

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION**

Appellate Side

Present:

The Hon'ble Justice Shampa Sarkar

And

The Hon'ble Justice Ajay Kumar Gupta

MAT 474 of 2026

With

CAN 1 of 2026

Debanjan Hazra

Vs.

The Serious Fraud Investigation Office & Ors.

For the Appellant	:	Mr. Sabyasachi Chowdhury, Ld. Sr. Adv. Mr. Rajarshi Datta, Adv. Mr. Pranav Sharma, Adv. Mr. Deepesh Sharma, Adv.
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For the Union of India	:	Mr. Kumar Jyoti Tewari, Ld. Sr. Adv. Mr. Arijit Majumdar, Adv.
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Heard on	:	01.04.2026
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Judgment on	:	30.04.2026
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Judgment uploaded on	:	30.04.2026
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Ajay Kumar Gupta, J:

1. This intra-court appeal has been filed challenging the Judgment and order dated 13.02.2026 passed by the Learned Single Judge in WPA 2772 of 2026.
2. The learned Single Judge, rejected the prayer for setting aside and/or quashing the Look Out Circular (in short 'LOC') issued in respect of the appellant, upon request by the Serious Fraud Investigation Office (in short SFIO).
3. The case run by the appellant in the writ petition was that, he is a citizen of India, but a non-resident and a chemist by profession. He had been appointed as an Assistant Manager at Elder Pharmaceuticals Limited (hereinafter referred to as 'Elder'). He continued in such post till 2009. Thereafter, he was employed with Cell Life Therapeutics Pvt. Ltd., Cerberus Venture Pvt. Ltd., AR Printing and Packaging Pvt. Ltd., AR Printpack Ltd. and Stone Sapphire Pvt. Ltd. In the year 2013, he left India and moved to China. He joined Shanghai Shitai Co. Ltd. He eventually joined AD Global Limited in 2014 in Shanghai, and ever since then, he had been employed with the said company. He married a Chinese national and has two children. His elderly parents reside in Kolkata, and he frequently visits them. On 15th December, 2025, he along with his wife and children, came to Kolkata to meet his aged parents. On 21st December, 2025, when he was proceeding to

Bangladesh to attend a conference from NSCB International Airport, Kolkata, the immigration authorities cancelled his boarding pass and ticket, and did not allow him to go to Bangladesh. He was asked to meet the higher officials of the Bureau of Immigration at the airport and upon meeting the officials, he came to know that a LOC had been issued against him on 7th February, 2025, in connection with the investigation into the affairs of Elder. The appellant was allowed to leave the Airport only after signing an “undertaking” and a “request for appearance” at the office of the respondent no. 1. The appellant appeared in the office of the respondent No. 1 on 22nd December, 2025. He was informed that summons had been issued on January 14, 2025 in exercise of power under the Companies Act, 2013. His statement was recorded in the presence of the investigation officer. The entire exercise of recording the statement commenced at 10:03 am and continued till 10:30 pm. He produced some documents as asked, but those were not retained by the authorities. He was made to sign, execute and submit three documents. He answered all the questions and undertook to submit necessary documents, if called for. He made a representation for withdrawal of the circular, but the same went unheeded. Being an expert in the field of Research and Development in oncology, he got a better opportunity in China and had been working in China since 2013. He was merely an employee of Elder and had left such

employment in 2009. The involvement of Elder in the alleged fraudulent business and mismanagement, was at a later date when the appellant was no longer with Elder. He did not hold any key managerial position at Elder. He had been unnecessarily detained in India despite his innocence and separated from his family. His life and livelihood were jeopardized and his liberty was wrongly curtailed. Thus, the writ petition was filed with the following prayers:-

“a) A writ of or in the nature of Mandamus do issue commanding the respondents, and particularly the respondent no.1, its men, agents or servants to recall, rescind and cancel the Look Out Circulars issued by the respondent no. 1 and the request made in that regard by the respondent no. 1 against the petitioner.

(b) A writ of or in the nature of Mandamus do issue commanding the respondents and particularly the respondent no.1, its men, agents or servants to provide and/or furnish the petitioner with a copy of the request of the respondent no.1 based on which the Look Out Circular has been issued against the petitioner.

(c) A writ of or in the nature of Certiorari do issue commanding the respondent authorities to produce the request for productions of the lookout circular issued by the respondent no. 1 against the petitioner before this Hon'ble Court so that conscionable justice may be done by quashing and/or setting aside the same,

(d) Rule NISI in terms of the prayers. above;

(e) An order of injunction be passed restraining the respondent authorities, their men, agents or servants from giving effect or further effect to the respondent no. 1's request for issuing Look Out Circulars issued against the petitioner;

(f) An order be passed directing respondents to permit international travel for the petitioner from India to the Peoples

Republic of China on such terms as this Hon'ble Court may deem fit and proper.

(g) Ad-interim orders in terms of prayers above;

(h) Costs;

(i) Such further or other orders or orders be passed and/or direction or directions be given as Your Lordship may deem fit and proper.”

4. Before the Single Bench, the Serious Fraud Investigation Office, being the respondent No. 1, filed a report in the form of an affidavit disclosing that the appellant did not co-operate with the investigation although there were materials to substantiate the connection between the appellant and the fraudulent activity of Elder. Facts leading to justifying the origination of the LoC were narrated in the report.
5. It was the contention of the appellant that the findings of the learned Single Bench were based on surmise and conjecture and the contents of the report were blindly followed, without any application of mind. The learned Judge did not consider that the investigation of the SFIO was over and the report had been sent to the Central Government way back on 6th May, 2025. No proceeding was instituted against the appellant. The Central Government had not decided to initiate prosecution against the appellant. The writ petition was dismissed on speculation that, as appellant had

married a Chinese national, his return to India could not be guaranteed.

SUBMISSION ON THE BEHALF OF APPELLANT:

6. Mr. Chowdhury, learned senior counsel submitted as under:

i) The parameters necessary for generation of an LOC were not fulfilled. No reasons as to why the departure of the appellant from India would be detrimental to the either the sovereignty or security or integrity of India or to the economic interests of India, had been assigned. There were no allegations against the appellant apart from being an ex-employee of Elder and a close associate of the promoter. Such allegations were incorrect, vague and fanciful. The role played by the appellant in the alleged fraudulent business of Elder had not been specified in the report submitted before the Single Judge. The relationship of the appellant with the subsidiaries of Elder could not be substantiated with facts and figures. Unless a criminal proceeding was pending and the appellant disregarded the summons of the Special court upon prosecution being instituted, the question of issuing the LOC did not arise. The LOC was contrary to the relevant guidelines.

ii) Even after having left India for China to pursue better career prospects in the year 2013, the appellant visited India frequently. Therefore, the apprehension that the appellant would not be

available or would not appear before the Special Court and/or would avoid future criminal proceedings, were baseless and unsustainable in law.

iii) Elder had gone into liquidation and the Bombay High Court had detected fraudulent activities of Elder sometime in 2014. The appellant was merely an employee of Elder and left the company in 2009.

iv) Although, an investigation into the affairs of Elder was initiated under Section 212 of the Companies Act, 2013, no specific role has been attributed to the appellant. The appellant had co-operated with the investigation. Therefore, the allegation of non-co-operation was misconceived. The investigation had already been completed and report was submitted to the Central Government.

v) No direction for prosecution had been issued against the appellant under Section 212(14) of the Companies Act. In the absence of any pending proceedings, the apprehension of evasion of trial was speculative and perverse. The further ground that “economic interest of India” was affected by the acts and deeds of the appellant, lacked fundamental basis. The indefinite continuation of the LOC violated the appellant’s fundamental right guaranteed under Article 21 of the Constitution of India.

vi) Not a single criterion laid down in the Office Memorandum dated 22nd February, 2021, had been satisfied. Stray allegations of fraud and commission of economic offence detrimental which was to public interest, without attributing any specific role to the appellant, could not be the basis for taking such an extreme measure of restricting the personal liberty of the appellant and preventing his return to China. In the absence of any valid or legally justifiable grounds, the LOC could not continue.

vii) “Economic interest of India” was explained by the Calcutta High Court in ***Vishambhar Saran v. Bureau of Immigration*** decided in ***WPA 6670 of 2022***. Such ground could not be pressed into service when there was no clear and direct nexus between the actions of appellant vis-à-vis Elder. There was no real threat to the country’s economic interest. No materials had been put forward which demonstrated the appellant’s role in the alleged financial irregularities of Elder. Mere reference to “economic interest of India” was insufficient to justify the issuance of the LOC. Restriction on the appellant’s right to travel did not satisfy the test of reasonableness and proportionality.

viii) The decisions in the case of ***Vishambhar Saran v. Bureau of Immigration*** in WPA 6670 of 2022, as well as ***Usha Sindhu Vs. Union of India & Ors.***¹ had clarified the position with regard

¹ **2024 SCC OnLine Del 4799**

to issuance of LOC. The learned judges in both cases had held that LOC could not be issued casually.

ix) The only ground repeatedly urged by the respondents was that, the appellant did not respond to the summons of the SFIO, which was sent to his last known address and also via email. Although the respondents submitted that the appellant did not supply the documents which he undertook to provide to the SFIO, till date there was not a single demand for any specific document. The investigation was over, but under specious pleas, the appellant was being detained in India.

x) The appellant was willing to give an undertaking that he would appear before the jurisdictional court, as and when called for. Moreover, other legal measures such as impounding the passport or imposing conditions on travel, could be employed to ensure the appellant's presence. The decision of the Madras High Court in ***Arockia Jeyabalan v. The Regional Passport Officer and Others***² was relied upon. Further reliance was placed on the decision of the Single bench in the case of ***Anant Raj Kanoria Vs. Union of India & Ors.*** decided in ***W.P.(C) 3313/2023***. Thus, the LOC deserved to be quashed.

xi) The LOC should be quashed.

² **2014 SCC OnLine Mad 7733**

SUBMISSIONS ON BEHALF OF THE RESPONDENTS:

- 7.** Per contra, Mr. Tewari, learned senior counsel appearing on behalf of the Respondents submitted as hereunder: -

i) In exercise of powers under Section 212(1)(a) read with Section 212(1)(c) of the Companies Act, the Ministry of Corporate Affairs by an order dated 12th December, 2019, directed investigation into the affairs of Elder, a public listed company which, despite its status, was closely controlled by its promoters and had indulged in serious financial irregularities.

ii) Winding up proceedings had been instituted before the Bombay High Court on account of non-payment of public deposits and mounting debts, culminating in the appointment of a Court Commissioner, i.e., M/s. T.R. Chadha & Co., to scrutinise the accounts of the company. The report so submitted, revealed large-scale siphoning off of funds, approximating to Rs. 1300 crores. The company was directed to be wound up, and an Official Liquidator was appointed. The Registrar of Companies, Mumbai, upon inspection under Section 206(5), of the Companies Act, 2013 detected grave violations of statutory provisions.

iii) The Registrar of Companies, Mumbai, submitted its report, highlighting various violations and non-compliances of the provisions of the Companies Act, 1956 and 2013. It was also found that Elder failed to pay about 23,946 public deposit holders

and came to the conclusion that the Company had diverted its funds to its subsidiaries and group companies. Accordingly, it was recommended that an investigation be conducted by the SFIO.

iv) The appellant was not a stranger to such transactions of Elder. Rather, he had been closely associated with the promoter group since 2006–2007 and functioned as an employee in one of the group companies, namely Elder Health Care Limited.

v) The appellant was the sole shareholder of an overseas company, namely, AD Global, to which Elder sold its two overseas step-down subsidiaries through a fraudulent scheme at grossly undervalued consideration. Those transactions formed part of a larger design to siphon off funds to the tune of approximately ₹215 crores, which had originally been advanced by Elder to its foreign subsidiary viz, Elder International FZCO, Dubai, without any terms or conditions and with no intention of recovery. The said subsidiary, which was under the complete control of the promoters, further routed funds to its UK and Bulgaria-based subsidiaries, and they subsequently wrote back the loans on the premise that those were not to be recovered. These downstream entities also wrote off or impaired their investments, and the investigation indicated that such subsidiaries were ultimately sold to the appellant, a close associate of the promoters, at a negligible value.

vi) The appellant played a key role in the sale of Brunel Healthcare and Biocare Limited under the directions of Anuj Saxena, and continued to advise and communicate with the promoters of Elder until 2016, even though he claimed to have left the employment with the company after 2009.

vii) Considering the materials available on record, the non-cooperation of the appellant and keeping in view the 'economic interest of India', the LOC was opened against the appellant in the month of February, 2025, in terms of the Office Memorandum dated 22nd February, 2021. The investigation into the affairs of the Elder was completed, and an investigation report dated 6th May, 2025, had already been submitted to the Ministry of Corporate Affairs in terms of Section 212(12) of the Companies Act, 2013 and only directions from the Ministry in terms of Section 212(14) were awaited.

viii) The appellant had persistently evaded the investigative process. Summons issued to his last known address remained unserved, and despite receipt of the summons via email, the appellant failed to either respond to or appear before the authorities. Even when the appellant admittedly accessed his email while in Bangkok, he did not take any steps to contact the SFIO. Further, during his visit to India in December 2025, he failed to appear before the investigating agency and was stopped

only when he was attempting to leave the country to Bangladesh by road.

ix) Although the appellant undertook to furnish crucial documents, he failed to honour his commitment, despite repeated communications. Such conduct, clearly established deliberate non-cooperation and justified the apprehension that the petitioner would evade the process of law if permitted to leave India.

- 8.** In the case of ***Ghanshyam Pandey v. Union of India***³ the request to quash LOC was rejected by the Court on the basis that, even if no FIR was registered LOC could be continued.

DISCUSSION AND FINDINGS: -

- 9.** Having heard the submissions of the rival parties and upon perusal of the records, the following issues emerge before this court: -
- a.** Whether the conditions necessary for issuance of the LOC dated 7th February 2025, existed in case of the appellant?
 - b.** Whether the subsistence of the said LOC is legally sustainable, in the facts and circumstances of the present case, thereby, justifying infringement of the appellant's right under Article 21 of the Constitution of India?
- 10.** The memorandum dated February 22, 2021 issued by the Ministry of Home Affairs, Foreigners Division (Immigration Section), Government of India, lays down the guidelines to be followed while

³ **2023 SCC OnLine Del 936**

making a request for issuance of an LOC. Unless those parameters are satisfied, LOC cannot be issued and is liable to be struck down on the ground of arbitrariness and disproportionality. Paragraph 6 and especially sub-paragraphs H to L provide the general circumstances under which opening of LOC can be requested by the originating agency. For convenience some of the paragraphs are quoted below: -

“6. The existing guidelines with regard to issuance of Look Out Circulars (LOC) in respect of Indian citizens and foreigners have been reviewed by this Ministry. After due deliberations in consultation with various stakeholders and in supersession of all the existing guidelines issued vide this Ministry's letters/ O.M. referred to in para 1 above, it has been decided with the approval of the competent authority that the following consolidated guidelines shall be followed henceforth by all concerned for the purpose of issuance of Look Out Circulars (LOC) in respect of Indian citizens and foreigners: -

(A) The request for opening an LOC would be made by the Originating Agency (OA) to the Deputy Director, Bureau of Immigration (Bol), East Block- VIII, R.K. Puram. New Delhi - 110066 (Telefax: 011-26192883, email: boihq@nic.in) in the enclosed Proforma.

(B) The request for opening of LOC must invariably be issued with the approval of an Originating Agency that shall be an officer not below the rank of-

- (i) Deputy Secretary to the Government of India; or
- (ii) Joint Secretary in the State Government; or
- (iii) District Magistrate of the District concerned; or
- (iv) Superintendent of Police (SP) of the District concerned;
- or
- (v) SP in CBI or an officer of equivalent level working in CBI; or
- (vi) Zonal Director in Narcotics Control Bureau (NCB) or an officer of equivalent level [including Assistant Director (Ops.) in Headquarters of NCB]; or
- (vii) Deputy Commissioner or an officer of equivalent level in the Directorate of Revenue Intelligence or Central Board of Direct Taxes or Central Board of Indirect Taxes and Customs; or
- (viii) Assistant Director of Intelligence Bureau/ Bureau of Immigration (Bol); or

- (ix) Deputy Secretary of Research and Analysis Wing (R&AW); or
- (x) An officer not below the level of Superintendent of Police in National Investigation Agency; or
- (xi) Assistant Director of Enforcement Directorate; or
- (xii) Protector of Emigrants in the office of the Protectorate of Emigrants or an officer not below the rank of Deputy Secretary to the Government of India; or
- (xiii) Designated officer of Interpol; or
- (xiv) An officer of Serious Fraud Investigation Office (SFIO), Ministry of Corporate Affairs not below the rank of Additional Director (in the rank of Director in the Government of India); or
- (xv) Chairman/ Managing Directors/ Chief Executive of all Public Sector Banks.

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(G) The legal liability of the action taken by the immigration authorities in pursuance of the LOC rests with the originating agency.

(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 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.

(J) The LOC opened shall remain in force until and unless a deletion request is received by BoI from the Originator itself. No LOC shall be deleted automatically. Originating Agency must keep reviewing the LOCs opened at its behest on quarterly and annual basis and submit the proposals to delete the LOC, if any, immediately after such a review. The BOI should contact the LOC Originators through normal channels as well as through the online portal. In all cases where the person against whom LOC has been opened is no longer wanted by the Originating Agency or by Competent Court, the LOC deletion request must be conveyed to BoI immediately so that liberty of the individual is not jeopardized.

(K) On many occasions, persons against whom LOCs are issued, obtain Orders regarding LOC deletion/suspension from Courts and approach ICPs for LOC deletion and seek their departure. Since ICPs have no means of verifying genuineness of the Court Order. In all such cases, orders for deletion/quashing/suspension etc. of LOC must be communicated to the BoI Through the same originator who requested for opening of LOC. Hon'ble Courts may be requested

by the Law Enforcement Agency concerned to endorse/convey orders regarding LOC suspension /deletion/quashing etc. to the same law enforcement agency through which LOC was opened.”

11. Thus, analysing the policy which existed from 2010 and which were amended from time to time and ultimately found its expression in the memorandum dated February 22, 2021, this court is of the view that only in exceptional cases LOCs can be issued even if the parameters quoted hereinabove were not covered.
12. Sub-paragraph (L) of the 2021 policy lays down the exceptions. The same is quoted below: -

“(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 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 of time.”

13. In this case there was no input that the departure of the appellant would be detrimental to the sovereignty, security and integrity of India, or detrimental to the bilateral relationship of India. A general allegation that the appellant was close to the provisions of Elder, who had siphoned off funds of the depositors was made. The fact that the appellant was the sole shareholder of an overseas Company, to which Elder had sold its two overseas step-down companies at a grossly undervalued consideration could not be a parameter for

issuance of LOC under the guidelines. According to the respondents, the above actions of the promoters of Elder and the relationship between the appellant and his ex-employer necessitated an exceptional measure under clause L above.

- 14.** LOC may be issued in cases involving cognizable offences under the IPC or other penal laws, where the accused is deliberately evading arrest or failing to appear before the trial court despite the issuance of Non-Bailable Warrants (NBWs) and other coercive measures. LOC may be issued if there is a likelihood that the accused may leave the country in order to evade arrest or trial. It was further clarified that an LOC was essentially a coercive measure, intended to secure the presence of a person before the investigating agency or the court of law.
- 15.** In the present case, the main allegation against the appellant is that he did not cooperate with the investigation and was involved in the alleged offence of fraud under Section 447 of the Companies Act, 2013. Pursuant thereto, an LOC was issued against the appellant at the request of the SFIO through the Bureau of Immigration with effect from February, 2025, which continues to remain operative even today.
- 16.** It would be appropriate and convenient to refer to the relevant sections/provisions of law governing investigation by the SFIO, into

the affairs of a company as Mr. Tiwari has placed heavy reliance on the same.

212. Investigation into affairs of Company by Serious Fraud Investigation Office. —

(1) Without prejudice to the provisions of section 210, where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company by the Serious Fraud Investigation Office—

(a) on receipt of a report of the Registrar or inspector under section 208;

(b) on intimation of a special resolution passed by a company that its affairs are required to be investigated;

(c) in the public interest; or

(d) on request from any Department of the Central Government or a State Government, the Central Government may, by order, assign the investigation into the affairs of the said company to the Serious Fraud Investigation Office and its Director, may designate such number of inspectors, as he may consider necessary for the purpose of such investigation.

(2) Where any case has been assigned by the Central Government to the Serious Fraud Investigation Office for investigation under this Act, no other investigating agency of Central Government or any State Government shall proceed with investigation in such case in respect of any offence under this Act and in case any such investigation has already been initiated, it shall not be proceeded further with and the concerned agency shall transfer the relevant documents and records in respect of such offences under this Act to Serious Fraud Investigation Office.

(3) Where the investigation into the affairs of a company has been assigned by the Central Government to Serious Fraud Investigation Office, it shall conduct the investigation in the manner and 131 follow the procedure provided in this Chapter; and submit its report to the Central Government within such period as may be specified in the order.

(4) 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.

(5) *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.*

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), 1 [offence covered under section 447] of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence referred to this sub section except upon a complaint in writing made by—

(i) the Director, Serious Fraud Investigation Office; or

(ii) any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government.

(7) The limitation on granting of bail specified in sub-section (6) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

(8) If the Director, Additional Director or Assistant Director of Serious Fraud Investigation Office authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under sections referred to in sub-section (6), he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(9) *The Director, Additional Director or Assistant Director of Serious Fraud Investigation Office shall, immediately after arrest of such person under sub-section (8), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Serious Fraud Investigation Office in a sealed envelope, in such manner as may be prescribed and the Serious Fraud Investigation Office shall keep such order and material for such period as may be prescribed.*

(10) *Every person arrested under sub-section (8) shall within twenty-four hours, be taken to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction: Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Magistrate's court.*

(11) *The Central Government if so directs, the Serious Fraud Investigation Office shall submit an interim report to the Central Government.*

(12) On completion of the investigation, the Serious Fraud Investigation Office shall submit the investigation report to the Central Government. 1. Subs. by Act 21 of 2015, s. 17, for certain words, brackets and figures (w.e.f. 29-5-2015). 132

(13) *Notwithstanding anything contained in this Act or in any other law for the time being in force, a copy of the investigation report may be obtained by any person concerned by making an application in this regard to the court.*

(14) On receipt of the investigation report, the Central Government may, after examination of the report (and after taking such legal advice, as it may think fit), direct the Serious Fraud Investigation Office to initiate prosecution against the company and its officers or employees, who are or have been in employment of the company or any other person directly or indirectly connected with the affairs of the company.

(15) Notwithstanding anything contained in this Act or in any other law for the time being in force, the investigation report filed with the Special Court for framing of charges shall be deemed to be a report filed by a police officer under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974).

(16) *Notwithstanding anything contained in this Act, any investigation or other action taken or initiated by Serious Fraud Investigation Office under the provisions of the Companies Act, 1956 (1 of 1956) shall*

continue to be proceeded with under that Act as if this Act had not been passed.

(17) (a) In case Serious Fraud Investigation Office has been investigating any offence under this Act, any other investigating agency, State Government, police authority, income-tax authorities having any information or documents in respect of such offence shall provide all such information or documents available with it to the Serious Fraud Investigation Office;

(b) The Serious Fraud Investigation Office shall share any information or documents available with it, with any investigating agency, State Government, police authority or income-tax authorities, which may be relevant or useful for such investigating agency, State Government, police authority or income-tax authorities in respect of any offence or matter being investigated or examined by it under any other law.

17. The learned Judge came to the following conclusions, which are quoted below: -

“18. As per report submitted by M/s. T.R. Chaddha and Company in terms of the order passed by the Bombay High Court it reveals that Rs. 1300 crores have been siphoned out of the Company/ Elder Pharmaceuticals Ltd. The inspection conducted by the Registrar of Companies, Mumbai it was also found that EPL failed to pay about 23,946 public deposit holders and diverted the funds illegally. As per investigation, it reveals that EPL fraudulently siphoned off the funds resulting in no repayment of deposits collected from the Public to the tune of Rs. 176.59 crores pertaining to 23,946 holders.

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22. At the time of investigation, summons was sent to the petitioner as per last known address but the same was returned “unserved”. An e-mail was also sent to the petitioner but the petitioner has taken the plea that in China there is restriction on Yahoo’s servers but has admitted that he came to know about the email when he accessed his Yahoo email when he was in Bangkok in February, 2025 but inspite of the same, the petitioner failed to contact with the Investigating Agency or sent any reply to the said email. As per the case of the petitioner, the petitioner came to Kolkata on 15th December, 2025 but failed to meet the Investigating Agency. The authorities have apprehended the petitioner when the petitioner was intending to proceed to Bangladesh on 21st December, 2025.

23. When the petitioner was apprehended at the airport as per the LOC issued against the petitioner, the petitioner has assured the authorities that the petitioner will submit documents but the petitioner has not submitted the same. The authorities have also sent an email to the petitioner for submission of documents but inspite of receipt of email, the petitioner has not submitted documents to the authorities.

24. It is the admitted case of the petitioner that the petitioner has left India and settled in China and also married to the Chinese National and out of the said wedlock, two children were born. It is also the admitted case of the petitioner that the petitioner had to go to Bangladesh and from Bangladesh, the petitioner will go to China.

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* * *

29. If the Central Government directs the SFIO to initiate prosecution on the basis of the investigation report, and if the report is filed before the Special Court, the Special Court will take cognizance of the case and will issue summons upon the petitioner for appearance before the Learned Special Court, there is every chance that the petitioner will not appear before the Special Court and will avoid the proceeding. It will be difficult for the Indian Government to bring the petitioner back to India to face trial before the Special Court.”

18. At the outset, it is evident that the learned Single Judge refused to quash the LOC primarily on the apprehension that, in the event prosecution is initiated in future under Section 212(14) of the Companies Act, the appellant, being an Indian citizen residing at China and having been favoured with a resident permit and work visa and being married to a chinese may not return to face trial. This reasoning, however, is founded on a contingent and speculative premise, when admittedly no proceeding has been initiated before the special court.

19. This alone cannot be held to be a ground to issue LOC to protect the economic interest of the country. Again, the appellant being

responsible for setting up a company in Bulgaria as a single shareholder, cannot be a reasonable ground to hold that the activities of the appellant was detrimental to the economic interest of India.

20. In *Vishambhar Saran (supra)* the issue of economic interest has been discussed as follows: -

“50. BOB requested the Bureau of Immigration to issue LOC. It is not on record whether such LOC has been issued or not. The Bureau of Immigration, Ministry of Home Affairs (Foreigners Division) and all the other members of the consortium of banks, apart from PNB were impleaded as respondents in this proceeding. None of these respondents have come up before the Court in support of the request of BOB. They have not contested the proceedings. Clause 3.1 of the SOP (Annexure P2, Page no. 26 of Writ petition) states that the responsibility for requesting issuance of LOC in respect of a defaulter would be on the leader of the consortium of banks or on the holder of the biggest share or exposure amongst them. In this case, the LOC originated by the lead bank, having the highest exposure has been quashed by a Co-ordinate Bench for the reasons which have already been quoted hereinabove. Default of the borrower cannot be read into the expression “detrimental to the economic interest of the country”. In order to cause injury to the economic interest of the democracy of India, the commission of alleged offence of default must be of high degree so as to shake the growth, financial stability, business transactions, bilateral trade relations, investments, stock markets etc. There is no evidence that on account of the default committed by the Visa Power Limited, the economy of India had been shaken. The bank has not provided any contemporaneous material against the petitioner which would satisfy the exceptions clause. The bank is also silent as to whether any input had been received from any agency that the petitioner was likely to flee the country and his departure would disrupt the economy.

51. Admittedly, in the facts of this case, no investigation is pending before any authority. It is also not a case where the bank had come to a conclusion on the basis of inputs

received from an intelligence agency or any other agency that the petitioner was trying to leave India in order to evade the consequences of the legal actions that may be taken against him, both under the civil and the criminal laws.”

21. The legal position governing LOCs is no longer res integra. In ***Sumer Singh Salkan (Supra)***, it has been held that recourse to an LOC is permissible only where the person is deliberately evading arrest, or he is not appearing before the authorities despite coercive processes, or he is likely to leave the country to evade trial. The issuance of an LOC must therefore be predicated upon cogent and tangible material, and not on mere conjecture.
22. It is an undisputed fact that the investigating agency has recorded the appellants’ statements on 22nd December, 2025. The investigation of the matter was concluded by SFIO, and the same was communicated to the Central Government long back. The final opinion as to whether a proceeding against the appellant would be initiated or not has not yet been taken despite lapse of almost a year. No such proceeding or case is pending against the petitioner in any court of law.
23. Tested on the aforesaid parameters and facts in hand, the continuation of the LOC in the present case is unsustainable. Admittedly, the investigation has already culminated into a report, which has been submitted under Section 212(12) of the Companies Act. No prosecution has yet been launched, nor is there any proceeding presently pending before a competent court. In such

circumstances, the apprehension of non-appearance of the appellant in any proceeding before a court of law remains premature and hypothetical, lacking the immediacy required to justify curtailing an individual's personal liberty. Thus, the very foundation of the decision of the learned Single Judge is erroneous speculative and misplaced.

24. The constitutional dimension of the issue further fortifies the appellant's case. In ***Maneka Gandhi v. Union of India***⁴, the Hon'ble Supreme Court unequivocally held that the right to travel abroad is an integral facet of personal liberty under Article 21, and any restriction thereon must satisfy the test of being just, fair and reasonable. The impugned LOC, which effectively prevents the appellant from resuming his professional commitments abroad, and separation from his family, constitutes a serious invasion of his right.

25. It is equally well-settled that such restrictions must meet the test of proportionality, namely, that the measure must have a legitimate aim, be rationally connected to that aim, be necessary in the sense that no lesser restrictive alternative is available. The measure must strike a proper balance between competing interests. In the present case, while the objective of securing investigation into alleged economic offences may be legitimate, the continuation of the LOC,

⁴ (1978) 1 SCC 248

after completion of the investigation and without any prosecution being initiated, fails the tests of necessity and balance.

26. The decision in ***Ghanshyam Pandey (Supra)***, relied upon by the respondents, doctrinally supports the present appellant's case, as it highlights the requirement of a live proceeding and non-speculative justification. In the said case, the LOC was sustained because it was anchored to an ongoing investigative or legal process, together with conduct suggesting non-cooperation. However, in the present case, the LOC has been continued even after the completion of the investigation, and without any pending proceeding. It is solely based on a speculative apprehension that the appellant may try to evade appearance before the special court in the event the Central Government decides to institute a proceeding before the competent court.
27. The contention of the respondents that the LOC is justified keeping in view the "economic interest of India" also does not withstand judicial scrutiny. While economic offences are undoubtedly grave, the mere reference to such interest, cannot be a substitute for specific and individual satisfaction regarding the necessity of restraining a particular individual from travelling abroad. The materials on record do not disclose any clear or direct role attributable to the appellant that would warrant such a drastic restriction, particularly when the LOC against the promoter of Elder

as we have been informed by Mr. Tiwari, in the course of this proceeding does not continue.

28. The foundation of the arguments of the respondents that stringent measures should be adopted as the appellant resides in China and in the absence of an extradition treaty, it would be impossible to ensure the appearance of the appellant to face trial, is unacceptable and not supported by the guidelines. Merely because he resides in China on a work visa and has married a Chinese National, there cannot be a presumption of either a flight risk or evasion of court proceedings. What is required is demonstrable conduct indicating evasion. On the contrary, the records reveal that the appellant has periodically visited India and, appeared before the authority to give his statements. The investigation by the SFIO was closed in May 2025.
29. In ***Arockia Jeyabalan (Supra)***, the Madras High Court recognised that mechanisms such as impounding of passport, imposition of travel conditions, or securing undertakings may adequately safeguard the interests of the authorities without resorting to an absolute restraint on travel.
30. We find the decision in ***Dr. Prannoy Roy v. Union of India*** in W.P.(C) 5316/2021 to be relevant. The Delhi High Court emphasised that mere existence of allegations or pendency of investigation does not, by itself, justify the issuance or continuation of an LOC. The

decision further underlines the requirement to adopt the least restrictive measure to make sure that an individual does not evade appearance in court. The Court recognised that conditions such as undertakings, intimation of travel, or other safeguards are sufficient to protect the interests of the investigation, while also protecting the rights of the individual which have been guaranteed under Article 21 of the Constitution.

- 31.** In view of the above, the impugned action suffers from the vice of arbitrariness and disproportionality and is inconsistent with the settled legal principles governing origination of LOCs. The continuation of the LOC, in the absence of any pending proceeding and based on speculative apprehension, results in an unwarranted infringement of the appellant's fundamental right under Article 21.
- 32.** Thus, the impugned LOC against the appellant is hereby quashed, subject to the appellant furnishing a notarized affidavit before the Respondent No.1 and 3, inter alia undertaking to make himself available before the jurisdictional court as and when required in the event any prosecution is instituted, and to render full co-operation. The affidavit shall be filed within a week from date. The affidavit will disclose his local Indian address, residential address in China, phone numbers, work place addresses, the email id which is operational in China and at all times. He will undertake not to

surrender his Indian Passport for a period of two years or until further orders of any competent court of law, whichever is earlier.

- 33.** If such affidavit is not filed within the time stipulated, the LOC will continue.
- 34.** Accordingly, **MAT 474 of 2026** is **allowed**. **CAN 1 of 2026** is also, thus, disposed of. The LOC is quashed.
- 35.** Consequently, the Judgment and order dated 13.02.2026 passed by the Learned Single Judge in WPA 2772 of 2026 is hereby set aside.
- 36.** Urgent photostat certified copy of this Judgment, if applied for, is to be given to the parties on priority basis on compliance of all legal formalities.

I Agree.

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)

Later:

Learned counsel for the respondent prays for a stay.

Such prayer is considered and rejected.

(Shampa Sarkar, J.)

(Ajay Kumar Gupta, J.)