Directorate of Enforcement Vs. M/s. Sunstar Overseas Ltd. & Ors. (Ankur Aggarwal's Application)
CNR No.: DLCT01-013456-2024
CC No.: 01/2024
ECIR No.: GNZO/09/2021
Under Sections: 3, 4, 70, 44, 45(1) PMLA Act, 2002
PS.: EOW

23.09.2024
Present: Mr. Simon Benjamin, Ld. SPP for ED.
Mr. Aditya Vardhan Sharma, Ld. Counsel for the applicant, Ankur Aggarwal.

ORDER

1. By means of the present order, this Court shall determine the application, filed on behalf of the applicant, namely, Ankur Aggarwal (*hereinafter referred to as the* ***'applicant'***), seeking suspension of look-out circular (*hereinafter referred to as* ***'LOC'***), to permit him to travel back to Dubai, United Arab Emirates/UAE.

2. Learned Counsel for applicant outrightly submitted that the applicant is citizen of India and permanent resident of Dubai. As per the Ld. Counsel, the applicant has been residing in Dubai for past several years and was granted UAE Permanent Resident (PR) Visa by Dubai Government in the year 2012. Further, as per the Ld. Counsel, the applicant is a holder of Indian Passport bearing no. X9297549 and had come to India on 28.06.2024, pursuant to summons issued by Directorate of Enforcement/ED, which was conducting investigation into the affairs of M/s Sunstar Overseas Pvt. Ltd. And its Ex-Promotors/Directors. Consequent thereto, the caption ECIR was registered by ED on 09.04.2021 under Section 3/4 of the Prevention of Money Laundering Act, 2002 (*hereinafter referred to as* ***'PMLA'***), which ECIR was premised on an FIR registered

by CBI bearing No. RCCGH2020A0021 on 31.12.2022 against M/s Sunstar Overseas Pvt. Ltd. And its Ex.-Promotors/Directors, including the applicant under Sec. 120B/406/409/420 of the Indian Penal Code, 1860/IPC r/w Sections 13(1)(d) and Section 13(2) of the Prevention of Corruption Act, 1981/PC Act, basis a complaint filed with CBI by Punjab National Bank. It was further submitted that post-completion of investigation in the said FIR case charge-sheet was filed before the Court of Ld. Special Judicial Magistrate, CBI, Panchkula, where the applicant is neither names as an accused nor chargesheeted. During the course of investigation in relation to ECIR case, the applicant was summoned to India and the last summon was issued on 06.06.2024, which was responded by the applicant vide his e-mail dated 07.06.2024, seeking accommodation/permission to permit him to appear on a different occasion, considering his ill-health. Subsequently, as per the Ld. Counsel, on 19.06.2024, the applicant volunteered to appear on summons before ED on 28.06.2024, which was conceded by ED, directing the applicant to appear at the ED's Office on 01.07.2024. Consequently, it was submitted that when the applicant arrived in Delhi on 28.06.2024, he was detained at IGI International Airport due to LOC issued against him by the ED. It was further submitted that after a wait of approximately five hours, the applicant was permitted to leave the airport with directions to visit ED's Office on 01.07.2024. As per the Ld. Counsel, till the time the applicant had not arrived in India, he had no intimation about the issuance of LOC against him at the instance of ED nor was given any intimation regarding the same. It was further submitted that even as on date, the material particulars regarding the LOC has not been shared with the applicant. Nevertheless, as per the Ld.

Counsel, the applicant had appeared before the concerned officials of ED on several occasions, *i.e.* on 01.07.2024, 03.07.2024, 10.07.2024, 18.07.2024 and 22.07.2024, as well as had furnished all the requisite information, besides his statement under Sec. 50 PMLA has already been recorded. Accordingly, Ld. Counsel submitted that the applicant had duly cooperated with the investigating officers and as such there is no further requirement of keeping the applicant in India. Ld. Counsel further submitted that the applicant's UAE PR Visa had already expired on 21.08.2024 and that his wife's PR Visa, granted on the basis of applicant's PR Visa is under threat of cancellation as well. Ld. Counsel further submitted that due to the applicant's persistent stay in India, not only is the applicant's day-to-day life affected, rather, his profession/job is also put under jeopardy. Ld. Counsel further submitted that the applicant had suffered immense hardship in obtaining his PR Visa and that upon expiring of his PR Visa as on date as well as his not returning to Dubai, timely, has put into peril, his prospect of renewal of said Visa. As per Ld. Counsel, a fresh PR Visa may not only entail imposition of cost by the applicant's employer, rather is remuneration may also be drastically reduced to one third from the present as the applicant would be treated as the employee by his employer. Further, it was vehemently contended that the applicant's wife in Dubai is presently seven months in her pregnancy and that the presence of the applicant in Dubai is imperative. Further, on earlier occasions, the applicant had resided in India for a maximum period of 12-13 days. However, his continued detention had also put his present employment under uncertainty. Ld. Counsel further re-agitated that the particulars of LOC have not been supplied to him till date and his fundamental rights guaranteed under Article 19 and 21 of Constitution are grossly getting affected. Accordingly, Ld. Counsel prayed that the present application may be allowed and the LOC may be suspended.

3. *Per contra,* Ld. SPP for ED vehemently opposed the present application on the ground that the applicant was associated with the main accused company M/s Sunstar Overseas Pvt. Ltd. As well as its related entity, M/s Star Rise Land Pvt. Ltd., found involved in the commission of offence of money laundering. Further as Ld. SPP for ED, the applicant was also associated with overseas related entity of accused company, namely, M/s JFP Gulf General Trading LLC, Dubai, through which exports have been made by the afore-stated Indigenous entity. As per Ld. SPP for ED, the applicant is in possession of export transactions/consignments, through which M/s Sunstar Overseas Pvt. Ltd. appears to have siphoned off loan funds, which is a subject matter of further investigation. Even otherwise, as per Ld. SPP for ED, issuance of LOC was in consonance with the spirit of safeguarding ongoing investigation as well as a precautionary measure by the complainant to protect the proceeds of crime. As per Office Memorandum bearing No. 25016/10/2017-Imm (PT) dated 22.02.2021. Ld. SPP for ED further submitted that the issuance of LOC has been persistently upheld by various Courts during the course of ongoing investigation and that it is essential in the instant case that the LOC is not cancel/suspended to ensure proper investigation of the present case. Ld. SPP for ED further submitted that for the investigation to proceed in a proper manner, the presence of applicant in India is imperative and in case the present application is allowed, the investigation would several delayed,

hampered as well as lead to destruction of material evidence. It was further submitted that even otherwise, personal hardship suffered by the applicant, due to his prolonged stay in India cannot outweigh the interest of investigating authorities and investigation in the present case. Further, as per Ld. SPP for ED, there is no procedure under law to share the information, as sought for by the applicant pertaining to LOC with him. Accordingly, Ld. SPP for ED has submitted that the present application may be dismisedd. In support of the said contentions, reliance was placed upon the decisions in;***Chaitya Shah v. Union of India & Ors., 2021 SCC OnLine Bom. 3967; G.S.C. Rao v. State of U.P. & Ors. 2018: AHC: 161457-DB*** *in* support of the said contentions.

4. Re-joining the submissions of Ld. SPP for ED, Ld. Counsel for the applicant re-iterated his earlier submission and averred that the applicant has duly cooperated in the investigation and his statement under Sec. 50 PMLA has been recorded. Further, as per the Ld. Counsel, no justifiable reasons for issuance of LOC, exist against the applicant especially when he is not even accused in the present case as well as in CBI's FIR proceedings. It was further submitted that the issuance of LOC against the applicant is against the mandate of law and the applicant is deprived of his valuable right of traveled as guaranteed by the Hon'ble Supreme Court ***Meneka Gandhi v. Union of India, AIR 1978 SC 597***, besides there is no justifiable or even *prima facie* reasons forthcoming on record, permitting continued detention of the applicant in India. In support of the said contention, Ld. Counsel placed reliance on Office Memorandums dated 27.10.2010, 05.12.2017, 19.07.2018 and 22.02.2021. Ld. Counsel further strenuously contended that his

wife is suffering with immense hardship in her late stage of pregnancy as well as he is in the verge of loosing his financial stability as well as job in UAE. Accordingly, Ld. Counsel re-agitated that his application may be allowed, in the interest of justice. In support of his contentions, he has placed reliance upon *Sumer Singh Salkan v. Asstt. Director & Ors., ILR (2010) VI DELHI 706; Priya Parameshwaran Pillai v. Union of India & Ors. 2015 SCC OnLine Del 7987; Sanjana Desai & Anr. v. Bank of India & Anr. W.P. (C) 1872/2021; Uday Jayant Desai v. Union of India & Ors. W.P. (C) 10540/2022; Ashish Mittal v. SFIO; Manish Bhatt v. Union of India & Ors. W.P. (C) 1962/2022; Parvin Juneja v. Directorate of Enforcement & Anr. Crl. M.C. 5143/2023; Raghav Bahl v. Enforcement Directorate Ministry of Finance, W.P. (Crl.) 2392/2021; Prateek Chitkara v. Union of India & Ors., W.P. (C) 10998/2022; Manoj Vasudev Pardasany v. Union of India & Ors. W.P. (C) 10604/2022; Thatisetti Ramesh v. State of Telangana W.P. No. 5024/2021; Md. Osman Khazi v. State of Telangana W.P. No. 7341/2019; Navinchandra Gangadhar Hegde v. State of Maharashtra, 2017 SCC OnLine Bom 8505; Syed Samsudeen v. Chief Immigration Officer, MANU/TN/3578/2021; E.V. Perumal Samy Reddy v. State, MANU/TN/2308/2013; Enforcement Directorate v. Sukesh Chandrashekhar & Ors., order dated 28.05.2022 in CC No. 123/2021 in ECIR/DLZO-II/54/2021; and ED v. Sukesh Chandrashekhar & Ors., order dated 15.11.2022 in CC No. 123/2021 in ECIR/DLZO-II/54/2021.*

5. The arguments of Ld. Counsel for applicant and that of Ld. SPP for ED, heard as well as case record(s) have been thoroughly perused.

6. In order to deal with the contentions raised by the Ld. Counsel for the applicant and that by the Ld. SPP for ED, this Court deems it pertinent to outrightly make a reference to the prayer clause of the present application, as under;

> *"In view of the aforementioned facts and circumstances, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to;*
>
> *a. Issue an order, or direction suspending the operation of any Look Out Circular that has been issued at the instance of the Respondent No. 1, ED in order to enable the travel of the Applicant Ankur Aggarwal having Indian passport no. X9297549 to Dubai, UAE; and*
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> *b. Direct the Respondents to take necessary steps for ensuring that there is no restriction on the travel Applicant, Ankur Aggarwal to Dubai, and*
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> *c. Pass an ad-interim/interim order directing the Respondents to disclose complete particulars about the LOC issued in respect of the Applicant.*
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> *d. Pass any other or further orders as this Hon'ble Court may deem fit and proper in the interest of justice…"*
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> *(Emphasis supplied)*

7. Relevantly, it is observed from perusal of the above that one of the primary entreaties of the applicant pertains to the suspension of LOC, issued against him/applicant at the behest of ED to enable him to travel in UAE on an India passport as well as directing the respondent to ensure that there is no impediment in his trave to UAE during the said period. Notably, during the course of arguments, before this Court, Ld. Counsel has confined his submissions to prayer clauses (a) and (b), as aforenoted, as well as, offered to submit to the conditions which may be imposed by this Court, including furnishing of sureties. Further, during the course of arguments, the applicant file two affidavits, firstly deposed on 18.09.2024 and secondly, deposed on 21.09.2024, wherein the applicant has furnished his address of stay during his travel abroad at Apartment No. APT 2801, Sadaf 8, Dubai, UAE as well as his contact details during the said

period as +971-52-888-8447. Further, in his initial affidavit, the applicant has specifically prayed for suspension of the LOC for a period of approximately three months, ensuring his presence in India on 25.12.2024, after the delivery of his child by his wife. Further, the applicant has also expresses his willingness to inform the concerned investigating officer upon his arrival in India in writing. Notably, in his supplementary affidavit, the applicant has specified his place of current employment/employer as; Eiffel Exhibition Branch (LLC), Murshid Bazar, Deira, Dubai, UAE, Tel. 04-2268333, Fax. 04-2269816, E-mail- info@eiffelexhibitions.com. Further, the applicant has specified the name of his parents as Mr. Rakesh Aggarwal and Ms. Sadhna Aggarwal, both residence of 10D, Under Hill Road, Civil Lines, Delhi-110054 as well as the fact that the order of provisional attachment has been passed by ED *qua* the said property as on date.

8. Notwithstanding the aforesaid, in order to deal with the present application, this Court deems it appropriate to make a reference to the decision in ***Sumer Singh Salkan v. Asstt. Director, 2010 SCC OnLine Del 2699***, wherein the Hon'ble Court, while cogitating on various aspects of LOC(s), observed as under;

> *"11. Look-out-Circular has also been issued against the petitioner as the petitioner is an accused the Court of M.M. and he has not appeared the Court of M.M. If the petitioner gives an undertaking the court for his appearance on a particular date, through his counsel, the Look-out-Circular issued against the petitioner shall be withdrawn within 24 hours of giving undertaking by the petitioner.*
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> *The questions raised in the reference are as under:*
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> *"A. What are the categories of cases in which the investigating agency can seek recourse of Look-out-Circular and under what circumstances?*

B. What procedure is required to be followed by the investigating agency opening a Look-out-circular?

C. What is the remedy available to the person against whom such Look-out-Circular has been opened?

D. What is the role of the concerned Court when such a case is brought it and under what circumstances, the subordinate courts can intervene?

The questions are answered as under:

A. Recourse to LOC can be taken by investigating agency in cognizable offences under IPC or other penal laws, where the 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 Investigating 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 alone 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 I.O. or should surrender 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 & 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."

(Emphasis supplied)

9. Relevantly, it is observed from above that Hon'ble High Court of Delhi, has in unambiguous terms observes that the recourse to LOC can be taken by investigating agency only when the accused has been deliberately evading arrest not appearing in the trial, despite coercive measures and there was a likelihood of the accused leaving the country to evade trial/arrest. Further, as

per Hon'ble High Court, the power to cancel/suspend LOC is stated to be invariably vest to the authority that had issued the same may also be *inter alia* rescinded/cancel/suspended by the concerned trial court where the case is pending. Lastly, the jurisdiction of trial court in such cases is stated to commensurate with the jurisdiction of cancellation or affirming NBWs. As aforenoted, Ld. Counsel for the applicant has confined his prayer in the present case to the suspension of the LOC for the period of three months with the applicant assuring his return in India on 25.12.2024. Accordingly, this Court is not delving into the aspect of correctness of issuance of LOC in this case, at present. However, it is pertinent to note here that from a perusal of case record, it is observed that the applicant has presently not been named as an accused in the complaint filed by the ED before this Court. Further, in its reply, ED has only specified the alleged association of the applicant with accused No. 1 and accused No. 3 in its said complaint, whilst M/s JFP Gulf General Trading LLC, Dubai has also not been named as accused in the present complaint. Needless to mention, the applicant was neither chargesheeted as an accused under column 11 of the charge-sheet, filed by CBI before the concerned court not has the applicant been summoned by the concerned Special Judicial Magistrate in his order dated 26.04.2024. Pertinent to further observe that upon issuance of summons dated 06.06.2024, the applicant had voluntarily issued e-mails dated 07.06.2024 and 19.06.2024, requesting for a short accommodation as well as expressing his willingness to appear before the concerned authorities at ED on 28.06.2024. Subsequently, upon the applicant's visit to India, he is stated to have join the investigation with ED on 01.07.2024, 03.07.2024, 10.07.2024, 18.07.2024 and 22.07.2024, as well as tendered his statement under Sec. 50 PMLA.

10. Notably, the aforesaid facts pertaining to the applicant joining the investigation, as also, tendering his statement under Sec. 50 PMLA have not been denied by Ld. SPP for ED/ED, on repeated queries from this court, however, the only objection to the suspension of LOC of the ED is premised on the submission that the offence is instant case is grave pertaining to economic offences and that the applicant's presence in India would be difficult to be ensured, once he is permitted to trave abroad. Appositely, this Court explicitly and repeatedly enquired Ld. SPP for ED/ED/IO regarding the time frame, in which the investigation is likely to be concluded *qua* the applicant in the present case, however, no response in this regard was forthcoming. Correspondingly, it was enquired from Ld. SPP for ED/ED/IO as to the status of investigation and the factum of not naming the applicant in the instant complaint, upon which, Ld. SPP for ED responded that the investigation is still ongoing against the applicant. However, once again no time frame for conclusion of such investigation has been specified by Ld. SPP for ED. Under such situation, this court is confronted with a situation where the fundamental rights of an individual to travel abroad has become antithetical to the rights of ED to further investigate the case, especially when no time frame for conclusion of such investigation is forthcoming. Here this Court deems it pertinent to make a reference to the decision of the Hon'ble Supreme Court in ***Parvez Noordin Lokhandwalla v. State of Maharashtra, (2020) 10 SCC 77***, wherein the Hon'ble Court in unambiguous terms noted as under;

"19. In Barun Chandra Thakur v. Ryan Augustine Pinto [Barun Chandra Thakur v. Ryan Augustine Pinto, 2019 SCC OnLine SC 1899], this Court restored a condition mandating that the respondent seek prior permission from a competent court for travel abroad. The condition, which was originally imposed by the High Court while granting anticipatory bail was subsequently deleted by it. This Court made the following observations with respect to imposing restrictions on the accused's right to travel: (SCC OnLine SC para 9)

> *"9. … There could be no gainsaying to that the right to travel abroad is a valuable one and an integral part of the right to personal liberty. Equally, however, the pre-condition of securing prior permission before travelling abroad is a crucial ingredient which undoubtedly was engrafted as a condition for the grant of anticipatory bail in this case. … At best, the condition for seeking permission before travelling abroad could have been regulated, not deleted altogether."*

20. This Court has passed multiple orders previously allowing an accused enlarged on bail to travel abroad. In Ganpati Ramnath v. State of Bihar [Ganpati Ramnath v. State of Bihar, 2017 SCC OnLine SC 1998], this Court allowed an accused applicant to travel abroad for medical treatment, modifying its earlier bail order, noting that the applicant had travelled abroad on the ground of medical necessity on six occasions with the permission of the court and had returned. In K. Mohammed v. State of Kerala [K. Mohammed v. State of Kerala, 2020 SCC OnLine SC 860], this Court allowed the appellant-accused to travel abroad to meet in the exigencies of a family situation. In Tarun Trikha v. State of W.B. [Tarun Trikha v. State of W.B., 2015 SCC OnLine SC 1879], this Court allowed the petitioner-accused to travel to Indonesia in connection with his employment and to return once the work was completed. In Pitam Pradhan v. State of A.P. [Pitam Pradhan v. State of A.P., 2014 SCC OnLine SC 1795], this Court while granting anticipatory bail, permitted the petitioner to travel abroad noting that his job required him to travel abroad at frequent intervals and may lose his employment if he were not permitted to travel abroad."

(Emphasis supplied)

11. Similarly, Hon'ble High Court of Madras, in ***E.V. Perumal Samy Redyy v. State, 2013 SCC OnLine Mad 4092,*** observed as under;

> *"9. It is basic that merely because a person is involved in a criminal case, he is not denude of his Fundamental Rights. It is the fundamental of a person to move anywhere he likes including foreign countries. One's such personal freedom and liberty cannot be abridged.[See : Article 21 Constitution of India]. In the celebrated in MENAKA GANDHI v. UNION OF INDIA [(1978) 1 SCC 248 : AIR 1978 SC 597], the Hon'ble Supreme Court upheld the constitutional right of persons to go abroad. The phrase no one shall be deprived of his "life and liberty" except procedure established by law employed in Article 21, had deep and pervasive effect on fundamental right and human right. MENAKA GANTHI (supra) ushered a new era in the annals of Indian Human Rights Law. It had gone ahead of American concept of 'Due Process of Law'.*
>
> *10. But, the fundamental right to move anywhere including foreign countries could be regulated. Where persons involved in criminal cases are wanted for investigation, for court cases, persons, who are anti-social elements their movements can be regulated. Need may arose to apprehend persons, who have ability to fly, flee away the country. So, L.O.C. orders are issued. It is an harmonius way out between a person's fundamental right and interest of the society/state. But, in any case, it must be fair and reasonable. It should not be indiscriminate without any reason or basis."*
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> *(Emphasis supplied)*

12. Ergo, in light of the aforesaid, it is observed that it is a settled law that even a person facing a criminal trial has a fundamental right to travel abroad, which may be subject to reasonable restrictions. Accordingly, reverting to the facts of the present case and considering that the applicant voluntarily surrendered before ED, he has further admittedly joined the investigation on 01.07.2024, 03.07.2024, 10.07.2024, 18.07.2024 and 22.07.2024, applicant's statement under Sec. 50 PMLA has

already been recorded, the applicant has prayed for a limited suspension of the LOC assuring his presence in India on 25.12.2024, the applicant's wife is stated to be in her advance stages of pregnancy in UAE and is in want of applicant's presence during such times as well as the applicant's Visa/job aspect are stated to be in jeopardy, the applicant has not been named as an accused in the instant complaint, accused No. 1 and accused No. 3 are represented, through their respective Directors/beneficial owners/etc., M/s JFP Gulf General Trading LLC, Dubai has not been named as an accused in the present complaint and further as aforenoted, ED has failed to specify any time-line for conclusion of its investigation *qua* the applicant, this Court deems it pertinent to ***allow*** the present application and **suspend the operation of LOC against the applicant, issued at the behest of ED or any other travel restrictions upon him, pertaining to the present ECIR *w.e.f.* 30.09.2024 till 25.12.2024, subject to the applicant conforming with the terms/undertakings, as specified in his affidavits, filed before this Court on 18.09.2024 and 21.09.2024.**

13. Further, as proposed/offered by the applicant, the **applicant is to furnish FD in the sum of Rs.10,00,000/- (Rupees Ten Lakhs only), in the name of this Court (ASJ-03, Central, Tis Hazari Courts, Delhi) along with one surety of the like amount**. Further, it is directed that **in case of change of residential address, particulars of contact details or office address of the applicant in UAE, he shall inform the same to the concerned officials of ED within the period of ten days of such change**. The **applicant is further directed to ensure that he cooperates with the concerned officials of ED during the investigation process as well as informs the concerned officials of ED, upon his return to India.**

14. Needless to reiterate that though the applicant has not pressed on prayer clause (c) of the present application, however, this Court is cognizant of the fact that the observations of Hon'ble High Court of Bombay in ***Noor Paul v. Union of India, 2022 SCC OnLine P&H 3408*** in this regard, have since, been stayed by the Hon'ble Supreme Court in ***Bank of India v. Noor Paul, 2022 SCC OnLine SC 2108***, in particular, under the following observations;

> *"7. In the special facts and circumstances of this case, we are not inclined to stay the judgment and order dated 05.04.2022 passed by the High Court except for the direction in the operative part of the order in Paragraph 78(c), which is set out hereinbelow for convenience:-*
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> > *"(78) For the aforesaid reasons, we hold that:*
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> > *(c) The respondents No. 1, 3 and 4 shall serve copy of the LOC and also reasons for issuing it to the person against whom it is issued as soon as possible after it is issued, and also provide a post decisional opportunity to him and these requirements shall be read into the Oms issued by respondents concerning the issuance of the LOCs."*
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> *8. There shall also be stay of the direction for payment of costs until further orders."*
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> *(Emphasis supplied)*

15. The application is, accordingly, ***disposed off*** in above terms.

16. A copy of this order be given ***dasti*** to Ld. Counsel for the applicant as well as Ld. SPP for ED.

ABHISHEK GOYAL Digitally signed by ABHISHEK GOYAL Date: 2024.09.23 18:09:15 +0530

Abhishek Goyal
ASJ-03, Central District,
Tis Hazari Courts, Delhi
23.09.2024