

WADIA GHANDY & Co.

ADVOCATES & SOLICITORS

Estd. 1883

* NOSHUR J. SETHNA
HAMID A. MOOCHHALA
DJENA B. SUNAVALA
MARYLOU A. BILAWALA
ASHISH A. AHUJA
BINDI G. DAVE
ANKIT A. MAJMUDAR
FARID F. KARACHIWALA
DHAWAL J. MEHTA
SAUMIL R. VASAVADA
FARIYAL Y. TAHSEEN
SHABNUM A. KAJJI
XERXES N. ANTIA

* NOTARY

N. M. WADIA BUILDINGS,
123 MAHATMA GANDHI ROAD,
MUMBAI 400 001, INDIA.

Telephone : (91-22) 2267 06 69

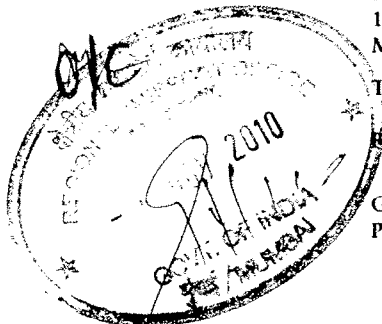
2271 56 00

Facsimile : (91-22) 2267 67 84

2267 02 26

General e-mail : contact@wadiaghandy.com

Personal e-mails : firstname.lastname@wadiaghandy.com



DJM/HC/10082/ 9075/10

30th October, 2010

BY HAND/ BY EMAIL/ BY FAX/

To,

The Assistant Passport Officer (Policy)
Regional Passport Office,
Mumbai

Reference: (i) Your letter no F7(5) 10-D-4399/10-572-Pool-1
dated 15/10/2010 ("letter under reference")

(ii) Our letter dated 26th October 2010 bearing
Ref. No. DJM-HC-10082/8951/10

(iii) Our letter dated 28th October 2010 bearing
Ref. No. DJM-HC-10082/8994/10

(iv) Our letter dated 28th October 2010 bearing
Ref. No. DJM-HC-10082/8997/10

(v) Our letter dated 28th October 2010 bearing
Ref. No. DJM-HC-10082/9002/10

(vi) Our letter dated 29th October, 2010 bearing
Ref No: DJM-HC-0082/9027/10

Sir,

We act for Mr. Lalit K. Modi who has placed in our hands the letter under
reference with instructions to respond thereto as under:

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BRANCHES :

AHMEDABAD : WADIA GHANDY & CO. (AHMEDABAD) 1ST FLOOR, CHANDAN HOUSE, NEAR MAYOR'S BUNGLOW, LAW GARDEN, AHMEDABAD 380 006 TEL. 91-79-26564700/4800 FAX 91-79-26564300
BANGALORE : WADIA GHANDY & CO. (SOUTH) 9TH FLOOR, VAYUDOOTHI CHAMBERS 15-16 M. G. ROAD, BENGALURU 560 001 TEL. 91-80-41233127-28 FAX 91-80-41233129
CHENNAI : WADIA GHANDY & CO. (SOUTH) B2, SPRINGFIELD, OLD NO 9, NEW NO. 22, JAGANATHAN ROAD, NUNCAMBAKKAM, CHENNAI 600 034. TEL. 91-44-43596858 /6868 FAX 91-44-43596838
PUNE : WADIA GHANDY & CO. (PUNE) OFFICE No. 12, SAGAR ARCADE 616 FERGUSSON COLLEGE ROAD, DECCAN GYMKHANA, PUNE 411 004 TEL. 91-20-25539950 FAX 25520578

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1. By our letter dated 26th October, 2010, three letters dated 28th October, 2010 and another letter dated 29th October, 2010 [Copies annexed at **Tab "1"**] we had (i) sought the 'material' stated therein; (ii) given an interim reply; (iii) sought reasonable time of two weeks after the material sought was made available; and (iv) sought confirmation about extension of the time stipulated in your letter dated 15th October 2010.
2. We have received neither the material sought nor extension of time. We have also not received any confirmation.
3. In the circumstances, we are left with little option but to file our second interim reply to your letter dated 15th October 2010. We reiterate that a final reply can and will be filed once we receive the materials sought for by .We also request that no final decision and /or order be passed till the time the aforesaid material is supplied to us and we are given an opportunity of an oral hearing. We also wish to record that we intend to appear before you on behalf of our client and present his case and we request you to intimate a date and time for the same with reasonable notice.
4. The present Reply is being submitted, under protest, and subject to our contention that not making available the material sought, constitutes, a clear breach of the principles of natural justice and our client's legal and/or fundamental rights. This also violates the constitutionally mandated rule of fairness and reasonableness, of state action. Failure to comply with the principles of natural justice in itself is a prejudice. In any event and without prejudice to the same a grave prejudice will be caused to our client in as much as without providing the basis for your notice under reply, our client is unable to file an effective reply. You must be and are well aware that compliance of the requirements of natural justice is a fundamental concomitant to administrative and quasi judicial actions. This is all the more so in the matters of fundamental rights of a citizen. This aspect has been repeatedly emphasized by the Hon'ble Supreme Court of India and more so in the matters under the Passport Act of which you must be aware .Your continued silence to our client's aforementioned letters seeking and demanding these basic requirements gives rise to serious apprehensions in the mind of our client that your notice has been issued for ulterior purposes knowing fully well that the same is without jurisdiction, unjustified , based on extraneous considerations on dictation of unauthorized persons and to cause undue harassment . You are aware that this is not a case of any emergency that the requirement of natural justice can be cured post your decision.
5. At the outset and without prejudice to the aforesaid contentions,

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we repeat, reiterate and confirm what is stated in our aforementioned letters and the same may kindly be treated as forming part of this Reply.

6. As an esteemed and responsible public servant, your good self is undoubtedly aware that the institution of proceedings under Section 10(3)(c) of the Passports Act, 1967, is something, which ought to be resorted to, with great circumspection. The power and/or jurisdiction under Section 10(3) of the Passports Act, 1967 is one having far reaching consequences upon the fundamental rights of a citizen and any order passed under Section 10 (3) of the Passport Act, 1967 entails a serious infringement and abridgement of a citizen's liberty. It is therefore necessary and imperative that before any proceedings are instituted and a Show Cause Notice under Section 10(3) of the Passports Act issued, your good self should be satisfied that there exists material to warrant doing so.

7. Section 10 (3) (c) of the Passport Act, 1967 provides, as under:-

“10(3)(c) if the passport authority deems it necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public.”

8. Ex-facie the provision has no application to our client and consequently the notice is without jurisdiction and is misconceived. Till date, our client has not been accused of doing anything which can be said to fall under any of the categories mentioned in Section 10 (3) (c) of the Passports Act, 1967.

9. Without prejudice to the above, it is urged that the proposed proceedings under Section 10(3) of the Passports Act, 1967 cannot and, in any event, ought not to be instituted merely on information from the Directorate of Enforcement that a Complaint said to be under Section 13 of FEMA has been filed against our client and a Show Cause Notice has been issued. Since you have declined to present us inspection of the documents on the basis of which your aforementioned notice has been issued, it must be presumed that you are not even aware of the contents of the Show Cause Notice and the relevant facts.

10. Some of the relevant facts which would demonstrate the complete non-application of the provisions, non-application of mind and mala-fides in the present proceedings are set out below:-

(a) The Enforcement Directorate commenced their enquiries in May 2010. On or around this time, the Income Tax

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Department had also conducted searches at the premises of IPL and our client's statements were recorded by the Income Tax Authorities, i.e. on 15th April, 2010; 21st April, 2010 and 3rd May, 2010 in response to a Summons under the Income Tax Act. Full co-operation was and has been given by our client to the Income Tax Department.

- (b) The first summons addressed to our client by the Enforcement Directorate, dated 2nd August 2010, issued under Section 37(1) and (3) of FEMA read with Section 131 (1) of the Income Tax Act and Section 30 of the Code of Civil Procedure, 1908, summoned our client to appear before the Assistant Director on 10th August 2010 along with documents listed in the Schedule. The Summons contained a Schedule of six items. Hereto annexed and marked **Annexure A** is a copy of the said summons. The first document was the "Original Passport" for verification. This request is significant since it was a well known fact that our client was overseas and was unable to return on account of security concerns.
- (c) Our client by his letter dated 7th August 2010, which was delivered by his Constituted Attorney, on 9th August 2010 expressed his inability to personally attend the office of the Enforcement Directorate on account of serious security concerns. However, in the spirit of co-operation, our client submitted all the documents that were requested for under the Summons which were in his possession. A xerox copy of his passport was also provided. Hereto annexed and marked **Annexure B** is the copy of the said letter along with its enclosures.
- (d) Subsequent thereto, our client was served with a letter dated 16th August 2010 issued by the Enforcement Directorate seeking evidence regarding the security concerns and threat to his life. Our client vide his letter dated 23rd August 2010 which was personally delivered by his Constituted Attorney to the Enforcement Directorate on the same date provided the necessary information along with the correspondence including with the Mumbai Police. Hereto annexed and marked **Annexure C** collectively is the copy of the said letter and our reply along with its enclosures.
- (e) Without even applying its mind to the contents of our client's response dated 23rd August 2010, the Enforcement Directorate issued another Summons dated 24th August 2010 to our client requesting him to appear before it on 7th September 2010. In this Summons, once again, there was a Schedule of Documents which the Enforcement

Directorate required. The first document of the Schedule was a passport for identification. Hereto annexed and marked **Annexure D** is the copy of the said summons.

- (f) Our client by his letter dated 6th September 2010, which was delivered to the enforcement Directorate through his Constituted Attorney, under the cover of his letter dated 7th September 2010, once again expressed his inability to personally attend the office of the Enforcement Directorate for reasons which had already been explained earlier. Copies of all documents requested were submitted to the Enforcement Directorate. It was pointed out that the copy of the passport had already been submitted. Hereto annexed and marked **Annexure E** is the copy of the said letter along with its enclosures.
- (g) In our client's letter of 6th September 2009, he had also requested the Enforcement Directorate to ascertain, from the Mumbai Police, the information and the intelligence received by them in relation to the threat to his life. We are not aware whether any such enquiry was ever made by the Enforcement Directorate. However, a media report yesterday (which is annexed at Annexure E) reported that the Mumbai Police has informed the Enforcement Directorate of a threat to our client's life in India.
- (h) Our client was shocked to receive, on 29th September 2010, a Show Cause Notice dated 20th September 2010 issued under Section 13 of the Foreign Exchange Management Act, 1989 on the basis of a complaint under Section 16(3) of FEMA dated 16th September 2010 made by the Assistant Director who had issued the summons alleging that our client had willfully disobeyed summonses dated 2nd August 2010 and 24th August 2010 and had thereby rendered himself liable for imposition of penalty under Section 13 of FEMA, an allegation which stands completely belied and falsified by the media report of 29/10/10.
- (i) Even before our client could respond to the said Show Cause Notice another summons dated 1st October 2010 came to be issued requesting our client to appear before the Enforcement Directorate on 12th October 2010. This Summons, which was received on October 4, 2010 was identical in all respect to the Summons dated 24th August 2010, save and except its date. Thus once again a request for our client's passport was made. In response to the said Summons, we, on behalf of our client, replied to the Enforcement Directorate stating that the said Summons is identical to the earlier Summons dated 24th August 2010. Hereto annexed and marked **Annexure F** collectively is the

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copy of the said summons and our reply.

- (j) Thereafter separately, we, on behalf of our client also filed a response to the Show Cause Notice under our letter dated 12th October 2010.
- (k) The extreme haste and unwillingness to be responsive to the concerns raised by our client is itself significant. It appears to be a clearly motivated action in as much as despite providing all the documents sought for, the Enforcement Directorate was of the opinion that our client had willfully disobeyed their Summonses.
- (l) Once again, without even waiting for a reply to their Show Cause Notice, on 7th October 2010 the Enforcement Directorate, without any jurisdiction, made an application for the issuance of a blue notice against our client. Our client verily believe that immediately on the same day, the said notice came to be issued by the concerned authority i.e CBI against our client which is lodged with Immigration Authorities across the country. The look-out circular has been proposed under Section 10(3)(c) of the Passport Act, 1967. The CBI website http://www.cbi.gov.in/interpol_notices.ph lays down the cases in which a blue notice can be issued. The same is annexed and marked as **Annexure G**. The notification states inter-alia that such a notice can be issued only “in order to have someone’s identity verified; to obtain particulars of a person’s criminal record; to locate someone who is missing or is an identified or unidentified international criminal or is wanted for a violation of ordinary criminal law and whose extradition may be requested“. None of these apply to our client. It is obvious that the concerned authority has acted with complete haste and without even examining the need and justification of the Enforcement Directorate in this regard. Hereto annexed and marked **Annexure H** is the copy of the media report which flashed the issuance of a blue corner notice.
- (m) Having learnt from the media, regarding the issuance of the “blue corner notice” our client addressed a letter dated 9th October 2010 seeking clarifications in this matter. In the said letter, our client made an offer that he was willing to answer questions by video link or by attending the Indian Embassy at London and face interrogation.
- (n) Instead of receiving any response to the said letter, my client was shocked to receive your letter under reply.
- (o) Your letter states that you have been informed by the

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Directorate of Enforcement that a Complaint dated 16th September 2010 under Section 13 of FEMA has been filed and a Show Cause Notice has been issued for non-compliance of Summonses and therefore our client has been called upon to explain as to why proceedings under Section 10(3)(c) should not be instituted against our client.

- (p) The pre-determination and malafides of the action are writ large in the above mentioned events. The look-out circular under section 10(3)(c) was issued prior to a reply being filed to the Show Cause Notice dated 20th September 2010 and even prior to the issuance of your letter under reply. Furthermore, your continued refusal to respond to our client's request to comply with natural justice vide our letters dated 27th and 28th October 2010 (3 letters) also reflects your determination to act in perverse, illegal, arbitrary and unconstitutional manner to deprive of my client to his legitimate and constitutional rights.
- (q) Certain other disquieting events have taken place simultaneously which also go to demonstrate that the actions are all motivated –
 - (i) On 29th September 2010 BCCI at its AGM interalia decided that in the event action is to be taken against Rajasthan Royals and Kings XI Punjab (IPL teams in which distant relatives of our client Mr. Suresh Chellaram i.e brother –in –law and Mr. Mohit Burman i.e step son in law Gaurav's brother hold a stake)a show cause notice would be issued . However on 10th October 2010 i.e three days of the blue notice and five days before the above referred notice these franchisees were unilaterally terminated pursuant to a decision in the Governing Council Meeting of IPL held on that date.
 - (ii) In the same Governing Council Meeting or thereabout it appears, contrary to an earlier decision of Special General Meeting of BCCI dated 3rd July 2010 wherein no criminal case would be filed till Disciplinary Proceedings against our client were concluded , a complaint came to be filed with the Chennai police on 12th October 2010 which was registered as a FIR on 13th October 2010 i.e near the date on which you issued notice .

- 11. Our client states that the look-out circular and the invocation of the provisions of the Passport Act, seeking to vary and impound the Passport is primarily intended to prevent a person from leaving the country. However, in the instant case, you are well aware that

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our client is overseas in London, UK and yet you are threatening action against our client. It is thus apparent that there is a singular and pre-determined action to render our client passport-less in a foreign country and deprive him of his legitimate, statutory, constitutional and legal rights. This is nothing short of an arm-twisting method. All these events give rise to serious and grave apprehension and concerns in our client's mind. Our client has been participating in all inquiries even from overseas and yet there appears some sort of concerted action against our client in different jurisdictions. It is apparent that apart from the security concerns spelt out earlier, persons jealous of our client's success and popularity are making every effort to tarnish his well earned reputation.

12. Without prejudice to the aforesaid it is submitted that there is no adjudication of the Show Cause Notice. Upon such an unadjudicated complaint no proceeding can be drawn by you. As there is no adjudication under Section 13 of FEMA, the very foundation of your letter stands denuded. Section 13 of FEMA is clearly not applicable.
13. Section 37 of FEMA is a complete provision in itself and subsection (3) thereof provides that the Officers of the Directorate of Enforcement shall exercise powers which are conferred on Income Tax Authorities under the Income Tax Act and shall exercise such powers subject to such limitation laid down under the Income Tax Act. The summons issued to our client were issued under Sec. 37(1) &(3) of FEMA read with Sec. 131 (1) and Sec 30 of Civil Procedure Code .In this regard the relevant Sections are reproduced below.

FEMA

“37. Power of search, seizure, etc.—(1) The Director of Enforcement and other officers of Enforcement, not below the rank of an Assistant Director, shall take up for investigation the contravention referred to in Section 13.

(3) The officers referred to in sub-section (1) shall exercise the like powers which are conferred on income tax authorities under the Income Tax Act, 1961 and shall exercise such powers, subject to such limitations laid down under that Act.”

Income Tax Act

“131. Power regarding discovery, production of evidence, etc. (1) The Assessing Officer, Deputy Commissioner (Appeals), Joint

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Commissioner, Commissioner (Appeals) and Chief Commissioner or Commissioner shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely:—

- (a) *discovery and inspection;*
- (b) *enforcing the attendance of any person, including any officer of a banking company and examining him on oath;*
- (c) *compelling the production of books of account and other documents; and*
- (d) *issuing commissions.*

(3) Subject to any rules made in this behalf, any authority referred to in sub-section (1) or sub-section (1-A) may impound and retain in its custody for such period as it thinks fit any books of account or other documents produced before it in any proceeding under this Act:

Provided that an Assessing Officer or an Assistant Director or Deputy Director shall not—

- (a) *impound any books of account or other documents without recording his reasons for so doing, or*
- (b) *retain in his custody any such books or documents for a period exceeding fifteen days (exclusive of holidays) without obtaining the approval of the Chief Commissioner or Director-General or Commissioner or Director therefore, as the case may be.*

272-A. Penalty for failure to answer questions, sign statements, furnish information, returns or statements, allow inspections, etc.—(1) *If any person,—*

(c) to whom a summons is issued under sub-section (1) of Section 131 either to attend to give evidence or produce books of account or other documents at a certain place and time omits to attend or produce books of account or documents at the place or time; or

*(d) 1 * * **

he shall pay, by way of penalty, 2 a sum of ten thousand rupees for each such default or failure.

(4) No order under this section shall be passed by any income tax authority referred to in sub-section (3) unless the person on whom the penalty is proposed to be imposed is given an opportunity of being heard in

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the matter by such authority.

Explanation.—In this section “income tax authority” includes a Director General, Director, Joint Director and an Assistant Director or Deputy Director while exercising the powers vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the matters specified in sub-section (1) of Section 131.”

Civil Procedure Code

30. Power to order discovery and the like.—Subject to such conditions and limitations as may be prescribed, the Court may, at any time, either of its own motion or on the application of any party,—

- (a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;
- (b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;
- (c) order any fact to be proved by affidavit.

It is apparent from the above that Sec. 13 of FEMA has no application.

- 14. It is further submitted that no Show Cause has been issued against our client regarding any substantive violation of FEMA. That, in any event, even with reference to the summons which are allegedly willfully disobeyed, all the required documents in the possession of our client were promptly furnished through his constituted attorney. Mere non-attendance is not a disobedience of the summons. They have in fact been complied with in substance. If the Enforcement Directorate had to ask our client any question in that regard, our client had vide his letter of 9th October 2010 offered to make himself available. The request of our client was neither unusual nor impermissible in law. Instead of even responding to the said letter, the Enforcement Directorate took steps to issue a blue notice.
- 15. Without prejudice to the above, it is submitted that your letter is based on mere Show Cause Notice, alleging non-compliance of a

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Summons, under FEMA. This can never be the basis for issuance of a letter seeking a response on why proceedings under Section 10(3)(c) of the Passports Act, 1967. In particular:-

- a. There is no adjudication, on merits, of any charge / allegation of a substantive violation of any provision of FEMA;
- b. There is no substantive contravention of Section 13 of FEMA;
- c. Even a Show Cause Notice alleging any substantive violation under FEMA has not been issued;
- d. All that has happened is that a Show Cause Notice has been issued calling upon our client to respond to a complaint that he has not personally remained present in response to a Summons issued under FEMA;
- e. Our client has submitted all the documents/materials called for, in his possession;
- f. Our client has offered to answer any questionnaire raised by the Enforcement Directorate. He has also offered to be questioned in person in Indian High Commission in London. He has also volunteered to answer all questions through video conferencing;
- g. Section 131 of Income Tax Act itself provides that Commission can be issued by the Agency for discovery and inspection as well as attendance and Section 30 of the CPC contemplates the issuance of interrogatories;
- h. Our client has explained, with cogent material, why security concerns and a serious threat to his life, require that he stay in London;
- i. Our client has extended all co-operation to the officials of the Enforcement Directorate

It is urged that there is therefore clearly no basis or justification for instituting proposed proceedings under Section 10(3) of the Passports Act, 1967.

16. Without prejudice to the above, it is submitted that, as a matter of law, the jurisdiction under Section 10(3)(c) of the Passports Act, 1967 cannot be assumed and proposed proceedings instituted and/or a proposed Show Cause Notice issued on a Summons issued by the Enforcement Directorate. A summons of the Enforcement Directorate is not a Court Summons or Warrant and

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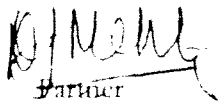
in issuing the letter, the vital distinction between the two has been lost sight off.

17. Without prejudice to the above, it is respectfully submitted that Section 10(3)(c) cannot be used as an instrument or means to coerce our client to attend before the officers of the Enforcement Directorate, regardless of concerns about the safety of his life and his security. The power to institute proceedings under Section 10(3)(c) is a drastic and draconian power whose ultimate result will have serious consequences and implications on the civil liberties of an individual / citizen. There are ample alternatives available in law and particularly in Income Tax Act which is applicable as per Section 37 of FEMA to send Commissions pursuant to a summons issued under the said Act. The powers under section 10(3) cannot be used in aid thereof.
18. Without prejudice to the above, it is submitted that the very fact that our client is being called upon to respond to why proceedings under Section 10(3)(c) should not be initiated, in circumstances such as the present, is itself clear evidence of mala-fide. The present case appears to be unique.
19. There has thus been complete non application of mind coupled with an abject failure to consider relevant facts and legal provisions, whilst issuing your letter. Your letter has been mechanically issued merely because a request or instruction or direction has been issued by "powers that be" and/or the Enforcement Directorate. This is clearly manifest from the fact all the legal provisions and grounds, more particularly referred to above, have been overlooked (if not ignored). This completely vitiates your letter. Application of mind to relevant criteria and the exclusion of irrelevant and extraneous material and considerations, is a jurisdictional sine qua non. As there has been a complete absence thereof, your letter ought to be withdrawn.
20. Your letter appears, clearly, to have been issued on extraneous considerations and at the dictate of higher ups. The fact that in a matter where a mere letter has been issued, for the foreign secretary to have stepped in and given a media briefing stating that in the absence of a reply action will be taken against our client, clearly establishes this. In light thereof, there is no adjudication possible at your end. This also vitiates your letter and the quasi-judicial enquiry which is supposed to be conducted.
21. Your letter has been issued in un-necessary haste. There was absolutely no requirement to issue such a misconceived letter that too at such a premature stage. The present case is not one where our client has not co-operated. The facts set out above clearly establish this. Our client has supplied all documents in his possession which were required. Our client has agreed to answer

any questionnaire our client has agreed to appear before the officers of the Enforcement Directorate at London or by video link. Save and except his legitimate security concerns, there is nothing that our client has done that can be regarded as obstructive.

22. An extremely critical factor that your good self may note in deciding whether to institute proceedings and issue a show Cause is that the present case pertains to a request under FEMA. In FEMA there is no scope for custodial interrogation hence questioning our client in the UK or by video conferencing would have sufficed the insistence on personal presence was therefore not necessary.
23. In the premises aforesaid, it is respectfully submitted that your letter and the proceedings whose institution is proposed is ex-facie without jurisdiction, null and void and beyond authority. Without prejudice to the above, it is submitted that this is not a fit case for initiation of proceedings. If you conclude that jurisdiction exists (which our client joins issue with) then it is suggested that prior to proceeding any further you may consider asking the Enforcement Directorate to exhaust the other options including those suggested in this letter, including questioning our client on Commission.
24. Our client submits that the action of the Enforcement Directorate while making an application for seeking to invoke powers under section 10(3)(c) and the refusal by the Enforcement Directorate to explore other options (including the commission of our client itself) for conducting this investigation give rise to an apprehension that there is more than what meets the eye, in the investigation and that their conduct, to say the least, is arbitrary, unreasonable and mala-fide.
25. Considering the importance of the matter and the serious issues of liberty and fundamental rights involved, our client once again reiterates his desire that a personal hearing be given to him through his lawyer after furnishing the materials as sought for by us vide our letters dated 27th October 2010 and 28th October 2010. We would also be grateful if you could let us know the time and date thereof. Our client reserves his right to file further and detailed reply, once the information sought for is received, from your good self.
26. Our client reserves his rights.

Yours truly,
For Wadia Ghandy & Co.


Partner