

October 5, 2015

Shri Mahendra Kumar
Deputy Secretary, Govt. of India (MU)
FCRA Wing
NDCC-II Building, Jai Singh Road
New Delhi – 110001

Sir,

Reference: F.No.II/21022/58(0047)/2013-FCRA(MU); dated September 9, 2015.

- 1 We are in receipt of your Order dated September 9, 2015 (the Order) whereby you have communicated the Central Government's decision in exercise of the powers conferred by Section 13 of the Foreign Contribution (Regulation) Act 2010 (FCRA 2010) to suspend the registration of Sabrang Trust (FCRA Regn No 083781099R) for a period of 180 days with effect from the date of the Order and called upon Sabrang Trust to explain why the FCRA Regn No 083781099R in respect of Sabrang Trust should not be cancelled under Section 14(2) of FCRA 2010. You have, in the abovementioned Order dated September 9, 2015 directed that the reply of Sabrang Trust should reach the Ministry of Home Affairs (MHA) by October 12, 2015.
- 2 We are completely shocked and surprised by this Order. At the outset, we respectfully submit that a careful perusal of the Order shows that the Order does not seem to have taken into consideration the detailed point by point response that Sabrang Trust had submitted to the findings of the on the spot inspection conducted by the team of officers of the Ministry of Home Affairs, Government of India ("MHA") between April 9-11, 2015 at the registered office of Sabrang Trust at Mumbai.
- 3 The Order proceeds to mechanically reiterate, more or less in the same language, the alleged violations of FCRA 2010 and FCRR 2011 as those set out in the observations of MHA in the letter dated June 4, 2015. The Order also does not deal with any of the explanations we had furnished or with the detailed documentary evidence that was submitted in support of our contention that Sabrang Trust has not violated any provisions of FCRA 2010 or FCRR 2011.
- 4 We submit that the manner in which the Order mechanically repeats the alleged violations of FCRA 2010 and FCRR 2011 as set out in the observation letter dated June 4, 2015 clearly shows that the Order has been passed without any application of mind and suffers from arbitrariness.

- 5 We are here-in-below dealing seriatim with the grounds set out in the Order on the basis of which our reply dated June 25, 2015 has been found “not satisfactory”.

5.1 **Para 4, page 1 of the order dated September 9, 2015 reads:**

Quote:

Whereas, the Section 3 (1) (b) & (h) of FCRA, 2010 says correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper; (h) correspondent or columnist, cartoonist, editor, owner of the association or company referred to in clause (g), are prohibited to accept foreign contribution. During course of inspection of records of Sabrang Trust, it was noticed that both, Ms. Teesta Setalvad and Mr. Javed Anand are Chief Functionary / Trustee of associations of Sabrang Trust, which is registered under FCRA, 1976 (repeated with FCRA, 2010). Both are also working as Directors, co-Editors, printers, and publisher in company, namely Sabrang Communications & Publishing Pvt. Limited having RNI No. MAHEG/1993-1148 and Published a Magazine called “Communalism Combat”. Further both, from time to time keep on writing various articles in Newspapers & Magazines. As per the provisions of above Section of FCRA, 2010 they are completely prohibited to take foreign contribution from foreign source. Thus the association have violated Section 3 (1) (b) & (h) of FCRA, 2010.

Unquote

5.2 **Corresponding Para 1, page 1 of the Observations dated June 4, 2015 read:**

Quote:

The Section 3 (1) (b) & (h) of FCRA, 2010 says correspondent, columnist, cartoonist, editor, owner, printer or publisher of a registered newspaper; (h) correspondent or columnist, cartoonist, editor, owner of the association or company referred to in clause (g) are prohibited to accept foreign contribution. During course of inspection of records of Sabrang Trust, it was noticed that both, Ms. Teesta Setalvad and Mr. Javed Anand are Chief Functionary /Trustee of associations Sabrang Trust registered under FCRA, 1976 (repeated with FCRA, 2010). And are also working as Directors, co-Editors, printers, and publisher in company namely Sabrang Communications & Publishing Pvt. Limited which is having RNI No. MAHEG/1993-1148 and Published a Magazine called ‘Communalism Combat’. Further both, from time to time keep on writing various articles in Newspapers & Magazines. As per the provisions of above Section of FCRA, 2010 they are not permitted to take foreign contribution from foreign source. Thus the association have violated Section 3 (1) (b) & (h) of FCRA, 2010.

Unquote

5.3 **Sabrang Trust's response to Observation (letter dated June 25, 2015) had stated:**

Quote:

We wish to draw your kind attention to a number of points concerning this observation:

One, Sabrang Trust is an independent legal entity in its own right. It is evident that the legal entity of a 'person' under FCRA 2010 (earlier FCRA, 1976) is considered distinct from an individual person. The definition of a 'person' under FCRA, 2010 includes "an individual", "a Hindu undivided family, "an Association" etc. In view of the same, we fail to understand how the receipt of foreign contribution by a 'person' named Sabrang Trust can be treated as if it's the same as, or identical to, its individual office bearers/board members.

Two, there is no stipulation in the FC(R) Act, 1976 or the amended FC(R) Act, 2010, or the rules framed under them (FCRR, 2011), forbidding an Association registered under the Act from any individual associated with registered newspaper or electronic news media from being on its board of trustees or an office bearer.

Three, the Registration Certificate granted to Sabrang Trust dated November 21, 2007, stipulates certain terms and conditions. Para 3 states: *"The association cannot bring out any publication (registered under PRB Act, 1867) or act as correspondent, columnist, editor, printer or publisher of a registered newspaper at a later stage thereby attracting provisions of the Section 4(b) of the FC(R) Act, 1976"*. The wordings of Para 3 leave no room for any doubt or ambiguity. It is Sabrang Trust, the association granted registration under FCRA, which is prohibited from publishing or acting as correspondent, columnist, editor, etc. Nowhere does the letter place any restriction or prohibition on any of its board members or office bearers being publishers, editors, printers, etc. of a registered newspaper run by some other independent legal entity.

Four: It is submitted that Section 3(1)(b) of FCRA, 2010 must be read with Section 4 of FCRA, 2010. Section 4 of the FC(R) Act, 2010 states: *"Nothing contained in section 3 shall apply to the acceptance, by any person specified in that section, of any foreign contribution where such contribution is accepted by him, subject to the provisions of Section 10 – (a) by way of salary, wages, or other remuneration due to him or to any group of persons working under him, from any source or by way of payment in the ordinary course of business transacted in India by such foreign source"*.

Given the clear and identical wordings of Section 4 of FCRA, 2010, we submit that any remunerations by Sabrang Trust to Teesta Setalvad and/or Javed Anand, for executing specific activities/programmes/projects for which foreign contribution was received towards furthering the stated objectives/activities of Sabrang Trust cannot be considered as violation of the FC(R) Act, 1976 or the amended FC(R) Act, 2010. Not even a rupee was ever paid by Sabrang Trust either to Teesta Setalvad or Javed Anand for their work related to 'Communalism Combat' or for writing articles in other newspapers and magazines. Any remuneration to them by Sabrang Trust was strictly for executing the activities/ programmes/ projects of the association which had nothing whatsoever to do with 'Communalism Combat' or their writing articles in newspapers.

Thus is not correct to maintain that Sabrang trust has violated Section 3(1)(b) & (h) of the FCRA, 2010.

Unquote

- 5.4 **Sabrang Trust's response to para 4 page 1 of Order dated September 9, 2015:** We respectfully submit that the manner in which the Order merely reiterates its earlier observation, word for word, and dismisses our detailed response to the observation with mere two words "not satisfactory" shows complete non application of mind.

6. **Para 5, page 1 of the order dated September 9, 2015 reads:**

Quote:

Whereas , on inspection of accounts of Sabrang Trust it was noticed that the association has received total donation of Rs. 48,42,557/- and Rs. 49,10,353/- in the year 2010-11 and 2011-12 respectively out of which they have spent Rs. 30,97,690/- and 27,07,864/- which comes to 64.23% and 55.14% respectively on administrative expenses. As per Section 8 (1) (b) of FCRA, 2010 requires approval of Ministry of Home Affairs before incurring expenses on administrative head exceeding fifty per cent limit. Thus, it is a violation of Section 8 (1) (b) of FCRA, 2010.

Unquote

6.1 **Corresponding Para 3, page 2 of the Observations dated June 4, 2015 read:**

Quote:

On inspection of accounts of Sabrang Trust it was noticed that the association has received total donation of Rs. 48,42,557/- and Rs. 49,10,353/- in the year 2010-11 and 2011-12 respectively out of which they have spent Rs. 30,97,690/- and Rs. 27,07,864/-

which comes to 64.23% and 55.14% respectively on administrative expenses. As per Section 8 (1) (b) of FCRA, 2010 it requires approval of Ministry of Home Affairs before incurring expenses on administrative head exceeding fifty per cent limit. Thus it is a violation of Section 8 (1) (b) of FCRA, 2010.

Unquote

Sabrang Trust's response to Observation (letter dated June 25, 2015) had stated:

Quote:

Sabrang Trust's FC-3/6 returns for 2010-11 and 2011-12 showed receipts of Rs. 48,42,557/- and Rs. 49,10,353/- respectively. The amounts utilized for the same years were Rs. 45,26,289/- and Rs. 36,46,477/- respectively. Having provided all the information asked for by the inspection team, since no details are provided in your observation, we are unable to understand how the inspection team arrived at the utilisation amounts of 30,97,690/- and Rs. 27,07,864/- which comes to 64.23% and 55.14% respectively on administrative expenses.

However, we wish to place on record that during the inspection of the accounts of Sabrang Trust (April 9-11, 2015), the issue of what constitutes administration expenses as per FCRA 2010 was discussed in great detail by us with the inspection team.

The inspection team kept referring to Rules 5 (i) and (ii) of FCRR 2011 which read as follows: *"The following shall constitute administrative expenses: (i) salaries, wages, travel expenses, or any remuneration realized by members of the Executive Committee or Governing Council of the person; (ii) all expenses towards hiring of personnel for management of the activities of the person and salaries, wages or any kind of remuneration paid, including cost of travel of such personnel;*

However, we repeatedly drew the attention of the inspection team to the last two paragraphs of the same Rule 5 which read as follows:

"Provided that the expenditure incurred on salaries or remuneration of personnel engaged in collection or analysis of field data of an association primarily engaged in research or training shall not be counted as administrative expenses".

"Provided further that the expenses incurred directly in furtherance of the stated objectives of the welfare oriented organization shall be excluded from the administrative expenses such as salaries to doctors of hospital, salaries to teachers of schools etc."

We repeatedly attempted to reason with the inspection team that the reference to doctors and school teachers in the last para of Rule 5 were merely illustrative of the general principle that programme related expenditure in furtherance of the stated objectives and activities/ programmes/projects of an Association are excluded from the definition and calculation of administrative expenses. It is respectfully submitted that our repeated attempts to demonstrate to the inspection team that much of what they were treating as administrative expenses were in fact in furtherance to the stated objectives and activities of Sabrang Trust, as is also evident from the details of the activities outlined in the grant letter of the foreign sources to Sabrang Trust, were to no avail. It is submitted that only because of an erroneous reading of Rule 5 of FCRR, 2011 that the inspection team has concluded that administrative expenses were in excess of the permitted 50% limit. Attached with this letter are worksheets wherein the items of project related and administrative expenses and their respective totals are shown. Also attached are copies of the audit certificates and audited statements of Receipts and Payments for both years so that they may be cross-checked with the total payments shown in the worksheets for 2010-11 and 2011-12 (Pgs 7-16 of annexures therein). It may be noted from the same that administrative expenses incurred by Sabrang Trust, in keeping with the grant letters and approved budget from donors, are well below the permissible 50% limit for both years.

As such, it is decried that Section 8(1)(b) of FCRA, 2010 has been violated by Sabrang Trust.

Unquote

Sabrang Trust's response to para 5 page 1 of Order dated September 9, 2015:

We respectfully submit that the manner in which the Order merely reiterates its earlier observation, word for word, and dismisses our detailed response to the observation with mere two words "not satisfactory" shows complete non application of mind. We beg to submit that such a summary dismissal of our averments amounts to non application of mind, if not worse. As was made clear through the worksheets that accompanied Sabrang Trust's response to the observation, MHA has obviously included salaries paid to project staff and travel expenses (both being "*expenses incurred directly in furtherance of the stated objectives of the welfare oriented organization*") have been whimsically and arbitrarily clubbed together with actual expenses to arrive at the conclusion that administrative expenses exceeded 50% of total expenses.

7. Para 6, page 2 of the order dated September 9, 2015 reads:

Quote:

Whereas , Section 7 and 8 (1) (a) FCRA, 2010 read with Rule 24 of FCRR, 2011 says Prohibition to transfer foreign contention (sic) to other person unless such other person is also registered and had been granted the certificate or obtained the prior permission under this Act. Rule 24 of FCRR, 2011 and every person, who is registered and granted a certificate or given prior permission under this Act and receives any foreign contribution shall utilize such contribution for the purposes for which the contribution has been received. But during course of inspection of books & records of the association it was noticed that payments of Rs. 50 lakhs were made by Sabrang Trust to Sabrang Communications & Publishing Pvt. (SCPPL) Limited which seems to be used for personal gain. Thus the association has violated Section 7 read with Rule 24 of FCRR, 2011 and 8 (1) (a) of FCRA, 2010.

Unquote

7.1 Corresponding Para 4, page 2 of the Observations dated June 4, 2015 read:

Quote:

Section 7 of FCRA, 2010 prohibits to the transfer of foreign contribution to other person unless such other person is also registered and had been granted the certificate or obtained the prior permission under this Act. Further rule 24 of FCRR, 2011 gives the procedure by which FC may be transferred to unregistered associations. But during course of inspection of books & records of the association it was noticed that an amount of Rs. 50 lakhs were transferred by Sabrang Trust to Sabrang Communications & Publishing Pvt. (SCPPL) Limited which is not registered under FCRA 2010. Thus the association has violated Section 7 read with Rule 24 of FCRR, 2011 and Section 8 (1) (a) of FCRA, 2010 as the received foreign contribution was not utilized for the purpose for which it was received.

Unquote

7.2 Sabrang Trust's response to Observation (letter dated June 25, 2015) had stated:

Quote

Not correct. We are extremely surprised by this observation considering that during the FCRA team's inspection of accounts of Sabrang Trust (April 9-11, 2015), voluminous documentary evidence was placed before the team, printouts from books of accounts of

both Sabrang Trust and SCPPL maintained on Tally and vouchers, copies of resolutions of Sabrang Trust's Board of Trustees etc. were provided to the inspection team as asked for.

It is submitted that if all payments made by an FCRA registered association to a non-registered association towards procurement of goods or services for the furtherance of the association's own objectives and activities are treated as '*transfer of foreign contribution*', it would be impossible for any FCRA registered association to function without violating FCRA, 2010 on an everyday basis.

Section 7 of FCRA, 2010 reads: "*No person who – (a) is registered or granted a certificate or has obtained prior permission under this Act; and (b) receives any foreign contribution, shall transfer such foreign contribution to any person unless such other person is also registered and had been granted the certificate or obtained prior permission under this Act*". Section 8(1)(a) of FCRA, 2010 states: "*Every person who is registered and granted a certificate or given prior permission under this Act and receives any foreign contribution – (a) shall utilise such contribution for the purposes for which the contribution has been received*". Rule 24 of FCRR, 2011 pertains to "*Procedure for transferring foreign contribution to other registered or unregistered persons*".

The wording and intention of Section 7 is very clear. *It bars a registered association from acting as a conduit for transferring part or all of the foreign contribution it receives to an unregistered person, since that would defeat the very purpose of the Act.* It could not possibly mean that payments to un-registered persons, such as towards salaries, wages, electricity or telephone bills, purchase of food, tickets for travel, booking of hall for meeting etc. amount to "transfer of foreign contribution". We categorically reiterate that as was explained in detail to the inspection team and also detailed below, Sabrang Trust did not transfer foreign contribution but made payments to SCPPL towards actual shared expenses.

No association can possibly function or undertake any activities or projects of any significance without adequate office space, furniture and fixtures, office equipments (computers, printers, photocopiers etc.), programme and administrative staff. During their visit to Mumbai for inspection of accounts and related records of Sabrang Trust (ST) between April 9 and 11, 2015, the FCRA inspection team saw for itself that Sabrang Trust neither had independent office space at Nirant, Juhu Tara Road, Juhu, Mumbai - 49, nor its own office furniture and fixtures, nor its own office equipments (computers,

printers, photocopiers, scanners etc), nor the project/programme and administrative staff essential to carry out its extensive, multi-pronged activities.

As is well known, Mumbai is among the most expensive cities in the world for purchase or renting of space. Sabrang trust did not have adequate funds even to rent office space, purchase/rent office furniture and fixtures, office equipments, hire independent project/programme and administration staff. In the given situation, the trustees of Sabrang Trust found it practical and cost effective to enter into an understanding with Sabrang Communications and Publishing Private Ltd (SCPPL) for sharing of actual expenses. Since its inception in 1993, SCPPL had invested lakhs of rupees over the years in the renovation, furnishing, regular repair and maintenance of office space. SCPPL had also invested lakhs over the years in the purchase, maintenance, upgradation of office equipment such as computers, printers, photocopiers, scanners, mobile phones etc. Also, over the years SCPPL had hired and trained staff. On a request from Sabrang Trust, SCPPL was agreeable to sharing its office space, office furniture and fixtures, office equipment, and staff on a sharing-of-actual-expenses basis.

The expenses-sharing arrangement meant exactly that: sharing actual expenses incurred on repair and maintenance of shared office space, repair/ maintenance/ upgradation of shared office equipment, electricity bills, stationary and postage, internet charges, remuneration to shared programme and administration staff, telephone/mobile bills. Not a rupee was paid by Sabrang Trust to SCPPL by way of rent at any time. The shared expenses did not include any payment to Javed Anand or Teesta Setalvad.

To begin with, the so-called "transfer" of Rs. 50 lakh (between 2006-07 and 2013-14, i.e. 7 years) by Sabrang Trust to SCPPL appears to be an exaggerated figure as it does not appear to tally with the audited accounts of Sabrang trust. Further, the so-called "transfer" was in fact payment by Sabrang Trust to SCPPL towards its agreed monthly share of shared actual expenses incurred on office/furniture and fixtures/office equipments/staff. As regards the total payments to SCPPL by Sabrang Trust, even assuming the inspection team's figure to be correct, it means payment of an average of around Rs. 7 lakh per year or less than Rs. 60,000 p.m. by Sabrang Trust towards shared actual expenses incurred on: staff salaries (9 employees); repair and maintenance of office space; repair, maintenance, upgradation of office equipments (including 12 computers, printers, photocopier, fax machine etc.); electricity bills etc.

Nowhere does FCRA, 10 or FCRR, 11 bar an Association with FCRA registration from a cost-saving, expenses-sharing arrangement with other association(s), whether registered under FCRA or not. A foreign contribution can only be said to be transferred

by an FCRA registered Association to an unregistered Association if such payment has nothing to do with the furtherance of the former's own objectives/activities and the recipient Association can utilise the FC on its own purposes. If paying office rental, purchasing or hiring of furniture and fixtures, office equipment to profit-making non-FCRA registered organisation/ association does not mean transfer of foreign contribution in violation of FCRA, 2010, we fail to understand how an agreement for sharing actual expenses with a non-FCRA registered association, which meant no profit to the recipient non-registered association and costs saving for the registered association could be so treated.

As regards the quantum of payments, an examination of the mutually agreed monthly payments by Sabrang Trust towards actual expenses incurred by SCPPL should clarify the point further. The maximum monthly payments by Sabrang Trust to SCPPL were during 2011-12 and 2012-13.

Details of the same are as follows:

Shared staff expenses (9-employees): Rs. 69,600 p.m., i.e., an average of around Rs. 7,700 per employee. As against this, of the 9 employees of SCPPL in 2012, the least paid employee was paid Rs. 8,720/- p.m. while the highest paid employee was Rs. 22,500 p.m. In addition, SCPPL paid towards Provident Fund, annual Diwali bonus).

Shared establishment expenses (including electricity bills, office repair and maintenance, repair/maintenance/upgradation of computers, salaries of maintenance staff, etc): Rs. 35,750 p.m.

Shared telephone/mobile bills, around Rs. 5,000 p.m.

When co-related to the intensity and scale of activities of Sabrang Trust and the skill levels and work experience of employees necessary for the purpose, it would be incorrect to maintain that such monthly payments by Sabrang Trust to SCPPL are on any count unreasonable.

A list of the staff shared between Sabrang trust and SCPPL and all other details concerning monthly payments by the former to the latter, including Trustees' resolutions were provided to the inspection team. Please let us know if you need any further details to satisfy yourself that the so-called monthly "transfer of funds" by Sabrang Trust to SCPPL were nothing but payments/re-imburements towards agreed shared expenses between the two Associations. Thus, payments by Sabrang Trust

towards sharing of office space, furniture and fixtures, office equipment and staff for the execution of the trust's activities for which it has received FC to SCPPL (or any other non-FCRA registered organisation for that matter, cannot be treated as "transfer" of amounts within the meaning of FCRA, 2010.

Section 8(1)(a) of FCRA stipulates that foreign contribution received shall be utilised for the purpose for which contribution has been received. Sabrang Trust has provided to the inspection team, Grant Letters as also Utilisation Certificates, annual Financial and Narrative reports submitted by Sabrang Trust to donors. The payments by Sabrang Trust to SCPPL were covered under the budgetary items (both programme-related and administrative) that were approved by the foreign donors and were thus utilisation of the foreign contribution for the stated/declared activities detailed in the grant letters. Since Sabrang Trust did not "transfer foreign contribution" but made legitimate payments towards the furtherance of its declared objectives and activities the question of application to the Home Ministry for permission to transfer foreign contribution (Rule 24 of FCRR, 2011) did not arise.

Thus, Sabrang Trust did not violate Section 7 read with Rule 24 of FCRR, 2011 and Section 8(1)(a) of FCRA, 2010.

Unquote

7.3 Sabrang Trust's response to para 6 page 2 of Order dated September 9, 2015:

It is submitted that the order is a mere rephrasing of the observation in the letter dated June 4, 2015 at para marked 4, page 2. Further, it not only dismisses our detailed rebuttal of the allegation with two words "not satisfactory" but proceeds to give a sinister twist to the allegation by adding the words "seems to be used for personal gain" in total disregard of our detailed explanation and hundreds of pages of documentary evidence provided to the inspection team. We submit that such summary dismissal apart from demonstrating complete non application of mind also shows bias and pre-meditated approach which vitiates the Order. We vehemently deny the baseless allegation that reimbursement to Sabrang Communications and Publishing Pvt. Ltd. towards shared expenses by Sabrang Trust was for personal gain.

Further, we wish to draw your attention to Section 2(1), Explanation 3 of FC(R) Act, 2010 which states:

"Any amount received, by any person from any foreign source in India, by way of fee (including fees charged by educational institutions in India

from foreign student) or towards costs of goods or services rendered by such person in the ordinary course of his business, trade or commerce whether within India or outside India or any contributions received from an agent or foreign source toward such fee or cost shall be excluded from the definition of foreign contribution within the meaning of this clause.

7.4 Para 7, page 2 of the order dated September 9, 2015 reads:

Quote:

Whereas, on review of vouchers of Sabrang Trust it has been noticed that association has transferred an amount of Rs. 2,46,954.00 from its FC designated account to Sabrang Trust domestic account on 14.01.2011 vide cheque no. 136035 without any logical reasons. This raises the suspicion of mixing of funds by the association and it can be treated as non utilization of foreign contribution for the purpose which it was received and mixing of foreign contribution with domestic contribution. This is a violation of section 8 (1) (a) and Section 17 (1), of FCRA 2010.

Unquote

Corresponding para 5, page 2 of the Observations dated June 4, 2015 read:

Quote:

On review of voucher of Sabrang Trust it has been noticed that association has transferred an amount of Rs. 2,46,954.00 from its FC designated account to Sabrang Trust's domestic account on 14.01.2011 vide Cheque No. 136035 without any logical reasons. This raises the suspicion of mixing of funds by the association and it can be treated as non utilization of foreign contribution for the purpose for which it was received and mixing of foreign contribution with domestic funds. This is a violation of section 8(1) (a) and Section 17 (1), of FCRA 2010 as no funds other than foreign contribution shall be received or deposited in such account or accounts.

Unquote

Sabrang Trust's response to Observation (letter dated June 25, 2015) had stated:

Quote:

As was explained to the FCRA inspection team during their visit to our Mumbai office, the transfer was for a valid reason. Sabrang Trust had signed an agreement with Centre for Promotion of Social Concerns (SPSC), Tamil Nadu (an FCRA registered association) for a project of Human Rights education in schools in Maharashtra during 2010-2011. All

the relevant documents pertaining to this project were shown and copies provided to the inspection team. As may be noted from those documents, the agreement was signed in February 2010 and Sabrang Trust started work on the same from June 2010. However, the first instalment of the funds was released by SPSC much later on October 7, 2010 and credited to Sabrang Trust's designated FC account on October 13, 2010. Therefore some expenses for the purpose for which the amount was received were incurred from the domestic account of the association. Thus, the amount of Rs. 2,64,954/- transferred from the FC account to the domestic account was towards reimbursement of the amount spent through the domestic account of Sabrang Trust on the Human Rights Education in schools project before receipt of funds from SCPC. We are especially surprised at this observation since after going through all the relevant records and taken photocopies, the inspection team observed that such reimbursements from the FCRA account to domestic account are often necessary and the same is not considered mixing of accounts.

Section 8(1)(a): "*Section 8(1)(a) of FCRA 2010 stipulates that the FC should be used for the purpose for which the contribution is received*". In view of the late receipt of funds from CPSC, Sabrang Trust had incurred expenses from the domestic account on the same purpose for which the contribution was received. On receipt of foreign amount in the FCRA account, the expenses totalling Rs. 2,64,954.00 earlier incurred from the domestic account was reimbursed.

As for the other observation, we are unable to understand how the above mentioned reimbursement amounts to violation of Section 17(1) of FCRA 2010 which stipulates that "*no funds other than foreign contribution shall be received or deposited in such account or accounts*". The amount of Rs.2,64,954 was not received or deposited in the designated FC account from the domestic account. Rather, it was the other way round.

Thus, the said transfer does not attract either Section 8(1)(a) or 17(1) of FCRA 2010.

Unquote

Sabrang Trust's response to para 7 page 2 of Order dated September 9, 2015:

We respectfully submit that the manner in which the Order merely reiterates its earlier observation, word for word, and dismisses our detailed response to the observation with two words "not satisfactory" shows complete non application of mind.

7.5 **Para 8, page 2 of the order dated September 9, 2015 reads:**

Quote:

Whereas , during the review of vouchers it was found that association had made the payment to Sabrang Communications & Publishing Pvt. Limited for purchase of Bulk SMS from Sandesha Online services, 213, Master Mind IV, IT Park, Aarey Colony, Goregaon (E), Mumbai-65. This action of association amounts to non-utilization of foreign contribution for the purpose for which they have received as well as transferring of FC to non-registered association. Thus, the association has violated Section 7, 8 (1) (a) & 17 (1) of FCRA, 2010.

Unquote

Corresponding Para 6, page 2 of the Observations dated June 4, 2015 read:

Quote:

During the review of vouchers it was found that association had made the payment to Sabrang Communications & Publishing Pvt. Limited for purchase of Bulk SMS from Sandesha Online services, 213, Master Mind IV, IT Park, Aarey Colony, Goregaon (E), Mumbai – 65. Few other direct payments made to Sabrang Communications & Publishing Pvt. Limited by Sabrang Trust are as under –

Vr. No. & date	Amount	Remarks
245 of 31.03.2010 vide Invoice No. SND 15(3/10) dt. 16.03.2010 vide	1103/-	Sandesha Online, 213 Master Mind IV, IT Park, Aarey Colony, Goregaon (E), Mumbai – 65 (for 10000 SMS)
184 of 26.02.2010 vide Invoice No. SND 280 (2/10)	2206	Sandesha Online, 213 Master Mind IV, IT Park, Aarey Colony, Goregaon (E), Mumbai-65 (for 20000 SMS)
183 of 25.02.2010 vide Invoice No. 269 (2/10)	2206	Sandesha Online, 213 Master Mind IV, IT Park, Aarey Colony, Goregaon (E), Mumbai-65 (for 20000 SMS)
179 of 19.02.2010 vide Invoice No. 123 (2/10) dt. 19.02.10	1102	Sandesha Online, 213 Master Mind IV, IT Park, Aarey Colony, Goregaon (E), Mumbai-65 (for 10000 SMS)
178 of 19.02.2010 vide No. GR/RR No. R654	3500	Star Web Designers, 305, Zaitoon Apartment, S.V. Road, Andheri (W), Mumbai-58 (21000 SMS)

This action of association amounts to non-utilization of foreign contribution for the purpose for which they have received as well as transferring of FC to non-registered association. Thus the association has violated Section 7 and 8 (1) (a) of FCRA, 2010.

Unquote

8 ***Sabrang Trust's response to Observation (letter dated June 25, 2015):***

Quote:

In January 2010 Sabrang Trust (Javed Anand) was contacted by Mrs. Thanksy Thekkekara, then Secretary, Govt. of Maharashtra, Minorities Dept., requesting the trust's help in popularising the Scholarship Schemes for Students from Minority Communities (part of Prime Minister's 15-point programme being implemented by Union Ministry of Minority Affairs and Minorities Dept of state government) among minorities. The reason for this was that during the previous two years, there had been poor response to the government's scheme from the minority communities. Among the major reasons for the same was lack of knowledge and procedure of the scheme among the target population. Sabrang Trust was contacted because both Teesta Setalvad and Javed Anand are well-known across Maharashtra (as also in other states) for their efforts towards conflict resolution and peace building and empowerment of minorities since the early 1990s and have a wide network of contacts across the state.

As mentioned by Sabrang Trust in its Narrative Report to Ford Foundation in its annual report for the period October 1, 2009-September 30, 2010, the contribution made by Sabrang Trust towards popularising the scholarship schemes was highly appreciated by the state government's Minorities Department. (This report is among the documents submitted to FCRA's Inspection team).

Because Sabrang Trust had been contacted by the state government in this regard towards the very end of the academic/financial year (February-March), the trust decided to make use of bulk SMS messages to reach out to people in the short time available. All the above mentioned payments to service provider for bulk SMS service was exclusively for Sabrang Trust towards implementation of one of its programmes for which FC was received. Kindly note that payment to Star Web Designers of Rs. 3,500 is supported by an invoice in the name of 'Muslims for Secular Democracy', a part of Sabrang Trust's project supported by foreign contribution (Pgs 17-18 of annexe). However, owing to an oversight, it was not noticed by us that the four invoices of

Sandesha Online (totalling Rs. 6,617) were wrongly made out in the name of SCPPL. The payments in case of all the expenses were out of the petty cash box of Sabrang Trust by the accounts executive directly to the service providers and no payment was made to SCPPL. The fact that these invoices did not get corrected by us is sincerely regretted and we seek condonation of the same.

However, there was no violation of Sections 7 and 8(1) of FCRA, 2010 as the amount was utilised for the purpose for which it was received and no amount was transferred to SCPPL. Cash payments were made from the petty cash box directly to the service providers.

Unquote

Sabrang Trust's response to para 8 page 2 of Order dated September 9, 2015:

We respectfully submit that the manner in which the Order merely reiterates its earlier observation, word for word, and dismisses our detailed response to the observation with two words "not satisfactory" shows complete non application of mind. It may further be noted that while agreeing to co-operate with the Minorities Department of the Maharashtra government in popularising the Union and the state government's scholarship for students from minority communities, for its efforts Sabrang Trust neither expected nor received even a rupee from the government. Expenses incurred in connection with the same were met out of the Grant received from Ford Foundation as the activity fell within the scope of the grant agreement and was aimed at furtherance of objects of Sabrang Trust.

8.1 *Para 9, page 2 of the order dated September 9, 2015 reads:*

Quote:

Whereas, on review of vouchers of the association it is found that Sabrang Trust has made direct payments of approximate Rs. 12 lakhs from FCRA designated account to Citi Bank and Union Bank of India on account for Credit Cards belonging to Ms. Teesta Setalvad and Mr. Javed Anand respectively as payments. The Cards are issued in the name of individuals and the above mentioned payment appears that the foreign contribution has been used for personal gain. This amounts to use the foreign contribution for the purposes not authorized as per provisions of FCRA, 2010 thus has violated Section 8 (1) (a) of FCRA, 2010.

Unquote

Corresponding Para 7, page 2 of the Observations dated June 4, 2015 read:

Quote:

On review of vouchers of the association it is found that Sabrang Trust has made direct payments of Rs. 12 lakhs from FRCA designated account to Citi Bank and Union Bank of India on account of credit facilities taken through Credit Cards belonging to Ms. Teesta Setalvad and Mr. Javed Anand respectively as reimbursements. This amounts to use of the foreign contribution for the purposes not authorized as per provisions of FCRA, 2010 thus association has violated Section 8 (1) (a) of FCRA, 2010.

Unquote

Sabrang Trust's response to Observation (letter dated June 25, 2015) had stated:

Quote:

Having placed original accounts/documents and provided photocopies as required by the inspection team, we are happy that the inspection team noted the fact that Sabrang Trust paid for only those expenses incurred through the personal credit cards of Teesta Setalvad and Javed Anand (such as air tickets etc.) which were related to the objectives and activities of Sabrang Trust and for which purpose foreign contribution was received. The only issue was this. According to the inspection team, Teesta Setalvad and Javed Anand should have first paid the full amount of the monthly credit card bills to the service provider and only subsequently sought reimbursement from Sabrang Trust. However, the Board of Trustees felt that the issue of so many cheques being paid by Sabrang Trust to Teesta Setalvad and Javed Anand might raise queries from some government agency since both are Trustees of Sabrang Trust. Therefore it was thought to be more prudent to make the payments directly to the service provider of the credit cards (Citibank, UBI) after the authorised Trustees had scrutinised the reimbursement claim and satisfied themselves that Sabrang Trust was only being charged for actual expenses incurred on the Trust's objectives/activities. Accordingly, a single month's credit card bills were paid through multiple cheques, with Sabrang Trust paying only for expenses pertinent to its activities while Teesta Setalvad and Javed Anand paid for all expenses of a personal nature from their own personal bank accounts. On some occasions when the authorised signatories were not available to sign cheques within the short payment deadlines (late payments invite heavy late fees and stiff interest rates), Javed Anand and Teesta Setalvad paid the entire credit card bill for the month and were

subsequently reimbursed by Sabrang Trust for expenses incurred on the Trust's activities.

Thus, since in either case Sabrang Trust reimbursed Teesta Setalvad and Javed Anand only for actual expenses incurred on the activities of the association and in accordance with the purpose for which contribution was received, there was no violation of Section 8(1)(a) of FCRA, 2010.

Unquote

8.2 **Sabrang Trust's response to para 9, page 2, of Order dated September 9, 2015:**

The order is merely a reiteration, word for word, of the observation in the letter dated June 4, 2015 at Para marked 4, page 2. What's worse, it not only dismisses our detailed rebuttal of the allegation with mere two words "not satisfactory" but also proceeds to give a sinister twist to the allegation by adding a sentence in the order that reads: "The Cards are issued in the name of individuals and the above mentioned payment appears that the foreign contribution has been used for personal gain". This is in total disregard of our detailed explanation and hundreds of pages of documentary evidence provided to the inspection team. We beg to submit that such summary dismissal amounts to non application of mind, if not worse. We vehemently deny the new and baseless allegation about foreign contribution having been used for personal gain through use of credit cards issues in the name of individual trustees. We urge the FCRA monitoring unit to reexamine the hundreds of pages of documentary evidence we have already provided to the inspection team to establish that no expenses of a personal nature incurred through the credit cards were charged to the Association (Sabrang Trust).

Para 10, page 2 of the order dated September 9, 2015 reads:

Quote:

Whereas, as per Voucher No. 294 dated 13.02.12 a sum of Rs. 1174/- was paid to AIMCO Forex (P) Limited towards International Medical Policy in favour of Shri Javed Anand for attending Lahore Conference and voucher No. 28 dated 02.05.2011 of Rs. 4227/- was paid to Shri Javed Anand towards purchase of books and travel expenses with regard to attending the People Union for Civil Liberty (PUCL) meeting. The above mentioned payment appears that the foreign contribution has been used for personal gain. This amounts to violation of Section 8 (1) (a) of FCRA, 2010.

Unquote

Corresponding Para marked 8, page 2 of the Observations dated June 4, 2015 read:

Quote:

As per Voucher No. 294 dated 13.02.12 a sum of Rs. 1174/- was paid to AIMCO Forex (P) Limited towards International Medical Policy in favour of Shri Javed Anand for attending Lahore Conference and voucher No. 28 dated 02.05.2011 of Rs. 4227/- was reimbursed to Shri Javed Anand towards purchase of books and travel expenses with regard to attending the People Union for Civil Liberty (PUCL) meeting. This amount to violation of Section 8 (1) (a) of FCRA, 2010.

Unquote

Sabrang Trust's response to Observation (letter dated June 25, 2015) had stated:

Quote:

(i) International medical policy (Rs.1,174/-): As may be seen from the grant letter provided to inspection team by Sabrang Trust, the stated purpose for the foreign contribution received from Ford Foundation for the period 2006-2009 was towards 'conflict resolution and peace building'. The Lahore conference to which Javed Anand was invited was for the same purpose. Invitation papers and other related documents have been shown and provided to the inspection team. Travel and accommodation expenses were paid for by the conference organisers. As the purpose of the conference was the same as the purpose for which foreign contribution had been received, an international medical policy for Javed Anand was paid by Sabrang Trust, in India, to Aim Forex (P) Ltd., Mumbai. *In our view, therefore, this does not amount to violation of Section 8(1)(a) of FCRA, 2010.*

(ii) Purchase of books and travel expenses (Rs. 4,227/-) with regard to attending People's Union of Civil Liberties (PUCL) meeting: Despite our clarification to the inspection team, during their April 2015 visit for inspection of accounts of Sabrang Trust, there appears to be some misunderstanding. Documents were shown and provided to inspection team as proof that Javed Anand was invited to a PUCL meeting, in Delhi, to speak on the issue of 'Freedom of Expression and Hate Speech', an issue closely related to conflict resolution and peace building. As may be seen from the email printouts provided to the inspection team, Javed Anand's air ticket was paid for by PUCL. But some local travel expenses incurred were reimbursed by Sabrang Trust. As for the purchase of books, these were bought by Javed Anand not for the PUCL meeting but during the Delhi trip for the PUCL meeting. Travel expenses, purchase of newspapers/ magazines/ books are very much

part of the budget proposed by Sabrang Trust and approved by Ford Foundation as may be seen from the documents provided to inspection team on April 11, 2015.

Thus it is not correct to say that expenses on the same are in violation of Section 8(1)(a) of FCRA, 2010.

Unquote

Sabrang Trust's response to para 10, page 2, of Order dated September 9, 2015:

The order is merely a reiteration, word for word, of the observation in the letter dated June 4, 2015 at para marked 4, page 2. What's worse, it not only dismisses our detailed rebuttal of the allegation with mere two words "not satisfactory" but also proceeds to give a sinister twist to the allegation by adding a sentence in the order that reads: "The above mentioned payment appears that the foreign contribution has been used for personal gain". This is in total disregard of our detailed explanation and hundreds of pages of documentary evidence provided to the inspection team. We beg to submit that this simply amounts to non application of mind, if not worse.

8.3 *Para 11, page 3 of the order dated September 9, 2015 reads:*

Quote:

Whereas, during course of inspection of books & records of the association it was noticed that payments of Rs. 50 lakhs were made by Sabrang Trust to Sabrang Communications & Publishing Pvt. (SCPPL) Limited which appears to be used for personal gain. SCPPL is also is not registered under FCRA 2010. Thus the association has violated Section 7 read with Rule 24 of FCRR, 2011 and 8 (1) (a) of FCRA, 2010.

Unquote

Sabrang Trust's response to para 11, page 3, of Order dated September 9, 2015:

This allegation is merely a slightly reworded repeat of the allegation under para 6, page 2 of the same order and therefore does not require separate comment.

Para 12, page 3 of the order dated September 9, 2015 reads:

Quote:

Whereas, on review of Registration Certificate of the association, "Sabrang Trust", it was noticed that it was registered under FCRA, 1976 (repeated with FCRA 2010) vide

registration Number 083781099R under nature of 'Educational and Social'. On scrutiny of FC-3 (now FC-6) return FY 2007-08 it was noticed that association has received Rs. 1,52,593/- as foreign contribution under the nature 'Cultural'. Further this amount has been reflected in FC-3 return in two different Columns as Rs. 1,02,593/- under 'Maintenance of place of Historical and Cultural importance and Rs. 50,000/- under 'other expenses'. This indicates that the association has received the FC for the purpose which is not permitted as per mandate of Registration Certificate allotted by Central Government under Foreign Contribution (Regulation) Act, 1976 (repeated with FCRA, 2010) and has violated the mandate of Registration Certificate.

Unquote

Corresponding Para 2, page 1 of the Observations dated June 4, 2015 reads:

Quote:

On review of Registration Certificate of the association, "Sabrang Trust", it was noticed that it was registered under FCRA, 1976 (repeated with FCRA 2010) vide registration Number 083781099R under nature of 'Educational and Social'. On scrutiny of FC-3 (now FC-6) return FY 2007-08 it was noticed that association has received Rs. 1,52,593/- as foreign contribution under the nature 'Cultural'. Further this amount has been reflected in FC-3 return in two different Columns as Rs. 1,02,593/- under 'Maintenance of place of Historical and Culture importance' and Rs. 50,000/- under 'other expenses'. This indicates that the association has received the FC for the purpose which is not permitted as per mandate of Registration Certificate allotted by Central Government under Foreign Contribution (Regulation) Act, 1976 (repeated with FCRA, 2010) and has violated the mandate of Registration Certificate.

Unquote

Sabrang Trust's response to Observation (letter dated June 25, 2015) had stated:

Quote:

Kindly note that the mistakes the observation refers to were committed by employees of FCRA department while making Online entries of the Offline (hard copy) returns of Sabrang Trust for 2007-08 and 2008-09. Sabrang Trust cannot be held responsible for errors committed by personnel of the FCRA department.

Sabrang Trust started filing FC-3/6 returns Online (in addition to filing hard copies of the same offline along with auditor's certificate and audited financial reports) only from 2009-10 onwards. As was pointed out and accepted by the inspection team, the FC-3/6

entries Online for 2007-08 and 2008-09 were subsequently made by staff/employees of the FCRA department in the course of which they have made a number of mistakes for both 2007-08 and 2008-09.

It appears that the information being relied on by you for your observation is taken from FC-3 Online entries for 2007-08 made by staff/employees of FCRA department. Kindly refer to the FC-3 for 2007-08 submitted by us to the Ministry which is attached here for ready reference (Pg 4 of annexure). Under point 4 ('Donor wise receipt of foreign contribution'), it is clearly shown that the amount of Rs. 1,02,593/- was received for the purpose, 'RTI Education', while the amount of Rs. 50,000 was received for purpose, 'Building a Memorial for Communal Harmony.' Neither of these activities could be called 'cultural' in nature.

It is agreed that in para 2 of the Form FC-3 filed by Sabrang Trust (Pg 1 of annexure), the amount of Rs. 50,000 received for a 'proposed memorial' is shown under purpose 3 ('Maintenance of place of Historical and Cultural Importance'). As explained to the inspection team during their inspection of accounts of Sabrang Trust (April 9-11, 2015), we received our FCRA registration in November 2007. FY 2007-08 was the very first year of our filing returns and we had yet to familiarise ourselves with what should go under which of the long list of 56 purposes detailed in Form FC-3. Having realized in subsequent years that the Memorial proposed to be built by Sabrang Trust could in no way fall under 'Maintenance of place of Historical and Cultural Importance', we have since then consistently reported this as yet unutilized amount under purpose 56 ('Activities other than those mentioned above').

Thus, the observation that Sabrang Trust has violated the mandate of the Registration Certificate is not correct.

Unquote

Sabrang Trust's response to Para 12 page 3 of Order dated September 9, 2015:

The order merely reiterates its earlier observation, word for word, and dismisses our detailed rebuttal of the allegation with two words "not satisfactory". We beg to submit that such summary dismissal amounts to non application of mind, if not worse.

8.4 *Para 13, page 3 of the order dated September 9, 2015 reads:*

Quote:



Whereas, it has been noticed that association has transferred an amount of Rs. 2,46,954.00 from its FC designated account to Sabrang Trust domestic account on 14.01.2011 vide cheque no. 136035 without any logical reasons. This may be treated as non utilization of foreign contribution for the purpose for which it was received and mixing of foreign contribution with domestic contribution. This is a violation of section 8 (1) (a) and Section 17 (1), of FCRA 2010.

Unquote

Sabrang Trust's response to para 13, page 3, of Order dated September 9, 2015:

This allegation is merely a slightly reworded repeat of the allegation under para 7, page 2 of the same order and therefore does not require separate comment.

In conclusion we would like to say and submit as follows:

- 1 During the on-site inspection that was conducted by the four member MHA team led by Deputy Secretary Shri Mahendra Kumar (who incidentally is also the signatory of the Order) from April 9-11, 2015 at the registered office of Sabrang Trust, full co-operation was extended by Sabrang Trust and all original documents were produced for inspection. Sabrang Trust also furnished 478 photocopies of documents as were asked for by the inspection team.
- 2 Further, we would like to stress that in view of the seriousness of the allegations about personal expenses incurred by Javed Anand and Teesta Setalvad through the use of their personal credit cards, Sabrang Trust submitted the inspection team a DVD containing the full record of all expenses incurred through the respective credit cards of Javed Anand and Teesta Setalvad to establish that expenses of a personal nature were not charged to the Sabrang Trust account nor were any such expenses recovered from or reimbursed by Sabrang Trust to Javed Anand or Teesta Setalvad.
- 3 In Sabrang Trust's response dated June 25, 2015 to the observations made in the letter dated June 4, 2015, Sabrang Trust had referred to and relied upon the original documents produced earlier as also the photocopies and DVDs submitted to the MHA inspection team in support of it's contention that the alleged violations of FCRA 2010 and FCRR 2011 could not be substantiated at all if the material placed on record before the inspection team and Sabrang Trust's response was objectively considered in its proper and true perspective.
- 4 No reasonable person applying his mind in a fair and objective manner on the facts of the case could have come to the conclusion that Sabrang Trust had violated any provisions of FCRA 2010 or FCRR 2011 and in particular concluded that Rs 50 lacs was transferred by Sabrang Trust to a non FCRA registered organisation namely

Sabrang Communications & Publications Pvt. Ltd or concluded that expenses totalling Rs 12 lacs were incurred through credit cards for "personal gain".

- 5 We therefore respectfully submit that this detailed point-wise, paragraph-wise reply should be taken into consideration and viewed in an objective and fair manner and if so done, the inescapable conclusion will be that Sabrang Trust has not violated any provisions of FCRA 2010 and FCRR 2011.
- 6 We would request that an opportunity be provided to Sabrang Trust to make detailed submissions in person through their lawyers and Chartered Accountants to fully explain the position in detail.
- 7 In view of all that we had stated in our response to the observations in June and in response to your order dated 23.7.2015, we request the MHA to revoke the suspension of the FCRA registration certificate of Sabrang Trust.
- 8 We wish to make it known that we are already subject to what we believe is a malicious investigation at the hands of the Gujarat police, on the registration of an innocuous FIR against two Trustees of Citizens for Justice and Peace (CJP) and Sabrang Trust, consequent to which we have been subject to a thorough financial examination on various relevant and irrelevant issues. That matter is currently pending in the Supreme Court of India. We have reasons to believe that these actions by the MHA (FCRA) department are part and parcel of this continued action, since no discrepancies and violations could be found through the entire Gujarat Police Crime Branch investigations.
- 9 The suspension of our FCRA registration has nothing to do with the legality of our activities and is purely actuated by malafides and extraneous considerations which you are well aware of and which will be detailed by us in the event of your not revoking the suspension order.

Thanking you.
Yours sincerely,


Javed Anand
Secretary/Chief Functionary

