

## Social Sector Hotline

October 26, 2023

### DECIPHERING DELHI HC'S INTERPRETATION ON FCRA SUSPENSION AND UNUTILIZED FUNDS

- The Delhi High Court ruling allows non-profit organizations to utilize 25% of its 'unutilized funds,' including fixed-deposits, government bonds etc. during FCRA suspension.
- The ruling emphasizes on the importance of meticulous FCRA compliance, expanding options for non-profit organizations to manage funds during suspension.

#### INTRODUCTION

In a recent and highly significant legal development, the Delhi High Court ("**Delhi HC**") passed a ruling that could have far-reaching implications for non-profit organizations navigating the complexities of the Foreign Contribution Regulation Act, 2010 ("**FCRA**"). The judgment dated October 16, 2023 revolves around the Centre for Policy Research ("**CPR**"), one of India's leading think-tanks and its ongoing legal battle against the suspension of its FCRA license by the Ministry of Home Affairs ("**MHA**") on February 27, 2023.<sup>1</sup> This suspension was the result of allegations of non-compliance with FCRA regulations stemming from an Income-tax Department raid on CPR, along with other non-profit organizations, including Oxfam India and Public Spirited Media Foundation.<sup>2</sup>

#### BACKGROUND

The FCRA is a crucial piece of legislation in India that regulates foreign contributions to Indian non-profit organizations. CPR's FCRA registration suspension on February 27, 2023, came in response to the allegations of misappropriation of foreign contributions for purposes outside the scope of its registered objectives. These allegations stemmed from an Income-tax raid carried out against CPR and several non-profit organizations. The suspension led to financial constraints for CPR, affecting its ability to meet financial commitments, including employees' salary disbursements.

In response to the suspension order issued by the MHA, CPR approached the Delhi HC through a writ petition under Article 226 of the Indian Constitution, seeking cancellation of the suspension order.<sup>3</sup>

#### CONTENTIONS OF THE PETITIONER

The Petitioner ("**CPR**") contended that the suspension order under S.13 of the FCRA had been issued without adhering to due process, rendering the order invalid. It was argued that this suspension had been imposed without conducting the mandatory inquiry specified under S.14 of the FCRA, which is a fundamental requirement under the Act.<sup>4</sup> Additionally, to address the immediate financial challenges pending writ petition, an application for interim relief had been filed by the Petitioner invoking S.13(2)(b) of the FCRA read with Rule 14(a) of the Foreign Contribution (Regulation) Rules, 2011 ("**FCRR**").<sup>5</sup>

The Petitioner sought a definitive interpretation of the term 'in his custody' as stipulated under S.13(2)(b) of the FCRA. The Petitioner argued that this provision of the FCRA permitted the utilization of 25% of the entire unutilized amount, including funds held in different deposit accounts/schemes like fixed deposits, government bonds, etc.

Further, in light of the organizations severe operational and financial challenges, the Petitioner emphasized on the critical need for broader access of funds during the suspension. This pressing requirement primarily revolved around the timely disbursement of salaries to its employees.

#### CONTENTIONS OF THE RESPONDENT

The Respondent asserted that the suspension order had been issued in accordance with the provisions of the FCRA. The Respondent contended that the FCRA provisions permitted the utilization of 25% of the unutilized amount in the current account of the Petitioner. By adopting a conservative approach, the Respondent argued that the amount kept under different deposit/investment schemes cannot be included in the definition of 'custody' under the provisions of S.13(2)(b) of the FCRA.

#### ANALYSIS

The Delhi HC examined the term "in his custody" under Section 13(2)(b) of the FCRA and determined that it should not be limited solely to funds held in current accounts. Instead, the Court held that unutilized foreign contributions in fixed deposits and government bonds should also be considered part of the funds "in his custody." These unspent funds are to be made available to the organization during the suspension period.

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To strike a balance between the organization's immediate financial needs and the prevention of any misuse or diversion of foreign contributions during the suspension period, the Delhi HC imposed specific compliance requirements on the Petitioner. The Court obligated the Petitioner to periodically submit comprehensive statements detailing its FCRA account, including the utilization of all funds and a record of expenses incurred from the date of suspension. Thus, setting a precedent for ensuring transparency, accountability and rigorous oversight of funds for similar cases.

CONCLUSION

The Delhi HC ruling in the instant case establishes a seminal legal precedent, emphasizing the importance of meticulous FCRA compliance. The judgment expands the scope of the term "in his custody" to include not only funds held in current accounts but also those in fixed deposits and government bonds, providing organizations with greater flexibility in managing unutilized foreign contributions during an FCRA suspension. Thus, enhancing their options in addressing financial challenges.

The judgment recognizes the need for a harmonious equilibrium between an organization's practical operational requirements and regulatory compliance. It highlights the ever-evolving nature of FCRA regulations in India, thereby emphasizing the essential requirement for non-profit organizations to exercise prudent navigation and unwavering diligence in their commitment to adhering to these dynamic regulations.

– Sehar Sharma and Rahul Rishi

You can direct your queries or comments to the authors.

<sup>1</sup>Centre for Policy Research v. Union of India, W.P.(C)-11139/2023 2023:DHC:7582 (<http://164.100.69.66/jsearch/>)

<sup>2</sup> <https://www.thehindubusinessline.com/economy/home-ministry-suspends-fcra-licence-of-the-centre-for-policy-research/article66567295.ece>

<sup>3</sup> <https://ddashboard.legislative.gov.in/sites/default/files/COI...pdf>

<sup>4</sup>Centre for Policy Research v. Union of India, W.P.(C)-11139/2023, Order dated 29/08/2023 ( <https://dhcapl.nic.in/dhcorderportal/>)

<sup>5</sup> <http://www.bareactslive.com/ACA/ACT2417.HTM>

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