

IBC DOSSIER

Bulletin on Landmark Judgments under IBC, 2016



GHANSHYAM PANDEY Vs. UNION OF INDIA & ANR

Brief Facts

In the present case, The case of the Petitioner(GHANSHYAM PANDEY) that he and his wife were intending to travel to the U.S.A., however, they were stopped at the Airport and were informed of the LOC which had been issued at the request of Serious Fraud Investigation Office (SFIO). The Petitioner submits that LOC has seriously impinged on his travel to meet his children and his family. It is prayed that the LOC may be quashed as he intends to come back to India and continue to cooperate in the SFIO investigation.

SFIO submits that the transactions being investigated by the SFIO are a complex maze of transactions involving Shilpi Cable. The Petitioner was the CEO of Shilpi Cable Technologies from 2006-12, a whole time Director of the company from 2013-17, and a member of the audit committee from 2011-17. It is during this very period that the transactions claimed by the SFIO to be fraudulent transactions have occurred. It is argued that the Petitioner has not been truthful in his statements made to the SFIO. The

company Shilpi Cable and its promoters and other persons involved have siphoned off substantial sums of money and had parked the same in foreign countries. The question that arises in the present case is whether the Look Out Circular (LOC) issued against the Petitioner is liable to be quashed.

Decision

The said company has had transactions with 8 other related companies based out of Dubai, Abu Dhabi, and Singapore. The said transactions show that the company had transferred more than Rs.800 crores to the related companies and loans for the same are outstanding. All these companies registered in Dubai, Abu Dhabi, and Singapore were used as shell companies to transfer monies that were lent to Shilpi Cable by banks and public financial institutions in India. According to the affidavit filed by the SFIO, there are more than 15 open charges against Shilpi Cable amounting to approximately Rs.1452 crores. Out of the said charges, 10 charges amounting to over Rs.1400 crores are outstanding. Shilpi Cables was a company against whom Corporate Insolvency Resolution Process (CIRP) proceeding was initiated by one M/s Macquarie Bank Limited before the NCLT & The NCLT ordered the liquidation of Shilpi Cables. It was, thereafter, unearthed that a large amount of funds that were lent to Shilpi Cables by banks and public financial institutions were routed through group companies that were located abroad and were siphoned through the said companies. In view thereof, an SFIO investigation was ordered on 10th August 2020 under Section 212 (1)(c) of the Companies Act, 2013.

Shilpi Cables was engaged in the mercantile trade of goods mostly involving foreign entities which were its own group companies that were controlled and managed by the erstwhile employees and management of Shilpi Cables. The claims of financial creditors of Shilpi Cables were to the tune of Rs. 1,770 crores and only around Rs. 6 crores were released by the sale of assets. The Petitioner was being evasive rather than candid. In fact, he has even failed to explain the contents of emails in which he was one of the recipients. He has also refused to divulge details relating to his bank accounts outside India. The facts of the present case reveal that a large amount of public funds of public sector banks and financial institutions are at stake. The Petitioner did not merely play a role in the management and administration of Shilpi Cables but, being an auditor also owed a duty to report any shortcomings or misconduct within the company.

Thus, the Petitioner cannot be completely absolved of responsibility merely on the ground that he was a mute spectator, there was a clear possibility, in the facts of this case that the Petitioner may not return to India as his entire immediate family resides abroad. He has not shown any assets in India and thus his travel is likely to impede the investigation.

Thus the LOC against the Petitioner is not liable to be quashed, at this stage.

Link of the Order

<https://ibbi.gov.in/uploads/order/d9a28c58744a9adebd028d32df447eec.pdf>



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