)(b)(ii) inter alia states that the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt. Considered in context of the Code, it would clearly appear that the interim moratorium comes into effect when a debtor or a creditor either directly or through the insolvency professional applies to the Adjudicating Authority for initiating an insolvency resolution process and whereas the interim moratorium is in aid of such process. An application preferred by a debtor challenging issuance of a Lookout Circular, more particularly on the ground that the Lookout Circular had been issued even before the debtor had been declared a willful defaulter and furthermore when a learned Co-ordinate Bench of this Court has quashed the Lookout



Circular as regards a co-debtor, therefore, the submission of the learned Advocate for the respondent-Bank with regard to Section 96 of the Code cannot be countenanced.

9. Insofar as the issue on merits is concerned, this Court is in agreement with contention of learned Advocate for the petitioner that the observations made by the learned Co-ordinate Bench at Para No.12 in the aforesaid order, would cover the present issue also. In the considered opinion of this Court, the observation that the Bank, without declaring the petitioner therein as willful defaulter and without assigning any reasons as to how the petitioner travelling abroad will be detrimental to the economic interest of the country and the fact that though the petitioner therein as well as the petitioner herein were declared as willful defaulter after issuance of the LOC, and whereas the order of declaring willful defaulters dated 6.6.2020, having been quashed by this Court vide order dated 21.9.2020, it would appear that no proceedings have been initiated against the petitioner also.

10. Having regard to the above position, more particularly since the view taken in case of a co-director, having not been questioned by the respondent-Bank, therefore the said observations would enure in favour of the present petitioner. Under such circumstances, more particularly in



light of the observations made by the learned Co-ordinate Bench vide order dated 19.10.2022 in Special Civil Application No. 13097 of 2020, the issuance of LOC at the request of the respondent No.2-Bank, is hereby declared to be bad in law and consequently is quashed and set aside. The respondent No.3 is hereby directed not to prevent the present petitioner from travelling abroad based on the pending LOC at the instance of the respondent No.2-Bank. Furthermore, liberty as reserved in favour of the respondent-Bank by the learned Co-ordinate Bench, i.e. the order not restraining the respondent-Bank from seeking issuance of fresh LOC in strict compliance of the office memorandum dated 27.10.2010 issued by the Ministry of Home Affairs, in future, is also reserved in favour of the respondent No.2-Bank herein.

11. With the above observations and directions, the present petition is disposed of as allowed. Rule is made absolute to the aforesaid extent.

BDSONGARA

(NIKHIL S. KARIEL,J)